

the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

**(c) Regional Small Business Regulatory Fairness Boards**

(1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b) of this section.

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

**(d) Powers of Boards**

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sub-

chapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.

(Pub. L. 85-536, §2[30], as added Pub. L. 104-121, title II, § 222(2), Mar. 29, 1996, 110 Stat. 860.)

REFERENCES IN TEXT

Section 7 of the Inspector General Act of 1978, referred to in subsec. (b)(2)(B), is section 7 of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 2[30] of Pub. L. 85-536 was renumbered section 2[31] and is set out as a note under section 631 of this title.

EFFECTIVE DATE

Section effective on expiration of 90 days after Mar. 29, 1996, see section 224 of Pub. L. 104-121 set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

**CHAPTER 14B—SMALL BUSINESS INVESTMENT PROGRAM**

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77c, 77ddd, 80a-2, 80a-18, 80a-60, 634, 637, 645, 1691c of this title; title

12 section 4702; title 26 sections 243, 246A, 542, 586, 1242, 1243.

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. 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 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 687l 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 provided in part 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 Reg-

ister 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, 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 [15 U.S.C. 632(a)(2)]; and

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

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

(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.

(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.)

#### 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, July 18, 1958, 72 Stat. 384, as amended, 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. 832, as amended, 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.

#### AMENDMENTS

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 in-

vestment 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”.

#### 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 635; title 18 section 20.

## 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 633, 693 of this title.

### § 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—SMALL BUSINESS INVESTMENT COMPANIES

### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 633, 634, 697f of this title.

### § 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 nec-

essary 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.

(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.)

REFERENCES IN TEXT

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

AMENDMENTS

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.

1960—Subsec. (d)(9) to (11). Pub. L. 86-502 repealed pars. (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 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 the date of enactment of this Act [Sept. 4, 1992], the Comptroller General of the United States shall transmit to the Committees on Small Business of the House of Representatives and the Senate a report that reviews 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 the date of enactment of this Act, with respect to each item listed in section 308(g)(3) of the Small Business Investment Act of 1958 [15 U.S.C. 687(g)(3)], as amended by subsection (a)."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 662, 682, 683, 687, 697f of this title; title 11 section 109; title 12 sections 1431, 1464; title 26 sections 1044, 1202; title 42 sections 5305, 9815.

### § 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<sup>1</sup> 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) Sale of shares of stock to banking organizations

Notwithstanding the provisions of section 1845(a)(1)<sup>2</sup> of title 12, 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.

### (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.)

#### 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), 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

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 experi-

<sup>1</sup> So in original. Probably should be followed by a comma.

<sup>2</sup> See References in Text note below.

ence 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 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 681, 683 of this title; title 42 section 9815.

### § 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 an additional charge of 1 percent per annum 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

ture 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) 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—

(A) if the company has private capital of not more than \$15,000,000, the total amount of leverage shall not exceed 300 per centum of private capital;

(B) 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 per centum of the amount of private capital over \$15,000,000; and

(C) 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 per centum of the amount of private capital over \$30,000,000 but not to exceed an additional \$15,000,000.

(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) 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.

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 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) Requirement to finance smaller enterprises**

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.

**(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 nearest one-eighth of 1 percent, plus an additional charge of 1 percent per annum 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 subsection 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 contingent upon and limited to the extent of earnings.

(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 partici-

pation 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<sup>1</sup> 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.

(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

<sup>1</sup> So in original. Probably should be capitalized.

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 remainder 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.

(13) PARTICIPATING SECURITIES FOR SMALLER SMALL BUSINESS INVESTMENT COMPANIES.—

(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 per cent 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.

**(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, 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.

**(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.

(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.)

REFERENCES IN TEXT

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

AMENDMENTS

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 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 tak-

ing 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 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 687l, 687m, 697 of this title; title 42 section 9815.

### § 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 1243.

**§ 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. 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.

**(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).

(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.)

#### 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, July 18, 1958, 72 Stat. 384, as amended, 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

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

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of Title 12, Banks and Banking.

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 Northern 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

#### § 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 is—

sued 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 objection 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.

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

#### CROSS REFERENCES

Per diem and mileage of witnesses, see section 1821 of Title 28, Judiciary and Judicial Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

### § 687b. Investigations and examinations; power to subpoena 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, subpoena 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 subpoena 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. 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 five years;
- (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.)

#### 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

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 company 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 compa-

nies 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 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."

#### FEDERAL RULES OF CIVIL PROCEDURE

Order for discovery and production of documents, see rule 34, Title 28, Appendix, Judiciary and Judicial Procedure.

Subpena, see rule 45.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687g of this title.

### § 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

### § 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 (including disclosure in the locality most directly affected by the transaction) 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.)

#### 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

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 and suspension of directors and officers of licensees**

**(a) Written notice of intention to remove; grounds**

The Administration may serve upon any director or officer of a licensee a written notice of its intention to remove him from office whenever, in the opinion of the Administration, such director or officer—

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

- (A) this chapter,
- (B) any regulation issued under this chapter, or
- (C) a cease-and-desist order which has become final, or

(2) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of his fiduciary duty as such director or officer,

and that such violation or such breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer.

**(b) Suspension pending completion of administrative proceedings**

In respect to any director or officer referred to in subsection (a) of this section, the Administration may, if it deems it necessary for the protection of the licensee or the interests of the Administration, by written notice to such effect served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (d) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) of this section and until such time as the Administration shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer, until the effective date of any such order. Copies of any such notice shall also be served upon the interested licensee.

**(c) Hearing; order of removal**

A notice of intention to remove a director or officer, as provided in subsection (a) of this section, 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. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Administration at the request of (1) such director or officer and for good cause shown, or (2) the Attorney General of the United States. Unless such director or officer shall appear at the hear-

ing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Administration shall find that any of the grounds specified in such notice has been established, the Administration may issue such orders of removal from office as it deems appropriate. Any such order shall become effective at the expiration of thirty days after service upon such licensee and the director or officer concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Administration or a reviewing court.

**(d) Stay by United States district court of suspension or prohibition**

Within ten days after any director or officer has been suspended from office and/or prohibited from participation in the conduct of the affairs of a licensee under subsection (b) of this section, such director or officer 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 such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director or officer under subsection (a) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

**(e) Suspension of directors and officers charged with felonies involving dishonesty or breach of trust; notice; duration of suspension; removal**

Whenever any director or officer of a licensee 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 Administration may, by written notice served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. A copy of such notice shall also be served upon the licensee. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administration. In the event that a judgment of conviction with respect to such offense is entered against such director or officer, and at such time as such judgment is not subject to further appellate review, the Administration may issue and serve upon such director or officer an order removing him from office. A copy of such order shall be served upon such licensee, whereupon such director or officer shall cease to be a director or officer of such licensee. A finding of not guilty or other disposition of the charge shall not preclude the Administration from thereafter instituting proceedings to suspend or remove such director or officer from office and/or to prohibit him from further participation in licensee affairs, pursuant to subsection (a) or (b) of this section.

**(f) Hearings; procedure; form and requisites of decision; review; stay of orders**

(1) Any hearing provided for in this section shall be 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 shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within ninety days after the Administration has notified the parties that the case has been submitted to it for final decision, the Administration shall render its decision (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. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Administration may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to such proceeding may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the director or officer concerned, or an order issued under subsection (e) 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, within thirty days after the date of service of such order, a written petition praying that the order of the Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Administration, and thereupon the Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administration.

(Pub. L. 85-699, title III, §313, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1360.)

## REFERENCES IN TEXT

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

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

**§ 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.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

### § 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.

### § 687l. 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 partici-

pating 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. 6877(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. 6877] 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.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687m 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 687l of this title at periodic intervals of not less than every three months and shall do so at such shorter intervals as its<sup>1</sup> 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, 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.)

## 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

1996—Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 687l 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.

<sup>1</sup> So in original. Probably should be “it”.

## 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

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 633, 636, 637 of this title.

## 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 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 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”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 694-1, 694b of this 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 inserted “, 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”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 636, 694-2 of this title.

**§ 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 ex-

penses, 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

#### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 636 of this title.

### § 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 pro-

vided 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).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1452.

### § 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 contract up to \$1,250,000.

(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 avail-

able 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<sup>1</sup> 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

(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 \$1,250,000,

(3) the surety has breached a material term or condition of such guarantee agreement, 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 sur-

<sup>1</sup> So in original. Probably should be capitalized.

ety, 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 each year 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.)

#### TERMINATION OF SUBSECTION (a)(3)

*For termination of subsection (a)(3) of this section, see Effective and Termination Dates of 1988 Amendment note below.*

#### AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104-208 added par. (5).

1988—Subsec. (a). Pub. L. 100-590, §§202, 207, amended subsec. (a) generally, substituting pars. (1) to (4) for former pars. (1) to (6), and provided for the termination of par. (3). See Effective and Termination Dates of 1988 Amendment note below.

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 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 applications received (or pending substantive evaluation) on or after October 1, 1995."

#### EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Section 207 of Pub. L. 100-590, 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, provided that: "The provisions contained in section 411(a)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(3)) shall cease to be effective after September 30, 1997."

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.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 644 of this title; title 25 section 1497a.

**§ 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

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 633, 636 of this title.

**§ 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,

(D) rural development,

(E) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,

(F) changes necessitated by Federal budget cutbacks, including defense related industries, or

(G) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees.

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.

(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.)

#### 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

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.

#### 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. 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 REFERRED TO IN OTHER SECTIONS

This section is referred to in section 696 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) 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.

(2) 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.

(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<sup>1</sup> (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.

(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.

(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.)

AMENDMENTS

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,

<sup>1</sup> So in original. Probably should be “clause”.

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 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 634, 697, 697d of this title; title 42 section 9815.

### § 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 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

(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 max-

imum 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 applica-

tions 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 (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, 1997.

**(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<sup>1</sup> shall take all necessary steps to purchase or accelerate the debenture.

**(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 based 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.

(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.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsections (b)(7)(A)(ii) and (g), see References in Text note set out under section 661 of this title.

<sup>1</sup> So in original. Probably should be capitalized.

## AMENDMENTS

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 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.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 696, 697a, 697d, 697e, 697f of this title.

**§ 697a. Private debenture sales**

(a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to in-

vestors, 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.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 697, 697d, 697f of this title.

**§ 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 de-

bentures 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].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 697f of this title.

### § 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

Section 212(c) of Pub. L. 103-403 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 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

On a pilot program basis, the Administration may establish a Premier Certified Lenders Program for not more than 15 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 if such company—

(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

(C) 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.

#### (c) Loss reserve

##### (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.

#### (d) 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 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.

#### (e) 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 (f) of this section, but such review shall not affect any outstanding debenture guarantee.

#### (f) Suspension or revocation

The designation of a State or local 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.

#### (g) Effect of suspension or designation<sup>1</sup>

A suspension or revocation under subsection (f) of this section shall not affect any outstanding debenture guarantee.

#### (h) Regulations

Not later than 180 days after October 22, 1994, the Administration shall promulgate regulations to carry out this section.

#### (i) 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 Representa-

<sup>1</sup> So in original. Probably should be "revocation".

tives 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; and
- (4) such other information as the Administration deems appropriate.

(Pub. L. 85-699, title V, §508, as added Pub. L. 103-403, title II, §217(a), Oct. 22, 1994, 108 Stat. 4185.)

#### REPEAL OF SECTION

*For repeal of section by section 217(b) of Pub. L. 103-403, see Termination Date note below.*

#### CODIFICATION

October 22, 1994, referred to in subsec. (i), 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.

#### TERMINATION DATE

Section 217(b) of Pub. L. 103-403 provided that: “Effective on October 1, 1997, section 508 of the Small Business Investment Act of 1958 [this section], as added by subsection (a), is repealed.”

### § 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 (i) 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 (e) 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.”

**CHAPTER 15—ECONOMIC RECOVERY**

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