

OMB FORM 83-I SUPPORTING STATEMENT

*PAPERWORK REDUCTION ACT SUBMISSION FOR
U.S. SMALL BUSINESS ADMINISTRATION'S (SBA)
SMALL BUSINESS INVESTMENT COMPANY (SBIC) PROGRAM*

*INFORMATION COLLECTION 3245-0379
SBA FORM 2428: FINANCING ELIGIBILITY STATEMENT FOR USAGE OF ENERGY
SAVING DEBENTURE*

A. Justification

1. Circumstances necessitating the collection of information.

The Office of Investment of the Small Business Administration (SBA) licenses and regulates small business investment companies (SBICs) pursuant to Title III, Part A of the Small Business Investment Act of 1958 as amended (SBIA), 15 U.S.C. Sections 671-687(m), and 13 CFR Part 107. The Energy Independence and Security Act of 2007 (Energy Act), Public Law 110-140, Title XII, section 1205, authorized SBICs licensed after September 30, 2008, to issue “Energy Saving Debentures” for the purposes of making “Energy Saving Qualified Investments” as defined in 13 CFR 107.50. Section 1206 of the Energy Act also authorized SBA to make this same category of SBICs eligible for additional leverage if they have made energy saving qualified investments in smaller enterprises.

In order to qualify as an “Energy Saving Qualified Investment” the Small Business receiving the proceeds of energy saving debentures must be “primarily engaged” in business activities that reduce the use or consumption of non-renewable energy sources (“Energy Saving Activities”). In many cases, the SBIC will be able to determine that a proposed investment qualifies by meeting specific criteria listed in the definition. However, if the proposed investment does not meet the specific criteria, the SBIC can still request a determination from SBA as to whether it qualifies. To make this determination, SBA must collect certain information about the business and activities of the Small Business.

With this submission there are no substantive changes to the information to be collected. Only minor changes were made to clarify the regulatory authority and the instructions for submitting the information.

2. How, by whom, and for what purpose information will be used.

This information collection is used by SBICs requesting a pre-financing determination of eligibility by SBA, as to: (1) whether a particular activity in which a Small Business is engaged is an Energy Saving Activity, as described in the definition of that term and as used in §107.610(f)(2); and/or, (2) whether a Small Business is “primarily engaged” in Energy Saving Activities, as described in the definition of Energy Saving Qualified Investment in §107.50 and as used in §107.610(f)(3). The SBIC must provide supporting evidence of the Small Business’s eligibility based upon information provided by the Small Business, and the Small Business providing the information must certify that it is true and correct.

3. Technological collection techniques.
SBA Form 2428 is available electronically, either on SBA's web site or by email upon request. SBICs may return the completed form to SBA by email – either to the general SBIC email address (sbic@sba.gov) or as directed by the Office of SBIC Operations Financial Analyst assigned to the SBIC.
4. Avoidance of Duplication.
The information collected by Form 2428 is necessary to SBA in determining whether the Small Business is “primarily engaged” in Energy Saving Activities or whether a particular activity in which a Small Business is engaged is an Energy Saving Activity. This information is not reported in any other format. Therefore, there is no duplication of information with this form.
5. Impact on small business or other small entities.
There is no significant impact on a substantial number of Small Businesses or other small entities. The information on the form must be certified by the Small Business in which the SBIC proposes to invest. There are approximately 300 active SBICs, with roughly 120 SBICs issuing leverage. Of those licensed after September 30, 2008, and therefore eligible to issue Energy Saving Debentures to make Energy Saving Qualified Investments, SBA estimates the number of eligible SBICs at 60 and the number of instances per year that will require an SBIC to seek a pre-financing determination from SBA at 5.
6. Consequences if collection of information is not conducted.
There is no similar information available that can be used to accomplish the purposes of this collection. If the information was not collected, businesses that do not conform to SBA eligibility criteria could benefit from use of the energy saving debenture, a riskier security than the standard debenture.
7. Existence of special circumstances.
An SBIC that wants to use an Energy Saving Debenture to make an Energy Saving Qualified Investment to a Small Business that does not satisfy the criteria listed in the SBIC program regulations will be required to submit the form prior to the provision of assistance to the Small Business, so that SBA may determine whether the proposed financing meets the eligibility requirements. The form must be completed in conjunction with a specific financing, and based on SBA's experience with the usage of the energy saving debenture, it is very unlikely that any SBIC will request a determination of eligibility more than once a quarter.
8. Solicitation of public comment.
SBA published the required notice in the Federal Register on March 19, 2015, at 80 FR 14430. The comment period ended on May 18, 2015; SBA received no comments.
9. Payment or gifts.
No payments or gifts are provided to respondents.

10. Assurance of confidentiality.

Generally the information collected will be protected to the extent permitted by law. The information collected includes financial data and product information of the portfolio company, which is protected from disclosure under the Freedom of Information Act; specifically, exemptions 4, 6 and 8, which allow SBA to withhold financial data on individual companies.

11. Questions of a sensitive nature.

No questions of a sensitive nature are asked. The Agency has reviewed the requirements of the Privacy Act and determined there is no need for a Privacy Act system of records for this collection of information.

12. Estimate of the hourly burden of the collection of information.

Of the approximately 300 active SBICs, SBA estimates that about 60 are eligible to issue Energy Saving Debentures to make Energy Saving Qualified Investments. Of those 60 SBICs, SBA estimates the number of instances per year that would require a pre-financing determination from SBA at 5.

Assuming each of these 60 SBICs invests in 5 Small Businesses per year, that 5% of those 300 investments will be in energy-saving companies, and that only 1/3 of those 15 will require SBA to make a pre-financing determination of eligibility, SBA estimates 5 responses per year.

SBA estimates the burden of this collection of information as follows: an applicant will complete this collection once for each prospective Energy Saving Qualified Investment that requires SBA to make a pre-financing determination of eligibility. SBA estimates that the time needed to complete this collection will average 10 hours.

SBA estimates that the cost to complete this collection will be approximately \$150 per hour. Total estimated aggregate burden is 50 hours per annum costing a total of \$7,500 for the year.

13. Estimate of total annual cost burden.

There is no cost to respondents exclusive of the cost of the hour burden given in item 12.

14. Estimated annualized cost to the Federal government.

The annualized cost to the Federal government for this collection is estimated as follows:

Cost of analysis by financial analyst (GS-13): 8 hrs @ \$50	\$400
Supervisory review: 2 hrs @ \$60 (GS-14) + 1 hr @ \$70 (GS-15)	\$190
Total cost per response to Federal government	0590
Estimated number of responses	5
Total annual cost to Federal government of application review	02,950

15. Explanation of program changes in Items 13 or 14 on OMB Form 83-I.

Not applicable. There are no changes.

16. Collection of information whose results will be published.

Not applicable. The results of this collection of information will not be published.

17. Expiration date for collection of information.

Not applicable. The expiration date will be displayed.

18. Exceptions to certifications in Block 19 on OMB Form 83-I.

Not applicable. There are no exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-1.

B. Collection of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

Attachments:

- Federal Register 60-day public comment notice
- Authorizing Statutory and Regulatory Provisions
- SBA Form 2428, Financing Eligibility Statement for Usage of Energy Saving Debentures



	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.625
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14239 5 and for economic injury is 14240 0.

The States which received an EIDL Declaration # are California, Nevada. (Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 11, 2015.
Maria Contreras-Sweet,
Administrator.
[FR Doc. 2015-06330 Filed 3-18-15; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 18, 2015.

ADDRESSES: Send all comments to Jamie Davenport, Financial Analyst, Office of Microloan, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jamie Davenport, Financial Analyst, Office of Microloan, *Jamie.davenport@sba.gov* 202-205-7516, or Curtis B. Rich, Management Analyst, 202-205-7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: This information collection is reported to SBA's Office Credit Risk Management (OCRM) by SBA's 7(A) Lenders, Certified Development Companies Microloan Lenders, and Non-Lending

Technical Assistance Providers. OCRM uses the information reported to facilitate its oversight and monitoring of these groups, including their overall performance on SBA loans and their compliance with the applicable program requirements.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: SBA Lender Microloan Intermediary and NTAP Reporting Requirements.

Description of Respondents: SBA Loan Applicants.

Form Number: N/A.

Total Estimated Annual Responses: 2,422.

Total Estimated Annual Hour Burden: 6,840.

Curtis B. Rich,
Management Analyst.

[FR Doc. 2015-06329 Filed 3-18-15; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 18, 2015.

ADDRESSES: Send all comments to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, 202-619-0511, or Curtis B. Rich, Management Analyst, 202-205-7030, *curtis.rich@sba.gov*;

SUPPLEMENTARY INFORMATION: Small Business Investment Companies will use this form to request a determination of eligibility for SBA leverage in form of a deferred interest "energy saving debenture" which can be used only to make an "Energy Saving Qualified Investment" Eligibility is based on whether the Small Business to be financed with leverage proceeds "primarily engaged" in Energy Savings Activities as defined in the SBIC program regulations.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Financing Eligibility Statement for Usage of Energy Saving Debenture.

Description of Respondents: Small Business Investment Companies.

Form Number: SBA Form 2428.

Total Estimated Annual Responses: 5.

Total Estimated Annual Hour Burden: 50.

Curtis B. Rich,
Management Analyst.

[FR Doc. 2015-06327 Filed 3-18-15; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public

INFORMATION COLLECTION 3245-0379

SBA FORM 2428: SBIC Financing Eligibility Statement for Usage of Energy Saving Debenture

- TITLE III—Investment Division Programs, Part A—Small Business Investment Companies of the Small Business Investment Act of 1958, as amended
- 15 U.S.C.
- 13 CFR 107

- **Small Business Investment Act of 1958, Sections 103(18), (19); 303(b)(2)(D); and 303(k)**

Sec. 103. DEFINITIONS.

As used in this Act—

.....

- (18) the term “Energy Saving debenture” means a deferred interest debenture that—
- (A) is issued at a discount;
 - (B) has a 5-year maturity or a 10-year maturity;
 - (C) requires no interest payment or annual charge for the first 5 years;
 - (D) is restricted to Energy Saving qualified investments; and
 - (E) is issued at no cost (as defined in section 502 of the Credit Reform Act of 1990) with respect to purchasing and guaranteeing the debenture; and

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

Sec. 303. BORROWING POWER.

(b)(2) MAXIMUM LEVERAGE.—

.....

- (A) IN GENERAL.—The maximum amount of outstanding leverage made available to any one company licensed under section 301(c) of this Act may not exceed the lesser of
- (i) 300 percent of such company’s private capital; or
 - (ii) \$150,000,000.

.....

- (D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—
- (i) IN GENERAL.—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any Energy Saving qualified investment in a smaller enterprise made in the first fiscal year after the date of enactment of this subparagraph or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

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

.....

- (k) ENERGY SAVING DEBENTURES.—In addition to any other authority under this Act, a small business investment company licensed in the first fiscal year after the date of enactment of this subsection or any fiscal year thereafter may issue Energy Saving debentures.

- **15 U.S.C. Sections 671, 681, 683, 687(m):**

**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.

**SUBCHAPTER III—INVESTMENT DIVISION PROGRAMS
Part A—Small Business Investment Companies**

§681. Organization

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

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

(b) Articles of incorporation; approval

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

(c) Issuance of license

(1) Submission of application

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

(2) Procedures

(A) Status

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

(B) Approval or disapproval

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

- (i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or
- (ii) disapprove the application and notify the applicant in writing of the disapproval.

(3) Matters considered

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

(A) shall determine whether—

- (i) the applicant meets the requirements of subsections (a) and (c) of section 682 of this title; and
- (ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this chapter;

(B) shall take into consideration—

- (i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;
- (ii) the general business reputation of the owners and management of the applicant; and
- (iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

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

(4) Exception

(A) In general

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

- (i) has private capital of not less than \$3,000,000;
- (ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 682(a) of this title; and
- (iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 682(a) of this title.

(B) Leverage

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

- (i) files an application for a license not later than 180 days after December 2, 1997;
- (ii) is located in a State that is not served by a licensee; and
- (iii) agrees to be limited to 1 tier of leverage available under section 682(b) of this title, until the applicant meets the requirements of section 682(a) of this title.

(e) Fees

(1) In general

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

(2) Use of amounts

Fees collected under this subsection—

- (A) shall be deposited in the account for salaries and expenses of the Administration; and
- (B) are authorized to be appropriated solely to cover the costs of licensing examinations.

§683. Borrowing operations

(k) Energy saving debentures

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

(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.

§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 12 months and shall do so at such shorter intervals as its deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

- **13 CFR 107.50 and 107.610(f)(2)-(3)**

§107.50 Definition of terms.

Energy Saving Activities means any of the following:

(1) Manufacturing or research and development of products, integral product components, integral material, or related software that meet one or more of the following:

(i) Improves residential energy efficiency as demonstrated by meeting Department of Energy or Environmental Protection Agency criteria for use of the Energy Star trademark label;

(ii) Improves commercial energy efficiency as demonstrated by being in the upper 25% of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program;

(iii) Improves automobile efficiency or reduces consumption of non-renewable fuels through the use of advanced batteries, power electronics, or electric motors; advanced combustion engine technology; alternative fuels; or advanced materials technologies, such as lightweighting;

(iv) Improves industrial energy efficiency through combined heat and power (CHP) prime mover or power generation technologies, heat recovery units, absorption chillers, desiccant dehumidifiers, packaged CHP systems, more efficient process heating equipment, more efficient steam generation equipment, heat recovery steam generators, or more efficient use of water recapture, purification and reuse for industrial application;

(v) Advances commercialization of technologies developed by recipients of awards from the Department of Energy under the Advanced Research Projects Agency—Energy, Small Business Innovation Research, or Small Business Technology Transfer programs;

(vi) Reduces the consumption of non-renewable energy by providing renewable energy sources, as demonstrated by meeting the standards, applicable to the year in which the investment is made, for receiving a Renewable Electricity Production Tax Credit as defined in Internal Revenue Code Section 45 or an Energy Credit as defined in Internal Revenue Code Section 48;

(vii) Reduces the consumption of non-renewable energy for electric power generation as described in Internal Revenue Code Section 48(c)(1)(A) by providing highly efficient energy conversion systems that can use renewable or non-renewable fuel through fuel cells; or

(viii) Improves electricity delivery efficiency by supporting one or more of the smart grid functions as identified in 42 U.S.C. 17386(d), by means of a product, service, or functionality that serves one or more of the following smart grid operational domains: Equipment manufacturing, customer systems, advanced metering infrastructure, electric distribution systems, electric transmission systems, storage systems, and cyber security.

(2) Installation and/or inspection services associated with the deployment of energy saving products as identified by meeting one or more of the following standards:

(i) Deploys products that qualify, in the year in which the investment is made, for installation-related Federal Tax Credits for Residential Consumer Energy Efficiency;

(ii) Deploys products related to commercial energy efficiency as demonstrated by deploying commercial equipment that is in the upper 25% of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program;

(iii) Deploys combined heat and power products, goods, or services;

(iv) Deploys products that qualify, in the year in which the investment is made, for receiving a Renewable Electricity Production Tax Credit as defined in Internal Revenue Code Section 45 or an Energy Credit as defined in Internal Revenue Code Section 48; or

(v) Deploys a product, service, or functionality that improves electricity delivery efficiency by supporting one or more of the smart grid functions as identified in 42 U.S.C. 17386(d), and that serves one or more of the following smart grid operational domains: Equipment manufacturing, customer systems, advanced metering infrastructure, electric distribution systems, electric transmission systems, or grid cyber security.

(3) Auditing or consulting services performed with the objective of identifying potential improvements of the type described in paragraph (1) or (2) of this definition.

(4) Other manufacturing, service, or research and development activities that use less energy to provide the same level of energy service or reduce the consumption of non-renewable energy by providing renewable energy sources, as determined by SBA. A Licensee must obtain such determination in writing prior to providing Financing to a Small Business. SBA will consider factors including but not limited to:

(i) Results of energy efficiency testing performed in accordance with recognized professional standards, preferably by a qualified third-party professional, such as a certified energy assessor, energy auditor, or energy engineer;

(ii) Patents or grants awarded to or licenses held by the Small Business related to Energy Saving Activities listed in subsection (1) or (2) above;

(iii) For research and development of products or services that are anticipated to reduce the consumption of non-renewable energy, written evidence from an independent, certified third-party professional of the feasibility, commercial potential, and projected energy savings of such products or services; and

(iv) Eligibility of the product or service for a Federal tax credit cited in this definition that is not available in the year in which the investment is made, but was available in a previous year.

Energy Saving Qualified Investment means a Financing which:

(1) Is made by a Licensee licensed after September 30, 2008;

(2) Is in the form of a Loan, Debt Security, or Equity Security, each as defined in this section;

(3) Is made to a Small Business that is primarily engaged in Energy Saving Activities. A Licensee must obtain a determination from SBA prior to the provision of Financing as to whether a Small Business is primarily engaged in Energy Saving Activities. SBA will consider the distribution of revenues, employees and expenditures, intellectual property rights held, and Energy Saving Activities described in a business plan presented to investors as part of a formal solicitation in making its determination. However, a Small Business is presumed to be primarily engaged in Energy Saving Activities, and no pre-Financing determination by SBA is required, if:

(i) The Small Business derived at least 50% of its revenues during its most recently completed fiscal year from Energy Saving Activities; or

(ii) The Small Business will utilize 100% of the Financing proceeds received from a Licensee to engage in Energy Saving Activities.

§107.610(f)(2)-(3) Required certifications for Loans and Investments.

(f) For each Energy Saving Qualified Investment:

(2) If, prior to providing Financing, you must obtain a determination from SBA that the activities in which a concern is engaged are Energy Saving Activities, submit to SBA in writing a description of the product or service being provided or developed, including all available documentation of the energy savings produced or anticipated, addressing the factors considered under paragraph (4) of the definition of “Energy Saving Activities” in §107.50 and certified by the concern to be true and correct to the best of its knowledge.

(3) If, prior to providing Financing, you must obtain a determination from SBA that the concern is “primarily engaged” in Energy Saving Activities, submit to SBA in writing all available information concerning the factors considered under paragraph (3) of the definition of “Energy Saving Qualified Investment” in §107.50, certified by the concern to be true and correct to the best of its knowledge.