

**CORRESPONDING STATUTORY AND REGULATORY PROVISIONS  
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.—

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- (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.

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- (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 6871 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.