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This compilation includes
P.L. 114-328, enacted 12/23/16.

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(Public Law 85-699,¹ as amended)

Sec. 101.² SHORT TITLE

This Act may be cited as the “Small Business Investment Act of 1958.”

Sec. 102. STATEMENT OF POLICY

15 USC 661.

It is declared to be the policy of the Congress and the purpose of this Act 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.

Statement of
policy.

It is the intention of the Congress that the provisions of this Act 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.

It³ is the intention of the Congress that in the award of financial assistance under this Act, 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.

Sec. 103. DEFINITIONS.

15 USC 662.

As used in this Act --

¹Approved Aug. 21, 1958 (72 Stat. 689).

² The table of contents formerly found in section 101 was removed by § 2(d)(3) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

³This paragraph added by § 416 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1019).

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- (1) the term “Administration” means the Small Business Administration; “Administration.”
- (2) the term “Administrator” means the Administrator of the Small Business Administration; “Administrator.”
- (3)⁴ the terms “small business investment company”, “company”, and “licensee” mean a company approved by the Administration to operate under the provisions of this Act and issued a license as provided in section 301; “Small business investment company.”
“Company.”
“Licensee.”
- (4)⁵ 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; “State.”
- (5) the term “small-business concern” shall have the same meaning as in the Small Business Act, except⁶ that, for purposes of this Act— “Small business concern.”
- (A) an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation-
- (i) shall not cause a business concern to be deemed not independently owned and operated regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment;⁷
- (ii) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and
- (iii) shall be disregarded in determining whether a small business concern is a smaller enterprise; and
- (B)⁸ in determining whether a business concern satisfies net income standards established pursuant to section 3(a)(2) of the Small Business Act, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other

⁴Amended by § 2(l) of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 752). Section 2(a) of P.L. 92-595, approved Oct. 27, 1972 (86 Stat. 1314), deleted “(c)” after “section 301”.

⁵Amended by § 3 of P.L. 86-502, approved June 11, 1960 (74 Stat. 196), to reflect admission of Alaska and Hawaii to the Union.

⁶Exception added by § 208(a)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-739).

⁷Phrase beginning with “regardless” added by § 402(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁸Subparagraph 103(5)(B) added by § 2(c)(1)(D) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

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

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

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

(7)⁹ the term “license” means a license issued by the Administration as provided in section 301; and “License.”

(8)¹⁰ 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. “Articles.”

(9)¹¹ the term “private capital”— “Private capital.”

(A) means the sum of—

⁹ Paragraph 103(7) added by § 2(2) of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 752). Section 2(a) of P.L. 92-595, approved Oct. 27, 1972 (86 Stat. 1314), deleted “(c)” after “section 301”.

¹⁰ Paragraph 103(8) added by § 106(a) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

¹¹ Paragraphs (9) and (10) added by § 410 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1017). Paragraph (9) rewritten by § 208(a)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-739). Text of former paragraph (9) is reprinted below:

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 unincorporated 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 Act or as the basis for the Administration to issue obligations to provide financing

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(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)¹² funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established prior to October 1, 1987;

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

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

(10)¹³ the term “leverage” includes—

“Leverage.”

(A) debentures purchased or guaranteed by the Administration;

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

¹² Subclauses 103(9)(B)(iii)(I) and (II) redesignated as (II) and (III), respectively, and new subclause 103(9)(B)(iii)(I) added by § 213 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601).

¹³ Paragraph 103(10) rewritten by § 208(a)(3) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-740). Text of former paragraph 10 reprinted below:

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 301(d) of this Act and which have been purchased by the Administration.

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

(11)¹⁴ the term “third party debt” means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

“Third party debt.”

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

“Smaller enterprise.”

(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 Act to that business concern; and

(ii)¹⁵ an average net income for the 2-year period preceding the date on which assistance is provided under this Act to that business concern, of not more than \$2,000,000, after Federal income taxes (excluding any carryover losses) except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

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

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

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

(13) the term “qualified nonprivate funds” means any-

“Qualified nonprivate funds.”

(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”;

¹⁴Paragraphs (11) through (16) added by § 208(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-740).

¹⁵The exception in clause 103(12)(A)(ii) added by § 2(c)(2) of P.L. 106-9, approved April 9, 1999 (113 Stat. 17).

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(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, and are intended to include-

"Employee welfare benefit plan."
"Pension plan."

(A) public and private pension or retirement plans subject to such Act; 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 [li]ability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company;

"Member."

(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;

"Limited liability company."

(17)¹⁶ the term "long term," when used in connection with equity capital or loan funds invested in any small business concern or smaller enterprise, means any period of time not less than 1 year;

(18)¹⁷ the term "Energy Saving debenture" means a deferred interest debenture that—

"Energy Saving debenture."

- (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;

¹⁶ New paragraph 103(17) added by § 402(b)(3) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

¹⁷ Paragraphs (18) and (19) added by §1205(b) of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1773).

(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.

“Energy Saving qualified investment.”

TITLE II -- SMALL BUSINESS INVESTMENT DIVISION OF THE SMALL BUSINESS ADMINISTRATION

Sec. 201.¹⁸ ESTABLISHMENT OF SMALL BUSINESS INVESTMENT DIVISION

15 USC 671.

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.

TITLE III—INVESTMENT DIVISION PROGRAMS¹⁹

PART A—SMALL BUSINESS INVESTMENT COMPANIES

Sec. 301. ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES

15 USC 681.

(a)²⁰ A small business investment company shall be an incorporated body, a limited liability company,²¹ or a limited partnership²² organized and chartered or otherwise existing²³ under State law solely for the purpose of performing the functions and conducting

¹⁸Amended by § 2 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1359), to provide that the Division be headed by an Associate Administrator in lieu of a Deputy Administrator; to delete the provisions stating that the powers of the Administrator under the Act be exercised through the Small Business Investment Division; and to transfer the administrative and penal provisions to a new sec. 308(f).

¹⁹ Heading for Title III changed from “SMALL BUSINESS INVESTMENT COMPANIES” and “PART A” added by § 101(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

²⁰ Sec. 301(a) rewritten by § 11(a) of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 756).

²¹Reference to limited liability company added by § 208(b)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-741).

²²The phrase “or a limited partnership” added by § 106(b) (1) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

²³The phrase “or otherwise existing” added by § 106(b)(2) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

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the activities contemplated under this title, 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,²⁴ 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 articles²⁵), shall be subject to the approval of the Administration.

(b) The articles²⁶ 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 Act 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.

Articles.

(c)²⁷ ISSUANCE OF LICENSE.—

Issuance of
license.

(1) SUBMISSION OF APPLICATION.—Each applicant for a license to operate as a small business investment company under this Act shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

(2) PROCEDURES.—

²⁴“Or partners” added by § 106(b)(3) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663). The clause “has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners” changed to current language by § 105 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2993).

²⁵The phrase “of incorporation” deleted by § 106(b)(4) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

²⁶The phrase “of incorporation” deleted wherever it appeared in this subsection per § 106(c) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

²⁷Subsection 301(c) rewritten by § 208(b)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-741). Text of former subsection 301(c) is reprinted below:

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 Act, 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 Act and issue the company a license for such operation.

(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 302; and

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

(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 probability [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 Act, the Administrator may, in the discretion of the Administrator and based on a showing of

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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 302(a); 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 302(a).

(B)²⁸ 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 302(a), unless the applicant—

- (i) files an application for a license not later than 180 days after the date of enactment of the Small Business Reauthorization Act of 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 302(b), until the applicant meets the requirements of section 302(a).

(d)²⁹ [Repealed].

(e)³⁰ FEES—

Licensing
fees.

²⁸ Subparagraph 301(c)(4)(B) rewritten by § 212 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601). Text of former subparagraph 301(c)(4)(B) is reprinted below:

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 302(a).

²⁹ Subsection 301(d) repealed by § 208(b)(3)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-742). Section 208(b)(3)(B) provides that: “[t]he repeal under subparagraph (A) 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 before the date of enactment of this Act.” Text of repealed provision is reprinted below:

Notwithstanding any other provision of this Act, 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 Act.

³⁰ New subsection 301(e) added by § 214 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601).

(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 Act.

(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.

Sec. 302. CAPITAL REQUIREMENTS³¹

15 USC 682.

(a) AMOUNT.—

Capital requirements for SBICs.

(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 Act.

(2) EXCEPTION.—The Administrator may, in the discretion of the Administration 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,³² both prior to licensing and prior to approving any request for financing, to make periodic payments on any

³¹Heading amended by § 203(b) of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 269).

³²Subsection 302(a) rewritten to this point by § 208(c)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-742). Text of former subsection 302(a) is reprinted below:

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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)³³ 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 301 before the date of enactment of the Small Business Program Improvement Act of 1996 that does not meet the capital requirements of paragraph (1), if—

Exemption from capital requirements.

(A) the licensee certifies in writing that not less [than] 50 percent of the aggregate dollar amount of its financings after the date of enactment of the Small Business Program Improvement Act of 1996 will be provided to smaller enterprises; and

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

(b) FINANCIAL INSTITUTION INVESTMENTS.—

Bank participation.

(1) CERTAIN BANKS.—Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Company Act of 1956,³⁴ any national bank, or any member bank

The combined private paid-in capital and paid-in surplus of any company licensed pursuant to sections 301(c) and (d) of this Act 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 sections 301(c) of this title shall be not less than \$2,500,000 and pursuant to section 301(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.[.]

Subsection 302(a) substantially rewritten two times - first by § 203(a) of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 269), to transfer SBIC authority to sell subordinated debentures to SBA to sec. 303(b); second by § 105 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757), to raise the minimum start-up capital to \$500,000 for SBICs licensed on or after Oct. 1, 1979. The last sentence (beginning with “In all cases,”) was added by § 406(a) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1015).

³³Paragraph 302(a)(4) added by § 208(c)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743).

³⁴Reference to the Bank Holding Company Act added by § 5 of P.L. 86-502, approved June 11, 1960 (74 Stat. 196), to allow a bank subsidiary of a holding company to invest in an SBIC subsidiary of the same holding company. Section 6 of the Bank Holding Company Act was repealed by § 9 of P.L. 89-485, approved July 1, 1966 (80 Stat. 240). Section 6(a)(1) was formerly 12 USC 1845(a)(1); see now 12 USC 371c. The maximum amount of shares a bank may hold in SBICs, formerly set at 2 percent of capital and surplus by § 3(b) of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 752) and at 5 percent but not to exceed 49 percent of any class of voting shares by § 204 of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 270), is now limited only by the 5 percent provision under § 107 of P.L. 94-305, approved June 4, 1976 (90 Stat. 663). The word “and” was inserted between the words “capital” and “surplus” by § 210 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553).

Subsection 302(b) was rewritten by § 215(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2601). Text of former subsection 302(b) is reprinted below:

of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

(2)³⁵ CERTAIN SAVINGS ASSOCIATIONS.—Notwithstanding any other provision of law, any Federal savings association may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.

(c)³⁶ DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure that the management of each licensee licensed after the date of enactment of the Small Business Program Improvement Act of 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.

Stock holding
limitations.

Sec. 303. BORROWING POWER.

15 USC 683.

(a) Each small business investment company shall have authority to borrow money and to issue its securities³⁷, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

Borrowing
power.

(b)³⁸ To encourage the formation and growth of small business investment companies the Administration is authorized³⁹ when authorized in appropriation Acts, to

Debentures and
participating
securities, SBA
guarantee.

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.

³⁵ New paragraph 302(b)(2) added by § 403(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-690).

³⁶ Subsection 302(c) rewritten by § 208(c)(3) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743). Text of former subsection 302(c) is reprinted below:

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.

³⁷ The term “securities” substituted for “debenture bonds” by § 208(h)(1)(A)(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-746).

³⁸ Section 205 of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 270), substantially recast the authority of SBA to purchase the debentures of SBICs and incorporated within this sec. 303(b) the debenture purchasing authority formerly set out in sec. 302(a). As amended, sec. 303(b) increases the capacity of SBICs to borrow from SBA and provides an even greater borrowing capacity for equity-oriented SBICs. Section 10 of P.L. 92-213, approved Dec. 22, 1971 (85 Stat. 776), amended the sec. 303(b)

purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities⁴⁰ 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.⁴¹ 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,⁴² plus, for debentures obligated after September 30, 2001⁴³, an additional charge, in an amount established annually by the Administration,⁴⁴ as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing debentures under this Act, which amount may not exceed 1.38 percent per year, and⁴⁵ 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:

debenture purchase authority of SBA by adding the authority to guarantee the timely payment of principal and interest on such debentures but requiring that the authority to purchase or guarantee be exercisable only when specially authorized in appropriation Acts; and by expressly pledging the full faith and credit of the United States to the payment of such guarantees.

³⁹The phrase “(but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms)” removed by § 208(d)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743).

⁴⁰Phrase “or participating securities” added by § 402(1) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1008).

⁴¹The “timely payment” and “full faith and credit” features and the word “guarantee” after the word “purchase” and all variations thereon throughout subsection (b) added by § 10 of P.L. 92-213, approved Dec. 22, 1971 (85 Stat. 775).

⁴²The last part of this sentence was changed from “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” by § 208(c)(6)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744). This phrase was changed again, from “plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration” by § 404(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-690).

⁴³ Date changed from 2000 to 2001 by § 2(a)(1)(C) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 966). Section 2(b) of that law provides that the effective date of the change shall be October 1, 2001.

⁴⁴ Phrase “of not more than 1 percent per year” deleted by § 2(a)(1)(A) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 966). See previous footnote for effective date.

⁴⁵ Subsidy fee limit of 1.38 percent added by § 2(a)(1)(B) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 966). See footnote 43 for effective date.

(1)⁴⁶ The total amount of debentures and participating securities that may be guaranteed by the Administration and outstanding from a company licensed under section 301(c) of this Act 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 repay such excess: And provided further, That any such company may apply for an additional debenture guarantee or participating security guarantee with the proceeds to be used solely to pay the amount due on such maturing debenture, but the maturity of the new debenture or security shall be not later than September 30, 2002.

(2) MAXIMUM LEVERAGE.—

(A)⁴⁷ 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

⁴⁶Paragraphs 303(b)(1) - (3) were rewritten by § 402(2) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1008). Text of former paragraphs (1) - (3) 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 title 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 any one time from a company not complying with section 301(d) of this Act, 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.

⁴⁷ Subparagraphs 303(b)(2)(A) and (B) were rewritten by § of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 156). The text of former subparagraphs (A) and (B) follows:

(A) IN GENERAL.—After March 31, 1993, the maximum amount of outstanding leverage made available to a company licensed under section 301(c) of this Act shall be determined by the amount of such company's private capital—

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

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

(iii) if the company has private capital of more than \$30,000,000, the total amount of leverage shall not exceed

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- (i) 300 percent of such company's private capital; or
- (ii) \$150,000,000.

(B)⁴⁸ MULTIPLE LICENSES UNDER COMMON CONTROL.—
the maximum amount of outstanding leverage made available to two or more companies licensed under section 301(c) of this Act that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed \$350,000,000⁴⁹.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC
AREAS.—

(i) In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(ii)⁵⁰ The maximum amount of outstanding leverage made available to—

(I) any 1 company described in clause (iii) may not exceed the lesser of 300 percent of private capital of the company, or \$175,000,000; and

(II) 2 or more companies described in clause (iii) that are under common control (as determined by the Administrator) may not exceed \$250,000,000.

\$75,000,000 plus 100 percent of the amount of private capital over \$30,000,000 but not to exceed an additional \$15,000,000.

(B) ADJUSTMENTS.—

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

(ii) INITIAL ADJUSTMENTS.—The initial adjustments made under this subparagraph after the date of enactment of the Small Business Reauthorization Act of 1997 shall reflect only increases from March 31, 1993.

⁴⁸Subparagraph 303(b)(2)(D) added by § 215(b)(1)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2602). Paragraph 303(b)(2) was reorganized by § 101(d) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Subparagraph 303(b)(2)(D) was renumbered as 303(b)(2)(B) and new subparagraph 303(b)(2)(C) was added in this change.

⁴⁹ Amount changed from \$225,000,000 by § 521(b), Title V, Division E of P.L. 114-113, approved Dec. 18, 2015 (Stat.).

⁵⁰ New clauses 303(b)(2)(C)(ii) and (iii) added by § 505(a)(2) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat.156).

(iii) A company described in this clause is a company licensed under section 301(c) in the first fiscal year after the date of enactment of this clause or any fiscal year thereafter that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 351).

(D)⁵¹ 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.

(3) Subject to the foregoing dollar and percentage limits, a company licensed under section 301(c) of this Act 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)⁵² [Deleted.]

⁵¹ New subparagraph 303(b)(2)(D) added by § 1206(a) of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1773).

⁵² Paragraph 303(b)(4) deleted by § 505(a)(3) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 156). Text of former paragraph 303(b)(4) is reprinted below:

MAXIMUM AGGREGATE AMOUNT OF LEVERAGE—

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

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

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

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

(C) APPLICABILITY OF OTHER PROVISIONS.—Any leverage that is issued to a company or companies commonly controlled in an amount that exceeds \$90,000,000, whether as a result of an increase in the Consumer

(c)⁵³ THIRD PARTY DEBT.—The Administrator—Third party
debt.

Price Index or a decision of the Administrator, is subject to subsection (d).

(D) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the aggregate outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(E) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

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

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

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing or guaranteeing any debenture involved.

Paragraph 303(b)(4) rewritten by § 215(b)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2602). Text of former paragraph 303(b)(4) is reprinted below:

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.

New subparagraph 303(b)(4)(D) added by § 1(d)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-665).

New subparagraph 303(b)(4)(E) added by § 1206(b) of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1774).

⁵³Subsection 303(c) rewritten by § 208(d)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743). Text of former subsection 303(c) is reprinted below:

Subject to the following conditions, the Administration is authorized to purchase securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under authority of section 301(d) of this Act. 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. 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.

(1) The Administration may purchase such securities: Provided, That—

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- (A) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;
- (B) on liquidation or redemption the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration shall be paid any amounts as may be due pursuant to subparagraph (i) of this paragraph;
- (C) the purchase price shall be at par value and, in any one sale, \$50,000 or more; and
- (D) the amount of such securities purchased and outstanding at any one time shall not exceed—
- (i) from a company licensed on or before October 13, 1971, 200 per centum of the combined private paid-in capital and paid-in surplus of such company, or
- (ii) from any such company licensed after October 13, 1971, and having a combined paid-in capital and paid-in surplus of less than \$500,000, 100 per centum of such capital and surplus, or
- (iii) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of \$500,000 or more, 200 per centum of such capital and surplus.
- (E) The amount of such securities purchased by the Administration in excess of 100 per centum of such capital and surplus from any company described in clause (i) or (iii) may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in equity securities. For the purposes of the subsection, the term “equity securities” means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint ventures for profit, or unsecured debt instruments which are subordinated by their terms to all other borrowings of the issuer.
- (2) The Administration may purchase or guarantee debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)): Provided, That—
- (A) such debentures are issued for a term of not to exceed fifteen years;
- (B) the interest rate is determined pursuant to this section or section 317; and
- (C) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than \$500,000 shall not exceed 300 per centum of its combined private paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of \$500,000 or more, 400 per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.
- (3) Debentures purchased and outstanding pursuant to section 303(b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(C) of this subsection (c).
- (4) The Administration may require, as a condition of the purchase or guarantee of any securities in excess of 300 per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintain a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate.
- (5) Notwithstanding the foregoing provisions of this subsection, securities purchased by the Administration on or after the effective date of this Act (A) shall provide that dividends shall be preferred and cumulative to the extent of 4 per centum of par value per annum and (B) shall include a provision requiring the issuer to redeem such securities, including any accrued and unpaid dividends, in 15 years from the date of issuance: Provided, That the Administration may, in its discretion, guarantee debentures in such amounts as will permit the simultaneous redemption of such securities, including such amounts as it deems appropriate to include all or any part of accrued and unpaid dividends:

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(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)⁵⁴ INVESTMENTS IN 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 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.

Provided further, That the Administration shall not pay any part of the interest on such debentures except pursuant to its guarantee in the event of default in payment by the issuer.

(6) In no event shall the Administration purchase or guarantee debentures or securities under the provisions of this title if the amount of outstanding securities and debentures of a company operating under the authority of section 301(d) would exceed 400 per centum of its combined private paid-in capital and paid-in surplus or \$35,000,000, which ever is less except as provided in paragraph (7);

(7) The Administration may guarantee debentures or may guarantee the payment of the redemption price and prioritized payments on participating securities under subsection (g) from a company operating under section 301(d) of this Act in amounts above \$35,000,000 but not to exceed the maximum amounts specified in section 303(b) subject to the following:

(A) The interest rate on debentures and the rate of prioritized payments on participating securities shall be specified in subsection 303(g)(2) without any reductions.

(B) Any outstanding assistance under paragraphs (1) to (6) of this subsection shall be subtracted from such company's eligibility under section 303(b)(2)(A).

⁵⁴Subsection 303(d) was first rewritten by § 208(d)(3) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-743). Text of former subsection 303(d) is reprinted below:

If the Administration guarantees debentures issued by a small business investment company operating under authority of section 301(d) of this Act, 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 321. 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.

Subsection 303(d) was rewritten again by § 215(b)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2602). Text of former subsection 303(d) is reprinted below:

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)⁵⁵ CAPITAL IMPAIRMENT.—Before approving any application for leverage submitted by a licensee under this Act, the Administrator—

Capital
impairment

(1) shall determine that the private capital of the licensee meets the requirements of section 302(a); 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

Subsection 303(d) was rewritten again by § 505(c) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 157). Text of former subsection 303(d) is reprinted below:

REQUIRED CERTIFICATIONS—

(1) IN GENERAL.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing—

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

(B) for licensees with leverage in excess of \$90,000,000, that, in addition to satisfying the requirements of subparagraph (A), 100 percent of the licensee’s aggregate dollar amount of financings made in whole or in part with leverage in excess of \$90,000,000 will be provided to smaller enterprises (as defined in section 103(12)).

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

⁵⁵Subsection 303(e) rewritten by § 208(c)(4)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744). Section 208(c)(4)(B) provides:

(B) REGULATIONS.—

(i) UNIFORM APPLICABILITY.—Any regulation issued by the Administration to implement section 303(e) of the Small Business Investment Act of 1958 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.

Text of former subsection 303(e) is reprinted below:

In determining the private capital of a small business investment company licensed under section 301(d) and notwithstanding section 103(9), 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 [prior] 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 301(d).

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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)⁵⁶ REDEMPTION OR REPURCHASE OF PREFERRED STOCK.—
Notwithstanding any other provision of law—

Redemption or
repurchase of
preferred stock.

(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)⁵⁷ 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 301(c) of this Act, and a trust or a pool

Participating
securities.

⁵⁶Subsection 303(f) rewritten by § 208(h)(1)(A)(ii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-746). Text of former subsection 303(f) is reprinted below:

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) 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 301(d), to the extent and in the amounts provided in advance in appropriations Acts.

⁵⁷Subsections (g) and (h) added by § 403 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1009).

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:

“Participating securities.”

“Prioritized payments.”

(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 payments 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 payment 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,⁵⁸ plus, for participating securities obligated after September 30, 2001,⁵⁹ an additional charge, in an amount established annually by the Administration,⁶⁰ as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing participating securities under this Act,

⁵⁸The last part of this sentence was changed from “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” by § 208(c)(6)(B) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744). The phrase was changed again from “plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration” by § 404(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-691).

⁵⁹ Date changed from 2000 to 2001 by § 2(a)(2)(B) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 966). Section 2(b) of that law provides that the effective date of this change is October 1, 2001.

⁶⁰ Phrase “of not more than 1 percent per year” deleted by § 2(a)(2)(A) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 966). See previous footnote for effective date.

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which amount may not exceed 1.46 percent per year,⁶¹ and which shall be paid to and retained by the Administration.

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

(4) Any company issuing a participating security under this Act⁶² shall commit to invest or shall invest⁶³ an amount equal to the outstanding face value of such security solely in equity capital. As used in this subsection, “equity capital” means common or preferred stock or a similar instrument, including subordinated debt with equity features which is not amortized and which provides for interest payments from appropriate sources, as determined by the Administration.⁶⁴

“Equity capital.”

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

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

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

“Combined capital.”

“Management expenses.”

⁶¹ Subsidy rate fee changed to 1.38 percent by § 2(a)(2)(B) of P. L. 107-100, approved Dec. 21, 2001 (115 Stat. 966). See footnote 56 for effective date. Fee changed again to 1.46 by § 117 of P.L. 108-84, approved Sept. 30, 2003 (117 Stat. 1044). The same change was made again in § 1(b) of P.L. 108-172, approved Dec. 6, 2003 (117 Stat. 2065).

⁶² “Subsection” changed to “Act” by § 201(1) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-657).

⁶³The phrase “and maintain” was removed by § 208(c)(5) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

⁶⁴ Section 201(2) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-657) substituted language beginning with “from appropriate sources” for “contingent upon and limited to the extent of earnings.”

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services provided by any affiliate of the company which are not part of the normal process of making and monitoring venture capital investments.

(8) Notwithstanding paragraph (9), if a company is operating as a limited partnership or as a subchapter S corporation or an equivalent pass-through entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the company may make annual distributions to the partners, shareholders, or members⁶⁵ 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.⁶⁶ A company may also elect to make a distribution under this paragraph at⁶⁷ any time during any calendar quarter based on an estimate of the maximum tax liability. If a company makes 1 or more interim⁶⁸ distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.

"Maximum
tax liability."

"State
income
tax."

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

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

(B) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 per centum but not more than 200 per centum of the

⁶⁵The references to members throughout this subsection were added by § 208(h)(1)(A)(iii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-746).

⁶⁶ Language following the footnote signal was added by § 215(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

⁶⁷ Last part of this sentence changed from "the end of any calendar quarter based on a quarterly" by § 405(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-691).

⁶⁸ "Interim" substituted for "quarterly" by § 405(3) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-691).

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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.

“Trustee.”

(13)⁶⁹ Repealed.

(h) 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) 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.

⁶⁹Paragraph 303(g)(13) repealed by § 2(d)(1) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17). Text of paragraph 303(g)(13), which was added by § 215 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4184), is reprinted below:

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 percent shall be reserved for funding small business investment companies with private capital of not more than \$20,000,000.

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

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(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), it may not elect to exclude profits on existing investments under this paragraph.

(i)⁷⁰ **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 licensee⁷¹ in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee.

Leverage
fee.

(j)⁷² **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 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures and participating securities under this Act.

Calculation of
subsidy rate.
[2 USC 661a].

(k)⁷³ **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.

Energy saving
debentures.

Sec. 304.⁷⁴ **PROVISION OF EQUITY CAPITAL FOR SMALL BUSINESS**

Equity capital.
15 USC 684.

⁷⁰Subsection 303(i) added by § 208(c)(6)(C) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

⁷¹ Language after the footnote signal was substituted for “, payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee” by § 215(d) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

⁷²Subsection 303(j) added by § 208(c)(6)(C) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-744).

⁷³ Subsection 303(k) added by § 1205(a) of P.L. 110-140, approved Dec. 19, 2007.

⁷⁴ Prior to its amendment by § 6 of P.L. 86-502, approved June 11, 1960 (74 Stat. 196), sec. 304 authorized SBICs to furnish

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CONCERNS

(a) It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated⁷⁵ 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) 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)⁷⁶ [Repealed.]

(d)⁷⁷ 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.

Sec. 305. LONG-TERM LOANS TO SMALL-BUSINESS CONCERNS

Long-term
loans.
15 USC 685.

(a) 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) 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.⁷⁸

Form of loan -
direct,
participation,
or guarantee.

equity capital only through the purchase of convertible debentures.

⁷⁵The words “and unincorporated” added by § 2(e) of P.L. 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

⁷⁶Section 206 of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 271), repealed sec. 304(c) which gave to companies receiving equity financing from an SBIC an option to purchase stock in the SBIC.

⁷⁷This subsection added by § 5 of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 752).

⁷⁸This sentence amended by § 6 of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 753), to substitute “other lenders, incorporated or unincorporated” for “other lending institutions”. The sentence “In agreements to participate in loans on a deferred basis under this subsection, the participation by the company shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement”, was repealed by § 105 of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

(c) 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 Act 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 Administration⁷⁹.

Conditions
of loan.

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

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

(f) 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.

Sec. 306. AGGREGATE LIMITATIONS

Aggregate
limitations.
15 USC 686.

(a)⁸⁰ PERCENTAGE LIMITATION ON PRIVATE CAPITAL.—If any small business investment company has obtained financing from the Administrator and such financing remains outstanding, the aggregate amount of securities acquired and for which commitments may be issued by such company under the provisions of this title for any single enterprise shall not, without the approval of the Administrator, exceed 10 percent of the sum of—

- (1) the private capital of such company; and
- (2) the total amount of leverage projected by the company in the company's business plan that was approved by the Administrator at the time of the grant of the company's license.

(b) [Repealed.]⁸¹

⁷⁹Proviso added by § 411 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1018).

⁸⁰Subsection 306(a) rewritten by § 408(a) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1016). Text of former § 306(a) 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 Act for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company.

Subsection 306(a) rewritten again by § 505(b) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 156). Text of former subsection 306(a) is reprinted below:

(c)⁸² 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. [P.L. 90-104].

Sec. 307.⁸³ EXEMPTIONS Exemptions.

(a) Section 3 of the Securities Act of 1933, as amended (15 U.S.C. 77c), is hereby amended by inserting at the end thereof the following new subsection (c): [15 USC 77c]

“(c) The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors.”

(b) Section 304 of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd) is hereby amended by adding the following subsection (e): [15 USC 77ddd]

“(e) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors.”

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 title for any single enterprise shall not exceed 20 per centum of the private capital of such company, without the approval of the Administration.

⁸¹Repealed by § 2(f) of P.L. 92-595, approved Oct. 27, 1972 (86 Stat. 1314). Former sec. 306(b) reprinted below to provide a clearer understanding of this entire section:

(b) For the purpose of this section, the combined paid-in capital and paid-in surplus of any company licensed prior to January 1, 1968, shall consist of (1) the paid-in capital and paid-in surplus of such company and (2) the following portions of the funds outstanding from the Administration through the issuance of subordinated debentures as of the effective date of the Small Business Investment Act Amendments of 1967, or on January 1 of each of the following calendar years, whichever is less: (A) 100 percent, during 1968; (B) 75 percent, during 1969; (C) 50 percent, during 1970; (D) 25 percent, during 1971; and (E) zero, during 1972 and thereafter.

⁸²Added by § 207 of P.L. 90-104, the Small Business Investment Act Amendments of 1967, approved Oct. 11, 1967 (81 Stat. 271). Effective date of P.L. 90-104 referred to in this subsection is Jan. 1, 1968, per § 211 of P.L. 90-104.

⁸³The Act provides a specific exemption from the Investment Company Act of 1940 for SBICs, releasing them from a 3-to-1 asset coverage requirement in connection with borrowings. SBA may prescribe limitations on borrowing by SBICs.

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(c) Section 18 of the Investment Company Act of 1940 (15 U.S.C. 80a - 18) is [15 USC 80a-18] amended by adding at the end thereof the following:

“(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958.”⁸⁴

Sec. 308. MISCELLANEOUS

15 USC 687.

(a)⁸⁵ 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 Act 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.

Cooperation with banks or other investors.

(b) 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 the provisions of this Act.⁸⁶ Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

Advisory services.

Investment of funds.

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

⁸⁴See sec. 317 of the Small Business Investment Act for further amendment.

⁸⁵Sec. 308(a) amended by § 8 of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 753), to substitute “investors or lenders, incorporated or unincorporated” for “financial institutions.”

⁸⁶The last seven words of this sentence added by § 11(c) of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 756). The last sentence first revised by § 5 of P.L. 88-273, approved Feb. 28, 1964 (78 Stat. 147), to permit deposits of idle SBIC funds in insured savings accounts; later revised by § 102 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757), to equalize SBA's treatment of FSLIC and FDIC insured institutions. Phrase “with outstanding financings” added by § 408(c) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1016). The last sentence was completely rewritten by § 202 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-657). Text of the previous version is reprinted below:

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

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

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

(c)⁸⁷ The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this Act, in accordance with the purposes of this Act. Regulations.

(d) Should any small business investment company violate or fail to comply with any of the provisions of this Act 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 Act 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. Noncompliance.

(e) Except as expressly provided otherwise in this Act,⁸⁸ nothing in this Act or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligations entered into, or stocks issued, or commitments made, by any company operating under the provisions of this Act.⁸⁹

(f)⁹⁰ In the performance of, and with respect to the functions, powers, and duties vested by this Act, the Administrator and the Administration shall (in addition to any authority otherwise vested by this Act) have the functions, powers, and duties set forth in the Small Business Act, and the provisions of sections 13 and 16 of that Act, insofar as applicable, are extended to the functions of the Administrator and the Administration under this Act. [15 USC 631]
[15 USC 642]
[15 USC 645]

(g)⁹¹ (1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act, a full and detailed account of its operations under Annual report.
[15 USC
639(a)]

⁸⁷The provisions relating to examinations and reports by SBICs were deleted from this subsection by § 3(1) of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1359), and added as a new sec. 310(b) by § 5(2) of P.L. 89-779.

⁸⁸Clause beginning “Except as” added by § 208(e) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745).

⁸⁹The last seven words added by § 11(d) of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 756). The same section also struck out the previous sec. 308(e) and (f) and redesignated this subsection (formerly (g)) as (e). The former sec. 308(e) and (f) were rewritten and expanded by § 9 of P.L. 87-341 and designated as secs. 309, 310, and 311.

⁹⁰Sec. 308(f) added by § 3 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1359), and contains the provision transferred from § 201.

⁹¹Sec. 308(g) added by § 3(2) of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1359), and redesignated as sec. 308(g)(1) by §

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this Act. 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)⁹² 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, 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 Bureau of the Budget⁹³ 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 to 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.

210 of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 271).

⁹²Sec. 308(g)(2) added by § 210 of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 271).

⁹³This should read "Office of Management and Budget" per Reorganization Plan No. 2 of 1970.

(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 and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of the Internal Revenue Code of 1954.

[15 USC 80a-1]
[26 USC 851]

(3)⁹⁴ 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, 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)⁹⁵ CERTIFICATIONS OF ELIGIBILITY.—

Certifications
of eligibility.

⁹⁴Paragraph 308(g)(3) added by § 417(a) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1019). Section 417(b) of P.L. 102-366 reads: “Not later than 4 years after the date of enactment of this Act, 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) 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, as amended by subsection (a).”

⁹⁵New subsection 308(h) added by § 214 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4184). For history of prior

(1) **CERTIFICATION BY SMALL BUSINESS CONCERN.**—Prior to receiving financial assistance from a company licensed pursuant to section 301,⁹⁶ 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 Act, a company licensed pursuant to section 301 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 301 for the duration of the financial assistance.

(i)⁹⁷ (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.

Long-term
loans and
equity funds.

subsection 308(h), see previous edition of this Handbook.

⁹⁶References to “subsection (c) or (d) of section 301” were replaced with references to “section 301” throughout subsection 308(h) by § 208(h)(1)(B) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

⁹⁷New subsection 308(i) added by § 1 of P.L. 99-226, approved Dec. 28, 1985 (99 Stat. 1744). Sec. 2 of P.L. 99-226 provides that the Act shall apply to maximum interest rates prescribed by the Administration on or after April 1, 1980. The Act was intended to be a technical amendment, clarifying the policy embodied in P.L. 96-221, approved Mar. 31, 1980 (94 Stat. 132). House report 99-306 states that Congress, by enacting P.L. 99-226, “makes it clear that SBA, by regulation, has the authority to determine the maximum allowable interest rates on loans to small businesses which are made by SBICs and MESBICs.” The text of prior Sec. 308(i) is provided:

(i) (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 lowest of the rates described in subparagraphs (A), (B), and (C).

(A) The rate described in this subparagraph is the maximum rate prescribed by regulation by the Small Business Administration for loans made by any small business investment company (determined without regard to any State rate incorporated by such regulation).

(B) The rate described in this subparagraph is the maximum rate authorized by an applicable State law or constitutional provision which is not preempted for purposes of this subsection.

(C) (i) The rate described in this subparagraph is the higher of the Federal Reserve rate or the maximum rate authorized by applicable State law or constitutional provision (determined without regard to the preemption of such State law or constitutional provision).

(ii) For purposes of clause (i), the term “Federal Reserve rate” means the rate equal to the sum of 1 percentage point plus the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve

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(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation). In this paragraph, the term “interest” includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.⁹⁸

Interest rate
limitations.

“Interest.”

(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

district in which the principal office of the small business investment company is located.

(iii) The rate described in this subparagraph shall not apply to loans made in a State if there is no maximum rate authorized by applicable State law or constitutional provision for such loans or there is a maximum rate authorized by an applicable State law or constitutional provision which is not preempted for purposes of this subsection.

Prior history of old Sec. 308(i)

Sec. 308(i), effective April 1, 1980, was added by § 524 of P.L. 96- 221 (94 Stat. 132) in Title V -- State Usury Laws (94 Stat. 161), approved Mar. 31, 1980. Title V of P.L. 96-221 repealed P.L. 96-104, § 105(a)(2) of P.L. 96-161, and the amendments and provisions of Title II of P.L. 96-161, except that as to any loan made in any State during any period when such laws were in effect in such State, the provisions of such laws shall continue to apply.

Sec. 528 of P.L. 96-221 provided:

In any case in which one or more provisions of, or amendments made by, this title, section 529 of the National Housing Act, or any other provision of law, including section 5197 of the Revised Statutes (12 U.S.C. 85), 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.

⁹⁸The last sentence in paragraph 308(i)(2) added by § 2(a) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

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(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.

Sec. 309.⁹⁹ REVOCATION AND SUSPENSION OF LICENSES; CEASE AND DESIST ORDERS

Suspend or
revoke
licenses.
15 USC 687a.

(a)¹⁰⁰ A license may be revoked or suspended by the Administration—

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

(2) If any written statement required under this title, or under any regulation issued under this title 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 Act;

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

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

(b) Where a licensee or any other person has not complied with any provision of this Act, 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 Act 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

Cease and
desist orders.

⁹⁹Sec. 309 added by § 9 of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 753). Previous sec. 309 was repealed by § 11(e) of P.L. 87-341.

¹⁰⁰Heading and subsections 309(a), (b), (c), (e) and (f) amended by § 4 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1359), to reflect license revocation authority granted to SBA; to delete limitation of grounds for suspension of license for false or misleading statements made for purpose of obtaining a license; and to authorize issuance and enforcement of cease and desist orders against individuals as well as licensees.

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Administration deems necessary to insure compliance with the Act 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) Before revoking or suspending a license pursuant to subsection (a) or issuing a cease and desist order pursuant to subsection (b), 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.

Order to
show cause.

Hearing.

(d) The Administration may require by subpoena [sic] 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 subpoena [sic], 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.

Subpoena.

(e) 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,¹⁰¹ 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.¹⁰² The court may affirm, modify, or set aside the order of

Appeals
procedure.

¹⁰¹Section 4(e) of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1360), added the clause "or other person against whom an order is issued."

¹⁰²Section 402(15) of P.L. 98-620, approved Nov. 11, 1984, Federal Courts Improvements Act (98 Stat. 3335 at 3357), removed

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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, United States Code.

[28 USC 1254]

(f)¹⁰³ 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) for applications to set aside or modify orders.

Enforcement
of order.

Sec. 310. EXAMINATIONS AND INVESTIGATIONS¹⁰⁴

15 USC 687b.
Investigations.

(a) 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 Act, or of any rule or regulation under this Act, or of any order issued under this Act. 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 [sic] 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 [sic] issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the

the sentence at this point, which made “proceedings in such cases in the court of appeals” a preferred cause to be expedited in every way.

¹⁰³Amended by § 4(f) of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1360), to provide for enforcement of cease and desist orders against individuals as well as against licensees. Amended again by § 402(15) of P.L. 98-620, *supra*, to remove last sentence making such case a preferred cause.

¹⁰⁴Sec. 310 added by § 9 of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 755). Section heading amended by § 5 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1360).

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) Each small business investment company shall be subject to examinations made by direction of the Investment Division of¹⁰⁵ 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,¹⁰⁶ and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.¹⁰⁷ 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 to the extent necessary to avoid duplication in reporting requirements.

Examinations.
Private sector
entity.

Fees for cost of
examinations;
collection; use.

Reports.

(c)¹⁰⁸ 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 title;

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

¹⁰⁵Phrase "Investment Division of" substituted for "examiners selected or approved by" by § 407(a) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1016). Section 407(b) provides: "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 shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration."

¹⁰⁶The clause allowing examinations to be performed by a private sector entity was added by § 208(f)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745).

¹⁰⁷ Second sentence in subsection 310(b) added by § 216 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

¹⁰⁸Section 104 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2993), added subsection 310(c) and deleted the following from subsection 310(b):

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.

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- business;
- (3) it has acquired or exercised illegal control of an assisted small business;
 - (4) it has made investments in small businesses for¹⁰⁹ not less than 1 year;
 - (5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable,¹¹⁰
 - (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)¹¹¹ VALUATIONS.—

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.

¹⁰⁹The phrase “not less than four years in the case of section 301(d) licensees and in all other cases,” was deleted by § 208(h)(1)(C) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747). The time was changed from 5 years to 1 year by § 406 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-691).

¹¹⁰Phrase “if such restriction is applicable” added by § 408(b) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1016).

¹¹¹Subsection 310(d) rewritten by § 208(f)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745). Text of former subsection 310(d) is reprinted below:

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 title shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise.

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(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.—

Certification and
audit of financial
statements.

(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.

Sec. 311.¹¹² INJUNCTIONS AND OTHER ORDERS

Injunctions.
15 USC 687c.

(a) 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 Act, or of any rule or regulation under this Act, or of any order issued under this Act, 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

¹¹²Section 9 of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 755), added sec. 311(a) (formerly substantially contained in section 308(e)) and sec. 311(b), authorizing the appointment of a trustee or receiver.

permanent or temporary injunction, restraining order, or other order, shall be granted without bond.¹¹³

(b) 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)¹¹⁴ 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.

Trustee or receiver.

Sec. 312.¹¹⁵ CONFLICTS OF INTEREST

Conflicts of interest.
15 USC 687d.

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 members¹¹⁶ of either, or to the purposes of this Act, 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 disclosure¹¹⁷ necessary to the purposes of this section.

Directors and officers, removal or suspension.
15 USC 687e.

Sec. 313.¹¹⁸ REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIALS.

¹¹³Section 402(15) of P.L. 98-620, approved Nov. 11, 1984 (98 Stat. 3357), repealed the last sentence which made an application by SBA for an injunction or compliance order "a preferred cause" to be expedited in every way.

¹¹⁴Sec. 311(c) added by § 6 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1360).

¹¹⁵Sec. 312 added by § 6 of P.L. 88-273, approved Feb. 28, 1964 (78 Stat. 147). The words "or partner" and "or partners" added by § 106(f)(1) and (2) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

¹¹⁶References to "member[s]" throughout this section added by § 208(h)(1)(D) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

¹¹⁷Phrase "(including disclosure in the locality most directly affected by the transaction)" in § 312 deleted by § 3 of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 966).

¹¹⁸Sec. 313 added by § 7 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1361). The section was completely rewritten by § 5 of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 967). The text of former § 313 is reprinted below:

(a) 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—

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(A) this Act,

(B) any regulation issued under this Act, 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) In respect to any director or officer referred to in subsection (a), 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), shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) 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) A notice of intention to remove a director of [sic; should read "or"] officer, as provided in subsection (a), 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 hearing 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) 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), 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), and such court shall have jurisdiction to stay such suspension and/or prohibition.

(e) 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).

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(a) DEFINITION OF “MANAGEMENT OFFICIAL”.—In this section, the term “management official” means an officer, director, general partner, manager, employee, agent, or other participant in the management or conduct of the affairs of a licensee. “Management official.”

(b) REMOVAL OF MANAGEMENT OFFICIALS.—

(1) NOTICE OF REMOVAL.—The Administrator may serve upon any management official a written notice of its intention to remove that management official whenever, in the opinion of the Administrator— Notice of removal.

(A) such management official—

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

(I) this Act;

(II) any regulation issued under this Act; or

(f) (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 of the United States Code. 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 of the United States Code. 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 of the United States Code. 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 of the United States Code.

(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.

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

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

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

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

(3) HEARINGS.—

Hearing.

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

- (i) the management official, and for good cause shown; or
- (ii) the Attorney General of the United States.

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

Consent to order of removal.

(4) ISSUANCE OF ORDER OF REMOVAL.—

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

(B) EFFECTIVENESS.—An order under subparagraph (A) shall—

Effective date of order of removal.

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

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

(c) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

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

Authority to suspend or prohibit participation.

(2) EFFECTIVENESS.—A suspension or prohibition under paragraph (1)—

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

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

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

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

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

Judicial review of suspension.

(d) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

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

Authority to suspend on criminal charges.

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

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

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

(e) NOTIFICATION TO LICENSEES.—Copies of each notice required to be served on a management official under this section shall also be served upon the interested licensee.

Notice to licensee.

(f) PROCEDURAL PROVISIONS; JUDICIAL REVIEW.—

(1) HEARING VENUE.—Any hearing provided for in this section shall be—

Procedural provisions; judicial review.

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

(B) conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

[5 USC Ch. 5]

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

(3) AUTHORITY TO MODIFY ORDERS.—The Administrator may modify, terminate, or set aside any order issued under this section—

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

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

(4) JUDICIAL REVIEW.—

(A) IN GENERAL.—Judicial review of an order issued under this section shall be exclusively as provided in this subsection.

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

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

(D) COURT JURISDICTION.—Upon the filing of a petition under subparagraph (A)—

(i) the court shall have jurisdiction, which, upon the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administrator, except as provided in the last sentence of paragraph (3)(B);

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

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

[28 USC 1254].

(E) JUDICIAL REVIEW NOT A STAY.—The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.

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Sec. 314. ¹¹⁹ UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIRECTORS,
EMPLOYEES, OR AGENTS; BREACH OF FIDUCIARY DUTY

15 USC 687f.

(a) Wherever a licensee violates any provision of this Act 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) 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) 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 dishonestly 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.

Sec. 315. ¹²⁰ PENALTIES AND FORFEITURES

Penalties and
forfeitures.
15 USC 687g.

¹¹⁹Sec. 314 added by § 7 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1363).

¹²⁰Sec. 315 added by § 7 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1364).

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(a) 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 310(b) of this Act, 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. Penalty.

(b) 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.

Sec. 316.¹²¹ JURISDICTION AND SERVICE OF PROCESS

Jurisdiction.
15 USC 687h.

Any suit or action brought under section 308, 309, 311, 313, or 315 by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this Act, 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.

Sec. 317.¹²²

¹²¹Sec. 316 added by § 7 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1364).

¹²²Sections 317 and 318 were deleted by § 208(h)(1)(E) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747). The same section redesignated old sections 319-322 as sections 317-320, respectively. Text of former section 317 is reprinted below:

Notwithstanding section 303(b), the effective rate of interest after October 13, 1971, during the first five years thereafter of the term of any debenture purchased by the Administration from a small business investment company under authority of section 303(c), shall be the greater of 3 per centum or 3 percentage points below the interest rate determined pursuant to section 303(b). The Administration is authorized to apply interest paid to it by such company for the period from October 13, 1971, to the effective date of this section, without interest thereon, to interest payable after such effective date.

Text of former section 318 is reprinted below:

The Administration is authorized to extend the benefits of sections 303(c) and 317 to any small business investment company operating under authority of section 301(d) of this Act, and which is owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by the Administration.

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Section 18 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a - 18), is further amended by amending subsection (k) to read as follows: [15 USC 80a-18(k)]

“(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958, and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration.” Preferred stock asset coverage requirement, exemption.

Sec. 318.¹²³ GUARANTEED OBLIGATIONS NOT ELIGIBLE FOR PURCHASE BY FEDERAL FINANCING BANK 15 USC 687k.

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 title,

(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).

Sec. 319.¹²⁴ ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES 15 USC 687l.

¹²³Section 318 (former § 320; redesignated by § 208(h)(1)(E) of P.L. 104-208) added by § 18004(a) of P.L. 99-272, approved April 7, 1986 (100 Stat. 364).

¹²⁴Section 319 (former § 321; redesignated by § 208(h)(1)(E) of P.L. 104-208) completely rewritten by § 404 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1013). Text of former § 321 follows:

(a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies, including companies operating under the authority of section 301(d), and guaranteed by the Administration under this Act: 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) 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) 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) The Administration shall not collect any fee for any guarantee under this section: Provided, That nothing herein

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Issuance and
guarantee of
trust
certificates.

(a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies¹²⁵ and guaranteed by the Administration under this Act, or participating securities which are issued by such companies and purchased and guaranteed pursuant to section 303(g): 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) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities, which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, or participating securities are redeemed, either voluntarily or involuntarily, or in the event of default of a debenture or voluntary or involuntary redemption of a participating security, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture or redeemed participating security and priority payments represent in the trust or pool. Interest on prepaid

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

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

(f) The Administration shall—

(1) 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;

(2) 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;

(3) 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

(4) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

¹²⁵Phrase “including companies operating under the authority of section 301(d)” was deleted by § 208(h)(1)(F)(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

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or defaulted debentures, or priority payments on participating securities, shall accrue and be guaranteed by the Administration only through the date of payment of 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) 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) 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) (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) (1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section.¹²⁶ Registration of trust certificates.

(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 States¹²⁷ as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this Act, and the issuance of trust

¹²⁶Paragraph 319(f)(1) (former § 321(f)(1)) was rewritten by § 205(b)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). Text of former 321(f)(1) is reprinted below:

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.

¹²⁷Phrase “or investments in obligations of the United States” added by § 208(h)(1)(F)(ii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

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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)¹²⁸ Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.

Sec. 320.¹²⁹ PERIODIC ISSUANCE OF GUARANTEES AND TRUST CERTIFICATES 15 USC 687m.

The Administration shall issue guarantees under section 303 and trust certificates under section 319 at periodic intervals of not less than every 12 months¹³⁰ and shall do so at such shorter intervals as its [sic] deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

Periodic issuance of guarantees and trust certificates.

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM¹³¹

Sec. 351 DEFINITIONS. 15 USC 689.

In this part, the following definitions apply:

(1) DEVELOPMENTAL VENTURE CAPITAL.—The term “developmental venture capital” means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term “equity capital” has the same meaning given such term in section 303(g)(4).

“Developmental venture capital.”

“Equity capital.”

(2) LOW-INCOME INDIVIDUAL.—The term “low-income individual” means an individual whose income (adjusted for family size) does not exceed—

“Low-income individual.”

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

¹²⁸Paragraph 319(f)(5) added by § 205(b)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738).

¹²⁹Section 320 (former § 322; redesignated by § 208(h)(1)(E) of P.L. 104-208) added by § 106(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2993).

¹³⁰“Three months” changed to “6 months” by § 215(e) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603). “Six months” changed to “12 months” by § 2(d)(2) of P.L. 106-9, approved April 5, 1999 (113 Stat. 17).

¹³¹Part B, the New Markets Venture Capital Program, added by § 101(b)(3) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-653).

(B) for nonmetropolitan areas, the greater of—

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

(ii) 80 percent of the statewide nonmetropolitan area median

income.

(3) **LOW-INCOME GEOGRAPHIC AREA.**— the term “low-income geographic area” means—

“Low-income geographic area.”

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

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

(ii) in the case of a tract—

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

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

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

(B) any area located within—

(i) HUBZone (as defined in section 3(p) of the Small Business Act and the implementing regulations issued under that section);

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

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

(4) **NEW MARKETS VENTURE CAPITAL COMPANY.**—The term “New Markets Venture Capital company” means a company that—

“New Markets Venture Capital Company.”

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(A) has been granted final approval by the Administrator under section 354(e); and

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

(5) OPERATIONAL ASSISTANCE.—The term “operational assistance” means management, marketing, and other technical assistance that assists a small business concern with business development. “Operational assistance.”

(6) PARTICIPATION AGREEMENT.—The term “participation agreement” means an agreement, between the Administrator and a company granted final approval under section 354(e), that— “Participation agreement.”

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

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

(7) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The term “specialized small business investment company” means any small business investment company that— “Specialized small business investment company.”

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

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

(C) was licensed under section 301(d), as in effect before September 30, 1996.

(8) STATE.—The term “State” means such of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States. “State.”

Sec. 352 PURPOSES Purposes.
15 USC 689a.

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

(1) to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by

encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

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

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

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

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

Sec. 353. ESTABLISHMENT

Establishment.
15 USC 689b.

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

(1) enter into participation agreements with companies granted final approval under section 354(e) for the purposes set forth in section 352;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 355; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 358.

Sec. 354. SELECTION OF NEW MARKETS VENTURE CAPITAL COMPANIES.

Selection.
15 USC 689c.

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

Eligibility.

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

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

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

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

- (1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas;
- (2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the company's management;
- (3) a description of how the company intends to work with community organizations and to seek to address the unmet capital needs of the communities served;
- (4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, when necessary, on the company's staff or from an outside entity;
- (5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;
- (6) a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;
- (7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the company's business plan; and
- (8) such other information as the Administrator may require.

(c) CONDITIONAL APPROVAL.—

Conditional approval.

(1) IN GENERAL.—From among companies submitting applications under subsection (b), the Administrator shall, in accordance with this subsection, conditionally approve companies to participate in the New Markets Venture Capital Program.

(2) SELECTION CRITERIA.—In selecting companies under paragraph (1), the Administrator shall consider the following:

- (A) The likelihood that the company will meet the goal of its business plan.
- (B) The experience and background of the company's management team.

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

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

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

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

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

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

(3) **NATIONWIDE DISTRIBUTION.**—The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

(d) **REQUIREMENTS TO BE MET FOR FINAL APPROVAL.**—The Administrator shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:

Final approval.

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

(2) **NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.**—

(A) **IN GENERAL.**—In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

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

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

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

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

(ii) shall have purchased an annuity—

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

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

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

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

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

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

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

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

(e) FINAL APPROVAL; DESIGNATION.—The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c), either—

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

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

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

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

Sec. 355 DEBENTURES.

Debentures.
15 USC 689d.

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

Debenture
guarantee.

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

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) MAXIMUM GUARANTEE.—

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

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

(e)¹³² INVESTMENT LIMITATIONS.—

(1) DEFINITION.—In this subsection, the term “covered New Markets Venture Capital company” means a New Markets Venture Capital company—

¹³² New subsection 355(e) added by § 1115 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

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(A) granted final approval by the Administrator under section 354(e) on or after March 1, 2002; and

(B) that has obtained a financing from the Administrator.

(2) LIMITATION.—Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this title for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

(A) the regulatory capital of the covered New Markets Venture Capital company; and

(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital. [sic]

Sec. 356 ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

Trust
certificates.
15 USC 689e.

(a) ISSUANCE.—The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) GUARANTEE.—

(1) IN GENERAL.—The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) LIMITATION.—Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) PREPAYMENT OR DEFAULT.—In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid

under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) FEES.—The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

Fees.

(e) SUBROGATION AND OWNERSHIP RIGHTS.—

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

(2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) MANAGEMENT AND ADMINISTRATION.—

(1) REGISTRATION.—The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) CONTRACTING OF FUNCTIONS.—

(A) IN GENERAL.—The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

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(4) ELECTRONIC REGISTRATION.—Nothing in this subsection may be construed to prohibit the use of a bookentry or other electronic form of registration for trust certificates issued under this section.

Sec. 357. FEES

Fees.
15 USC 689f.

Except as provided in section 356(d), the Administrator may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

Sec. 358 OPERATIONAL ASSISTANCE GRANTS.

Operational
assistance grants.
15 USC 689g.

(a) IN GENERAL.—

(1) AUTHORITY.—In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) TERMS.—Grants made under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) GRANTS TO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

(A) AUTHORITY.—In accordance with this section, the Administrator may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

(B) USE OF FUNDS.—The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low-income geographic area.

(C) SUBMISSION OF PLANS —A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(4) GRANT AMOUNT.—

(A) NEW MARKETS VENTURE CAPITAL COMPANIES.—
The amount of a grant made under this subsection to a New Markets Venture Capital

company shall be equal to the resources (in cash or in kind) raised by the company under with [sic] section 354(d)(2).

(B) OTHER ENTITIES.—The amount of a grant made under this subsection to any entity other than a New Markets Venture capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Markets Venture Capital companies set forth in section 354(d)(2).

(5) PRO RATA REDUCTIONS.—If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(b) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in cash or in kind), other than those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a New Markets Venture Capital company or a specialized small business investment company.

Sec. 359 BANK PARTICIPATION.

Bank participation.
15 USC 689h.

(a) IN GENERAL.—Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

(b) LIMITATION.—No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

Sec. 360. FEDERAL FINANCING BANK.

15 USC 689i.

Section 318 shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

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Sec. 361. REPORTING REQUIREMENTS.

Reporting
requirements.
15 USC 689j.

Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

Sec. 362. EXAMINATIONS.

Examinations.
15 USC 689k.

(a) IN GENERAL.—Each New Markets Venture Capital company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Small Business Administration in accordance with this section.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) COSTS.—

(1) ASSESSMENT.—

(A) IN GENERAL.—The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) PAYMENT.—Any company against which the Administrator assess costs under this paragraph shall pay such costs.

(2) DEPOSIT OF FUNDS.—Funds collected under this section shall be deposited in the account for salaries and expenses of the Small Business Administration.

Sec. 363. INJUNCTIONS AND OTHER ORDERS.

Injunctions.
15 USC 689l.

(a) IN GENERAL.—Whenever, in the judgment of the Administrator, a New Markets Venture Capital company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act, the Administrator may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order

enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administrator that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) **JURISDICTION.**—In any proceeding under subsection (a), the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Markets Venture Capital company and the assets thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) **ADMINISTRATOR AS TRUSTEE OR RECEIVER.**—

(1) **AUTHORITY.**—The Administrator may act as trustee or receiver of a New Markets Venture Capital company.

(2) **APPOINTMENT.**—Upon request of the Administrator, the court may appoint the Administrator to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

Sec. 364. **ADDITIONAL PENALTIES FOR NONCOMPLIANCE.**

Penalties for
noncompliance.
15 USC 689m.

(a) **IN GENERAL.**—With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this Act, of any regulation issued under this Act, or of any participation agreement entered into under this Act, the Administrator may in accordance with this section—

(1) void the participation agreement between the Administrator and the company; and

(2) cause the company to forfeit all of the rights and privileges derived by the company from this Act.

(b) **ADJUDICATION OF NONCOMPLIANCE.**

(1) **IN GENERAL.**—Before the Administrator may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a), a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for the purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

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(2) PARTIES AUTHORIZED TO FILE CAUSES OF ACTION.—Each cause of action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

Sec. 365. UNLAWFUL ACTS AND OMISSIONS; BREACH OF FIDUCIARY DUTY.

Unlawful acts.
Breach of
fiduciary duty.
15 USC 689n.

(a) PARTIES DEEMED TO COMMIT A VIOLATION.—Whenever any New Markets Venture Capital company violates any provision of this Act, of a regulation issued under this Act, or of a participation agreement entered into under this Act, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

(b) FIDUCIARY DUTIES.—It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

(c) UNLAWFUL ACTS.—Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

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

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

(2) for any person to continue to serve in any of the capacities described in paragraph (1), if—

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

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

Sec. 366. REMOVAL OR SUSPENSION OF DIRECTORS OR OFFICERS.

Removal or
suspension of
directors.
15 USC 689o.

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 313 (to the extent that such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

Sec. 367. REGULATIONS.

Regulations.
15 USC 689p.

The Administrator may issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

Sec. 368. AUTHORIZATIONS OF APPROPRIATIONS.

Authorizations of
appropriations.
15 USC 689q.

(a) IN GENERAL.—There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee \$150,000,000 of debentures under this part.

(2) \$30,000,000 to make grants under this part.

(b) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 362(c)(2) are authorized to be appropriated only for the costs of examinations under section 362 and for the costs of other oversight activities with respect to the program established under this part.

PART C—RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM¹³³

Sec. 381. DEFINITIONS.

15 USC 690.

In this part:

¹³³ Part C, the Renewable Fuel Capital Investment Pilot Program, added by § 1207 of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1774). Section 1208 of P.L. 110-140 provides:

STUDY AND REPORT.—The Administrator of the Small Business Administration shall conduct a study of the Renewable Fuel Capital Investment Program under part C of title III of the Small Business Investment Act of 1958, as added by this Act. Not later than 3 years after the date of enactment of this Act, the Administrator shall complete the study under this section and submit to Congress a report regarding the results of the study.

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(1) OPERATIONAL ASSISTANCE.—The term “operational assistance” means management, marketing, and other technical assistance that assists a small business concern with business development. “Operational assistance.”

(2) PARTICIPATION AGREEMENT.—The term “participation agreement” means an agreement, between the Administrator and a company granted final approval under section 384(e), that— “Participation agreement.”

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

(B) requires the company to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(3) RENEWABLE ENERGY.—The term “renewable energy” means energy derived from resources that are regenerative or that cannot be depleted, including solar, wind, ethanol, and biodiesel fuels. “Renewable energy.”

(4) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY.—The term “Renewable Fuel Capital Investment company” means a company— “Renewable Fuel Capital Investment company.”

(A) that—

(i) has been granted final approval by the Administrator under section 384(e); and

(ii) has entered into a participation agreement with the Administrator; or

(B) that has received conditional approval under section 384(c).

(5) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States. “State.”

(6) VENTURE CAPITAL.—The term “venture capital” means capital in the form of equity capital investments, as that term is defined in section 303(g)(4). “Venture capital.”

Sec. 382. PURPOSES. 15 USC 690a.

The purposes of the Renewable Fuel Capital Investment Program established under this part are—

(1) to promote the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in smaller enterprises primarily engaged [in] such activities; and

(2) to establish a venture capital program, with the mission of addressing the unmet equity investment needs of smaller enterprises engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy, to be administered by the Administrator—

(A) to enter into participation agreements with Renewable Fuel Capital Investment companies;

(B) to guarantee debentures of Renewable Fuel Capital Investment companies to enable each such company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy; and

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

Sec. 383. ESTABLISHMENT.

Establishment.
15 USC 690b.

The Administrator shall establish a Renewable Fuel Capital Investment Program, under which the Administrator may—

(1) enter into participation agreements for the purposes described in section 382; and

(2) guarantee the debentures issued by Renewable Fuel Capital Investment companies as provided in section 385.

Sec. 384. SELECTION OF RENEWABLE FUEL CAPITAL INVESTMENT COMPANIES.

Selection.
15 USC 690c.

(a) ELIGIBILITY.—A company is eligible to apply to be designated as a Renewable Fuel Capital Investment company if the company—

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

(2) has a management team with experience in alternative energy financing or relevant venture capital financing; and

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(3) has a primary objective of investment in smaller enterprises that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

(b) APPLICATION.—A company desiring to be designated as a Renewable Fuel Capital Investment company shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful venture capital investments in smaller enterprises primarily engaged in the research, manufacture, develop, produce, or bringing to market goods, products, or services that generate or support the production of renewable energy;

(2) information regarding the relevant venture capital qualifications and general reputation of the management of the company;

(3) a description of how the company intends to seek to address the unmet capital needs of the smaller enterprises served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

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

(6) a description of whether and to what extent the company meets the criteria under subsection (c)(2) and the objectives of the program established under this part;

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

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

(c) CONDITIONAL APPROVAL.—

Conditional approval.

(1) IN GENERAL.—From among companies submitting applications under subsection (b), the Administrator shall conditionally approve companies to operate as Renewable Fuel Capital Investment companies.

(2) SELECTION CRITERIA.—In conditionally approving companies under paragraph (1), the Administrator shall consider—

- business plan;
- (A) the likelihood that the company will meet the goal of its business plan;
- (B) the experience and background of the management team of the company;
- (C) the need for venture capital investments in the geographic areas in which the company intends to invest;
- (D) the extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest;
- (E) the likelihood that the company will be able to satisfy the conditions under subsection (d);
- (F) the extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest;
- (G) the strength of the proposal by the company to provide operational assistance under this part as the proposal relates to the ability of the company to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or contractors; and
- (H) any other factor determined appropriate by the Administrator.

(3) **NATIONWIDE DISTRIBUTION.**—From among companies submitting applications under subsection (b), the Administrator shall consider the selection criteria under paragraph (2) and shall, to the maximum extent practicable, approve at least one company from each geographic region of the Administration.

(d) **REQUIREMENTS TO BE MET FOR FINAL APPROVAL.**—

Final
approval.

(1) **IN GENERAL.**—The Administrator shall grant each conditionally approved company 2 years to satisfy the requirements of this subsection.

(2) **CAPITAL REQUIREMENT.**—Each conditionally approved company shall raise not less than \$3,000,000 of private capital or binding capital commitments from 1 or more investors (which shall not be departments or agencies of the Federal Government) who meet criteria established by the Administrator.

(3) **NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.**—

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(A) IN GENERAL.—In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company shall have binding commitments (for contribution in cash or in-kind)—

(i) from sources other than the Administration that meet criteria established by the Administrator; and

(ii) payable or available over a multiyear period determined appropriate by the Administrator (not to exceed 10 years).

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

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

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

(C) LIMITATION.—The total amount of a [sic] in-kind contributions by a company shall be not more than 50 percent of the total contributions by a company.

(e) FINAL APPROVAL; DESIGNATION.—The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

(1) grant final approval to the applicant to operate as a Renewable Fuel Capital Investment company under this part and designate the applicant such a company, if the applicant—

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

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

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in paragraph (1) of that subsection, revoke the conditional approval granted under that subsection.

Sec. 385. DEBENTURES.

Debentures.
15 USC 690d.

(a) IN GENERAL.—The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any Renewable Fuel Capital Investment company.

(b) **TERMS AND CONDITIONS.**—The Administrator may make guarantees under this section on such terms and conditions as it determines appropriate, except that—

- (1) the term of any debenture guaranteed under this section shall not exceed 15 years; and
- (2) a debenture guaranteed under this section—
 - (A) shall carry no front-end or annual fees;
 - (B) shall be issued at a discount;
 - (C) shall require no interest payments during the 5-year period beginning on the date the debenture is issued;
 - (D) shall be prepayable without penalty after the end of the 1-year period beginning on the date the debenture is issued; and
 - (E) shall require semiannual interest payments after the period described in subparagraph (C).

(c) **FULL FAITH AND CREDIT OF THE UNITED STATES.**—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) **MAXIMUM GUARANTEE.**—

(1) **IN GENERAL.**—Under this section, the Administrator may guarantee the debentures issued by a Renewable Fuel Capital Investment company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) **TREATMENT OF CERTAIN FEDERAL FUNDS.**—For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than a department or agency of the Federal Government.

Sec. 386 **ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.**

(a) **ISSUANCE.**—The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a Renewable Fuel Capital Investment company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

Trust
certificates.
15 USC 690e.

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(b) GUARANTEE.—

(1) IN GENERAL.—The Administrator may, under such terms and conditions as it determines appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) LIMITATION.—Each guarantee under this subsection shall be limited to the extent of the principal and interest on the guaranteed debentures that compose the trust or pool.

(3) PREPAYMENT OR DEFAULT.—If a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) FEES.—The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) SUBROGATION AND OWNERSHIP RIGHTS.—

(1) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) MANAGEMENT AND ADMINISTRATION.—

(1) REGISTRATION.—The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) CONTRACTING OF FUNCTIONS.—

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(A) IN GENERAL.—The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section, including, not withstanding [sic] any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

Regulation of
brokers and
dealers.

(4) ELECTRONIC REGISTRATION.—Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

Sec. 387. FEES.

Fees.
15 USC 690f.

(a) IN GENERAL.—Except as provided in section 386(d), the Administrator may charge such fees as it determines appropriate with respect to any guarantee or grant issued under this part, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures under this part, which amounts shall be paid to and retained by the Administration.

(b) OFFSET.—the Administrator may, as provided by section 388, offset fees charged and collected under subsection (a).

Sec. 388. FEE CONTRIBUTION.

Fee contribution.
15 USC 690g.

(a) IN GENERAL.—To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the Renewable Fuel Capital Investment companies under section 387.

(b) ANNUAL ADJUSTMENT.—Each fee contribution under subsection (a) shall be effective for 1 fiscal year and shall be adjusted as necessary for each fiscal year thereafter to ensure that amounts under subsection (a) are fully used. The fee contribution for a fiscal

year shall be based on the outstanding commitments made and the guarantees and grants that the Administrator projects will be made during that fiscal year, given the program level authorized by law for that fiscal year and any other factors that the Administrator determines appropriate.

Sec. 389. OPERATIONAL ASSISTANCE GRANTS.

Operational
assistance grants.
15 USC 690h.

(a) IN GENERAL.—

(1) AUTHORITY.—The Administrator may make grants to Renewable Fuel Capital Investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) TERMS.—A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) GRANT AMOUNT.—The amount of a grant made under this subsection to a Renewable Fuel Capital Investment company shall be equal to the lesser of—

(A) 10 percent of the resources (in cash or in kind) raised by the company under section 384(d)(2); or

(B) \$1,000,000.

(4) PRO RATA REDUCTIONS.—If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (3), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(5) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), upon the request of a company conditionally approved under section 384(c), the Administrator shall make a grant to the company under this subsection.

(B) REPAYMENT BY COMPANIES NOT APPROVED.—If a company receives a grant under this paragraph and does not enter into a participation agreement for final approval, the company shall, subject to controlling Federal law, repay the amount of the grant to the Administrator.

(C) DEDUCTION OF GRANT TO APPROVED COMPANY.—If a company receives a grant under this paragraph and receives final approval under section 384(e), the Administrator shall deduct the amount of the grant from the total grant amount the company receives for operational assistance.

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(D) AMOUNT OF GRANT.—No company may receive a grant of more than \$100,000 under this paragraph.

(b) SUPPLEMENTAL GRANTS.—

Supplemental grants.

(1) IN GENERAL.—The Administrator may make supplemental grants to Renewable Fuel Capital Investment companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in cash or in kind), other than those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a Renewable Fuel Capital Investment company.

Sec. 390. BANK PARTICIPATION.

Bank participation.
15 USC 690i.

(a) IN GENERAL.—Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any Renewable Fuel Capital Investment company, or in any entity established to invest solely in Renewable Fuel Capital Investment companies.

(b) LIMITATION.—No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

Sec. 391. FEDERAL FINANCING BANK.

15 USC 690j.

Notwithstanding section 318, the Federal Financing Bank may acquire a debenture issued by a Renewable Fuel Capital Investment company under this part.

Sec. 392. REPORTING REQUIREMENT.

Reporting requirement.
15 USC 690k.

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

SMALL BUSINESS INVESTMENT ACT OF 1958

(2) in each case in which the company makes, under this part, an investment in, or a loan or a grant to, a business that is not primarily engaged in the research, development, manufacture, or bringing to market of renewable energy sources, a report on the nature, origin, and revenues of the business in which investments are made.

Sec. 393. EXAMINATIONS.

Examinations.
15 USC 690l.

(a) IN GENERAL.—Each Renewable Fuel Capital Investment company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) COSTS.—

(1) ASSESSMENT.—

(A) IN GENERAL.—The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) PAYMENT.—Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(2) DEPOSIT OF FUNDS.—Funds collected under this section shall be deposited in the account for salaries and expenses of the Administration.

Sec. 394. MISCELLANEOUS.

15 USC 690m.

To the extent such procedures are not inconsistent with the requirements of this part, the Administrator may take such action as set forth in sections 309, 311, 312, and 314 and an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a Renewable Fuel Capital Investment company shall be subject to the requirements of such sections.

Sec. 395. REMOVAL OR SUSPENSION OF DIRECTORS OR OFFICERS.

Removal of
directors or
officers.
15 USC 690n.

Using the procedures for removing or suspending a director an officer of a licensee set forth in section 313 (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any Renewable Fuel Capital Investment company.

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Sec. 396. REGULATIONS.

Regulations.
15 USC 690o.

The Administrator may issue such regulations as the Administrator determines necessary to carry out the provisions of this part in accordance with its purposes.

Sec. 397. AUTHORIZATIONS OF APPROPRIATIONS.

Authorization of
appropriations.
15 USC 690p.

(a) IN GENERAL.—Subject to the availability of appropriations, the Administrator is authorized to make \$15,000,000 in operational assistance grants under section 389 for each of fiscal years 2008 and 2009.

(b) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 393(c)(2) are authorized to be appropriated only for the costs of examinations under section 393 and for the costs of other oversight activities with respect to the program established under this part.

Sec. 398. TERMINATION.

Termination.
15 USC 690q.

The program under this part shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the program under this part.

TITLE IV – GUARANTEES

PART A -- LEASE GUARANTEES

Sec. 401.¹³⁴ AUTHORITY OF THE ADMINISTRATION

Lease
guarantees.
15 USC 692.

(a) 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.¹³⁵ 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)

¹³⁴Original title IV, which provided for the conversion of State chartered investment companies and State development companies into SBICs, was repealed by § 11(f) of P.L. 87-341, approved Oct. 3, 1961 (75 Stat. 756), and new Title IV, Lease Guarantees, was added by § 316(a) of P.L. 89-117, the Housing and Urban Development Act of 1965, approved Aug. 10, 1965 (79 Stat. 482). Title heading amended by § 911(a)(1) of P.L. 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812). [Beginning with FY 1977, no appropriation for new lease guarantees has been made.]

¹³⁵Section 209 of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 271), extended the lease guarantee program to small business concerns generally by deleting the language which had limited the program to small concerns displaced by federally aided construction or eligible for title IV loans under the Economic Opportunity Act of 1964 (42 USC 2901 et seq.).

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) 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,¹³⁶ 2-1/2 per centum per annum of the minimum annual guaranteed rental payable under any guarantee 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.

Fees.

(c) 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;

Escrow.

(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

¹³⁶The reference to "this part" inserted in lieu of "this title" by § 911(a)(2) of P.L. 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812).

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(4) such other provisions, not inconsistent with the purposes of this part,¹³⁷ as the Administrator may in his discretion require.

Sec. 402. POWERS

Without limiting the authority conferred upon the Administrator and the Administration by section 201¹³⁸ of this Act, 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 5(b) of the Small Business Act 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.

15 USC 693.
Administrator,
powers.

Sec. 403. FUND [Repealed]¹³⁹

Sec. 404.¹⁴⁰ POLLUTION CONTROL

15 USC 694-1.

(a) For purposes of this section, the term—

¹³⁷The reference to “this part” inserted in lieu of “this title” by § 911(a)(2) of P.L. 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812).

¹³⁸The “section 201” authority referred to was transferred from sec. 201 to new sec. 308(f) pursuant to P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1359).

¹³⁹Sec. 403 repealed and remaining funds transferred to business loan and investment fund, §§ 4(c)(1) and (2) of the Small Business Act, by § 111(b) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2995). Text of section 403 and its legislative history set out below:

There is hereby 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 purposes of section 401. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 401, shall be deposited in the fund. All expenses, excluding administrative expenses, pursuant to operations of the Administrator under section 401 shall be paid from the fund.

Sec. 403 rewritten by § 911(a)(3) of P.L. 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812), to increase the amount of the revolving fund and extend its use to the Surety Bond Guarantees under Part B of Title IV. Sec. 403 rewritten by § 6(a) of P.L. 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742), to establish a separate revolving fund to provide capital for Surety Bond Guarantees under Part B of Title IV. The amount authorized for the sec. 403 fund was previously set at \$10 million by § 911(a)(3) of P.L. 91-609, to be shared by the Surety Bond Program and the Lease Guarantee Program under Part A of Title IV. (See sec. 412 for the Surety Bond Program Revolving Fund.) Sec. 403 rewritten in its current language by § 103 of P.L. 95-89, approved Aug. 4, 1977, effective Oct. 1, 1977 (91 Stat. 553). The authorization language was transferred to § 20 of the Small Business Act; SBA was no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under the Real Estate Lease Guarantee Program and the authority to invest idle funds obtained as fees was also eliminated. “Section 401” was substituted for “this part” by § 103 of P.L. 94-305, approved June 4, 1976 (90 Stat. 663.)

¹⁴⁰Added by § 102 of P.L. 94-305, approved June 4, 1976 (90 Stat. 663). While this section has not been repealed, the program has been transferred to § 7(a)(12)(B) of the Small Business Act by § 111(c) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2995), as a guaranteed financing program pursuant to that section.

(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.

“Pollution control facilities.”

(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.

“Person.”

(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.

“Qualified contract.”

(b) 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:

Guarantees.

(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 issued¹⁴¹ 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,¹⁴² 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 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.

¹⁴¹“Shall be issued” substituted for “may be issued” by § 115(1) of P.L. 98-473, approved Oct. 12, 1984 (98 Stat. 1967).

¹⁴²Clause following footnote signal added by P.L. 98-473, supra.

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(c) 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 amount¹⁴³ be less than 1 per centum or more than 3-1/2 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. Fees.

(d) 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) 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) Section 402 shall apply to the administration of this section.

¹⁴³Fee bracketed between one and 3-1/2% (instead of prior ceiling of 3-1/2%) by § 115(3) of P.L. 98-473, approved Oct. 12, 1984 (98 Stat. 1837 at 1967).

Sec. 405.¹⁴⁴ FUND

Pollution
control
revolving fund.
15 USC 694-2.

There is hereby 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 404. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 404 shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 404 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.¹⁴⁵

PART B -- SURETY BOND GUARANTEES¹⁴⁶

Sec. 410. DEFINITIONS

15 USC 694a.

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.

“Bid
bond.”

(2) the term “payment bond” means a bond conditioned upon the payment by the principal of money to persons under contract with him.

“Payment
bond.”

(3) the term “performance bond” means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

“Performance
bond.”

(4) the term “surety” means the person who, (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent,

“Surety”.

¹⁴⁴Sec. 405 rewritten by § 104 of P.L. 95-89, approved Aug. 4, 1977, effective Oct. 1, 1977 (91 Stat. 553). The authorization language was transferred to § 20 of the Small Business Act; SBA is no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under this program and the authority to invest idle funds was ended.

¹⁴⁵Last sentence added by § 112 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833).

¹⁴⁶Part B added by § 911(a)(4) of P.L. 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812).

SMALL BUSINESS INVESTMENT ACT OF 1958

underwriter, or any other company or individual empowered to act on behalf of such person.¹⁴⁷

(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. “Obligee.”

(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. “Principal.”

(7) the term “prime contractor” means the person with whom the obligee has contracted to perform the contract. “Prime contractor.”

(8) the term “subcontractor” means a person who has contracted with a prime contractor or with another subcontractor to perform a contract. “Subcontractor.”

(9)¹⁴⁸ Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 410, 411, and 412 the term “small business concern” means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System. “Small business concern.”

Sec. 411.¹⁴⁹ AUTHORITY OF THE ADMINISTRATION 15 USC 694b.

¹⁴⁷Sec. 410(4)(D) added by § 110 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

¹⁴⁸ New subsection 410(9) added by § 1695(c) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090). The same provision was added by § 508(c) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). Section 508(f) of that law provides: “The amendments made by this section shall remain in effect until September 30, 2010.”

¹⁴⁹Sec. 411(a) substantially rewritten by § 202 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3007). For prior text, see § 111 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1758). Sec. 12079 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1406) provides:

SMALL BUSINESS BONDING THRESHOLD.

(a) IN GENERAL.—Except as provided in subsection (b), and notwithstanding any other provision of law, for any procurement related to a major disaster, the Administrator may, upon such terms and conditions as the Administrator may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed \$5,000,000.

(b) INCREASE OF AMOUNT.—Upon request of the head of any Federal agency other than the Administration involved in reconstruction efforts in response to a major disaster, the Administrator may guarantee and enter into a

SMALL BUSINESS INVESTMENT ACT OF 1958

(a) (1) (A) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed \$6,500,000, as adjusted for inflation in accordance with section 1908 of title 41, United States Code.¹⁵⁰

(B)¹⁵¹ The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed \$10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.

(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)¹⁵² The Administration may authorize any surety, without further Administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

Preferred
surety bond
guarantee
program.

commitment to guarantee any security [sic; should probably read "surety"] against loss under subsection (a) on any total work order or contract amount at the time of bond execution that does not exceed \$10,000,000.

(c) LIMITATION ON USE OF OTHER FUNDS.—The Administrator may carry out this section only with amounts appropriated in advance specifically to carry out this section.

The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2178).

¹⁵⁰“\$1,250,000” inserted in lieu of “\$1,000,000” per § 18014 of P.L. 99-272, approved April 7, 1986 (100 Stat. 370). “\$2,000,000” inserted instead of “\$1,250,000” by § 805(a)(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-705). Phrase “contract up to” replaced by language beginning “total work order” by § 203(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-657). Amount changed from “\$2,000,000 to \$5,000,000 by § 508(a)(2) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). Subsection 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010. Amount changed to “\$6,500,000” and inflation adjustment added by § 1695(a)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2089).

¹⁵¹ Paragraph 411(a)(1) renumbered as 411(a)(1)(A) and new paragraph 411(a)(1)(B) added by § 1695(a)(3) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090). The same change was made by § 508(a) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). Subsection 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010.”

¹⁵²Section 207 of P.L. 100-590 (102 Stat. 3009) provided for an expiration date of September 30, 1991 “or the last day of the third full fiscal year after the date of enactment of this Act, whichever is later,” for paragraph 411(a)(3). Expiration date of this paragraph changed to September 30, 1994, by § 216(a) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2823). Expiration date changed to Sept. 30, 1995, by § 302 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4188). Expiration date changed to Sept. 30, 1997, by § 7 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297). Expiration date changed to Sept. 30, 2000, by § 503 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624). Changed again to Sept. 30, 2003, by § 805(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-706). Section 207 of P.L. 100-590 was repealed by § 204(c) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-658). [Section 206 of P.L. 100-590, approved Nov. 3, 1988, as amended by § 216(b) of P.L. 101-574, requires the Comptroller General of the U.S. to report on the success of this provision not later than March 1, 1994, and cover the period Oct. 1, 1990, through Sept. 30, 1993.]

SMALL BUSINESS INVESTMENT ACT OF 1958

(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)¹⁵³ (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).

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Program [sic] 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) 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), 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): Provided, however—

Indemnifi-
cation.

(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)¹⁵⁴ 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); and

¹⁵³Paragraph 411(a)(5) added by § 206(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). Section 206(b) of P.L. 104-208 provides that “[t]he amendments made by subsection (a) shall apply with respect to applications received (or pending substantive evaluation) on or after October 1, 1995.”

¹⁵⁴Section 411(b)(2) was rewritten by § 203(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3008), which deleted existing paragraph 411(b)(3), inserted new paragraph (2), and renumbered existing paragraph (2) as paragraph (3). For prior version, see § 111 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1758).

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).¹⁵⁵ Limitation.

(c)¹⁵⁶ Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

(1) not to exceed 90¹⁵⁷ 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);

(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) 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 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 8(d) of the Small Business Act or to a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act¹⁵⁸; or

(4) determined pursuant to subsection (b), if applicable.

¹⁵⁵Last sentence in § 411(b) added by § 203(a)(5) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3008).

¹⁵⁶Sec. 411(c) rewritten by section 203(b) of P.L. 100-590. For prior version, see § 115 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Section 5(a) of P.L. 100-442, the Indian Financing Act of 1988, approved Sept. 22, 1988 (102 Stat. 1764) authorizes the Secretary of the Interior to provide a supplemental surety bond guarantee not to exceed 20% of any loss for any Indian individual or economic enterprise eligible for a surety guarantee under § 411 of the Small Business Investment Act. For text of P.L. 100-442, see the Related Provisions of Law section of this Handbook.

¹⁵⁷ Percentage changed from 70 to 90 by § 874(b) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 941). Section 874(c) of that law provides: "The amendments made by this section shall take effect 1 year after the date of the enactment of this Act."

¹⁵⁸ Reference to "qualified HUBZone small business concern" added by § 604(d) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2633).

- (d) 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. Regulations.
- (e)¹⁵⁹ 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 (in whole or in part within the discretion of the Administration) if— SBA not liable 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 \$6,500,000,
 - (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).
- (f) 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)¹⁶⁰ (1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require. Reports to SBA.
- (2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.
- (3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once every three years¹⁶¹ by examiners selected and approved by the Administration. Audit of surety.

¹⁵⁹Paragraphs 411(e)(3) and (4) added by § 203(c) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3008). “\$1,250,000” inserted in lieu of “\$1,000,000” per § 18014 of P.L. 99-272, approved April 7, 1986 (100 Stat. 370). “\$2,000,000” inserted in lieu of “\$1,250,000” per § 805(a)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-705). Subsection 411(e) rewritten by § 508(b)(1) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). Subsection 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010.” The same language was added permanently by § 1695(b)(1) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090).

¹⁶⁰Paragraphs (1) and (3) of section 411(g) added by § 204 of P.L. 100-590, *supra*.

¹⁶¹ Audit frequency changed from each year to every three years by § 202(b) of P.L. 108-447, approved Dec. 8, 2004 (118

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(h) The Administration shall administer this Part on a prudent and economically justifiable basis¹⁶² 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.

Fees.

(i) The provisions of section 402 shall apply in the administration of this section.

(j)¹⁶³ For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guarantee application.

(k)¹⁶⁴ [deleted]

Sec. 412.¹⁶⁵ FUND

15 USC 695.
Surety bond
guarantee
fund.

(a) There is hereby 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.¹⁶⁶

Stat. 2809-658).

¹⁶²The phrase “administer this program on a prudent and economically justifiable basis” added to the original § 411 by § 11(a) of P.L. 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742). Subsection (h), formerly (c), entirely rewritten by said section, to distinguish between fees payable by small concerns, and premiums paid by sureties, and to eliminate several sentences.

¹⁶³ New subsection 411(j) added by § 1695(b)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090). The same language was added as subsection 411(k) by § 508(b)(2) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). Section 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010.”

¹⁶⁴ New subsection 411(k) added by § 508(b)(2) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). There is no 411(j). Section 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010.” Text of subsection 411(k), as added by P.L. 111-5 follows:

(k) For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guaranty application.

¹⁶⁵Sec. 412, added by § 6(a)(4) of P.L. 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742), was rewritten by § 105 of P.L. 95-89, approved Aug. 4, 1977, effective Oct. 1, 1977 (91 Stat. 553). The authorization language was transferred to § 20 of the Small Business Act; SBA is no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under this program and the authority to invest idle funds was modified.

¹⁶⁶Last sentence, repealed by § 111 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833), authorized investment of funds not needed for operating expenses or claims payments to be invested in U.S. bonds and U.S. guaranteed obligations, except for moneys provided as capital. See § 6(a) of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742).

(b)¹⁶⁷ Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

TITLE V -- LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Sec. 501. STATE DEVELOPMENT COMPANIES.

15 USC 695.

(a)¹⁶⁸ The Congress hereby finds and declares that the purpose of this title 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 title.

State
development
companies.

(b) The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this Act. 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) 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 the date of the enactment of this Act, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(d)¹⁶⁹ In order to qualify for assistance under this title, 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

¹⁶⁷Existing § 412 redesignated (a) and subsection 412(b) added by § 208 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3009).

¹⁶⁸Subsections 501(a) and (b) redesignated as 501(b) and (c), respectively, and new subsection 501(a) added by § 115(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2997). Section 115(b)(1) added the heading "State development companies." Subsection 501(a) rewritten by § 214(a) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821).

¹⁶⁹New subsection 501(d) added by § 214(b) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821).

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- (3) the achievement of one or more of the following public policy goals:
- (A) business district revitalization,
 - (B) expansion of exports,
 - (C) expansion of minority business development or women-owned business development,¹⁷⁰
 - (D) rural development,
 - (E)¹⁷¹ expansion of small business concerns owned and controlled by veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)), especially service-disabled veterans, as defined in such section 3(q). [15 USC 632(q)].
 - (F) enhanced economic competition, including the advancement of technology, plant retooling, conversion to robotics, or competition with imports,
 - (G) changes necessitated by Federal budget cutbacks, including defense related industries,
 - (H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees,
 - (I)¹⁷² reduction of energy consumption by at least 10 percent,
 - (J) increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact,
 - (K) plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers, or
 - (L)¹⁷³ reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.

¹⁷⁰ Reference to women-owned business development added by § 302 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat 2763).

¹⁷¹ Subparagraphs 501(d)(3)(E) – (G) renumbered as (F) –(H), respectively, and new subparagraph 501(d)(3)(E) added by § 405 of P.L. 106-50, approved August 17, 1999 (113 Stat. 246).

¹⁷² New subparagraphs (I) through (K) added by § 1204(a) of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1772).

¹⁷³ New subparagraph (L) added by § 1132(3) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2514).

In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and environmental design (LEED) standard for green building certification, as determined by the Administrator.¹⁷⁴

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

(e)¹⁷⁵ (1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every \$65,000¹⁷⁶ guaranteed by the Administration, except that the amount is \$100,000 in the case of a project of a small manufacturer.

(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company's portfolio of outstanding debentures creates or retains one job for every \$65,000¹⁷⁷ guaranteed by the Administration.

(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than \$75,000 per job created or retained.

(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

(6) As used in this subsection, the term "small manufacturer" means a small business concern— "Small manufacturer."

(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

¹⁷⁴ Freestanding language after subparagraph (K) added by § 1204(a)(4) of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1772).

¹⁷⁵ New subsection 501(e) added by § 105 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-636).

¹⁷⁶ Amount changed from "\$50,000" to "\$65,000" by § 504(b) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 156).

¹⁷⁷ Amount changed from "\$50,000" to "\$65,000" by § 504(b) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 156).

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(B) all of the production facilities of which are located in the United States.

Sec. 502. LOANS FOR PLANT ACQUISITION, CONSTRUCTION, CONVERSION, AND EXPANSION¹⁷⁸ 15 USC 696.

The Administration may, in addition to its authority under section 501, make loans for plant acquisition,¹⁷⁹ 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)¹⁸⁰ USE OF PROCEEDS.—The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business concerns and for a sound business purpose approved by the Administration.

(2)¹⁸¹ MAXIMUM AMOUNT.—

¹⁷⁸ Heading for § 502 added by § 116(b) of P.L. 100-590.

¹⁷⁹The word “acquisition” added by § 108(a) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

¹⁸⁰Former para. (1) and (5) repealed and former para. (2), (3), and (4) renumbered as para (1), (2), and (3), respectively, by § 1909 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357). Effective date is Oct. 1, 1981 per § 1918 of P.L. 97-35. Former para. 1 required loans to be “so secured as reasonably to assure repayment” and limited loan guarantees to 90%. Former para. 5 limited loans to 25 years plus construction period, and an additional 10 years if needed for orderly liquidation. For full text see § 502 of P.L. 85-699, approved Aug. 21, 1958 (72 Stat. 697). Paragraph 502(1) was rewritten by § 221(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603). Text of former paragraph 502(1) is reprinted below:

The proceeds of any such loan shall be used solely by such borrower to assist an identifiable small-business concern and for a sound business purpose approved by the Administration.

¹⁸¹Paragraph 502(2) rewritten by § 104 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-636). The text of former paragraph 502(2) and its history are set out below:

Loans made by the Administration under this section shall be limited to \$1,000,000 for each such identifiable small-business concern, except loans meeting the criteria specified in section 501(d)(3) shall be limited to \$1,300,000 for each such identifiable small business concern.

This limitation was raised from “\$500,000” to “\$750,000” by § 8007(b) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1561). The limitation was raised from “\$750,000” to “\$1,000,000” by § 303 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-684). Section 8007(c) of P.L. 100-418 provides that:

The Administrator of the Small Business Administration shall report to the Committees on Small Business of the House of Representatives and the Senate within 6 months after the date of enactment of this title as to the viability of creating cooperative Federal-State guarantee programs, particularly for purposes of export financing, to encourage States to coinsure Federal loans, thus permitting the Federal Government to reduce its exposure.

Exception for 501(d)(3) added by § 214(c) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2822). Limitation was changed from “\$1,000,000” to \$1,300,000” by § 303 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-684).

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(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

(i) \$5,000,000¹⁸² for each small business concern if the loan proceeds will not be directed toward a goal or project described in clause (ii), (iii), (iv), or (v)¹⁸³;

(ii) \$5,000,000¹⁸⁴ for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3);

(iii) \$5,500,000¹⁸⁵ for each project of a small manufacturer;

(iv)¹⁸⁶ \$5,500,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and

(v) \$5,500,000¹⁸⁷ for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.

(B) DEFINITION.—As used in this paragraph, the term “small manufacturer” means a small business concern—

“Small
manufacturer.”

(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(ii) all of the production facilities of which are located in the United States.

(3)¹⁸⁸ CRITERIA FOR ASSISTANCE.—

Criteria for
assistance.

¹⁸² Amount changed from \$1,500,000 by § 1112(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

¹⁸³ Phrase “subparagraph (B) or (C)” replaced with current language by § 1122(c) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2512).

¹⁸⁴ Amount changed from \$2,000,000 by § 1112(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

¹⁸⁵ Amount changed from \$4,000,000 by § 1112(3) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

¹⁸⁶ New clauses (iv) and (v) added by § 1204(b) of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1773). Amount changed from \$4,000,000 by § 1112(4) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

¹⁸⁷ Amount changed from \$4,000,000 by § 1112(5) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

¹⁸⁸ Subsection 502(3) rewritten by § 202(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-734). Text of former subsection 502(3) is reprinted below:

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

SMALL BUSINESS INVESTMENT ACT OF 1958

(A) IN GENERAL.—Any development company assisted under this section or section 503 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.

Community
injection
funds.

(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 title.

(ii)¹⁸⁹ FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of

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 title.

¹⁸⁹ Section 503 of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 153) provides:

SEC. 503. ESTABLISHMENT OF SBA SECONDARY MARKET GUARANTEE AUTHORITY.

(a) PURPOSE.—The purpose of this section is to provide the Administrator with the authority to establish the SBA Secondary market Guarantee Authority within the SBA to provide a Federal guarantee for pools of first lien 504 loans that are to be sold to third-party investors.

(b) DEFINITIONS.—For purposes of this section:(1) The term “Administrator” means the Administrator of the Small Business Administration.

(2) The term “first lien position 504 loan” means the first mortgage position, non-federally guaranteed loans made by private sector lenders made under title V of the Small Business Investment Act.

(c) ESTABLISHMENT OF AUTHORITY.—

(1) ORGANIZATION.—

(A) The Administrator shall establish a Secondary Market Guarantee Authority within the Small Business Administration.

SMALL BUSINESS INVESTMENT ACT OF 1958

- (B) The Administrator shall appoint a Director of the Authority who shall report to the Administrator.
- (C) The Administrator is authorized to hire such personnel as are necessary to operate the Authority and may contract such operations of the Authority as necessary to qualified third party companies or individuals.
- (D) The Administrator is authorized to contract with private sector fiduciary and custom dial [sic; should probably read “custodial”] agents as necessary to operate the Authority.

(2) GUARANTEE PROCESS.—

- (A) The Administrator shall establish, by rule, a process in which private sector entities may apply to the Administration for a Federal guarantee on pools of first lien position 504 loans that are to be sold to third-party investors.
- (B) The Administrator is authorized to contract with private sector fiduciary and custom dial [sic; should probably read “custodial”] agents as necessary to operate the Authority.

(3) RESPONSIBILITIES.—

- (A) The Administrator shall establish, by rule, a process in which private sector entities may apply to the SBA for a Federal guarantee on pools of first lien position 504 loans that are to be sold to third-party investors.
- (B) The rule under this section shall provide for a process for the Administrator to consider and make decisions regarding whether to extend a Federal guarantee referred to in clause (i). Such rule shall also provide that:
 - (i) The seller of the pools purchasing a guarantee under this section retains not less than 5 percent of the dollar amount of the pools to be sold to third-party investors.
 - (ii) The Administrator shall charge fees, upfront or annual, at a specified percentage of the loan amount that is at such a rate that the cost of the program under the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661) shall be equal to zero.
 - (iii) The Administrator may guarantee not more than \$3,000,000,000 of pools under this authority.
- (C) The Administrator shall establish documents, legal covenants, and other required documentation to protect the interests of the United States.
- (D) The Administrator shall establish a process to receive and disburse funds to entities under the authority established in this section.

(d) LIMITATIONS.—

- (1) The Administrator shall ensure that entities purchasing a guarantee under this section are using such guarantee for the purpose of selling 504 first lien position pools to third-party investors.
- (2) If the Administrator finds that any such guarantee was used for a purpose other than that specified in paragraph (1), the Administrator shall—
 - (A) prohibit the purchaser of the guarantee or its affiliates (within the meaning of the regulations under 13 CFR 121.103) from using the authority of this section in the future; and
 - (B) take any other actions the Administrator, in consultation with the Attorney General of the United States deems appropriate.

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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 title 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.

(e) OVERSIGHT.—The Administrator shall submit a report to Congress not later than the third business day of each month setting forth each of the following:

- (1) The aggregate amount of guarantees extended under this section during the preceding month.
- (2) The aggregate amount of guarantees outstanding.
- (3) Defaults and payments on defaults made under this section.
- (4) The identity of each purchaser of a guarantee found by the Administrator to have misused guarantees under this section.
- (5) Any other information the Administrator deems necessary to fully inform Congress of undue risk to the United States associated with the issuance of guarantees under this section.

(f) DURATION OF PROGRAM.—The authority of this section shall terminate on the date 2 years after the date of enactment of this section.

(g) FUNDING.—Such sums as necessary are authorized to be appropriated to carry out the provisions of this section.

(h) BUDGET TREATMENT.—Nothing in this section shall be construed to exempt any activity of the Administrator under this section from the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661 and following).

(i) EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall issue regulations under this section within 15 days after the date of enactment of this section. The notice requirements of section 553(b) of title 5, United States Code shall not apply to the promulgation of such regulations.

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(D)¹⁹⁰ SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

(E) COLLATERALIZATION.—

(i) IN GENERAL.—The collateral provided by the small business concern shall generally include a subordinate lien position on the property being financed under this title, and is only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case by case basis, that additional security is necessary to protect the interest of the Government.

(ii)¹⁹¹ APPRAISALS.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

(I) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than \$250,000; or

(II) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is \$250,000 or less, and such appraisal is necessary for appropriate evaluation of creditworthiness.

(4)¹⁹² If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

(5)¹⁹³ LIMITATION ON LEASING.—In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small business to 1 or more other tenants, if the assisted small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6)¹⁹⁴ OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any

Community
property.

¹⁹⁰ Subparagraphs 502(3)(D) and (E) were added by § 221(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

¹⁹¹ Clause 502(3)(E)(ii) added by § 208 (b)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-683).

¹⁹²Section 502(4) added by § 116(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2998).

¹⁹³ Paragraph 502(5) added by § 221(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604).

¹⁹⁴ New paragraph 502(6) added by § 802(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-702).

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credit program under this title shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(7)¹⁹⁵ PERMISSIBLE DEBT REFINANCING.—

(A) IN GENERAL.—Any financing approved under this title may include a limited amount of debt refinancing.

(B) EXPANSIONS.—If the project involves expansion of a small business concern, any amount of existing indebtedness that does not exceed 50 percent of the project cost of the expansion may be refinanced and added to the expansion cost, if—

(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

(ii) the existing indebtedness is collateralized by fixed assets;

(iii) the existing indebtedness was incurred for the benefit of the small business concern;

(iv) the financing under this title will be used only for refinancing existing indebtedness or costs relating to the project financed under this title;

(v) the financing under this title will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

(vi) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

(vii) the financing under section 504 will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

(C)¹⁹⁶ REFINANCING NOT INVOLVING EXPANSIONS.—

¹⁹⁵ New paragraph 502(7) added by § 504(a) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 155).

¹⁹⁶ New subparagraph 502(7)(C) added by § 1122(a) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2510). Section 1122(b) of that law provides that: “Effective 2 years after the date of enactment of this Act, section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by striking subparagraph (C).”. Section 521(a), Title V, Division E of P.L. 114-113, approved Dec. 18, 2015 (Stat.) provides: “Subparagraph (C) of section 502(7) of the Small Business Investment Act of 1958 as in effect on September 25, 2012, shall be in effect in any fiscal year during which the cost to the Federal Government of making guarantees under such subparagraph (C) and section 503 of the Small Business Act of 1958 is zero.” Paragraph 521(a)(2) of P.L. 114-113 provides: “unless, upon application by a development company and after determining that the refinance loan is needed for good cause, the Administrator of the Small Business

(i) DEFINITIONS.—In this subparagraph—

(I) the term “borrower” means a small business concern that submits an application to a development company for financing under this subparagraph; “Borrower.”

(II) the term “eligible fixed asset” means tangible property relating to which the Administrator may provide financing under this section; and “Eligible fixed asset.”

(III) the term “qualified debt” means indebtedness— “Qualified debt.”

(aa) that—

(AA) was incurred not less than 2 years before the date of the application for assistance under this subparagraph;

(BB) is a commercial loan;

(CC) is not subject to a guarantee by a Federal agency;

(DD) the proceeds of which were used to acquire an eligible fixed asset;

(EE) was incurred for the benefit of the small business concern; and

(FF) is collateralized by eligible fixed assets; and

(bb) for which the borrower has been current on all payments for not less than 1 year before the date of the application.

(ii) AUTHORITY.—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

(I) the amount of the financing is not more than 90 percent of the value of the collateral for the financing, except that, if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency;

Administration waives this paragraph, a development company shall limit its financings under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) so that, during any fiscal year, new financings under such subparagraph (C) shall not exceed 50 percent of the dollars loaned under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) during the previous fiscal year”.

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(II) the borrower has been in operation for all of the 2-year period ending on the date of the loan; and

(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

(iii) FINANCING FOR BUSINESS EXPENSES.—

(I) FINANCING FOR BUSINESS EXPENSES.—

The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

(II) APPLICATION FOR FINANCING.—An application for financing under subclause (I) shall include—

(aa) a specific description of the expenses for which the additional financing is requested; and

(bb) an itemization of the amount of each expense.

(III) CONDITION ON ADDITIONAL FINANCING.—A borrower may not use any part of the financing under this clause for non-business purposes.

(iv) LOANS BASED ON JOBS.—

(I) JOB CREATION AND RETENTION

GOALS.—

(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation and retention¹⁹⁷ goals under subsection (d) or (e) of section 501.

(bb)¹⁹⁸

¹⁹⁷ Section 521(a)(3) of Title V, Division E, P.L. 114-113, approved Dec. 18, 2015 (Stat.) added the phrase “and retention.”

¹⁹⁸ Subclause 502(7)(C)(iv)(I)(bb) and (II) no longer in effect per § 521(a)(1) of Title V, Division E, P.L. 114-113, approved Dec. 18, 2015 (Stat.). Text of former subclause(iv)(I)(bb) and (iv)(II) is reprinted below:

(bb) ALTERNATE JOB RETENTION GOAL.—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$65,000.

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(v) NONDELEGATION.—Notwithstanding section 508(e), the Administrator may not permit a premier certified lender to approve or disapprove an application for assistance under this subparagraph.

(vi) TOTAL AMOUNT OF LOANS.—The Administrator may provide not more than a total of \$7,500,000,000 of financing under this subparagraph for each fiscal year.

Sec. 503.¹⁹⁹ DEVELOPMENT COMPANY DEBENTURES

15 USC 697.
Development
company
debentures,
guarantee
by SBA.

(a) (1) Except as provided in subsection (b), 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 by 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) 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.²⁰⁰

(3) The full faith and credit of the United States is 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

(II) NUMBER OF EMPLOYEES.—For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

(bb) the product obtained by multiplying—

(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; by

(BB) the quotient obtained by dividing the average number of hours each part-time employee of the borrower works each week by 40.

¹⁹⁹New sec. 503 added by § 113 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833).

²⁰⁰Provisos added by section 114 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2997).

SMALL BUSINESS INVESTMENT ACT OF 1958

Administration to any other debenture, promissory note, or other debt or obligation of such company.²⁰¹

(b) No guarantee may be made with respect to any debenture under subsection (a) unless— Terms and conditions of guarantee.

(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 502;

(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 debentures is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 303(b);

(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; and

(6) the Administration approves each loan to be made from such proceeds.

(7)²⁰² with respect to each loan made from the proceeds of such debenture, the Administration--

(A)²⁰³ assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed²⁰⁴ [of]—

²⁰¹P.L. 98-8, Emergency Jobs Appropriations, 1983, approved March 24, 1983 (97 Stat. 13), provided for fiscal year 1983 in part:

. . . the Administration may not decline to participate in a project under section 503 of the Small Business Investment Company (sic) Act of 1958 because other sources of financing for the project include or are collateralized by obligations described in section 103(b) of the Internal Revenue Code of 1954: And provided further, That loans made with the proceeds of debentures guaranteed under section 503 of said Act shall be subordinated to (such) obligations . . .

²⁰²Paragraph 503(b)(7) added by § 6 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297). The amount of the fee was changed from 0.125 percent per year of the outstanding balance of the loan and clause (ii) was added by § 202(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735). For information on applicability of this amendment, see footnote to § 7(a)(2) of the Small Business Act.

²⁰³ Subparagraph 503(b)(7)(A) was rewritten by § 222(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604). Text of former subparagraph (A) is reprinted below:

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(i) the lesser [of]

(I) 0.9375 percent per year of the outstanding
balance of the loan; and

(II) the minimum amount necessary to reduce the
cost (as defined in section 502 of the Federal Credit Reform Act of 1990) to the
Administration of purchasing and guaranteeing debentures under this Act to zero; and [2 USC 661a].

(ii)²⁰⁵ 50 percent of the amount established under clause (i) in
the case of a loan made during the 2-year period beginning on October 1, 2002, for the life of
the loan; and

(B) uses the proceeds of such fee to offset the cost (as such term is
defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of
making guarantees under subsection (a).

(c)²⁰⁶ (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, Interest
the maximum legal rate of interest on any commercial loan which funds any portion of the rates.
cost of the project financed pursuant to this section or section 504 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.

(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 502 of the Federal Credit Reform Act of 1990) to the
Administration of purchasing and guaranteeing debentures under this Act 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;

²⁰⁴ Section 6(b)(1)(B) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 971), deleted the phrase “not exceed the lesser” and
inserted “not exceed”.

²⁰⁵ Clause 503(b)(7)(A)(ii) added by § 6(b)(1)(C) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 971).

²⁰⁶ Subsections 503(c) and (d) redesignated as 503(d) and (e), respectively, and new subsection 503(c) added by § 112(c)(1) of
P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2996). Section 112(c)(2) of P.L. 100-590 provides that new subsection 503(c)
shall be repealed on October 1, 1990. Section 3 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2140), extends the period to
Oct. 1, 1994. Section 213(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4185), repealed the sunset provision, thereby
making the subsection permanent.

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(3) The Administrator is authorized and directed to establish and publish quarterly a maximum legal interest rate for any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 504 which is not funded by a debenture guaranteed under this section.

(d)²⁰⁷ CHARGES FOR ADMINISTRATION EXPENSES.—

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).

(2)²⁰⁸ 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 502(3)(B)(i). 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 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

Participation
fee.

²⁰⁷Subsection 503(d) rewritten by § 202(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735). Text of former § 503(d) is reprinted below:

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).

²⁰⁸ Section 501(b) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 151), provides:

(b) TEMPORARY FEE ELIMINATION FOR THE 504 LOAN PROGRAM.—

(1) IN GENERAL.—Until September 30, 2010, and to the extent the cost of such elimination in fees is offset by appropriations, with respect to each project or loan guaranteed by the Administrator pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) for which an application is approved or pending approval on or after the date of enactment of this Act—

(A) the Administrator shall, in lieu of the fee otherwise applicable under section 503(d)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)(2)), collect no fee;

(B) a development company shall, in lieu of the processing fee under section 120.971(a)(1) of title 13, Code of Federal Regulations (relating to fees paid by borrowers), or any successor thereto, collect no fee.

(2) REIMBURSEMENT FOR WAIVED FEES.—

(A) IN GENERAL.—To the extent that the cost of such payments is offset by appropriations, the Administrator shall reimburse each development company that does not collect a processing fee pursuant to paragraph (1)(B).

(B) AMOUNT.—The payment to a development company under subparagraph (A) shall be in an amount equal to 1.5 percent of the net debenture proceeds for which the development company does not collect a processing fee pursuant to paragraph (1)(B).

(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 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

Development company fee.

[2 USC 661a].

(e) (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—

“Qualified State or local development company.”

(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)²⁰⁹ 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)²¹⁰ Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under Section 7(a) of the Small Business Act, to service such loans and to charge a reasonable fee for servicing such loans.

(f) **EFFECTIVE DATE.**—The fees authorized by subsections (b) and (d) shall apply to financings approved by the Administration on or after October 1, 1996.²¹¹

²⁰⁹Section 503(e) renumbered para. 1 by § 117(a)(1) and (2), and § 503(e)(2) added by § 117(a)(2) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2998).

²¹⁰New paragraph 503(e)(3) added by § 8 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2144).

²¹¹Subsection 503(f) added by subsection 202(d) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735). Sunset date changed from 1997 to 2000 by § 222(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604). Date changed again from 2000 to Oct. 1, 2003 by § 304 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-684). Section 116 of P.L. 108-84, approved Sept. 30, 2003 (117 Stat. 1044) provides that this section “shall be applied by substituting the date specified in section 107(c) [Oct. 31, 2003] of this joint resolution.” Section 1(a) of P.L. 108-172, approved Dec. 6, 2003 (117 Stat. 2065), provides for the temporary extension of all SBA programs, authority, or provisions until March 15, 2004. Section 613 of P.L. 108-199, approved Jan. 23, 2004, substitutes “March 15, 2004” for the last date appearing in § 503(f). The date was extended to May 21, 2004, by § 2 of P.L. 108-205, approved March 15, 2004 (118 Stat. 553). The date was further extended to October 1, 2004, by § 2 of P.L. 108-217, approved April 5, 2004 (118 Stat. 591). The sunset date was deleted

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(g)²¹² 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 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures under this Act.

Calculation of
subsidy rate.

[2 USC 661a].

(h)²¹³ REQUIRED ACTIONS UPON DEFAULT.—

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 [sic] 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 502(3), the Administration—

Prepayment
penalties.

(A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

(B) shall not pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and

(C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

(i)²¹⁴ TWO-YEAR WAIVER OF FEES.—The Administration may not assess or collect any up front guarantee fee with respect to loans made under this title during the 2-year period beginning on October 1, 2002.

2-year
waiver of
fees.

by § 204 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-658).

²¹²Subsection 503(g) added by subsection 202(e) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-735).

²¹³Subsection 503(h) added by § 203 of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-736).

²¹⁴ New subsection 503(i) added by § 6(b)(2) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 971). Section 6 of the same law also provides:

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Sec. 504.²¹⁵ PRIVATE DEBENTURE SALES

Sale of
debentures.
15 USC 697a.

(a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 503 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 years 1987 and 1988, an amount not to exceed \$425,000,000.

(3)²¹⁶ 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 503 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).

Sec. 505.²¹⁷ POOLING OF DEBENTURES

15 USC 697b.

(c) BUDGETARY TREATMENT OF LOANS AND FINANCINGS.— . . . financings made under title V of the Small Business Investment Act of 1958 during the 2-year period beginning on October 1, 2002, shall be treated as separate programs of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 only.

(d) USE OF FUNDS.—The amendments made by this section to section 503 of the Small Business Investment Act of 1958, shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be utilized by the Administrator to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990) of such amendments.

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

²¹⁵Section 504 was rewritten and in subsection 504(b) “this title” substituted for “Small Business Investment Act of 1958” by § 112(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2996), which provided a permanent extension of the pilot program established by § 18008(a) of P.L. 99-272, approved April 7, 1986 (100 Stat. 366).

²¹⁶Section 2(b) of P.L. 100-72, approved July 11, 1987 (101 Stat. 477), changed authorization in 504(a)(2) from \$295,000,000 to current amount. Section 2(c) of P.L. 100-72 added new subsection 504(a)(3).

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(a) 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 Act: 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.

Pooling of
debentures.

(b) 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) 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) 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) (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.

²¹⁷Section 505 added by § 18008(c) of P.L. 99-272, approved April 7, 1986 (100 Stat. 367). Title changed from “Authority for issuance of trust certificates” by section 111(d)(2) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2995). Section 111(d)(1) of P.L. 100-590 corrected typographical error, from “all of a” to “all or a” in second line of § 505(a).

Section 18008(d) of P.L. 99-272 provides:

(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of enactment of this Act, 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, 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, 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.

SMALL BUSINESS INVESTMENT ACT OF 1958

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

(f) (1)²¹⁸ 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.

Sec. 506.²¹⁹ RESTRICTIONS ON DEVELOPMENT COMPANY ASSISTANCE

15 USC 697c.

²¹⁸Paragraphs 505(f)(1) - (4) renumbered 505(f)(1)(A) - (D), respectively, and paragraph (2) added by § 205(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). The following language was deleted from new paragraph 505(f)(1)(A):

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;

²¹⁹Section 506 added by § 117(b) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2998). Section 117(c) of P.L. 100-590 provides that:

Not later than one hundred and eighty days after the effective date of this Act, the Small Business Administration shall report to the Small Business Committees of the Senate and the House of Representatives on the amount and nature of all financial assistance or income being received by certified development companies from sources other than the Small Business Administration or those being assisted by the programs authorized in title V of the Small Business Investment Act of 1958. The report shall include any conditions or restrictions imposed on the development companies due to such financial assistance, a comparison of all sources of income which comprise the development companies' budgets, an analysis of the financial impact of various sources of financial assistance, and the feasibility of restricting assistance received from the Federal Government solely to Small Business Administration funding.

SMALL BUSINESS INVESTMENT ACT OF 1958

Notwithstanding any other provisions 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 title or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this title; 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 title nor shall it include any condition or impose any requirement, directly or indirectly upon any recipient of assistance under this title: 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.

Restrictions on
development
company
assistance.

Sec. 507.²²⁰ ACCREDITED LENDERS PROGRAM

15 USC 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).

(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 502, 503, and 504 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;

²²⁰Section 507 added by § 212(a) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4183). Section 212(b) requires that the Administration promulgate final regulations implementing the section within 120 days of the enactment. Section 212(c) requires that:

Not later than 1 year after the effective date of regulations promulgated under subsection (b), 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. 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.

(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 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).

(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); 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) **DEFINITION.**—For purposes of this section, the term “qualified State or local development company” has the same meaning as in section 503(e).

“Qualified State or local development company.”

Sec. 508.²²¹ **PREMIER CERTIFIED LENDERS PROGRAM**

15 USC 697e.

(a)²²² **ESTABLISHMENT.**—The Administration may establish a Premier Certified Lenders Program for²²³ certified development companies that meet the requirements of subsection (b).

Premier Certified Lenders Program.

(b) **REQUIREMENTS.**—

²²¹Section 508 added by § 217(a) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4185). Section 217(b) of P.L. 103-403 provides for the repeal of § 508 effective October 1, 1997. The program was extended through October 1, 2000, by § 223(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606). Section 217(b) of P.L. 103-403, the sunset provision for the PCLP program, was repealed by § 305 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-685).

²²² The phrase “On a pilot program basis” was deleted by § 306(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-685).

²²³ Phrase “not more than 15” was deleted by § 223(a)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604).

SMALL BUSINESS INVESTMENT ACT OF 1958

(1) APPLICATION.—To be eligible to participate in the Premier Certified Lenders Program established under subsection (a), 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 lender²²⁴

(A) if the company is an active certified development company in good standing and has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the company submits an application under paragraph (1), except that the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

(B) if the company has a history of—

(i) submitting to the Administration adequately analyzed debenture guarantee application packages; and

(ii) of properly closing section 504 loans and servicing its loan portfolio;

(C) if the company agrees to assume and to reimburse the Administration for 10 percent of any loss sustained by the Administration as a result of default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administration under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company)²²⁵; and

²²⁴ Subparagraphs 508(b)(2)(A) and (B) were rewritten by § 223(a)(2)(ii) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2604). Former subparagraphs (A) and (B) (with introductory language from the end of paragraph 508(b)(2)) are reprinted below:

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

²²⁵ Parenthetical added by § 3(b) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652).

SMALL BUSINESS INVESTMENT ACT OF 1958

(D)²²⁶ the Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c)²²⁷ is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3)²²⁸ **APPLICABILITY OF CRITERIA AFTER DESIGNATION.**—The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c)²²⁹ **LOSS RESERVE.**—

²²⁶Subparagraph 508(b)(2)(D) added by § 223(a)(2)(A)(iv) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

²²⁷ Reference to subsection (c) changed from “(c)(2)” by § 3(c)(1) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652).

²²⁸ Paragraph 508(b)(3) added by § 223(a)(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

²²⁹ Subsection 508(c) rewritten by § 223(a)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605). Text of former subsection 508(c) is reprinted below:

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).

(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.

Subsection 3(d) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652) provides:

(d) **STUDY AND REPORT.**—

(1) **IN GENERAL.**—The Administrator shall enter into a contract with a Federal agency experienced in community development lending and financial regulation or with a member of the Federal Financial Institutions Examinations Council to study and prepare a report regarding—

(A) the extent to which statutory requirements have caused overcapitalization in the loss reserves maintained by

SMALL BUSINESS INVESTMENT ACT OF 1958

(1) ESTABLISHMENT.—A company designated as a premier certified lender shall establish a loss reserve for financing approved pursuant to this section.

(2) AMOUNT.—The amount of each loss reserve established under paragraph (1) shall be 10 percent of the amount of the company's exposure, as determined under subsection (b)(2)(C).

(3) ASSETS.—Each loss reserve established under paragraph (1) shall be comprised of—

(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administration;

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administration; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(4) CONTRIBUTIONS.—The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent additional not later than 1 year after a debenture is closed.

(C) 25 percent additional not later than 2 years after a debenture is closed.

certified development companies participating in the Premier Certified Lenders Program established under section 508 of the Small Business Investment Act of 1958 (15 U.S.C. 697e); and

(B) alternatives for establishing and maintaining loss reserves that are sufficient to protect the Federal Government from the risk of loss associated with loans guaranteed under such Program.

(2) TRANSMISSION OF REPORT.—The report described in paragraph (1) shall be transmitted to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than 90 days after the enactment of this Act.

(3) LIMITATION.—The amount of the contract described in paragraph (1) shall not exceed \$75,000.

(5) REPLENISHMENT.—If a loss has been sustained by the Administration, any portion of the loss reserve, and other funds provided by the premier company as necessary, may be used to reimburse the Administration for the premier company's²³⁰ share of the loss as provided in subsection (b)(2)(C). If the company utilizes the reserve, within 30 days it shall replace an equivalent amount of funds.

(6) DISBURSEMENTS.—

(A) IN GENERAL.—The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(B)²³¹ TEMPORARY REDUCTION BASED ON OUTSTANDING BALANCE.—Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after the date of the enactment of this subparagraph, the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7)²³² ALTERNATIVE LOSS RESERVE.—

Alternative
loss reserve.

(A) ELECTION.—With respect to any eligible calendar quarter, any qualified high loss reserve PCL may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for such quarter.

(B) CONTRIBUTIONS.—

(i) ORDINARY RULES INAPPLICABLE.—Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during such quarter.

(ii) BASED ON LOSS.—A qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to any calendar quarter shall, before the last day of such quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the PCL is—

(I) not less than \$100,000; and

²³⁰ The phrase “10 percent” deleted by § 3(c)(2) of P.L. 108-232, approved May 28, 2004 (118 Stat. 652).

²³¹ New subparagraph 508(c)(6)(B) added by § 2(2) of P.L. 108-232, approved May 28, 2004 (118 Stat. 649).

²³² New paragraphs 508(c)(7) and (8) added by § 3(a) of P.L. 108-232, approved May 28, 2004 (118 Stat. 649).

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(II) sufficient, as determined by a qualified independent auditor, for the PCL to meet its obligations to protect the Federal Government from risk of loss.

(iii) CERTIFICATION.—Before the end of any calendar quarter for which an election is in effect under subparagraph (A), the head of the PCL shall submit to the Administrator a certification that the loss reserve of the PCL is sufficient to meet such PCL's obligation to protect the Federal Government from risk of loss. Such certification shall be in such form and submitted in such manner as the Administrator may require and shall be signed by the head of such PCL and the auditor making the determination under clause (ii)(II).

(C) DISBURSEMENTS.—

(i) ORDINARY RULE INAPPLICABLE.—Paragraph (6) shall not apply respect to any qualified high loss reserve PCL for any calendar quarter for which an election is in effect under subparagraph (A).

(ii) EXCESS FUNDS.—At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administration shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of—

(I) the amount of the loss reserve, over

(II) the greater of \$100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the PCL's obligation to protect the Federal Government from risk of loss.

(D) RECONTRIBUTION.—If the requirements of this paragraph apply to a qualified high loss reserve PCL for any calendar quarter and cease to apply to such PCL for any subsequent calendar quarter, such PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine provided that such amount does not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in such loss reserve had this paragraph never applied to such PCL. The Administrator may require that such payment be made as a single payment or as a series of payments.

(E) RISK MANAGEMENT.—If a qualified high loss reserve PCL fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and such failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to such PCL as of the end of such 180-day period and such PCL shall make the contribution to its loss reserve described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

(F) **QUALIFIED HIGH LOSS RESERVE PCL**—The term “qualified high loss reserve PCL” means, with respect to any calendar year, any premier certified lender designated by the Administrator as a qualified high loss reserve PCL for such year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

“Qualified high loss reserve PCL.”

(i) the amount of the loss reserve of the company is not less than \$100,000;

(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans and for grading each PCLP loan made by the company on the basis of the risk of loss associated with such loan; and

(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administration has issued a waiver with respect to the requirement of this clause.

(G) **SPECIFIED RISK MANAGEMENT BENCHMARKS**.—For purposes of this paragraph, the term “specified risk management benchmarks” means the following rates, as determined by the Administrator:

“Specified risk management benchmarks.”

(i) Currency rate.

(ii) Delinquency rate.

(iii) Default rate.

(iv) Liquidation rate.

(v) Loss rate.

(H) **QUALIFIED INDEPENDENT AUDITOR**.—For purpose of this paragraph, the term “qualified independent auditor” means any auditor who—

“Qualified independent auditor.”

(i) is compensated by the qualified high loss reserve PCL;

(ii) is independent of such PCL; and

(iii) has been approved by the Administrator during the preceding year.

(I) **PCLP LOAN**.—For purposes of this paragraph, the term “PCLP loan” means any loan guaranteed under this section.

“PCLP loan.”

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(J) ELIGIBLE CALENDAR QUARTER.—For purposes of this paragraph, the term “eligible calendar quarter” means— “Eligible calendar quarter.”

(i) the first calendar quarter that begins after the end of the 90-day period beginning with the date of the enactment of this paragraph; and

(ii) the 7 succeeding calendar quarters.

(K) CALENDAR QUARTER.—For purposes of this paragraph, the term “calendar quarter” means— “Calendar quarter.”

(i) the period which begins on January 1 and ends on March 31 of each year;

(ii) the period which begins on April 1 and ends on June 30 of each year;

(iii) the period which begins on July 1 and ends on September 30 of each year; and

(iv) the period which begins on October 1 and ends on December 31 of each year.

(L) REGULATIONS.—Not later than 45 days after the date of the enactment of this paragraph, the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to— Regulations.

(i) the approval of auditors under subparagraph (H); and

(ii) the designation of qualified high loss reserve PCLs under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

(8) BUREAU OF PCLP OVERSIGHT.—

Bureau of
PCLP
Oversight.

(A) ESTABLISHMENT.—There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight.

(B) PURPOSE.—The Bureau of PCLP Oversight shall carry out such functions of the Administration under this subsection as the Administrator may designate.

(C) DEADLINE.—Not later than 90 days after the date of the enactment of this act—

(i) the Administrator shall ensure that the Bureau of PCLP Oversight is prepared to carry out any functions designated under subparagraph (B), and

(ii) the Office of the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau of PCLP Oversight to carry out such functions.

(d)²³³ SALE OF CERTAIN DEFAULTED LOANS.—

(1) NOTICE.—If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) LIMITATIONS.—The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

(A) provides prospective purchasers with the opportunity to examine the Administration’s records with respect to such loan; and

(B) provides the notice required by paragraph (1).

(e) LOAN APPROVAL AUTHORITY.—

(1) IN GENERAL.—Notwithstanding section 503(b)(6), 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 section²³⁴ to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans that are funded with the proceeds of a debenture issued by such company and may authorize the guarantee of such debenture.

(2) SCOPE OF REVIEW.—The approval of a loan by a premier certified lender shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 503(a), but such final approval shall not include review of

²³³ Former subsections 508(d) – (i) renumbered (e) – (j) and new subsection 508(d) added by § 306 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-685).

²³⁴ Phrase “to approve loans” deleted and language before “that are funded” added by § 223(a)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2605).

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decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

(f) **REVIEW.**—After the issuance and sale of debentures under this section, the Administration, at intervals of not greater than 12 months, shall review the financings made by each premier certified lender. The review shall include the lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the program authorized under this section. The Administration shall consider the findings of the review in carrying out its responsibilities under subsection (g), but such review shall not affect any outstanding debenture guarantee.

(g) **SUSPENSION OR REVOCATION.**—The designation of a certified²³⁵ 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);
- (2) has not established or maintained the loss reserve required under subsection (c);
- (3) is failing to adhere to the Administration's rules and regulations; or
- (4) is violating any other applicable provision of law.

(h) **EFFECT OF SUSPENSION OR REVOCATION.**—A suspension or revocation under subsection (g) shall not affect any outstanding debenture guarantee.

(i)²³⁶ **PROGRAM GOALS.**—Each certified development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 504 pursuant to the program authorized under this section.

²³⁵ “State or local” replaced by “certified” by § 223(a)(5) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606).

²³⁶ Subsection 508(h)(redesignated as subsection 508(i)), which required the promulgation of regulations within 180 days after the date of the enactment of the section, was rewritten by § 223(a)(7) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606). Subsection 223(b) of P.L. 105-135 provides:

(b) **REGULATIONS.**—The Administrator shall—

- (1) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out the amendments made by subsection (a); and
- (2) not later than 180 days after the date of enactment of this Act, issue program guidelines and fully implement the amendments made by subsection (a).

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§ 508(j) to § 509(a)

(j) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Each report shall include—

Report to Congressional committees.

- (1) the number of certified development companies designated as premier certified lenders;
- (2) the debenture guarantee volume of such companies;
- (3) a comparison of the loss rate for premier certified lenders to the loss rate for accredited and other lenders, specifically comparing default rates and recovery rates on liquidations; and
- (4) such other information as the Administration deems appropriate.

Sec. 509²³⁷ PREPAYMENT OF DEVELOPMENT COMPANY DEBENTURES.

15 USC 697f.

(a) IN GENERAL.—

Prepayment of development company debentures.

²³⁷Section 509 added by § 503 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4199). Section 502, entitled “InterCongress,” provides:

(a) IN GENERAL.—The Small Business Administration shall fully utilize the \$30,000,000 appropriated in Public Law 103-317 to reduce, in accordance with 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, which have been purchased by the Federal Financing Bank; and
- (2) title III to companies operating under section 301(d) of such Act, 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.

(1) **PREPAYMENT AUTHORIZED.**—Subject to the requirements set forth in subsection (b), an issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under this Act may, at the election of the borrower (in the case of a loan under section 503) 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.²³⁸

(2) **PROCEDURE.**—

(A) **IN GENERAL.**—In making a prepayment under paragraph (1)—

(i) the borrower (in the case of a loan under section 503) 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 the 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;

²³⁸The following sentence was deleted from paragraph 509(a)(1) by § 208 (h)(1)(H)(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747):

A small business investment company operating under the authority of section 301(d) 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.

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- (II) with respect to a 15-year term loan, 9.5 percent;
- (III) with respect to a 20-year term loan, 10.5 percent; and
- (IV) with respect to a 25-year term loan, 11.5 percent.

(iii) **ADJUSTMENTS TO APPLICABLE PERCENTAGE RATE.**—The percentage rates described in clause (ii) shall be increased or decreased by the Administration by a factor not to exceed one-third, if the same factor is applied in each case and if the Administration determines that an adjustment is necessary, based on the number of borrowers having given notice of their intent to participate, in order to make the program (including the amounts appropriated for this purpose under Public Law 103-317) result in no substantial net gain or loss of revenue to the Federal Financing Bank or to the Administration. Amounts collected in excess of the amount necessary to ensure revenue neutrality shall be refunded to the borrowers.

(b) **REQUIREMENTS.**—For purposes of subsection (a), 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 title, are used to prepay or roll over the debenture; and

(3) with respect to a debenture issued under section 503, 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 504 and 505, in accordance with subsection (b)(2)—

(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

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(B) except as provided in paragraphs (2) and (3), shall be subject to the provisions of sections 504 and 505 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 505.

(2) **JOB CREATION.**—An applicant for refinancing under section 504 of a loan made pursuant to section 503 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) 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 title III may issue new debentures in accordance with such title 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 title. 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) **DEFINITION.**—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.” “Borrower.”

(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—

“Issuer.”

(1) the term “issuer” means—

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(A) the qualified State or local development company that issued a debenture pursuant to section 503, which has been purchased by the Federal Financing Bank; and

(B) a small business investment company licensed pursuant to section 301²³⁹; or

(2) the term “borrower” means a small business concern whose loan secures a debenture issued pursuant to section 503. “Borrower.”

(f) REGULATIONS.—Not later than 30 days after the date of enactment of this section, 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.

Sec. 510.²⁴⁰ FORECLOSURE AND LIQUIDATION OF LOANS.

(a) DELEGATION OF AUTHORITY.—In accordance with this section, the Administration shall delegate to any qualified State or local development company (as defined in section 503(e)) that meets the eligibility requirements of subsection (b)(1) the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 503.

Delegation of
foreclosure and
liquidation
authority.
15 USC 697g.

(b) ELIGIBILITY FOR DELEGATION.—

(1) REQUIREMENTS.—A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) if—

Eligibility
requirements.

(A) the company—

²³⁹Reference to “subsection (c) or (d) of section 301” changed to “section 301” by § 208(h)(1)(H)(ii) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747).

²⁴⁰New § 510 added by § 307(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-685). Section 307(b) of P.L. 106-554 provides:

(1) IN GENERAL.—Not later than 150 days after the date of enactment of this Act, the Administration shall issue such regulations as may be necessary to carry out section 510 of the Small Business Investment Act of 1958, as added by subsection (a) of this section.

(2) TERMINATION OF PILOT PROGRAM.—Beginning on the date on which final regulations are issued under paragraph (1), section 204 of the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note) shall cease to have effect.

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(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

(ii) is participating in the Premier Certified Lenders Program under section 508; or

(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 503; and

(B) the company—

(i) has one or more employees—

(I) with not less than 2 years of substantive, decision-making experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 503; and

(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) CONFIRMATION.—On request the Administration shall examine the qualifications of any company described in subsection (a) to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

(c) SCOPE OF DELEGATED AUTHORITY.—

(1) IN GENERAL.—Each qualified State or local development company to which the Administration delegates authority under section (a) may with respect to any loan described in subsection (a)—

(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially

Scope of
delegated
authority.

Liquidation
authority.

accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

Litigation authority.

(i) defend or bring any claim if—

(I) the outcome of the litigation may adversely affect the Administration’s management of the loan program established under section 502; or

(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

(ii) oversee the conduct of any such litigation; and

(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

Mitigation authority.

(2) ADMINISTRATION APPROVAL.—

(A) LIQUIDATION PLAN.—

Liquidation plan.

(i) IN GENERAL.—Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

(ii) ADMINISTRATION ACTION ON PLAN.—

(I) TIMING.—Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) NOTICE OF NO DECISION.—With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(iii) ROUTINE ACTIONS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

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(B) PURCHASE OF INDEBTEDNESS.—

Purchase of
indebtedness.

(i) IN GENERAL.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other indebtedness secured by the property securing a defaulted loan.

(ii) ADMINISTRATION ACTION ON REQUEST.—

(I) TIMING.—Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

(II) NOTICE OF NO DECISION.—With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

(C) WORKOUT PLAN.—

Workout
plan.

(i) IN GENERAL.—In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

(ii) ADMINISTRATION ACTION ON PLAN.—

(I) TIMING.—Not later than 15 business days after a workout plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) NOTICE OF NO DECISION.—With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(D) COMPROMISE OF INDEBTEDNESS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

Compromise
of
indebtedness.

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

(E) CONTENTS OF NOTICE OF NO DECISION.—Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)— Notice of no decision.

- (i) shall be in writing;
- (ii) shall state the specific reason for the Administration’s inability to act on a plan or request;
- (iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and
- (iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third party lender, associate of a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company— Suspension or revocation of authority.

- (1) does not meet the requirements of subsection (b)(1);
- (2) has violated any applicable rule or regulation of the Administration or any other applicable law; or
- (3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out functions described in paragraph (1).

(e) REPORT.—

(1) IN GENERAL.—Based on information provided by qualified State and local development companies and the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section. Report to Congress.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include the following information:

(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

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- Administration;
- (i) the total cost of the project financed with the loan;
 - (ii) the total original dollar amount guaranteed by the Administration;
 - (iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;
 - (iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and
 - (v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

- (D) A comparison between—
- (i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and
 - (ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.

TITLE VI—CHANGES IN FEDERAL RESERVE AUTHORITY

[Omitted as no longer current.]

TITLE VII—CRIMINAL PENALTIES

(This title amends the U.S. Code to include certain actions by persons affiliated with or dealing with SBICs as Federal crimes. The provisions have been amended from time to

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time to include various agencies. The pertinent parts of the affected sections, 18 U.S.C. 212, 213, 215, 657, 1006 and 1014, are set out below for information purposes only).

18 USC § 212. Offer of loan or gratuity to financial institution examiner.²⁴¹

(a) In general.—Except as provided in subsection (b), whoever, being an officer, director, or employee of a financial institution, makes or grants any loan or gratuity to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, association, or institution—

(1) shall be fined under this title, imprisoned not more than 1 year, or both; and

(2) may be fined a further sum equal to the money so loaned or gratuity given.

(b) Regulations.—A Federal financial institution regulatory agency may prescribe regulations establishing additional limitations on the application for and receipt of credit under this section and on the application and receipt of residential mortgage loans under this section, after consulting with each other Federal financial institution regulatory agency.

(c) Definitions.—In this section:

(1) Examiner.—The term “examiner” means any person—

(A) appointed by a Federal financial institution regulatory agency or pursuant to the laws of any State to examine a financial institution; or

(B) elected under the law of any State to conduct examinations of any financial institutions.

(2) Federal financial institution agency.—The term “Federal financial institution agency” means—

* * *

(H) the Small Business Administration.

(3) Financial institution.—The term “financial institution” does not include a credit union, a Federal Reserve Bank, a Federal home loan bank, or a depository institution holding company.

(4) Loan.—The term “loan” does not include any credit card account established under an open end consumer credit plan or a loan secured by residential real property that is the principal residence of the examiner, if—

²⁴¹ 18 USC 212 completely rewritten by § 2(a) of P.L. 108-198, approved Dec. 19, 2003 (117 Stat. 2899).

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(A) the applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;

(B) the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers or cardholders in comparable circumstances under open end consumer credit plans or for residential real property loans; and

(C) with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.

18 USC § 213.²⁴² Acceptance of a loan or gratuity by financial institution examiner.

(a) In general.—Whoever, being an examiner or assistant examiner, accepts a loan or gratuity from any bank, branch, agency, organization, corporation, association, or institution examined by the examiner or from any person connected with it, shall—

- (1) be fined under this title, imprisoned not more than one year, or both;
- (2) may be fined a further sum equal to the money so loaned or gratuity given; and
- (3) shall be disqualified from holding office as an examiner.

(b) Definitions.—In this section, the terms “examiner”, “Federal financial institution regulatory agency”, “financial institution”, and “loan” have the same meanings as in section 212.

18 USC § 215.²⁴³ Receipt of commissions or gifts for procuring loans.

(a) Whoever—

- (1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

²⁴²Former 18 USC 218 was redesignated to be current 18 USC 213 by § 1(d) of P.L. 87-849, approved Oct. 23, 1962 (76 Stat. 1125). 18 USC 213 was rewritten by § 2(a) of P.L. 108-198, approved Dec. 19, 2003 (117 Stat. 2899)

²⁴³18 USC 215 substantially rewritten by § 1107 of P.L. 98-473, approved Oct. 12, 1984 (98 Stat. 2145).

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(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be fined not more than \$1,000,000 or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both, but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed \$1000,²⁴⁴ shall be fined under this title²⁴⁵ or imprisoned not more than one year, or both.

(b)²⁴⁶ [Transferred].

(c) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.

18 USC § 657. Lending, credit and insurance institutions.

Whoever, being an officer, agent or employee of or connected in any capacity with . . . any small business investment company, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted [sic] to its care, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year or both.

18 USC § 1006. Federal credit institution entries, reports and transactions.

Whoever, being an officer, agent or employee of or connected in any capacity with . . . any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or

²⁴⁴ Amount changed from \$100 by § 606(a) of P.L. 104-294, approved Oct. 11, 1996 (110 Stat. 3511).

²⁴⁵ Section 330016(1)(H) of P.L. 103-322, approved Sept. 13, 1994 (108 Stat. 2147) replaced “not more than \$1,000” with “under this title.”

²⁴⁶ Subsection (b)(6), which defined the term “financial institution” as including a small business investment company, was transferred to 18 USC § 20 by § 962(e)(1) of P.L. 101-73, approved Aug. 9, 1989 (103 Stat. 503).

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without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than \$1,000,000 or imprisoned not more than 30²⁴⁷ years, or both.

18 USC § 1014. Loan and credit applications generally; renewals and discounts; crop insurance.

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . a small business investment company . . . upon any application, advance, discount purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

²⁴⁷ Term of imprisonment changed from 20 years by § 2504(e) of P.L. 101-647, approved Nov. 29, 1990 (104 Stat. 4861).