[MS-0436.004.002.004]

SMALL BUSINESS INVESTMENT ACT OF 1958

(Public Law 85-699, 1/ as amended)

Sec. 101. SHORT TITLE

This Act, divided into titles and sections according to the following table of contents, may be cited as the "Small Business Investment Act of 1958".

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3/ Added by § 9 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 753). Heading amended by § 9(a) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1364).

4/ Added by § 9 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 753).

5/ Added by § 6(b) of PL 88-273, approved Feb. 28, 1964 (78 Stat. 147).

6/ Section and section title added by §§ 7 and 9(a) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360, 1365).

7/ Table of contents not technically amended by an Act. Sections 317, 318 and 319 added to Title III by § 2(g) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

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9/ New section and section title added by § 113 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

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. 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.

Sec. 103. DEFINITIONS. 15 USC 662.

As used in this Act -- Definitions.

(1) the term "Administration" means the Small Business Administration; "Administration".

(2) the term "Administrator" means the Administrator of the Small Business Administration; "Administrator."

(3) 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; 10/ "SBIC". "Company". "Licensee".

(4) the term "State" includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia; 11/ "State."

10/ Amended by § 2(1) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 752). Section 2(a) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314), deleted "(c)" after "section 301".

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

(5) the term "small-business concern" shall have the same meaning as in the Small Businsss Act; "Small-business concern."

(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) the term "license" means a license issued by the Administration as provided in section 301; 12/ and "License."

(8) the term "articles" means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities. 13/ "Articles."

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

Sec. 201. 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. 14/

12/ This subsection added by § 2(2) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 752). Section 2(a) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314), deleted "(c)" after "section 301".

13/ This subsection added by § 106(a) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

14/ Amended by § 2 of PL 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).

TITLE III -- SMALL BUSINESS INVESTMENT COMPANIES

Sec. 301. ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES

15 USC 681.

Incorporation and charter under state law.

(a) A small business investment company shall be an incorporated body or a limited partnership 15/ organized and chartered or otherwise existing 16/ under State law solely for the purpose of performing the functions and conducting the activities contemplated under this title, which has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners 17/ and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles 18/), shall be subject to the approval of the Administration. 19/

15/ The phrase "or a limited partnership" added by § 106(b) (1) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

16/ The phrase "or otherwise existing" added by § 106(b)(2) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

17/ "Or partners" added by § 106(b)(3) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

18/ The phrase "of incorporation" deleted by § 106(b)(4) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

19/ Sec. 301(a) rewritten by § 11(a) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756).

(b) The articles 20/ 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) The articles 21/ 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. 22/ Consideration by SBA.

(d) 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 Investment companies financing disadvantaged persons.

20/ The phrase "of incorporation" deleted wherever it appeared in this subsection per § 106(c) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

21/ The phrase "of incorporation" deleted wherever it appeared in this subsection per § 106(d) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

22/ New language in second and third sentences added by §§ 11(b)(1) and (2) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756). Previous secs. 301(d) and 301(e) struck out by § 11(b)(3) of PL 87-341. The business reputation of owners and management and the probability of successful operations, including adequate profitability and financial soundness, were added as criteria for approval by § 202 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269).

because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, or formed as a limited partnership 23/ and may be licensed by the Administration to operate under the provisions of this Act. 24/

§ 302. CAPITAL REQUIREMENTS 25/

15 USC 682.

Capital Requirements for SBIC's.

(a) The combined private paid-in capital and paid-in surplus 26/ 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, 1979 pursuant to sections 301(c) and (d) of this Act shall be not less than $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. 27/

Conversion of $1,000,000

23/ "Or formed as a limited partnership" added by § 104 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

24/ Subsection 201(d) added by § 2(b) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

25/ Heading amended by § 203(b) of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269).

26/ Section 742 of the Economic Opportunity Act of 1964, as amended, (formerly 42 USC 2985a) provided that funds granted under Title VII which were invested, directly or indirectly, in a SBIC shall be included as private paid-in capital and paid-in surplus. Section 742 repealed by § 683(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 519); however, contents of § 742 substantially re-enacted at 42 USC 9815 by § 626 of PL 97-35.

27/ Section 302(a) substantially rewritten two times - first by § 203(a) of PL 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 PL 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.

(b) Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Company Act of 1956, 28/ 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. 29/

Participation by banks.

(c) 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.

Stock holding limitations.

28/ Reference to the Bank Holding Company Act added by § 5 of PL 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 PL 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.

29/ The maximum amount of shares a bank may hold in SBICs, formerly set at 2 percent of capital and surplus by § 3(b) of PL 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 PL 90-104, approved Oct. 11, 1967 (81 Stat. 270), is now limited only by the 5 percent provision under § 107 of PL 94-305, approved June 4, 1976 (90 Stat. 663). The word "and" was inserted between the words "capital" and "surplus" by § 210 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553).

Sec. 303. BORROWING POWER 15 USC 683.

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

(b) To encourage the formation and growth of small business investment companies the Administration is authorized (but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms) when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures 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. 30/ 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-eight of 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. The debentures shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations: Debentures.

30/ The "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 PL 92-213, approved Dec. 22, 1971 (85 Stat. 775).

(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 31/ paid-in capital and paid-in surplus 32/ of such company. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000. 33/

(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. 34/

31/ The word "private" added by § 2(c)(1) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

32/ Section 742 of the Economic Opportunity Act of 1964, as amended, (formerly 42 USC 2985a) provided that funds granted under Title VII which are invested, directly or indirectly, in a SBIC shall be included as paid-in capital and paid-in surplus. Section 742 repealed by § 683(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 519); however, contents of § 742 substantially re-enacted at 42 USC 9815 by § 626 of PL 97-35.

33/ $15,000,000 substituted for $7,500,000 by § 2(c)(2) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314). "300" percent substituted for "200" percent, and "$35,000,000" substituted for "$15,000,000" by §§ 104(a)(1) and (2) of PL 94-305, approved June 4, 1976 (90 Stat.663).

34/ Amended by § 2(c)(3) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314), to reduce the minimum capital required from $1 million to $500,000 and to increase from $10 to $20 million the ceiling on outstanding debentures under this paragraph.

"400" per centum substituted for "300" per centum and "$35,000,000" substituted for "$20,000,000" by §§ 104(b)(1) and (2) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

(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. PL 90-104.

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing. 35/ "Venture capital."

36/ (c) Subject to the following conditions, the Administration is authorized to purchase preferred 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. Preferred securities.

The Administration may purchase -- Purchase and guarantee operations.

37/ (1) shares of nonvoting stock (or other corporate securities having similar characteristics), provided --

(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

35/ Section 205 of PL 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 PL 92-213, approved Dec. 22, 1971 (85 Stat. 776), amended this sec. 303(b) 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.

36/ Added by § 2(d) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

37/ Section 303(c)(1) substantially rewritten by § 101 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

(ii) 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;

(iii) the purchase price shall be at par value and, in any one sale, $50,000 or more; and

(iv) the amount of such securities purchased and outstanding at any one time shall not exceed --

(A) 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

(B) 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

(C) 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.

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 (A) or (C) 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.

"Equity securities."

The Administration may purchase or guarantee --

(2) debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)), provided --

(i) such debentures are issued for a term of not to exceed fifteen years;

(ii) the interest rate is determined pursuant to sections 303(b) and 317; and

*Incorrectly reads "of" in Statutes at Large.

Debentures-maximum amounts.

(iii) 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 38/ 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 39/ per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.

Debentures maximum

Retirement of debentures

(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)(iii) of this subsection (c).

Venture CAP Requirements and restrictions

(4) the Administration may require, as a condition of the purchase or guarantee of any securities in excess of 300 40/ per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintains 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.

38/ "300" per centum substituted for "200" per centum by § 104(c)(2) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

39/ "400" per centum substituted for "300" per centum by § 104(c)(1) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

40/ "300" per centum substituted for "200" per centum by § 104(c)(2) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

Sec. 304. PROVISION OF EQUITY CAPITAL FOR SMALL BUSINESS CONCERNS 41/ — 15 USC 684.

(a) It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated 42/ 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. — Equity capital.

(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) [Repealed.] 43/

(d) 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. 44/

41/ Prior to its amendment by § 6 of PL 86-502, approved June 11, 1960 (74 Stat. 196), sec. 304 authorized SBICs to furnish equity capital only through the purchase of convertible debentures.

42/ The words "and unincorporated" added by § 2(e) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

43/ Section 206 of PL 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.

44/ This section added by § 5 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 752).

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

15 USC 685.

Long-term loans.

(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.

Form of loan - direct, participation or guarantee.

(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. 45/

Conditions of loan.

(c) The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration.

(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.

45/ This sentence amended by § 6 of PL 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 PL 94-305, approved June 4, 1976 (90 Stat. 663).

Sec. 306. AGGREGATE LIMITATIONS

15 USC 686.

Assistance, limitations.

(a) 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 46/ paid-in capital and paid-in surplus of such company. 47/

(b) [Repealed. 48/]

(c) 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. 49/

PL 90-104.

46/ The word "private" added by § 2(f) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

47/ By basing the limitation on "paid-in capital and paid-in surplus" instead of "combined capital and surplus" and adding secs. 306(b) and 306(c), § 207 of PL 90-104, the Small Busiiness Investment Act Amendments of 1967, approved Oct. 11, 1967 (81 Stat. 271), in effect reduced the limitation for SBICs have subordinated debenture funds and made the change effective on a sliding scale for SBICs already in operation.

48/ Repealed by § 2(f) of PL 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.]

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

Sec. 307. EXEMPTIONS 50/

(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)]

"(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." Exemptions by SEC.

(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 77 ddd(e)]

"(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."

(c) Section 18 of the Investment Company Act of 1940 (15 U.S.C. 80a - 18) is amended by adding at the end thereof the following: [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." 51/

50/ The 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.

51/ See sec. 319 of the Small Business Investment Act for further amendment.

Sec. 308. MISCELLANEOUS 15 USC 687.

(a) 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. 52/ 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. 53/ Such companies 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. 54/ Advisory services. Investment of funds.

(c) 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. 55/ Regulations.

52/ Sec. 308(a) amended by § 8 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 753), to substitute "investors or lenders, incorporated or unincorporated" for "financial institutions."

53/ The last seven words of this sentence added by § 11(c) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756).

54/ The last sentence first revised by § 5 of PL 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 PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757), to equalize SBA's treatment of FSLIC and FDIC insured institutions.

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

(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) 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. 56/

(f) 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. 57/ 15 USC 631 [et seq.]. 15 USC 642. 15 USC 645.

(g) (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 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. 58/ Annual report, contents. 15 USC 639(a).

56/ The last seven words added by § 11(d) of PL 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 PL 87-341 and designated as secs. 309, 310, and 311.

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

58/ Sec. 308(g) added by § 3(2) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359), and redesignated as sec. 308(g)(1) by § 210 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 271).

(2) 59/ 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: 15 USC 639(a).

(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 Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

59/ Sec. 308(g)(2) added by § 210 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 271).

(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.

(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 et seq.] [26 USC 851.]

(h) [Repealed.] 60/ 61/

[Sec. 308(h) has been repealed by § 529 of PL 96-221, approved Mar. 31, 1980 (94 Stat. 168). See footnotes 60/ and 61/ for repealed provisions and prior history.]

60/ Sec. 308(h) has been repealed by § 529 of PL 96-221, approved Mar. 31, 1980 (94 Stat. 168), effective at the close of March 31, 1980. However, the provisions of PL 96-104, approved Nov. 5, 1979, and PL 96-161, approved Dec. 28, 1979, continue to apply to any loan made or any obligation issued during the period when those provisions were in effect.

See also footnotes 61/, 62/ and 63/.

Repealed provisions of Sec. 308(h) are provided below:

(h) (1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds to small business investment companies to small business concerns.

(2) In the case of a business loan the principal amount of which is $25,000 or more, 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 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 (determined without regard to the preemption of such State law).

(ii) For purposes of clause (i), the term "Federal Reserve rate" means the rate equal to the sum of 5 percentage points plus the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve 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 for such loans or there is a maximum rate authorized by an applicable State law which is not preempted for purposes of this subsection.

(3) A State law shall be preempted for purposes of paragraph (2)(B) with respect to any loan if such loan is made before the earliest of -

[Repealed provisions and prior history of sec. 308(h) noted below.]

60/ (cont'd) (A) in the case of a State statute, July 1, 1980;

(B) the date, after the date of the enactment of this paragraph, on which such State adopts a law stating in substance that such State does not want this subsection to apply with respect to loans made in such State; or

(C) The date on which such State certifies that the voters of such State, after the date of the enactment of this paragraph, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in this subsection.

(4) (A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.

61/ Prior history of sec. 308(h) follows:

Sec. 308(h) added by § 204 of PL 93-501, approved Oct. 29, 1974 (88 Stat. 1557), was rewritten by § 104 of PL 96-104, approved Nov. 5, 1979 (93 Stat. 789), and later rewritten by § 204 of PL 96-161, approved Dec. 28, 1979 (93 Stat. 1233).

PL 96-104 and the amendments made by it were repealed by § 212 of PL 96-161, which provided the following exceptions:

Sec. 212 . . . except that --

(1) the amendments made by title I of such Act and the provisions of such title shall apply to any loan made in any State on or after November 5, 1979, but prior to such repeal; and

(2) the amendments made by title II of such Act shall apply to any deposit made or obligation issued in any State on or after November 5, 1979, but prior to such repeal.

Sec. 213. Notwithstanding any other provision of this title, subject to sections 207(2) and (3) and 211(2) and (3) of this Act and section 308(h)(3)(B) and (C) of the Small Business Investment Act of 1958, the provisions of this title shall continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

(i) (1) 62/ 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.

(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). Interest rates limitations.

(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 district in which the principal office of the small business investment company is located. 63/ "Federal Reserve rate."

62/ New sec. 308(i), effective April 1, 1980, was added by § 524 of PL 96-221 (94 Stat. 132) in Title V -- State Usury Laws (94 Stat. 161), approved Mar. 31, 1980. Title V of PL 96-221 repealed PL 96-104, § 105(a)(2) of PL 96-161, and the amendments and provisions of Title II of PL 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.

63/ Section 528 of PL 96-221 may make possible in some designated circumstances the application of § 501 (first lien mortgages on residences) or § 511(a) (business and agriculture loans of $25,000 or more). Section 528 of PL 96-221 provides:

"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."

(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.

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2)(B) 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. Effective date.

(4) (A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later that two years after the most recent payment of interest.

Sec. 309. REVOCATION AND SUSPENSION OF LICENSES; CEASE AND DESIST ORDERS 64/ 65/ 15 USC 687a.

(a) 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; Suspend or revoke licenses.

(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 willfull or repeated failure to observe, any provision of this Act;

(4) for willful or repeated violation of or willfull 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 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. Cease and desist orders.

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

65/ Heading and sec. 309(a), (b), (c), (e) and (f) amended by § 4 of PL 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.

(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 subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the Administration , or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Subpena.

(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, 66/ 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

Appeals procedure.

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

a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28, United States Code. [28 USC 1254]

(f) 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. The proceedings in such cases shall be made a preferred cause and shall be expedited in every way. 67/

Enforcement.

67/ Amended by § 4(f) of PL 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.

Sec. 310. EXAMINATIONS AND INVESTIGATIONS 68/ 69/ 15 USC 687b.

(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, subpena 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 subpena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Investigations.

(b) Each small business investment company shall be subject to examinations made by direction of the Administration by examiners selected or approved by the Administration, 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. 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 Examinations.

68/ Sec. 310 added by § 9 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 755).

69/ Section heading amended by § 5 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360).

is in receivership. 70/ 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. 71/ Reports.

Sec. 311. INJUNCTIONS AND OTHER ORDERS 72/ 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 permanent or temporary injunction, restraining order, or other order, shall be granted without bond. The proceedings in such a case shall be made a preferred cause and shall be expedited in every way. Injunction.

(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. Trustee.

70/ Sentence added by § 208 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 271).

71/ Section 5(2) of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360), redesignated sec. 310 as sec. 310(a) and also added sec. 310(b). The provisions relating to examinations and reports were previously in sec. 308(c).

72/ Section 9 of PL 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.

(c) 73/ 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.

Sec. 312. CONFLICTS OF INTEREST 74/ — 15 USC 687d.

Conflicts of interest.

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders or partners of either, or to the purposes of this Act, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, or partner 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, or partner of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure (including disclosure in the locality most directly affected by the transaction) necessary to the purposes of this section.

Sec. 313. REMOVAL OR SUSPENSION OF DIRECTORS AND OFFICERS OF LICENSEES 75/ — 15 USC 687e.

Directors and officers, removal or suspension.

(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 of officer -

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73/ Sec. 311(c) added by § 6 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360).

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

75/ Sec. 313 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1361).

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

(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.

Authority to suspend.

(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.

Notice.

Hearing.

(c) A notice of intention to remove a director of 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 enforcible except to such extent as it is stayed, mofified, terminated, or set aside by action of the Administration or a reviewing court.

Stay of suspension.

(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.

Jurisdiction.

Felony, dishonesty or breach of trust.

(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).

Hearing.

(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.

Judicial review.

(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.

[28 USC 2112]

[28 USC 1254]

(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.

Sec. 314. UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS; BREACH OF FIDUCIARY DUTY 76/ 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.

Breach of fiduciary duty.

(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

76/ Sec. 314 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1363).

(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. PENALTIES AND FORFEITURES 77 15 USC 687g.

(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 Administation 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. Exemption.

77/ Sec. 315 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1364).

Sec. 316. JURISDICTION AND SERVICE OF PROCESS 78/ 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. Jurisdiction.

Sec. 317. 79/ 15 USC 687i.

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. 80/ Interest subsidy.

78/ Sec. 316 added by § 7 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1364).

79/ Added by § 2(g) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314).

80/ Section 103 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757), repealed the last sentence of this section which read:

> "No company which has received the benefit of this section may make a distribution (other than to the Administration) unless it has first paid to the Administration an amount equal to the difference between the rate of interest payable to the Administration pursuant to the previous sentence, and the rate of interest which would have been payable pursuant to section 303(b)."

Sec. 318. 15 USC 687j.

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. Joint ownership companies, benefits.

Sec. 319.

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." 81/ Preferred stock asset coverage requirement, exemption.

81/ Sec. 319 added by § 2(g) of PL 92-595, approved Oct. 27, 1972 (86 Stat. 1314). See sec. 307(c) for original language as enacted in Small Business Investment Act of 1958, PL 85-699, approved Aug. 21, 1958 (72 Stat. 689). For substantive amendments to the Investment Company Act of 1940 and other federal securities laws, see the Small Business Investment Incentive Act of 1980, PL 96-477, approved Oct. 21, 1980 (94 Stat. 2275).

TITLE IV -- GUARANTEES

PART A -- LEASE GUARANTEES

Sec. 401. AUTHORITY OF THE ADMINISTRATION 82/ 15 USC 692.

Lease Guarantees.

(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. 83/ 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:

Guarantee of payment and rentals.

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

82/ Original title IV, which provided for the conversion of State chartered investment companies and State development companies into SBICs, was repealed by § 11(f) of PL 87-341, approved Oct. 3, 1961 (75 Stat. 756), and new Title IV, Lease Guarantees, was added by § 316(a) of PL 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 PL 91-609, the Housing and Urban Development Act of 1970, approved Dec. 31, 1970 (84 Stat. 1812).

83/ Section 209 of PL 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.).

Fees.

(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 guaranteed made under this part, 84/ 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.

(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 -

Escrow.

(1) that the lessee pay an amount, not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease;

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

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

(3) that any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this part, 85/ as the Administrator may in his discretion require. SBA discretion.

Sec. 402. POWERS 15 USC 693.

Powers.

Without limiting the authority conferred upon the Administrator and the Administration by section 201 86/ 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, 85/ 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 634(b).

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

86/ The "section 201" authority refered to was transferred from sec. 201 to new sec. 308(f) pursuant to PL 89-779, approved Nov. 6, 1966 (80 Stat. 1359).

Sec. 403. FUND 87/ 15 USC 694.

Lease-guarantee fund.

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.

87/ Sec. 403 rewritten several times. Sec. 403 rewritten by § 911(a)(3) of PL 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 PL 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 PL 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 PL 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 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 PL 94-305, approved June 4, 1976 (90 Stat. 663.)

Sec. 404. POLLUTION CONTROL [88/] 15 USC 694-1.

(a) For purposes of this section, the term - Definitions.

(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 may be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax.

88/ Added by § 102 of PL 94-305, approved June 4, 1976 (90 Stat. 663).

(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.

(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 amount exceed 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. Periodic review.

(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.

Sec. 405. FUND 89/ — 15 USC 694-2.

Pollution control revolving fund.

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. 90/

89/ Sec. 405 rewritten by § 104 of PL 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.

90/ Last sentence added by § 112 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

PART B -SURETY BOND GUARANTEES 91/

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, underwriter, or any other company or individual empowered to act on behalf of such person. 92/ — "Surety."

(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."

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

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

(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.

Sec. 411. AUTHORITY OF THE ADMINISTRATION 93/ 15 USC 694b.

(a) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety (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) against loss, as hereinafter provided, as the result of a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000 94/, subject to the following conditions: Surety-bond guarantees.

(1) the person who would be the principal of the bond is a small business concern;

(2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(3) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section;

93/ Sec. 411 substantially rewritten by § 111 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757) which added subsection (b), (e), (f), and (g).

94/ "$1,000,000" inserted in lieu of "$500,000" that originally was provided in sec. 411, per § 6(a)(3) of PL 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742).

(4) the Administration determines that there is a reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required;

(5) the contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost; and

(6) the terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety's participation.

(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): Indemnification.
Provided, however --

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) 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; and Limitation.

(3) no new agreements to indemnify shall be entered into pursuant to this subsection subsequent to two years after the date of its enactment.

(c) Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 percent of the loss incurred and paid by the surety as the result of the breach; or (2) in a case in which (b) applies, the amount determined under (b). 95/

(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

95/ Sec. 411(c) rewritten by § 115 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

(e) Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if --

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation, or

(2) the total contract amount at the time of execution of the bond or bonds exceeds $1,000,000.

(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) 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. Audit.

(h) The Administration shall administer this Part on a prudent and economically justifiable basis 96/ 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. Administration.

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

96/ The phrase "administer this program on a prudent and economically justifiable basis" added to the original § 411 by § 11(a) of PL 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. Subsection (i) formerly (d).

Sec. 412. FUND 97/ 15 USC 694c.

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. 98/ Surety-bond guarantee fund.

TITLE V -- LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Sec. 501. 15 USC 695.

(a) 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. State development companies.

(b) 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.

97/ Sec. 412, added by § 6(a)(4) of PL 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742), was rewritten by § 105 of PL 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.

98/ Prior last sentence beginning with words "Moneys in the fund . . ." repealed by § 111 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

Sec. 502. 15 USC 696.

The Administration may, in addition to its authority under section 501, make loans for plant acquisition, 99/ 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:

State and local development companies, participation loans.

100/ (1) 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.

(2) Loans made by the Administration under this section shall be limited to $500,000 101/ for each such identifiable small-business concern.

(3) 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 102/ to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from --

Community injection funds.

99/ The word "acquisition" added by § 108(a) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

100/ Former para. (1) and (5) repealed and former para. (2), (3), and (4) renumbered as para (1), (2), and (3), respectively, by § 1909 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). Effective date is Oct. 1, 1981 per § 1918 of PL 97-35.

101/ This limitation was raised from "$350,000" to "$500,000" by § 110 of PL 94-305, approved June 4, 1976 (90 Stat. 663).

102/ Section 742 of the Economic Opportunity Act of 1964, as amended (formerly 42 USC 2985a) provided that funds granted under Title VII which were invested, directly or indirectly, in a local development company shall be included as paid-in capital. Section 742 repealed by § 683(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 519); however, contents of § 742 substantially re-enacted at 42 USC 9815 by § 626 of PL 97-35.

(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. 103/

Sec. 503. DEVELOPMENT COMPANY DEBENTURES 104/ 15 USC 697.

(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.

Development company debentures.

(2) Such guarantees may be made on such terms and conditions as the Administration may by regulation determine to be appropriate.

Guarantees.

(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 Administration to any other debenture, promissory note, or other debt or obligation of such company.

(b) No guarantee may be made with respect to any debenture under subsection (a) unless --

Terms and conditions.

(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;

103/ Words "Community injection funds . . . ." through the end of this subsection added by § 112 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

104/ New sec. 503 added by § 113 of PL 96-302, approved July 2, 1980 (94 Stat. 833).

(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.

Administrative expenses, additional charge.

(c) 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).

"Qualified State or local development company."

(d) 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 --

(1) a full-time professional staff;

(2) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

(3) 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.

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 SBIC's as Federal crimes. The provisions have been amended from time to time to include various agencies. Only the pertinent parts of the affected sections, 18 U.S.C. 212, 213, 216, 657, 1006 and 1014, are set out below for information purposes only).

18 USC § 212. Offer of loan or gratuity to bank examiner.

Whoever, being an officer, director or employee . . . of any small business investment company, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such . . . corporation . . . shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given.

The provisions of this section and section 218 105/ of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or insured banks, or National Agricultural Credit Corporations, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed only by a clearing-house association or by the directors of a bank.

105/ "Section 218", referred to in this section, is former § 218 prior to its redesignation as 18 USC 213 by § 1(d) of PL 87-849, approved Oct. 23, 1962 (76 Stat. 1125).

18 USC § 213. Acceptance of a loan or gratuity by bank examiner. 106/

Whoever, being an examiner . . . of small business investment companies, accepts a loan or gratuity from any . . . corporation . . . or organization examined by him or from any person connected therewith, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner.

18 USC § 216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.

Whoever, being an officer, director, attorney or employee of a . . . small business investment company, is a beneficiary of or receives, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank, other than the usual salary or director's fee paid to such officer, director, attorney, or employee thereof, and a reasonable fee paid by such association . . . to such officer, director, attorney, or employee for services rendered, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Whoever causes or procures any . . . small business investment company, to charge or receive any fee, commission, bonus, gift, or other consideration not specifically authorized, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

106/ Former 18 USC 218 was redesignated to be current 18 USC 213 by § 1(d) of PL 87-849, approved Oct. 23, 1962 (76 Stat. 1125).

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 to its care, shall be fined not more than $5,000 or imprisoned not more than five 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 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 $10,000 or imprisoned not more than five 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 $5,000 or imprisoned not more than two years, or both.

INTERNAL REVENUE CODE OF 1954
as amended

(Title 26 of the United States Code)

* * * * *

SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

* * * * *

(F)[1] In the case of a financial institution to which section 585, 586, or 593 applies, a net operating loss for any taxable year beginning after December 31, 1975, shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

* * * * *

SEC. 243.[2] DIVIDENDS RECEIVED BY CORPORATIONS.

(a) GENERAL RULE.—In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 85 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following); and

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1. Added by § 431(b) of PL 91-172, the Tax Reform Act of 1969, approved Dec. 30, 1969 (83 Stat. 619), and provides loss carryback and carryover benefits to SBICs since they are financial institutions to which § 586 of the Internal Revenue Code applies.

2. The provision allowing SBICs a deduction of 100 percent of dividends received from a taxable domestic corporation rather than the 85 percent generally allowed corporate taxpayers was added by § 57(b) of PL 85-866, the Technical Amendments Act of 1958, approved Sept. 2, 1958 (72 Stat. 1645). Amendments have been made to this section since the 1958 Act but have not affected the treatment given to SBIC dividends.

SEC. 542. DEFINITION OF PERSONAL HOLDING COMPANY.

(a) GENERAL RULE.—For purposes of this subtitle, the term "personal holding company" means any corporation (other than a corporation described in subsection (c)) if—

* * * * *

(c) EXCEPTIONS.—The term "personal holding company" as defined in subsection (a) does not include—

* * * * *

(8)[3] a small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following) and which is actively engaged in the business of providing funds to small business concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in the value of the outstanding stock of such concern; and

* * * * *

SEC. 582. BAD DEBTS, LOSSES, AND GAINS WITH RESPECT TO SECURITIES HELD BY FINANCIAL INSTITUTIONS.

* * * * *

(c) BOND, ETC., LOSSES AND GAINS OF FINANCIAL INSTITUTIONS.—

(1)[4] GENERAL RULE.—For purposes of this subtitle, in the case of a financial institution to which section 585, 586, or 593 applies, the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset.

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3. Added as paragraph 11 by § 3 of PL 86-376, approved Sept. 23, 1959 (73 Stat. 700), and redesignated as paragraph 8 by § 225(c)(2) of PL 88-272, the Revenue Act of 1964, approved Feb. 26, 1964 (78 Stat. 79). The provision qualifiedly exempts SBICs from the personal holding company surtax.

4. Amended by § 433(a) of PL 91-172, the Tax Reform Act of 1969, approved Dec. 30, 1969 (83 Stat. 623), and provides ordinary gain and loss treatment to the sale or exchange of certain securities held by SBICs. Section 433(d) makes this provision applicable to taxable years beginning after July 11, 1969, but authorizes SBICs to elect irrevocably whether it shall apply to their taxable years beginning after July 11, 1969 and before July 11, 1974.

SEC. 586.[5] RESERVES FOR LOSSES ON LOANS OF SMALL BUSINESS INVESTMENT COMPANIES, ETC.

(a) INSTITUTIONS TO WHICH SECTION APPLIES.—This section shall apply to the following financial institutions:

(1) any small business investment company operating under the Small Business Investment Act of 1958, and

(2) any business development corporation.

For purposes of this section, the term "business development corporation" means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks (as defined in section 581) within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(b) ADDITION TO RESERVES FOR BAD DEBTS.—

(1) GENERAL RULE.—For purposes of section 166(c), except as provided in paragraph (2) the reasonable addition to the reserve for bad debts of any financial institution to which this section applies shall be an amount determined by the taxpayer which shall not exceed the amount necessary to increase the balance of the reserve for bad debts (at the close of the taxable year) to the greater of—

(A) the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the 5 preceding taxable years (or, with the approval of the Secretary,[6] a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, or

(B) the lower of—

(i) the balance of the reserve at the close of the base year, or

(ii) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

For purposes of this subparagraph, the term "base year" means the last taxable year beginning on or before July 11, 1969.

(2) NEW FINANCIAL INSTITUTIONS.—In the case of any taxable year beginning not more than 10 years after the day before the first day on which a financial institution (or any predecessor) was authorized to do business as a financial institution described in subsection (a), the reasonable addition to the reserve for bad debts of such financial institution shall not exceed the larger of the amount determined under paragraph (1) or the amount necessary to increase the balance of the reserve for bad debts at the close of the taxable year to the amount which bears the same ratio (as determined by the Secretary) to loans outstanding at the close of the taxable year as (i) the total bad debts sustained by all institutions described in the applicable paragraph of subsection (a) during the 6 preceding taxable years (adjusted for recoveries of bad debts during such period), bears to (ii) the sum of the loans by all such institutions outstanding at the close of such taxable years.

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5. Added by § 431(a) of PL 91-172, the Tax Reform Act of 1969, approved Dec. 30, 1969 (83 Stat. 618), and made effective by § 431(d) for taxable years beginning after July 11, 1969.

6. Word "Secretary" substituted for phrase "Secretary or his delegate" wherever it appeared by § 1906(b)(13)(A) of PL 94-455, approved Oct. 4, 1976 (90 Stat. 1834).

SEC. 1242.[7] LOSSES ON SMALL BUSINESS INVESTMENT COMPANY STOCK.

If—

(1) a loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss. For purposes of section 172 (relating to the net operating loss deduction) any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

SEC. 1243.[8] LOSS OF SMALL BUSINESS INVESTMENT COMPANY.

In the case of a small business investment company operating under the Small Business Investment Act of 1958, if—

(1)[9] a loss is on stock received pursuant to the conversion privilege of convertible debentures acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss.[10]

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7. Added by § 57(a) of PL 85-866, the Technical Amendments Act of 1958, approved Sept. 2. 1958 (72 Stat. 1645). Under Internal Revenue Service Income Tax Regulation § 1.1242-1(a), ordinary loss deductions are made clearly available to subsequent purchasers as well as to original investors in SBIC stock. Amended by § 1901(b)(3)(F) of PL 94-455, approved Oct. 4, 1976 (90 Stat. 1793) which substituted "an ordinary loss" for "a loss from the sale or exchange of an asset which is not a capital asset" wherever it appeared in § 1242. Applies with respect to taxable years beginning after Dec. 31, 1976.

8. Added by § 57(a) of PL 85-866, the Technical Amendments Act of 1958, approved Sept. 2, 1958 (72 Stat. 1645). Sec. 304 of the Small Business Investment Act of 1958 was amended in 1960 to permit SBICs, under SBA regulations, to accept securities other than convertible debentures in exchange for equity capital supplied to small concerns. However, only stock acquired by exercise of the conversion privilege is specifically covered by § 1243 of the Internal Revenue Code (see Footnote 9).

9. Para. (1) amended by § 433(b) of PL 91-172, the Tax Reform Act of 1969, approved Dec. 30, 1969 (83 Stat. 624), to conform to the amendment made to § 582(c) by § 433(a) of PL 91-172, giving ordinary gain and loss treatment to debentures and other evidence of indebtedness. Prior to the change, this section covered the ordinary loss treatment given to both convertible debentures and stock received pursuant thereto.

10. Amended by § 1901(b)(3)(F) of PL 94-455, approved Oct. 4, 1976 (90 Stat. 1793), which substituted "an ordinary loss" for "a loss from the sale or exchange of an asset which is not a capital asset" wherever it appeared in § 1243. Applies with respect to taxable years beginning after Dec. 31, 1976.

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