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SUBCHAPTER I—GENERAL PROVISIONS

§ 661. Congressional declaration of policy

It is declared to be the policy of the Congress and the purpose of this chapter to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: *Provided, however,* That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

It is the intention of the Congress that the provisions of this chapter shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country. It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies.

(Pub. L. 85-699, title I, §102, Aug. 21, 1958, 72 Stat. 689; Pub. L. 102-366, title IV, §416, Sept. 4, 1992, 106 Stat. 1019.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 85-699, which enacted this chapter, amended sections 77c, 77ddd, 80a-18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealed section 352a of Title 12, Banks and Banking, and enacted notes set out under this section and section 352a of Title 12. Sections 212 and 213 of Title 18, as renumbered by Pub. L. 87-849, were subsequently repealed. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1992—Pub. L. 102-366 inserted at end "It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or

purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies.”

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-232, §1, May 28, 2004, 118 Stat. 649, provided that: “This Act [amending section 697e of this title] may be cited as the ‘Premier Certified Lenders Program Improvement Act of 2004.’”

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107-100, §1, Dec. 21, 2001, 115 Stat. 966, provided that: “This Act [amending sections 636, 683, 687d, 687e, and 697 of this title, section 1833a of Title 12, Banks and Banking, and section 1014 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 636, 683, and 697 of this title] may be cited as the ‘Small Business Investment Company Amendments Act of 2001.’”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(8) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-653, provided that: “This section [enacting part B of subchapter III of this chapter, amending section 683 of this title, section 109 of Title 11, Bankruptcy, and section 1464 of Title 12, Banks and Banking, and amending provisions set out as a note under section 631 of this title] may be cited as the ‘New Markets Venture Capital Program Act of 2000.’”

Pub. L. 106-554, §1(a)(9) [title III, §301], Dec. 21, 2000, 114 Stat. 2763, 2763A-684, provided that: “This title [enacting section 697g of this title, amending sections 695 to 697 and 697e of this title, enacting provisions set out as a note under section 697g of this title, and repealing provisions set out as a note under section 697e of this title] may be cited as the ‘Certified Development Company Program Improvements Act of 2000.’”

Pub. L. 106-554, §1(a)(9) [title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A-690, provided that: “This title [amending sections 662, 682, 683, and 687b of this title] may be cited as the ‘Small Business Investment Corrections Act of 2000.’”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-9, §1, Apr. 5, 1999, 113 Stat. 17, provided that: “This Act [amending sections 662, 683, 687, and 687m of this title and provisions set out as notes under this section and section 631 of this title] may be cited as the ‘Small Business Investment Improvement Act of 1999.’”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-403, title V, §501, Oct. 22, 1994, 108 Stat. 4198, provided that: “This title [enacting section 697f of this title and provisions set out as a note under section 697f of this title] may be cited as the ‘Small Business Prepayment Penalty Relief Act of 1994.’”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-366, title IV, §401, Sept. 4, 1992, 106 Stat. 1007, provided that: “This Act [probably means “This title”, amending this section and sections 662, 682, 683, 685 to 687, 687b, and 687l of this title, enacting provisions set out as notes under this section and sections 681 and 687b of this title, and amending provisions set out as a note under section 631 of this title] may be cited as the ‘Small Business Equity Enhancement Act of 1992.’”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-590, title II, §201, Nov. 3, 1988, 102 Stat. 3007, provided that: “This title [amending sections 694b and 694c of this title and enacting provisions set out as notes under section 694b of this title] may be cited as the ‘Preferred Surety Bond Guarantee Program Act of 1988.’”

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92-595, §1, Oct. 27, 1972, 86 Stat. 1314, provided: “That this Act [enacting sections 687i and 687j of this

title and amending sections 80a-18, 633, 636, 662, 681, 683, 684, and 686 of this title] may be cited as the ‘Small Business Investment Act Amendments of 1972.’”

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90-104, title II, §201, Oct. 11, 1967, 81 Stat. 269, provided that: “This title [amending sections 681, 682, 683, 684, 686, 687, 687b, and 692 of this title] may be cited as the ‘Small Business Investment Act Amendments of 1967.’”

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-779, §1, Nov. 6, 1966, 80 Stat. 1359, provided: “That this Act [enacting sections 687e, 687f, 687g, and 687h of this title and amending sections 633, 671, 687, 687a, 687b, and 687c of this title, and sections 5315 and 5316 of Title 5, Government Organization and Employees] may be cited as the ‘Small Business Investment Act Amendments of 1966.’”

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88-273, §1, Feb. 28, 1964, 78 Stat. 146, provided: “That this Act [enacting section 687d and amending sections 682, 686, and 687 of this title] may be cited as the ‘Small Business Investment Act Amendments of 1963.’”

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87-341, §1, Oct. 3, 1961, 75 Stat. 752, provided: “That this Act [enacting sections 687a, 687b, and 687c of this title, amending sections 633, 662, 681, 683 to 687, and 696 of this title, and enacting provisions set out as notes under sections 631 and 686 of this title] may be cited as the ‘Small Business Investment Act Amendments of 1961.’”

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86-502, §1, June 11, 1960, 74 Stat. 196, provided: “That this Act [amending sections 662, 681, 682, and 684 of this title, and section 26-610 of the District of Columbia Code, 1973 edition] may be cited as the ‘Small Business Investment Act Amendments of 1960.’”

SHORT TITLE

Pub. L. 85-699, title I, §101, Aug. 21, 1958, 72 Stat. 689, as amended by Pub. L. 106-9, §2(d)(3), Apr. 5, 1999, 113 Stat. 18, provided that: “This Act [enacting this chapter, amending sections 77c, 77ddd, 80a-18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealing section 352a of Title 12, Banks and Banking, and enacting notes set out under this section and former section 352a of title 12] may be cited as the ‘Small Business Investment Act of 1958.’”

REGULATIONS

Pub. L. 102-366, title IV, §415, Sept. 4, 1992, 106 Stat. 1018, provided that: “Notwithstanding any law, rule, regulation or administrative moratorium, except as otherwise expressly provided in this Act [probably means “this title”, see Short Title of 1992 Amendment note above], the Small Business Administration shall—

“(1) within 90 days after the date of enactment of this Act [Sept. 4, 1992], publish in the Federal Register proposed rules and regulations implementing this Act and the amendments made by this Act; and

“(2) within 180 days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act, and enter such contracts as are necessary to implement this Act and the amendments made by this Act.”

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Pub. L. 102-366, title IV, §418, Sept. 4, 1992, 106 Stat. 1019, provided that: “Nothing in this Act [probably means “this title”, see Short Title of 1992 Amendment note above] (and no amendment made by this Act) shall

be construed to affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or the authority at any time conferred under the securities laws.”

§ 662. Definitions

As used in this chapter—

(1) the term “Administration” means the Small Business Administration;

(2) the term “Administrator” means the Administrator of the Small Business Administration;

(3) the terms “small business investment company”, “company”, and “licensee” mean a company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681 of this title;

(4) the term “State” includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia;

(5) the term “small-business concern” shall have the same meaning as in the Small Business Act [15 U.S.C. 631 et seq.], except that, for purposes of this chapter—

(A) an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

(i) shall not cause a business concern to be deemed not independently owned and operated regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment;

(ii) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)]; and

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

(B) in determining whether a business concern satisfies net income standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)], if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

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

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

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

(7) the term “license” means a license issued by the Administration as provided in section 681 of this title;

(8) the term “articles” means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities;

(9) the term “private capital”—

(A) means the sum of—

(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee: *Provided*, That such unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

(B) does not include any—

(i) funds borrowed by a licensee from any source;

(ii) funds obtained through the issuance of leverage; or

(iii) funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for—

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

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

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

(10) the term “leverage” includes—

(A) debentures purchased or guaranteed by the Administration;

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

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

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