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;

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

(A) has—

(i) a net financial worth of not more than $6,000,000, as of the date on which assistance is provided under this chapter to that business concern; and

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

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

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

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

(13) the term ''qualified nonprivate funds'' means any—

(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term ''private capital'';

(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term ''private capital''; and

(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee;

(14) the terms ''employee welfare benefit plan'' and ''pension plan'' have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002], and are intended to include—

(A) public and private pension or retirement plans subject to such Act [29 U.S.C. 1001 et seq.]; and

(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

(15) the term ''member'' means, with respect to a licensee that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company;

(16) the term ''limited liability company'' means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration;

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

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

(A) is issued at a discount;

(B) has a 5-year maturity or a 10-year maturity;

(C) requires no interest payment or annual charge for the first 5 years;

(D) is restricted to Energy Saving qualified investments; and

(E) is issued at no cost (as defined in section 661a[1] of title 2) with respect to purchasing and guaranteeing the debenture; and

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

(Pub. L. 85–699, title I, § 103, Aug. 21, 1958, 72 Stat. 690; Pub. L. 86–502, § 3, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, § 2, Oct. 3, 1961, 75 Stat. 752; Pub. L. 92–595, § 2(a), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, § 106(a), June 4, 1976, 90 Stat. 666; Pub. L. 102–366, title IV, § 410, Sept. 4, 1992, 106 Stat. 1017; Pub. L. 104–208, div. D, title II, § 208(a), Sept. 30, 1996, 110 Stat. 3009–739; Pub. L. 105–135, title II, § 213, Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106–9, § 2(c), Apr. 5, 1999, 113 Stat. 17; Pub. L. 106–554, § 1(a)(9) [title IV, § 402], Dec. 21, 2000, 114 Stat. 2763, 2763A–690; Pub. L. 110–140, title XII, § 1205(b), Dec. 19, 2007, 121 Stat. 1773.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in text, see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in par. (5), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified to chapter 14A (§ 631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of

[1] See References in Text note below.

this title and Tables. The term ''small-business concern'' is defined in section 632 of this title.

The Employee Retirement Income Security Act of 1974, referred to in par. (14), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 661a of title 2, referred to in par. (18)(E), was in the original ''section 502 of the Credit Reform Act of 1990'', which was translated as reading ''section 502 of the Federal Credit Reform Act of 1990'', to reflect the probable intent of Congress.

AMENDMENTS

2007—Pars. (18), (19). Pub. L. 110–140 added pars. (18) and (19).

2000—Par. (5)(A)(i). Pub. L. 106–554, § 1(a)(9) [title IV, § 402(a)], inserted before semicolon at end ''regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment''.

Par. (17). Pub. L. 106–554, § 1(a)(9) [title IV, § 402(b)], added par. (17).

1999—Par. (5). Pub. L. 106–9, § 2(c)(1), designated existing provisions after ''for purposes of this chapter'' as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpar. (B).

Par. (12)(A)(ii). Pub. L. 106–9, § 2(c)(2), inserted before ''; or'': ''except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

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

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

1997—Par. (9)(B)(iii). Pub. L. 105–135 added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

1996—Par. (5). Pub. L. 104–208, § 208(a)(1), inserted before semicolon at end '', except that, for purposes of this chapter, 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—

''(A) shall not cause a business concern to be deemed not independently owned and operated;

''(B) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and

''(C) shall be disregarded in determining whether a small business concern is a smaller enterprise''.

Par. (9). Pub. L. 104–208, § 208(a)(2), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''notwithstanding any other provision of law, the term 'private capital' means the private paid-in capital and paid-in surplus of a corporate licensee, or the private partnership capital of an unincorporate licensee, inclusive of (A) any funds invested in the licensee by a public or private pension fund, (B) any funds invested in the licensee by State or local government entities, to the extent that such investment does not exceed 33 percent of a licensee's total private capital and otherwise meets criteria established by the Administration, and (C) unfunded commitments from institutional investors that meet criteria established by the Administration, but it excludes any funds which are borrowed by the licensee from any source or which are obtained or derived, directly or indirectly, from any Federal source, including the Administration: *Provided*, That no unfunded commitment from an institutional investor may be used for the purpose of meeting the minimum amount of private capital required by this chapter or as the basis for the Administration to issue obligations to provide financing; and''.

Pars. (10) to (16). Pub. L. 104–208, § 208(a)(3), added pars. (10) to (16) and struck out former par. (10) which read as follows: ''the term 'leverage' includes debentures purchased or guaranteed by the Administration, participating securities purchased or guaranteed by the Administration, or preferred securities issued by companies licensed under section 681(d) of this title and which have been purchased by the Administration.''

1992—Pars. (9), (10). Pub. L. 102–366 added pars. (9) and (10).

1976—Par. (8). Pub. L. 94–305 added par. (8).

1972—Par. (3). Pub. L. 92–595 substituted ''section 681'' for ''section 681(c)''.

Par. (7). Pub. L. 92–595 substituted ''section 681'' for ''section 681(c)''.

1961—Par. (3). Pub. L. 87–341, § 2(1), inserted ''licensee'' and substituted ''company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681(c) of this title'' for ''small business investment company organized as provided in subchapter III of this chapter, including (except for purposes of sections 681 and 687(f) of this title) a State-chartered investment company which has obtained the approval of the Administrator to operate under the provisions of this chapter as provided in section 688 of this title and a company converted into a small business investment company under section 691 of this title''.

Par. (7). Pub. L. 87–341, § 2(2), added par. (7).

1960—Par. (4). Pub. L. 86–502 substituted definition of ''State'' for definition of ''United States''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

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

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

SUBCHAPTER II—SMALL BUSINESS INVESTMENT DIVISION OF SMALL BUSINESS ADMINISTRATION

§ 671. Establishment; Associate Administrator; appointment and compensation

There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.

(Pub. L. 85–699, title II, § 201, Aug. 21, 1958, 72 Stat. 690; Pub. L. 89–117, title III, § 316(b), Aug.