

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.

10, 1965, 79 Stat. 484; Pub. L. 89-779, §2, Nov. 6, 1966, 80 Stat. 1359.)

#### AMENDMENTS

1966—Pub. L. 89-779 substituted “Associated Administrator” for “Deputy Administrator” as the head of the Small Business Investment Division of the Small Business Administration, substituted the rate provided by law for other Associate Administrators of the Small Business Administration for the rate provided by law for the other Deputy Administrators of the Small Business Administration as the standard of compensation for the head of the Small Business Investment Division, and struck out provisions spelling out the proper exercise of the powers conferred on the Administration and on the Administrator through the Small Business Investment Division and the Division head. See section 687(f) of this title.

1965—Pub. L. 89-117 provided that the powers conferred by subchapters IV-A and V of this chapter shall be exercised through such divisions, sections, or other personnel as the Administrator in his discretion determines.

#### § 672. Repealed. Pub. L. 87-341, § 11(h)(1), Oct. 3, 1961, 75 Stat. 757

Section, Pub. L. 85-699, title II, § 202(b), Aug. 21, 1958, 72 Stat. 691, authorized appropriations for business expenses.

### SUBCHAPTER III—INVESTMENT DIVISION PROGRAMS

#### PART A—SMALL BUSINESS INVESTMENT COMPANIES

#### § 681. Organization

##### (a) Incorporation and charter under State law, period of succession; area of operations

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

##### (b) Articles of incorporation; approval

The articles of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this chapter that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

##### (c) Issuance of license

###### (1) Submission of application

Each applicant for a license to operate as a small business investment company under this chapter shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

###### (2) Procedures

###### (A) Status

Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

###### (B) Approval or disapproval

Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

- (i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or
- (ii) disapprove the application and notify the applicant in writing of the disapproval.

###### (3) Matters considered

In reviewing and processing any application under this subsection, the Administrator—

(A) shall determine whether—

- (i) the applicant meets the requirements of subsections (a) and (c) of section 682 of this title; and
- (ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this chapter;

(B) shall take into consideration—

- (i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;
- (ii) the general business reputation of the owners and management of the applicant; and
- (iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

(C) shall not take into consideration any projected shortage or unavailability of leverage.

###### (4) Exception

###### (A) In general

Notwithstanding any other provision of this chapter, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that—

- (i) has private capital of not less than \$3,000,000;