

rarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

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

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty 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.

(Pub. L. 85-699, title III, §314, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1363.)

#### REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a), see References in Text note set out under section 661 of this title.

### § 687g. Penalties and forfeitures

#### (a) Report violations

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 687b(b) of this title, 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.

#### (b) Exemption from reporting requirements

The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85-699, title III, §315, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1364.)

### § 687h. Jurisdiction and service of process

Any suit or action brought under section 687, 687a, 687c, 687e, or 687g of this title by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this chapter, 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.

(Pub. L. 85-699, title III, §316, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1364.)

#### 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.

### §§ 687i, 687j. Repealed. Pub. L. 104-208, div. D, title II, § 208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009-747

Section 687i, Pub. L. 85-699, title III, §317, as added Pub. L. 92-595, §2(g), Oct. 27, 1972, 86 Stat. 1316; amended Pub. L. 95-507, title I, §103, Oct. 24, 1978, 92 Stat. 1758, established effective rate of interest of debentures purchased by Administration from small business investment company under authority of section 683(c) of this title.

Section 687j, Pub. L. 85-699, title III, §318, as added Pub. L. 92-595, §2(g), Oct. 27, 1972, 86 Stat. 1316, authorized Administration to extend benefits of sections 683(c) and 687i of this title to any small business investment company operating under authority of section 681(d) of this title, and which was owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by Administration.

### § 687k. Guaranteed obligations not eligible for purchase by Federal Financing Bank

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985—

(1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this subchapter,

(2) any obligation which is an interest in any obligation described in paragraph (1), or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85-699, title III, §318, formerly §320, as added Pub. L. 99-272, title XVIII, §18004(a), Apr. 7, 1986, 100 Stat. 364; renumbered §318, Pub. L. 104-208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009-747.)

#### PRIOR PROVISIONS

A prior section 318 of Pub. L. 85-699 was classified to section 687j of this title, prior to repeal by Pub. L. 104-208.

### § 687l. Issuance and guarantee of trust certificates

#### (a) Issuance; debentures or participating securities composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies and guaranteed by the Administration under this chapter, or participating securities which are issued by such companies and purchased and guaranteed pursuant to section 683(g) of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the

Administration and composed solely of guaranteed debentures or guaranteed participating securities.

**(b) Terms and conditions of guarantee; payment of principal and interest**

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities, which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, or participating securities are redeemed, either voluntarily or involuntarily, or in the event of default of a debenture or voluntary or involuntary redemption of a participating security, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture or redeemed participating security and priority payments represent in the trust or pool. Interest on prepaid or defaulted debentures, or priority payments on participating securities, shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures or redemption, whether voluntary or involuntary, of all participating securities residing in the pool.

**(c) Full faith and credit of United States**

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

**(d) Collection of fees**

The Administration shall not collect a fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

**(e) Subrogation rights; ownership rights in debentures or participating securities**

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

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

**(f) Central registration requirements; regulation of brokers and dealers**

(1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section.

(2) The Administrator shall contract with an agent or agents to carry out on behalf of the Ad-

ministration the pooling and the central registration functions of this section including, notwithstanding any other provision of law, maintenance on behalf of and under the direction of the Administration, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this chapter, and the issuance of trust certificates to facilitate such poolings. Such agent or agents shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government.

(3) Prior to any sale, the Administrator shall require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument.

(4) The Administrator is authorized to regulate brokers and dealers in trust certificates sold pursuant to this section.

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

(Pub. L. 85-699, title III, §319, formerly §321, as added Pub. L. 99-272, title XVIII, §18005(a), Apr. 7, 1986, 100 Stat. 364; amended Pub. L. 101-162, title V, (5), Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102-366, title IV, §404, Sept. 4, 1992, 106 Stat. 1013; renumbered §319 and amended Pub. L. 104-208, div. D, title II, §§205(b), 208(h)(1)(E), (F), Sept. 30, 1996, 110 Stat. 3009-738, 3009-747.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (f)(2), see References in Text note set out under section 661 of this title.

PRIOR PROVISIONS

A prior section 319 of Pub. L. 85-699, which amended section 80a-18 of this title, was renumbered section 317.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208, §208(h)(1)(F)(i), struck out "including companies operating under the authority of section 681(d) of this title," after "investment companies".

Subsec. (f)(1). Pub. L. 104-208, §205(b)(1), struck out at end "Such central registration shall include with respect to each sale—

"(A) identification of each small business investment company;

"(B) the interest rate or prioritized payment rate paid by the small business investment company;

"(C) commissions, fees, or discounts paid to brokers and dealers in trust certificates;

"(D) identification of each purchaser of the trust certificate;

"(E) the price paid by the purchaser for the trust certificate;

"(F) the interest rate on the trust certificate;

"(G) the fee of any agent for carrying out the functions described in paragraph (2); and

"(H) such other information as the Administration deems appropriate."

Subsec. (f)(2). Pub. L. 104-208, §208(h)(1)(F)(ii), inserted "or investments in obligations of the United States" after "accounts".

Subsec. (f)(5). Pub. L. 104-208, §205(b)(2), added par. (5).

1992—Pub. L. 102-366 amended section generally, in subsec. (a) authorizing issuance of trust certificates

representing ownership of participating securities, in subsec. (b) inserting provisions authorizing Administration to guarantee payment of redemption price of and priority payments on participating securities, in subsec. (e)(2) including participating securities within prohibition against preclusion or limitation of Administration's ownership rights, and in subsec. (f) in par. (1) substituting provisions relating to small business investment company for provisions relating to development company and requiring prioritized payment rate to be included in central registration requirements, and in par. (2) inserting provisions relating to participating securities, contracts to carry out pooling, and maintenance of commercial bank accounts.

1989—Subsec. (a). Pub. L. 101-162 inserted “, including companies operating under the authority of section 681(d) of this title,” after “investment companies”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 205 of Pub. L. 104-208 effective Oct. 1, 1996, see section 3 of Pub. L. 104-208, set out as a note under section 633 of this title.

Amendment by section 208 of Pub. L. 104-208 effective Sept. 30, 1996, see section 208(j) of Pub. L. 104-208, set out as a note under section 634 of this title.

#### REGULATIONS

Pub. L. 99-272, title XVIII, § 18005(b), Apr. 7, 1986, 100 Stat. 365, provided that:

“(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 321(f)(1) of the Small Business Investment Act [15 U.S.C. 687(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in sections 321(f)(2) and 321(f)(3) of such Act.

“(2) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 [section 321; 15 U.S.C. 687] of the Small Business Investment Act.”

#### 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.

#### § 687m. Periodic issuance of guarantees and trust certificates

The Administration shall issue guarantees under section 683 of this title and trust certificates under section 687l of this title at periodic intervals of not less than every 12 months and shall do so at such shorter intervals as its<sup>1</sup> deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

(Pub. L. 85-699, title III, § 320, formerly § 322, as added Pub. L. 100-590, title I, § 106(a), Nov. 3, 1988, 102 Stat. 2993; renumbered § 320 and amended Pub. L. 104-208, div. D, title II, § 208(h)(1)(E), (G), Sept. 30, 1996, 110 Stat. 3009-747; Pub. L. 105-135, title II, § 215(e), Dec. 2, 1997, 111 Stat.

2603; Pub. L. 106-9, § 2(d)(2), Apr. 5, 1999, 113 Stat. 18.)

#### PRIOR PROVISIONS

A prior section 320 of Pub. L. 85-699 was renumbered section 318 and is classified to section 687k of this title.

#### AMENDMENTS

1999—Pub. L. 106-9 substituted “12 months” for “6 months”.

1997—Pub. L. 105-135 substituted “6 months” for “three months”.

1996—Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 687l of this title.

#### 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.

#### § 688. Repealed. Pub. L. 87-341, § 11(e), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85-699, title III, § 309, Aug. 21, 1958, 72 Stat. 696, related to approval of State chartered investment companies. See subsec. (a) of section 681 of this title.

#### PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

#### § 689. Definitions

In this part, the following definitions apply:

##### (1) Developmental venture capital

The term “developmental venture capital” means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term “equity capital” has the same meaning given such term in section 683(g)(4) of this title.

##### (2) Low-income individual

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

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

(B) for nonmetropolitan areas, the greater of—

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

(ii) 80 percent of the statewide non-metropolitan area median income.

##### (3) Low-income geographic area

the<sup>1</sup> term “low-income geographic area” means—

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

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

(ii) in the case of a tract—

(I) that is located within a metropolitan area, 50 percent or more of the

<sup>1</sup> So in original. Probably should be “it”.

<sup>1</sup> So in original. Probably should be capitalized.