

Calendar No. 455

104TH CONGRESS
2^D SESSION

S. 1784

A BILL

To amend the Small Business Investment Act of
1958, and for other purposes.

JUNE 25, 1996

Reported with an amendment

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To amend the Small Business Investment Act of 1958, and for other purposes.

 IN THE SENATE OF THE UNITED STATES

MAY 20, 1996

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Small Business

JUNE 25, 1996

Reported by Mr. BOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Small Business Investment Act of 1958, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; INCORPORATED DEFINITIONS.**

4 This Act may be cited as the “Small Business Invest-
5 ment Company Improvement Act of 1996”.

1 **SEC. 2. DEFINITIONS.**

2 (a) **SMALL BUSINESS CONCERN.**—Section 103(5) of
 3 the Small Business Investment Act of 1958 (15 U.S.C.
 4 662(5)) is amended by inserting before the semicolon the
 5 following: “; except that, for purposes of this Act, an in-
 6 vestment by a venture capital firm, investment company
 7 (including a small business investment company) employee
 8 welfare benefit plan or pension plan, or trust, foundation,
 9 or endowment that is exempt from Federal income tax-
 10 ation—

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

13 “(B) shall be disregarded in determining wheth-
 14 er a business concern satisfies size standards estab-
 15 lished pursuant to section 3(a)(2) of the Small Busi-
 16 ness Act; and

17 “(C) shall be disregarded in determining wheth-
 18 er a small business concern is a smaller enterprise”.

19 (b) **PRIVATE CAPITAL.**—Section 103(9) of the Small
 20 Business Investment Act of 1958 (15 U.S.C. 662(9)) is
 21 amended to read as follows:

22 “(9) the term ‘private capital’—

23 “(A) means the sum of—

24 “(i) the paid-in capital and paid-in
 25 surplus of a corporate licensee; the contrib-
 26 uted capital of the partners of a partner-

1 ship licensee, or the equity investment of
2 the members of a limited liability company
3 licensee; and

4 “(ii) unfunded binding commitments,
5 from investors that meet criteria estab-
6 lished by the Administrator, to contribute
7 capital to the licensee; provided that such
8 unfunded commitments may be counted as
9 private capital for purposes of approval by
10 the Administrator of any request for lever-
11 age; but leverage shall not be funded based
12 on such commitments; and

13 “(B) does not include any—

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

16 “(ii) funds obtained through the issu-
17 ance of leverage; or

18 “(iii) funds obtained directly or indi-
19 rectly from any Federal, State, or local
20 government, or any government agency or
21 instrumentality, except for—

22 “(I) funds invested by an em-
23 ployee welfare benefit plan or pension
24 plan; and

1 “(H) any qualified nonprivate
 2 funds (if the investors of the qualified
 3 nonprivate funds do not control, di-
 4 rectly or indirectly, the management,
 5 board of directors, general partners,
 6 or members of the licensee);”.

7 (e) NEW DEFINITIONS.—Section 103 of the Small
 8 Business Investment Act of 1958 (15 U.S.C. 662) is
 9 amended by striking paragraph (10) and inserting the fol-
 10 lowing:

11 “(10) the term ‘leverage’ includes—

12 “(A) debentures purchased or guaranteed
 13 by the Administration;

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

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

18 “(11) the term ‘third party debt’ means any in-
 19 debtedness for borrowed money, other than indebt-
 20 edness owed to the Administration;

21 “(12) the term ‘smaller enterprise’ means any
 22 small business concern that, together with its affili-
 23 ates—

24 “(A) has—

1 “(i) a net financial worth of not more
2 than \$6,000,000, as of the date on which
3 assistance is provided under this Act to
4 that business concern; and

5 “(ii) an average net income for the 2-
6 year period preceding the date on which
7 assistance is provided under this Act to
8 that business concern, of not more than
9 \$2,000,000, after Federal income taxes
10 (excluding any carryover losses); or

11 “(B) satisfies the standard industrial clas-
12 sification size standards established by the Ad-
13 ministration for the industry in which the small
14 business concern is primarily engaged;

15 “(13) the term ‘qualified nonprivate funds’
16 means any—

17 “(A) funds directly or indirectly invested in
18 any applicant or licensee on or before August
19 16, 1982, by any Federal agency, other than
20 the Administration, under a provision of law ex-
21 plicitly mandating the inclusion of those funds
22 in the definition of the term ‘private capital’;

23 “(B) funds directly or indirectly invested
24 in any applicant or licensee by any Federal
25 agency under a provision of law enacted after

1 September 4, 1992, explicitly mandating the in-
 2 clusion of those funds in the definition of the
 3 term ‘private capital’; and

4 “~~(C)~~ funds invested in any applicant or li-
 5 censee by one or more State or local govern-
 6 ment entities (including any guarantee extended
 7 by those entities) in an aggregate amount that
 8 does not exceed—

9 “~~(i)~~ 33 percent of the private capital
 10 of the applicant or licensee if such funds
 11 were invested before June 30, 1996; or

12 “~~(ii)~~ 20 percent of the private capital
 13 of the applicant or licensee if such funds
 14 were invested on or after June 30, 1996;

15 “~~(14)~~ the terms ‘employee welfare benefit plan’
 16 and ‘pension plan’ have the same meanings as in
 17 section 3 of the Employee Retirement Income Secu-
 18 rity Act of 1974, and are intended to include—

19 “~~(A)~~ public and private pension or retire-
 20 ment plans subject to such Act; and

21 “~~(B)~~ similar plans not covered by such Act
 22 that have been established and that are main-
 23 tained by the Federal Government or any State
 24 or political subdivision, or any agency or instru-
 25 mentality thereof, for the benefit of employees;

1 “(15) the term ‘member’ means, with respect to
2 a licensee that is a limited liability company, a hold-
3 er of an ownership interest or a person otherwise ad-
4 mitted to membership in the limited liability com-
5 pany; and

6 “(16) the term ‘limited liability company’
7 means a business entity that is organized and oper-
8 ating in accordance with a State limited liability
9 company statute approved by the Administration.”.

10 **SEC. 3. ORGANIZATION OF SMALL BUSINESS INVESTMENT**
11 **COMPANIES.**

12 (a) **LIMITED LIABILITY COMPANIES.**—Section
13 301(a) of the Small Business Investment Act of 1958 (15
14 U.S.C. 681(a)) is amended in the first sentence, by strik-
15 ing “body or” and inserting “body, a limited liability com-
16 pany, or”.

17 (b) **ISSUANCE OF LICENSE.**—Section 301(e) of the
18 Small Business Investment Act of 1958 (15 U.S.C.
19 681(e)) is amended to read as follows:

20 “(e) **ISSUANCE OF LICENSE.**—

21 “(1) **SUBMISSION OF APPLICATION.**—Each ap-
22 plicant for a license to operate as a small business
23 investment company under this Act shall submit to
24 the Administrator an application, in a form and in-

1 eluding such documentation as may be prescribed by
2 the Administrator.

3 ~~“(2) PROCEDURES.—~~

4 ~~“(A) STATUS.—Not later than 90 days~~
5 ~~after the initial receipt by the Administrator of~~
6 ~~an application under this subsection, the Ad-~~
7 ~~ministrator shall provide the applicant with a~~
8 ~~written report detailing the status of the appli-~~
9 ~~cation and any requirements remaining for~~
10 ~~completion of the application.~~

11 ~~“(B) APPROVAL OR DISAPPROVAL.—With-~~
12 ~~in a reasonable time after receiving a completed~~
13 ~~application submitted in accordance with this~~
14 ~~subsection and in accordance with such require-~~
15 ~~ments as the Administrator may prescribe by~~
16 ~~regulation, the Administrator shall—~~

17 ~~“(i) approve the application and issue~~
18 ~~a license for such operation to the appli-~~
19 ~~cant if the requirements of this section are~~
20 ~~satisfied; or~~

21 ~~“(ii) disapprove the application and~~
22 ~~notify the applicant in writing of the dis-~~
23 ~~approval.~~

1 ~~“(3) MATTERS CONSIDERED.—~~In reviewing and
2 processing any application under this subsection, the
3 ~~Administrator—~~

4 “(A) shall determine whether—

5 “(i) the applicant meets the require-
6 ments of subsections (a) and (c) of section
7 302; and

8 “(ii) the management of the applicant
9 is qualified and has the knowledge, experi-
10 ence, and capability necessary to comply
11 with this Act;

12 “(B) shall take into consideration—

13 “(i) the need for and availability of fi-
14 nancing for small business concerns in the
15 geographic area in which the applicant is
16 to commence business;

17 “(ii) the general business reputation
18 of the owners and management of the ap-
19 plicant; and

20 “(iii) the probability of successful op-
21 erations of the applicant, including ade-
22 quate profitability and financial soundness;
23 and

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

1 “(4) EXCEPTION.—

2 “(A) IN GENERAL.—Notwithstanding any
3 other provision of this Act, the Administrator
4 may, in the discretion of the Administrator and
5 based on a showing of special circumstances
6 and good cause, approve an application and
7 issue a license under this subsection with re-
8 spect to any applicant that—

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

11 “(ii) would otherwise be issued a li-
12 cense under this subsection, except that
13 the applicant does not satisfy the require-
14 ments of section 302(a); and

15 “(iii) has a viable business plan rea-
16 sonably projecting profitable operations
17 and a reasonable timetable for achieving a
18 level of private capital that satisfies the re-
19 quirements of section 302(a).

20 “(B) LEVERAGE.—An applicant licensed
21 pursuant to the exception provided in this para-
22 graph shall not be eligible to receive leverage as
23 a licensee until the applicant satisfies the re-
24 quirements of section 302(a).”.

1 (c) SPECIALIZED SMALL BUSINESS INVESTMENT
 2 COMPANIES.—Section 301(d) of the Small Business In-
 3 vestment Act of 1958 (15 U.S.C. 681(d)) is repealed.

4 **SEC. 4. CAPITAL REQUIREMENTS.**

5 (a) INCREASED MINIMUM CAPITAL REQUIRE-
 6 MENTS.—Section 302(a) of the Small Business Invest-
 7 ment Act of 1958 (15 U.S.C. 682(a)) is amended by strik-
 8 ing “(a)” and all that follows through “The Administra-
 9 tion shall also determine the ability of the company,” and
 10 inserting the following:

11 “(a) AMOUNT.—

12 “(1) IN GENERAL.—Except as provided in para-
 13 graph (2), the private capital of each licensee shall
 14 be not less than—

15 “(A) \$5,000,000; or

16 “(B) \$10,000,000, with respect to each li-
 17 censee authorized or seeking authority to issue
 18 participating securities to be purchased or guar-
 19 anteed by the Administration under this Act.

20 “(2) EXCEPTION.—The Administrator may, in
 21 the discretion of the Administrator and based on a
 22 showing of special circumstances and good cause,
 23 permit the private capital of a licensee authorized or
 24 seeking authorization to issue participating securi-
 25 ties to be purchased or guaranteed by the Adminis-

1 tration to be less than \$10,000,000, but not less
 2 than \$5,000,000, if the Administrator determines
 3 that such action would not create or otherwise con-
 4 tribute to an unreasonable risk of default or loss to
 5 the Federal Government.

6 “(3) ADEQUACY.—In addition to the require-
 7 ments of paragraph (1), the Administrator shall—

8 “(A) determine whether the private capital
 9 of each licensee is adequate to assure a reason-
 10 able prospect that the licensee will be operated
 11 soundly and profitably, and managed actively
 12 and prudently in accordance with its articles;
 13 and

14 “(B) determine that the licensee will be
 15 able”.

16 (b) EXEMPTION FOR CERTAIN LICENSEES.—Section
 17 302(a) of the Small Business Investment Act of 1958 (15
 18 U.S.C. 682(a)) is amended by adding at the end the fol-
 19 lowing new paragraph:

20 “(4) EXEMPTION FROM CAPITAL REQUIRE-
 21 MENTS.—

22 “(A) AUTHORITY TO EXEMPT.—The Ad-
 23 ministrator may, in the discretion of the Ad-
 24 ministrator, exempt from the capital require-
 25 ments in paragraph (1) any licensee licensed

1 under subsection (c) or (d) of section 301 be-
2 fore the date of enactment of the Small Busi-
3 ness Investment Company Improvement Act of
4 1996, if—

5 “(i) the private capital of the licensee
6 is not less than \$2,500,000;

7 “(ii) the licensee certifies in writing
8 that not less than 50 percent of the aggre-
9 gate dollar amount of its financings after
10 the date of enactment of the Small Busi-
11 ness Investment Company Improvement
12 Act of 1996 will be provided to smaller en-
13 terprises; and

14 “(iii) the Administrator determines
15 that the licensee—

16 “(I) has a record of profitable
17 operations; and

18 “(II) has not committed any seri-
19 ous or continuing violation of any ap-
20 plicable provision of Federal or State
21 law or regulation.

22 “(B) REDUCTION OF PRIVATE CAPITAL RE-
23 QUIREMENT.—If the Administrator determines
24 that such action would not create or otherwise
25 contribute to an unreasonable risk of default or

1 loss to the United States Government, the Ad-
2 ministrator, in the discretion of the Adminis-
3 trator and based on a showing of special cir-
4 cumstances and good cause, may reduce the
5 private capital requirement under subparagraph
6 (A)(i) with respect to any licensee.”.

7 (e) **DIVERSIFICATION OF OWNERSHIP.**—Section
8 302(e) of the Small Business Investment Act of 1958 (15
9 U.S.C. 682(e)) is amended to read as follows:

10 “(e) **DIVERSIFICATION OF OWNERSHIP.**—The Ad-
11 ministrator shall ensure that the management of each li-
12 censee licensed after the date of enactment of the Small
13 Business Investment Company Improvement Act of 1996
14 is sufficiently diversified from and unaffiliated with the
15 ownership of the licensee in a manner that ensures inde-
16 pendence and objectivity in the financial management and
17 oversight of the investments and operations of the li-
18 censee.”.

19 **SEC. 5. BORROWING.**

20 (a) **DEBENTURES.**—Section 303(b) of the Small
21 Business Investment Act of 1958 (15 U.S.C. 683(b)) is
22 amended in the first sentence, by striking “(but only” and
23 all that follows through “terms)”.

1 (b) ~~THIRD PARTY DEBT.~~—Section 303(c) of the
 2 Small Business Investment Act of 1958 (15 U.S.C.
 3 683(c)) is amended to read as follows:

4 “~~(c) THIRD PARTY DEBT.~~—The Administrator—

5 “(1) shall not permit a licensee having out-
 6 standing leverage to incur third party debt that
 7 would create or contribute to an unreasonable risk
 8 of default or loss to the Federal Government; and

9 “(2) shall permit such licensees to incur third
 10 party debt only on such terms and subject to such
 11 conditions as may be established by the Adminis-
 12 trator, by regulation or otherwise.”

13 (c) ~~REQUIREMENT TO FINANCE SMALLER ENTER-~~
 14 ~~PRISES.~~—Section 303(d) of the Small Business Invest-
 15 ment Act of 1958 (15 U.S.C. 683(d)) is amended to read
 16 as follows:

17 “~~(d) REQUIREMENT TO FINANCE SMALLER ENTER-~~
 18 ~~PRISES.~~—The Administrator shall require each licensee,
 19 as a condition of approval of an application for leverage,
 20 to certify in writing that not less than 20 percent of the
 21 aggregate dollar amount of the financings of the licensee
 22 will be provided to smaller enterprises.”

23 (d) ~~CAPITAL IMPAIRMENT REQUIREMENTS.~~—Section
 24 303(e) of the Small Business Investment Act of 1958 (15
 25 U.S.C. 683(e)) is amended to read as follows:

1 “(e) CAPITAL IMPAIRMENT.—Before approving any
2 application for leverage submitted by a licensee under this
3 Act, the Administrator—

4 “(1) shall determine that the private capital of
5 the licensee meets the requirements of section
6 302(a); and

7 “(2) shall determine, taking into account the
8 nature of the assets of the licensee, the amount and
9 terms of any third party debt owed by such licensee,
10 and any other factors determined to be relevant by
11 the Administrator, that the private capital of the li-
12 censee has not been impaired to such an extent that
13 the issuance of additional leverage would create or
14 otherwise contribute to an unreasonable risk of de-
15 fault or loss to the Federal Government.”.

16 (e) EQUITY INVESTMENT REQUIREMENT.—Section
17 303(g)(4) of the Small Business Investment Act of 1958
18 (15 U.S.C. 683(g)(4)) is amended by striking “and main-
19 tain”.

20 (f) FEES.—Section 303 of the Small Business Invest-
21 ment Act of 1958 (15 U.S.C. 683) is amended—

22 (1) in subsection (b), in the fifth sentence, by
23 striking “1 per centum,” and all that follows before
24 the period at the end of the sentence and inserting
25 the following: “1 percent, plus an additional charge

1 of .50 percent per annum which shall be paid to and
 2 retained by the Administration”;

3 ~~(2)~~ in subsection ~~(g)(2)~~, by striking “1 per cen-
 4 tum,” and all that follows before the period at the
 5 end of the paragraph and inserting the following: “1
 6 percent, plus an additional charge of .50 percent per
 7 annum which shall be paid to and retained by the
 8 Administration”; and

9 ~~(3)~~ by adding at the end the following new sub-
 10 sections:

11 “(i) LEVERAGE FEE.—With respect to leverage
 12 granted by the Administration to a licensee, the Adminis-
 13 tration shall collect from the licensee a nonrefundable fee
 14 in an amount equal to 3 percent of the face amount of
 15 leverage granted to the licensee, payable upon the earlier
 16 of the date of entry into any commitment for such leverage
 17 or the date on which the leverage is drawn by the licensee.

18 “(j) CALCULATION OF SUBSIDY RATE.—All fees, in-
 19 terest, and profits received and retained by the Adminis-
 20 tration under this section shall be included in the calcula-
 21 tions made by the Director of the Office of Management
 22 and Budget to offset the cost (as that term is defined in
 23 section 502 of the Federal Credit Reform Act of 1990)
 24 to the Administration of purchasing and guaranteeing de-
 25 bentures and participating securities under this Act.”.

1 **SEC. 6. LIABILITY OF THE UNITED STATES.**

2 Section 308(e) of the Small Business Investment Act
3 of 1958 (15 U.S.C. 687(e)) is amended by striking “Noth-
4 ing” and inserting “Except as expressly provided other-
5 wise in this Act, nothing”.

6 **SEC. 7. EXAMINATIONS; VALUATIONS.**

7 (a) **EXAMINATIONS.**—Section 310(b) of the Small
8 Business Investment Act of 1958 (15 U.S.C. 687b(b)) is
9 amended in the first sentence by inserting “which may be
10 conducted with the assistance of a private sector entity
11 that has both the qualifications to conduct and expertise
12 in conducting such examinations,” after “Investment Divi-
13 sion of the Administration,”.

14 (b) **VALUATIONS.**—Section 310(d) of the Small Busi-
15 ness Investment Act of 1958 (15 U.S.C. 687b(d)) is
16 amended to read as follows:

17 “(d) **VALUATIONS.**—

18 “(1) **FREQUENCY OF VALUATIONS.**—

19 “(A) **IN GENERAL.**—Each licensee shall
20 submit to the Administrator a written valuation
21 of the loans and investments of the licensee not
22 less often than semiannually or otherwise upon
23 the request of the Administrator, except that
24 any licensee with no leverage outstanding shall
25 submit such valuations annually, unless the Ad-
26 ministrator determines otherwise.

1 “(B) MATERIAL ADVERSE CHANGES.—Not
 2 later than 30 days after the end of a fiscal
 3 quarter of a licensee during which a material
 4 adverse change in the aggregate valuation of
 5 the loans and investments or operations of the
 6 licensee occurs, the licensee shall notify the Ad-
 7 ministrator in writing of the nature and extent
 8 of that change.

9 “(C) INDEPENDENT CERTIFICATION.—

10 “(i) IN GENERAL.—Not less than once
 11 during each fiscal year, each licensee shall
 12 submit to the Administrator the financial
 13 statements of the licensee, audited by an
 14 independent certified public accountant ap-
 15 proved by the Administrator.

16 “(ii) AUDIT REQUIREMENTS.—Each
 17 audit conducted under clause (i) shall in-
 18 clude—

19 “(I) a review of the procedures
 20 and documentation used by the li-
 21 censee in preparing the valuations re-
 22 quired by this section; and

23 “(II) a statement by the inde-
 24 pendent certified public accountant
 25 that such valuations were prepared in

1 conformity with the valuation criteria
 2 applicable to the licensee established
 3 in accordance with paragraph (2).

4 “(2) VALUATION CRITERIA.—Each valuation
 5 submitted under this subsection shall be prepared by
 6 the licensee in accordance with valuation criteria,
 7 which shall—

8 “(A) be established or approved by the Ad-
 9 ministrator; and

10 “(B) include appropriate safeguards to en-
 11 sure that the noncash assets of a licensee are
 12 not overvalued.”.

13 **SEC. 8. TRUSTEE OR RECEIVERSHIP OVER LICENSEES.**

14 (a) IN GENERAL.—Section 311 of the Small Business
 15 Investment Act of 1958 (15 U.S.C. 687e) is amended by
 16 adding at the end the following new subsection:

17 “(d) APPOINTMENT OF PRINCIPAL RECEIVERS AND
 18 AGENTS.—

19 “(1) IN GENERAL.—Upon appointment as a re-
 20 ceiver, as described in subsection (c), the Adminis-
 21 trator may appoint principal receivers and receiver’s
 22 agents.

23 “(2) COMPENSATION.—A receiver’s agent ap-
 24 pointed under paragraph (1) may be paid—

1 “(A) at any time from salaries and expense
2 amounts appropriated for the Administration,
3 and the Administration may be reimbursed for
4 such amounts from amounts recovered from the
5 liquidation of any assets of the licensee at the
6 conclusion of the receivership; or

7 “(B) from amounts recovered from the liq-
8 uidation of any assets of the licensee, but only
9 at the conclusion of the receivership.”.

10 (b) **CONTRACTS WITH PRIVATE SECTOR ENTI-**
11 **TIES.—**

12 (1) **IN GENERAL.—**Not later than June 30,
13 1997, the Small Business Administration shall enter
14 into one or more contracts or arrangements with pri-
15 vate sector entities to provide for the orderly liquida-
16 tion of all licensee assets in liquidation, including as-
17 sets of licensees in receivership or in trust with re-
18 spect to which the court has appointed the Adminis-
19 tration as receiver or trustee under section 311 of
20 the Small Business Investment Act of 1958.

21 (2) **DEFINITION.—**For purposes of this sub-
22 section, the term “licensee” has the same meaning
23 as in section 103 of the Small Business Investment
24 Act of 1958.

1 **SEC. 9. BOOK ENTRY REGISTRATION.**

2 Subsection 321(f) of the Small Business Investment
3 Act of 1958 (15 U.S.C. 687f) is amended by adding at
4 the end the following new paragraph:

5 “(5) Nothing in this subsection shall prohibit the uti-
6 lization of a book entry or other electronic form of reg-
7 istration for trust certificates.”

8 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

9 The Small Business Investment Act of 1958 (15
10 U.S.C. 661 et seq.) is amended—

11 (1) in section 303—

12 (A) in subsection (a), by striking “debenture
13 bonds,” and inserting “securities,”;

14 (B) by striking subsection (f) and inserting
15 the following:

16 “(f) REDEMPTION OR REPURCHASE OF PREFERRED
17 STOCK.—Notwithstanding any other provision of law—

18 “(1) the Administrator may allow the issuer of
19 any preferred stock sold to the Administration be-
20 fore November 1, 1989 to redeem or repurchase
21 such stock, upon the payment to the Administration
22 of an amount less than the par value of such stock,
23 for a repurchase price determined by the Adminis-
24 trator after consideration of all relevant factors, in-
25 cluding—

26 “(A) the market value of the stock;

1 “(B) the value of benefits provided and an-
2 ticipated to accrue to the issuer;

3 “(C) the amount of dividends paid, ac-
4 crued, and anticipated; and

5 “(D) the Administrator’s estimate of any
6 anticipated redemption; and

7 “(2) any moneys received by the Administration
8 from the repurchase of preferred stock shall be
9 available solely to provide debenture leverage to li-
10 censees having 50 percent or more in aggregate dol-
11 lar amount of their financings invested in smaller
12 enterprises.”; and

13 (C) in subsection (g)(8)—

14 (i) by striking “partners or sharehold-
15 ers” and inserting “partners, shareholders,
16 or members”;

17 (ii) by striking “partner’s or share-
18 holder’s” and inserting “partner’s, share-
19 holder’s, or member’s”; and

20 (iii) by striking “partner or share-
21 holder” and inserting “partner, share-
22 holder, or member”;

23 (2) in section 308(h), by striking “subsection
24 (e) or (d) of section 301” each place that term ap-
25 pears and inserting “section 301”;

1 (3) in section 310(e)(4), by striking “not less
2 than four years in the case of section 301(d) licens-
3 ees and in all other cases,”;

4 (4) in section 312—

5 (A) by striking “shareholders or partners”
6 and inserting “shareholders, partners, or mem-
7 bers”; and

8 (B) by striking “shareholder, or partner”
9 each place that term appears and inserting
10 “shareholder, partner, or member”;

11 (5) by striking sections 317 and 318, and re-
12 designating sections 319 through 322 as sections
13 317 through 320, respectively;

14 (6) in section 319, as redesignated—

15 (A) in subsection (a), by striking “, includ-
16 ing companies operating under the authority of
17 section 301(d),”; and

18 (B) in subsection (f)(2), by inserting “or
19 investments in obligations of the United States”
20 after “accounts”;

21 (7) in section 320, as redesignated, by striking
22 “section 321” and inserting “section 319”; and

23 (8) in section 509—

24 (A) in subsection (a)(1), by striking the
25 second sentence; and

1 ~~(B)~~ in subsection ~~(e)(1)(B)~~, by striking
2 “subsection (e) or (d) of section 301” and in-
3 serting “section 301”.

4 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

5 Section 20(p)(3) of the Small Business Act (15
6 U.S.C. 631 note) is amended by striking subparagraph
7 ~~(B)~~ and inserting the following:

8 “(B) \$300,000,000 in guarantees of de-
9 bentures; and”.

10 **SEC. 12. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall
12 become effective on the date of enactment of this Act.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Small Business Invest-*
15 *ment Company Improvement Act of 1996”.*

16 **SEC. 2. DEFINITIONS.**

17 (a) *SMALL BUSINESS CONCERN.*—Section 103(5) of
18 *the Small Business Investment Act of 1958 (15 U.S.C.*
19 *662(5)) is amended by inserting before the semicolon the*
20 *following: “, except that, for purposes of this Act, an invest-*
21 *ment by a venture capital firm, investment company (in-*
22 *cluding a small business investment company) employee*
23 *welfare benefit plan or pension plan, or trust, foundation,*
24 *or endowment that is exempt from Federal income tax-*
25 *ation—*

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

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

7 “(C) shall be disregarded in determining whether
8 a small business concern is a smaller enterprise”.

9 (b) PRIVATE CAPITAL.—Section 103(9) of the Small
10 Business Investment Act of 1958 (15 U.S.C. 662(9)) is
11 amended to read as follows:

12 “(9) the term ‘private capital’—

13 “(A) means the sum of—

14 “(i) the paid-in capital and paid-in
15 surplus of a corporate licensee, the contrib-
16 uted capital of the partners of a partnership
17 licensee, or the equity investment of the
18 members of a limited liability company li-
19 censee; and

20 “(ii) unfunded binding commitments,
21 from investors that meet criteria established
22 by the Administrator, to contribute capital
23 to the licensee: Provided, That such un-
24 funded commitments may be counted as
25 private capital for purposes of approval by

1 *the Administrator of any request for lever-*
 2 *age, but leverage shall not be funded based*
 3 *on such commitments; and*

4 “(B) does not include any—

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

7 “(ii) funds obtained through the issu-
 8 ance of leverage; or

9 “(iii) funds obtained directly or indi-
 10 rectly from any Federal, State, or local gov-
 11 ernment, or any government agency or in-
 12 strumentality, except for—

13 “(I) funds invested by an em-
 14 ployee welfare benefit plan or pension
 15 plan; and

16 “(II) any qualified nonprivate
 17 funds (if the investors of the qualified
 18 nonprivate funds do not control, di-
 19 rectly or indirectly, the management,
 20 board of directors, general partners, or
 21 members of the licensee);”.

22 (c) *NEW DEFINITIONS.*—Section 103 of the Small
 23 Business Investment Act of 1958 (15 U.S.C. 662) is amend-
 24 ed by striking paragraph (10) and inserting the following:

25 “(10) the term ‘leverage’ includes—

1 “(A) debentures purchased or guaranteed by
2 the Administration;

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

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

7 “(11) the term ‘third party debt’ means any in-
8 debtedness for borrowed money, other than indebted-
9 ness owed to the Administration;

10 “(12) the term ‘smaller enterprise’ means any
11 small business concern that, together with its affili-
12 ates—

13 “(A) has—

14 “(i) a net financial worth of not more
15 than \$6,000,000, as of the date on which as-
16 sistance is provided under this Act to that
17 business concern; and

18 “(ii) an average net income for the 2-
19 year period preceding the date on which as-
20 sistance is provided under this Act to that
21 business concern, of not more than
22 \$2,000,000, after Federal income taxes (ex-
23 cluding any carryover losses); or

24 “(B) satisfies the standard industrial classi-
25 fication size standards established by the Admin-

1 *istration for the industry in which the small*
2 *business concern is primarily engaged;*

3 *“(13) the term ‘qualified nonprivate funds’*
4 *means any—*

5 *“(A) funds directly or indirectly invested in*
6 *any applicant or licensee on or before August 16,*
7 *1982, by any Federal agency, other than the Ad-*
8 *ministration, under a provision of law explicitly*
9 *mandating the inclusion of those funds in the*
10 *definition of the term ‘private capital’;*

11 *“(B) funds directly or indirectly invested in*
12 *any applicant or licensee by any Federal agency*
13 *under a provision of law enacted after September*
14 *4, 1992, explicitly mandating the inclusion of*
15 *those funds in the definition of the term ‘private*
16 *capital’; and*

17 *“(C) funds invested in any applicant or li-*
18 *cencee by one or more State or local government*
19 *entities (including any guarantee extended by*
20 *those entities) in an aggregate amount that does*
21 *not exceed—*

22 *“(i) 33 percent of the private capital of*
23 *the applicant or licensee, if such funds were*
24 *committed for investment before the date of*

1 *enactment of the Small Business Investment*
2 *Company Improvement Act of 1996; or*

3 “(ii) 20 percent of the private capital
4 of the applicant or licensee, if such funds
5 were committed for investment on or after
6 the date of enactment of the Small Business
7 Investment Company Improvement Act of
8 1996;

9 “(14) the terms ‘employee welfare benefit plan’
10 and ‘pension plan’ have the same meanings as in sec-
11 tion 3 of the Employee Retirement Income Security
12 Act of 1974, and are intended to include—

13 “(A) public and private pension or retire-
14 ment plans subject to such Act; and

15 “(B) similar plans not covered by such Act
16 that have been established and that are main-
17 tained by the Federal Government or any State
18 or political subdivision, or any agency or instru-
19 mentality thereof, for the benefit of employees;

20 “(15) the term ‘member’ means, with respect to
21 a licensee that is a limited liability company, a hold-
22 er of an ownership interest or a person otherwise ad-
23 mitted to membership in the limited liability com-
24 pany; and

1 *report detailing the status of the application and*
2 *any requirements remaining for completion of*
3 *the application.*

4 “(B) *APPROVAL OR DISAPPROVAL.*—*Within*
5 *a reasonable time after receiving a completed ap-*
6 *plication submitted in accordance with this sub-*
7 *section and in accordance with such require-*
8 *ments as the Administrator may prescribe by*
9 *regulation, the Administrator shall—*

10 “(i) *approve the application and issue*
11 *a license for such operation to the applicant*
12 *if the requirements of this section are satis-*
13 *fied; or*

14 “(ii) *disapprove the application and*
15 *notify the applicant in writing of the dis-*
16 *approval.*

17 “(3) *MATTERS CONSIDERED.*—*In reviewing and*
18 *processing any application under this subsection, the*
19 *Administrator—*

20 “(A) *shall determine whether—*

21 “(i) *the applicant meets the require-*
22 *ments of subsections (a) and (c) of section*
23 *302; and*

24 “(ii) *the management of the applicant*
25 *is qualified and has the knowledge, experi-*

1 ence, and capability necessary to comply
2 with this Act;

3 “(B) shall take into consideration—

4 “(i) the need for and availability of fi-
5 nancing for small business concerns in the
6 geographic area in which the applicant is to
7 commence business;

8 “(ii) the general business reputation of
9 the owners and management of the appli-
10 cant; and

11 “(iii) the probability of successful oper-
12 ations of the applicant, including adequate
13 profitability and financial soundness; and

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

16 “(4) EXCEPTION.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of this Act, the Administrator
19 may, in the discretion of the Administrator and
20 based on a showing of special circumstances and
21 good cause, approve an application and issue a
22 license under this subsection with respect to any
23 applicant that—

24 “(i) has private capital of not less than
25 \$3,000,000;

1 “(ii) would otherwise be issued a li-
 2 cense under this subsection, except that the
 3 applicant does not satisfy the requirements
 4 of section 302(a); and

5 “(iii) has a viable business plan rea-
 6 sonably projecting profitable operations and
 7 a reasonable timetable for achieving a level
 8 of private capital that satisfies the require-
 9 ments of section 302(a).

10 “(B) *LEVERAGE*.—An applicant licensed
 11 pursuant to the exception provided in this para-
 12 graph shall not be eligible to receive leverage as
 13 a licensee until the applicant satisfies the re-
 14 quirements of section 302(a).”.

15 (c) *SPECIALIZED SMALL BUSINESS INVESTMENT COM-*
 16 *PANIES*.—Section 301(d) of the Small Business Investment
 17 Act of 1958 (15 U.S.C. 681(d)) is repealed.

18 **SEC. 4. CAPITAL REQUIREMENTS.**

19 (a) *INCREASED MINIMUM CAPITAL REQUIREMENTS*.—
 20 Section 302(a) of the Small Business Investment Act of
 21 1958 (15 U.S.C. 682(a)) is amended by striking “(a)” and
 22 all that follows through “The Administration shall also de-
 23 termine the ability of the company,” and inserting the fol-
 24 lowing:

25 “(a) *AMOUNT*.—

1 “(1) *IN GENERAL.*—*Except as provided in para-*
2 *graph (2), the private capital of each licensee shall be*
3 *not less than—*

4 “(A) \$5,000,000; or

5 “(B) \$10,000,000, *with respect to each li-*
6 *cencee authorized or seeking authority to issue*
7 *participating securities to be purchased or guar-*
8 *anteed by the Administration under this Act.*

9 “(2) *EXCEPTION.*—*The Administrator may, in*
10 *the discretion of the Administrator and based on a*
11 *showing of special circumstances and good cause, per-*
12 *mit the private capital of a licensee authorized or*
13 *seeking authorization to issue participating securities*
14 *to be purchased or guaranteed by the Administration*
15 *to be less than \$10,000,000, but not less than*
16 *\$5,000,000, if the Administrator determines that such*
17 *action would not create or otherwise contribute to an*
18 *unreasonable risk of default or loss to the Federal*
19 *Government.*

20 “(3) *ADEQUACY.*—*In addition to the require-*
21 *ments of paragraph (1), the Administrator shall—*

22 “(A) *determine whether the private capital*
23 *of each licensee is adequate to assure a reason-*
24 *able prospect that the licensee will be operated*
25 *soundly and profitably, and managed actively*

1 *and prudently in accordance with its articles;*
 2 *and*

3 “(B) *determine that the licensee will be*
 4 *able*”.

5 (b) *EXEMPTION FOR CERTAIN LICENSEES.*—Section
 6 *302(a) of the Small Business Investment Act of 1958 (15*
 7 *U.S.C. 682(a)) is amended by adding at the end the follow-*
 8 *ing new paragraph:*

9 “(4) *EXEMPTION FROM CAPITAL REQUIRE-*
 10 *MENTS.*—*The Administrator may, in the discretion of*
 11 *the Administrator, exempt from the capital require-*
 12 *ments in paragraph (1) any licensee licensed under*
 13 *subsection (c) or (d) of section 301 before the date of*
 14 *enactment of the Small Business Investment Com-*
 15 *pany Improvement Act of 1996, if—*

16 “(A) *the licensee certifies in writing that*
 17 *not less than 50 percent of the aggregate dollar*
 18 *amount of its financings after the date of enact-*
 19 *ment of the Small Business Investment Company*
 20 *Improvement Act of 1996 will be provided to*
 21 *smaller enterprises; and*

22 “(B) *the Administrator determines that—*

23 “(i) *the licensee has a record of profit-*
 24 *able operations;*

1 “(ii) the licensee has not committed
2 any serious or continuing violation of any
3 applicable provision of Federal or State law
4 or regulation; and

5 “(iii) such action would not create or
6 otherwise contribute to an unreasonable risk
7 of default or loss to the United States Gov-
8 ernment.”.

9 (c) *DIVERSIFICATION OF OWNERSHIP.*—Section 302(c)
10 of the *Small Business Investment Act of 1958* (15 U.S.C.
11 682(c)) is amended to read as follows:

12 “(c) *DIVERSIFICATION OF OWNERSHIP.*—The Admin-
13 istrator shall ensure that the management of each licensee
14 licensed after the date of enactment of the *Small Business*
15 *Investment Company Improvement Act of 1996* is suffi-
16 ciently diversified from and unaffiliated with the ownership
17 of the licensee in a manner that ensures independence and
18 objectivity in the financial management and oversight of
19 the investments and operations of the licensee.”.

20 **SEC. 5. BORROWING.**

21 (a) *DEBENTURES.*—Section 303(b) of the *Small Busi-*
22 *ness Investment Act of 1958* (15 U.S.C. 683(b)) is amended
23 in the first sentence, by striking “(but only” and all that
24 follows through “terms)”.

1 (b) *THIRD PARTY DEBT.*—Section 303(c) of the Small
2 *Business Investment Act of 1958 (15 U.S.C. 683(c))* is
3 *amended to read as follows:*

4 “(c) *THIRD PARTY DEBT.*—The Administrator—

5 “(1) shall not permit a licensee having outstand-
6 ing leverage to incur third party debt that would cre-
7 ate or contribute to an unreasonable risk of default or
8 loss to the Federal Government; and

9 “(2) shall permit such licensees to incur third
10 party debt only on such terms and subject to such
11 conditions as may be established by the Adminis-
12 trator, by regulation or otherwise.”.

13 (c) *REQUIREMENT TO FINANCE SMALLER ENTER-*
14 *PRISES.*—Section 303(d) of the *Small Business Investment*
15 *Act of 1958 (15 U.S.C. 683(d))* is amended to read as fol-
16 *lows:*

17 “(d) *REQUIREMENT TO FINANCE SMALLER ENTER-*
18 *PRISES.*—The Administrator shall require each licensee, as
19 *a condition of approval of an application for leverage, to*
20 *certify in writing that not less than 20 percent of the aggre-*
21 *gate dollar amount of the financings of the licensee will be*
22 *provided to smaller enterprises.”.*

23 (d) *CAPITAL IMPAIRMENT REQUIREMENTS.*—Section
24 *303(e) of the Small Business Investment Act of 1958 (15*
25 *U.S.C. 683(e))* is amended to read as follows:

1 “(e) *CAPITAL IMPAIRMENT.*—*Before approving any*
 2 *application for leverage submitted by a licensee under this*
 3 *Act, the Administrator—*

4 “(1) *shall determine that the private capital of*
 5 *the licensee meets the requirements of section 302(a);*
 6 *and*

7 “(2) *shall determine, taking into account the na-*
 8 *ture of the assets of the licensee, the amount and*
 9 *terms of any third party debt owed by such licensee,*
 10 *and any other factors determined to be relevant by the*
 11 *Administrator, that the private capital of the licensee*
 12 *has not been impaired to such an extent that the issu-*
 13 *ance of additional leverage would create or otherwise*
 14 *contribute to an unreasonable risk of default or loss*
 15 *to the Federal Government.”.*

16 “(e) *EQUITY INVESTMENT REQUIREMENT.*—*Section*
 17 *303(g)(4) of the Small Business Investment Act of 1958 (15*
 18 *U.S.C. 683(g)(4)) is amended by striking “and maintain”.*

19 “(f) *FEES.*—*Section 303 of the Small Business Invest-*
 20 *ment Act of 1958 (15 U.S.C. 683) is amended—*

21 “(1) *in subsection (b), in the fifth sentence, by*
 22 *striking “1 per centum”, and all that follows before*
 23 *the period at the end of the sentence and inserting the*
 24 *following: “1 percent, plus an additional charge of .50*

1 *percent per annum which shall be paid to and re-*
2 *tained by the Administration”;*

3 (2) *in subsection (g)(2), by striking “1 per cen-*
4 *tum,” and all that follows before the period at the end*
5 *of the paragraph and inserting the following: “1 per-*
6 *cent, plus an additional charge of .50 percent per*
7 *annum which shall be paid to and retained by the*
8 *Administration”;* and

9 (3) *by adding at the end the following new sub-*
10 *sections:*

11 “(i) *LEVERAGE FEE.—With respect to leverage grant-*
12 *ed by the Administration to a licensee, the Administration*
13 *shall collect from the licensee a nonrefundable fee in an*
14 *amount equal to 3 percent of the face amount of leverage*
15 *granted to the licensee, payable upon the earlier of the date*
16 *of entry into any commitment for such leverage or the date*
17 *on which the leverage is drawn by the licensee.*

18 “(j) *CALCULATION OF SUBSIDY RATE.—All fees, inter-*
19 *est, and profits received and retained by the Administration*
20 *under this section shall be included in the calculations made*
21 *by the Director of the Office of Management and Budget*
22 *to offset the cost (as that term is defined in section 502*
23 *of the Federal Credit Reform Act of 1990) to the Adminis-*
24 *tration of purchasing and guaranteeing debentures and*
25 *participating securities under this Act.”.*

1 **SEC. 6. LIABILITY OF THE UNITED STATES.**

2 Section 308(e) of the Small Business Investment Act
3 of 1958 (15 U.S.C. 687(e)) is amended by striking “Noth-
4 ing” and inserting “Except as expressly provided otherwise
5 in this Act, nothing”.

6 **SEC. 7. EXAMINATIONS; VALUATIONS.**

7 (a) *EXAMINATIONS.*—Section 310(b) of the Small
8 Business Investment Act of 1958 (15 U.S.C. 687b(b)) is
9 amended in the first sentence by inserting “which may be
10 conducted with the assistance of a private sector entity that
11 has both the qualifications to conduct and expertise in con-
12 ducting such examinations,” after “Investment Division of
13 the Administration,”.

14 (b) *VALUATIONS.*—Section 310(d) of the Small Busi-
15 ness Investment Act of 1958 (15 U.S.C. 687b(d)) is amended
16 to read as follows:

17 “(d) *VALUATIONS.*—

18 “(1) *FREQUENCY OF VALUATIONS.*—

19 “(A) *IN GENERAL.*—Each licensee shall sub-
20 mit to the Administrator a written valuation of
21 the loans and investments of the licensee not less
22 often than semiannually or otherwise upon the
23 request of the Administrator, except that any li-
24 censee with no leverage outstanding shall submit
25 such valuations annually, unless the Adminis-
26 trator determines otherwise.

1 “(B) *MATERIAL ADVERSE CHANGES.*—Not
2 *later than 30 days after the end of a fiscal quar-*
3 *ter of a licensee during which a material adverse*
4 *change in the aggregate valuation of the loans*
5 *and investments or operations of the licensee oc-*
6 *curs, the licensee shall notify the Administrator*
7 *in writing of the nature and extent of that*
8 *change.*

9 “(C) *INDEPENDENT CERTIFICATION.*—

10 “(i) *IN GENERAL.*—Not less than once
11 *during each fiscal year, each licensee shall*
12 *submit to the Administrator the financial*
13 *statements of the licensee, audited by an*
14 *independent certified public accountant ap-*
15 *proved by the Administrator.*

16 “(ii) *AUDIT REQUIREMENTS.*—Each
17 *audit conducted under clause (i) shall in-*
18 *clude—*

19 “(I) *a review of the procedures*
20 *and documentation used by the licensee*
21 *in preparing the valuations required*
22 *by this section; and*

23 “(II) *a statement by the inde-*
24 *pendent certified public accountant*
25 *that such valuations were prepared in*

1 *conformity with the valuation criteria*
 2 *applicable to the licensee established in*
 3 *accordance with paragraph (2).*

4 “(2) *VALUATION CRITERIA.—Each valuation*
 5 *submitted under this subsection shall be prepared by*
 6 *the licensee in accordance with valuation criteria,*
 7 *which shall—*

8 *“(A) be established or approved by the Ad-*
 9 *ministrator; and*

10 *“(B) include appropriate safeguards to en-*
 11 *sure that the noncash assets of a licensee are not*
 12 *overvalued.”.*

13 **SEC. 8. TRUSTEE OR RECEIVERSHIP OVER LICENSEES.**

14 *(a) FINDING.—It is the finding of the Congress that*
 15 *increased recoveries on assets in liquidation under the*
 16 *Small Business Investment Act of 1958 are in the best inter-*
 17 *ests of the Federal Government.*

18 *(b) DEFINITIONS.—For purposes of this section—*

19 *(1) the term “Administrator” means the Admin-*
 20 *istrator of the Small Business Administration;*

21 *(2) the term “Administration” means the Small*
 22 *Business Administration; and*

23 *(3) the term “licensee” has the same meaning as*
 24 *in section 103 of the Small Business Investment Act*
 25 *of 1958.*

1 (c) *LIQUIDATION PLAN.*—

2 (1) *IN GENERAL.*—Not later than October 15,
3 1996, the Administrator shall submit to the Commit-
4 tees on Small Business of the Senate and the House
5 of Representatives a detailed plan to expedite the or-
6 derly liquidation of all licensee assets in liquidation,
7 including assets of licensees in receivership or in trust
8 held by or under the control of the Administration or
9 its agents.

10 (2) *CONTENTS.*—The plan submitted under
11 paragraph (1) shall include a timetable for liquidat-
12 ing the liquidation portfolio of small business invest-
13 ment company assets owned by the Administration,
14 and shall contain the Administrator's findings and
15 recommendations on various options providing for the
16 fair and expeditious liquidation of such assets within
17 a reasonable period of time, giving due consideration
18 to the option of entering into one or more contracts
19 with private sector entities having the capability to
20 carry out the orderly liquidation of similar assets.

21 **SEC. 9. BOOK ENTRY REGISTRATION.**

22 Subsection 321(f) of the Small Business Investment
23 Act of 1958 (15 U.S.C. 687l) is amended by adding at the
24 end the following new paragraph:

1 “(5) *Nothing in this subsection shall prohibit the utili-*
 2 *zation of a book entry or other electronic form of registra-*
 3 *tion for trust certificates.*”.

4 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

5 (a) *SMALL BUSINESS INVESTMENT ACT OF 1958.—The*
 6 *Small Business Investment Act of 1958 (15 U.S.C. 661 et*
 7 *seq.) is amended—*

8 (1) *in section 303—*

9 (A) *in subsection (a), by striking “debenture*
 10 *bonds,” and inserting “securities,”;*

11 (B) *by striking subsection (f) and inserting*
 12 *the following:*

13 “(f) *REDEMPTION OR REPURCHASE OF PREFERRED*
 14 *STOCK.—Notwithstanding any other provision of law—*

15 “(1) *the Administrator may allow the issuer of*
 16 *any preferred stock sold to the Administration before*
 17 *November 1, 1989 to redeem or repurchase such stock,*
 18 *upon the payment to the Administration of an*
 19 *amount less than the par value of such stock, for a*
 20 *repurchase price determined by the Administrator*
 21 *after consideration of all relevant factors, including—*

22 “(A) *the market value of the stock;*

23 “(B) *the value of benefits provided and an-*
 24 *anticipated to accrue to the issuer;*

1 “(C) the amount of dividends paid, accrued,
2 and anticipated; and

3 “(D) the Administrator’s estimate of any
4 anticipated redemption; and

5 “(2) any moneys received by the Administration
6 from the repurchase of preferred stock shall be avail-
7 able solely to provide debenture leverage to licensees
8 having 50 percent or more in aggregate dollar
9 amount of their financings invested in smaller enter-
10 prises.”; and

11 (C) in subsection (g)(8)—

12 (i) by striking “partners or sharehold-
13 ers” and inserting “partners, shareholders,
14 or members”;

15 (ii) by striking “partner’s or share-
16 holder’s” and inserting “partner’s, share-
17 holder’s, or member’s”; and

18 (iii) by striking “partner or share-
19 holder” and inserting “partner, shareholder,
20 or member”;

21 (2) in section 308(h), by striking “subsection (c)
22 or (d) of section 301” each place that term appears
23 and inserting “section 301”;

1 (3) in section 310(c)(4), by striking “not less
2 than four years in the case of section 301(d) licensees
3 and in all other cases,”;

4 (4) in section 312—

5 (A) by striking “shareholders or partners”
6 and inserting “shareholders, partners, or mem-
7 bers”; and

8 (B) by striking “shareholder, or partner”
9 each place that term appears and inserting
10 “shareholder, partner, or member”;

11 (5) by striking sections 317 and 318, and redesi-
12 gnating sections 319 through 322 as sections 317
13 through 320, respectively;

14 (6) in section 319, as redesignated—

15 (A) in subsection (a), by striking “, includ-
16 ing companies operating under the authority of
17 section 301(d),”; and

18 (B) in subsection (f)(2), by inserting “or in-
19 vestments in obligations of the United States”
20 after “accounts”;

21 (7) in section 320, as redesignated, by striking
22 “section 321” and inserting “section 319”; and

23 (8) in section 509—

24 (A) in subsection (a)(1), by striking the sec-
25 ond sentence; and

1 (B) in subsection (e)(1)(B), by striking
2 “subsection (c) or (d) of section 301” and insert-
3 ing “section 301”.

4 (b) *AMENDMENT IN OTHER LAW.*—Section 11(h) of the
5 *Federal Home Loan Bank Act (12 U.S.C. 1431(h))* is
6 amended by striking “301(d)” and inserting “301”.

7 **SEC. 11. AMENDMENTS TO THE SMALL BUSINESS ACT.**

8 (a) *POWERS OF THE ADMINISTRATOR.*—Section
9 5(b)(7) of the *Small Business Act (15 U.S.C. 634(b)(7))* is
10 amended by striking the colon and all that follows before
11 the semicolon at the end of the paragraph and inserting
12 the following: “: Provided, That with respect to deferred
13 participation loans, the Administrator may, in the discre-
14 tion of and pursuant to regulations promulgated by the Ad-
15 ministrator, authorize participating lending institutions to
16 take actions relating to loan servicing on behalf of the Ad-
17 ministrator, including determining eligibility and credit-
18 worthiness and loan monitoring, collection, and liquida-
19 tion”.

20 (b) *AUTHORIZATION OF APPROPRIATIONS.*—Section
21 20(p)(3) of the *Small Business Act (15 U.S.C. 631 note)*
22 is amended by striking subparagraph (B) and inserting the
23 following:

24 “(B) \$300,000,000 in guarantees of debentures; and”.

1 **SEC. 12. EFFECTIVE DATE.**

2 *This Act and the amendments made by this Act shall*

3 *become effective on the date of enactment of this Act.*