

In the House of Representatives, U. S.,

November 16, 2001.

Resolved, That the bill from the Senate (S. 1196) entitled “An Act to amend the Small Business Investment Act of 1958, and for other purposes”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Small Business Invest-*
3 *ment Company Amendments Act of 2001”.*

4 ***SEC. 2. SUBSIDY FEES.***

5 *(a) IN GENERAL.—Section 303 of the Small Business*
6 *Investment Act of 1958 (15 U.S.C. 683) is amended—*

7 *(1) in subsection (b)—*

8 *(A) by striking “of not more than 1 percent*
9 *per year”;*

10 *(B) by inserting “which amount may not*
11 *exceed 1.38 percent per year, and” before “which*
12 *shall be paid”; and*

13 *(C) by striking “September 30, 2000” and*
14 *inserting “September 30, 2001”; and*

15 *(2) in subsection (g)(2)—*

1 (A) by striking “of not more than 1 percent
2 per year”;

3 (B) by inserting “which amount may not
4 exceed 1.38 percent per year, and” before “which
5 shall be paid”; and

6 (C) by striking “September 30, 2000” and
7 inserting “September 30, 2001”.

8 (b) *EFFECTIVE DATE.*—The amendments made by this
9 section shall become effective on October 1, 2001.

10 **SEC. 3. CONFLICTS OF INTEREST.**

11 Section 312 of the Small Business Investment Act of
12 1958 (15 U.S.C. 687d) is amended by striking “(including
13 disclosure in the locality most directly affected by the trans-
14 action)”.

15 **SEC. 4. PENALTIES FOR FALSE STATEMENTS.**

16 (a) *CRIMINAL PENALTIES.*—Section 1014 of title 18,
17 United States Code, is amended by inserting “, as defined
18 in section 103 of the Small Business Investment Act of 1958
19 (15 U.S.C. 662), or the Small Business Administration in
20 connection with any provision of that Act” after “small
21 business investment company”.

22 (b) *CIVIL PENALTIES.*—Section 951 of the Financial
23 Institutions Reform, Recovery, and Enforcement Act of
24 1989 (12 U.S.C. 1833a) is amended—

1 (1) by redesignating subsections (d) through (g)
2 as subsections (e) through (h), respectively; and

3 (2) in subsection (c)—

4 (A) in paragraph (1), by striking “or” at
5 the end;

6 (B) in paragraph (2)—

7 (i) by striking “1341;” and inserting
8 “1341”; and

9 (ii) by striking “institution.” and in-
10 serting “institution; or”;

11 (C) by inserting immediately after para-
12 graph (2) the following:

13 “(3) section 16(a) of the Small Business Act (15
14 U.S.C. 645(a)).”; and

15 (D) by striking “This section shall” and in-
16 serting the following:

17 “(d) *EFFECTIVE DATE.*—*This section shall*”.

18 **SEC. 5. REMOVAL OR SUSPENSION OF MANAGEMENT OFFI-**
19 **CIALS.**

20 Section 313 of the Small Business Investment Act of
21 1958 (15 U.S.C. 687e) is amended to read as follows:

22 **“SEC. 313. REMOVAL OR SUSPENSION OF MANAGEMENT OF-**
23 **FICIALS.**

24 “(a) *DEFINITION OF ‘MANAGEMENT OFFICIAL’.*—*In*
25 *this section, the term ‘management official’ means an offi-*

1 *cer, director, general partner, manager, employee, agent, or*
 2 *other participant in the management or conduct of the af-*
 3 *fairs of a licensee.*

4 “(b) *REMOVAL OF MANAGEMENT OFFICIALS.—*

5 “(1) *NOTICE OF REMOVAL.—The Administrator*
 6 *may serve upon any management official a written*
 7 *notice of its intention to remove that management of-*
 8 *ficial whenever, in the opinion of the*
 9 *Administrator—*

10 “(A) *such management official—*

11 “(i) *has willfully and knowingly com-*
 12 *mitted any substantial violation of—*

13 “(I) *this Act;*

14 “(II) *any regulation issued under*
 15 *this Act; or*

16 “(III) *a cease-and-desist order*
 17 *which has become final; or*

18 “(ii) *has willfully and knowingly com-*
 19 *mitted or engaged in any act, omission, or*
 20 *practice which constitutes a substantial*
 21 *breach of a fiduciary duty of that person as*
 22 *a management official; and*

23 “(B) *the violation or breach of fiduciary*
 24 *duty is one involving personal dishonesty on the*
 25 *part of such management official.*

1 “(2) *CONTENTS OF NOTICE.*—A notice of inten-
 2 tion to remove a management official, as provided in
 3 paragraph (1), shall contain a statement of the facts
 4 constituting grounds therefor, and shall fix a time
 5 and place at which a hearing will be held thereon.

6 “(3) *HEARINGS.*—

7 “(A) *TIMING.*—A hearing described in
 8 paragraph (2) shall be fixed for a date not ear-
 9 lier than 30 days nor later than 60 days after
 10 the date of service of notice of the hearing, unless
 11 an earlier or a later date is set by the Adminis-
 12 trator at the request of—

13 “(i) the management official, and for
 14 good cause shown; or

15 “(ii) the Attorney General of the
 16 United States.

17 “(B) *CONSENT.*—Unless the management of-
 18 ficial shall appear at a hearing described in this
 19 paragraph in person or by a duly authorized
 20 representative, that management official shall be
 21 deemed to have consented to the issuance of an
 22 order of removal under paragraph (1).

23 “(4) *ISSUANCE OF ORDER OF REMOVAL.*—

24 “(A) *IN GENERAL.*—In the event of consent
 25 under paragraph (3)(B), or if upon the record

1 *made at a hearing described in this subsection,*
 2 *the Administrator finds that any of the grounds*
 3 *specified in the notice of removal has been estab-*
 4 *lished, the Administrator may issue such orders*
 5 *of removal from office as the Administrator*
 6 *deems appropriate.*

7 “(B) *EFFECTIVENESS.*—*An order under*
 8 *subparagraph (A) shall—*

9 “(i) *become effective at the expiration*
 10 *of 30 days after the date of service upon the*
 11 *subject licensee and the management official*
 12 *concerned (except in the case of an order*
 13 *issued upon consent as described in para-*
 14 *graph (3)(B), which shall become effective at*
 15 *the time specified in such order); and*

16 “(ii) *remain effective and enforceable,*
 17 *except to such extent as it is stayed, modi-*
 18 *fied, terminated, or set aside by action of*
 19 *the Administrator or a reviewing court in*
 20 *accordance with this section.*

21 “(c) *AUTHORITY TO SUSPEND OR PROHIBIT PARTICI-*
 22 *PATION.*—

23 “(1) *IN GENERAL.*—*The Administrator may, if*
 24 *the Administrator deems it necessary for the protec-*
 25 *tion of the licensee or the interests of the Administra-*

tion, suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of the licensee, or both, any management official referred to in subsection (b)(1), by written notice to such effect served upon the management official.

“(2) *EFFECTIVENESS.*—A suspension or prohibition under paragraph (1)—

“(A) shall become effective upon service of notice under paragraph (1); and

“(B) unless stayed by a court in proceedings authorized by paragraph (3), shall remain in effect—

“(i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b); and

“(ii) until such time as the Administrator shall dismiss the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

“(3) *JUDICIAL REVIEW.*—Not later than 10 days after any management official has been suspended

1 *from office or prohibited from participation in the*
 2 *management or conduct of the affairs of a licensee, or*
 3 *both, under paragraph (1), that management official*
 4 *may apply to the United States district court for the*
 5 *judicial district in which the home office of the li-*
 6 *censee is located, or the United States District Court*
 7 *for the District of Columbia, for a stay of the suspen-*
 8 *sion or prohibition pending the completion of the ad-*
 9 *ministrative proceedings pursuant to a notice of in-*
 10 *tent to remove served upon the management official*
 11 *under subsection (b), and such court shall have juris-*
 12 *isdiction to stay such action.*

13 “(d) *AUTHORITY TO SUSPEND ON CRIMINAL*
 14 *CHARGES.—*

15 “(1) *IN GENERAL.—*Whenever a manage-
 16 *ment official is charged in any information, in-*
 17 *dictment, or complaint authorized by a United*
 18 *States attorney, with the commission of or par-*
 19 *ticipation in a felony involving dishonesty or*
 20 *breach of trust, the Administrator may, by writ-*
 21 *ten notice served upon that management official,*
 22 *suspend that management official from office or*
 23 *prohibit that management official from further*
 24 *participation in any manner in the management*
 25 *or conduct of the affairs of the licensee, or both.*

1 “(2) *EFFECTIVENESS.*—A suspension or
2 prohibition under paragraph (1) shall remain in
3 effect until the subject information, indictment,
4 or complaint is finally disposed of, or until ter-
5 minated by the Administrator.

6 “(3) *AUTHORITY UPON CONVICTION.*—If a
7 judgment of conviction with respect to an offense
8 described in paragraph (1) is entered against a
9 management official, then at such time as the
10 judgment is not subject to further appellate re-
11 view, the Administrator may issue and serve
12 upon the management official an order removing
13 that management official, which removal shall
14 become effective upon service of a copy of the
15 order upon the licensee.

16 “(4) *AUTHORITY UPON DISMISSAL OR*
17 *OTHER DISPOSITION.*—A finding of not guilty or
18 other disposition of charges described in para-
19 graph (1) shall not preclude the Administrator
20 from thereafter instituting proceedings to sus-
21 pend or remove the management official from of-
22 fice, or to prohibit the management official from
23 participation in the management or conduct of
24 the affairs of the licensee, or both, pursuant to
25 subsection (b) or (c).

1 “(e) *NOTIFICATION TO LICENSEES.*—Copies of each no-
 2 *tice required to be served on a management official under*
 3 *this section shall also be served upon the interested licensee.*

4 “(f) *PROCEDURAL PROVISIONS; JUDICIAL REVIEW.*—

5 “(1) *HEARING VENUE.*—Any hearing provided
 6 *for in this section shall be—*

7 “(A) *held in the Federal judicial district or*
 8 *in the territory in which the principal office of*
 9 *the licensee is located, unless the party afforded*
 10 *the hearing consents to another place; and*

11 “(B) *conducted in accordance with the pro-*
 12 *visions of chapter 5 of title 5, United States*
 13 *Code.*

14 “(2) *ISSUANCE OF ORDERS.*—After a hearing
 15 *provided for in this section, and not later than 90*
 16 *days after the Administrator has notified the parties*
 17 *that the case has been submitted for final decision, the*
 18 *Administrator shall render a decision in the matter*
 19 *(which shall include findings of fact upon which its*
 20 *decision is predicated), and shall issue and cause to*
 21 *be served upon each party to the proceeding an order*
 22 *or orders consistent with the provisions of this section.*

23 “(3) *AUTHORITY TO MODIFY ORDERS.*—The Ad-
 24 *ministrator may modify, terminate, or set aside any*
 25 *order issued under this section—*

1 “(A) at any time, upon such notice, and in
2 such manner as the Administrator deems proper,
3 unless a petition for review is timely filed in a
4 court of appeals of the United States, as pro-
5 vided in paragraph (4)(B), and thereafter until
6 the record in the proceeding has been filed in ac-
7 cordance with paragraph (4)(C); and

8 “(B) upon such filing of the record, with
9 permission of the court.

10 “(4) JUDICIAL REVIEW.—

11 “(A) IN GENERAL.—Judicial review of an
12 order issued under this section shall be exclu-
13 sively as provided in this subsection.

14 “(B) PETITION FOR REVIEW.—Any party to
15 a hearing provided for in this section may ob-
16 tain a review of any order issued pursuant to
17 paragraph (2) (other than an order issued with
18 the consent of the management official concerned,
19 or an order issued under subsection (d)), by fil-
20 ing in the court of appeals of the United States
21 for the circuit in which the principal office of the
22 licensee is located, or in the United States Court
23 of Appeals for the District of Columbia Circuit,
24 not later than 30 days after the date of service
25 of such order, a written petition praying that the

1 *order of the Administrator be modified, termi-*
 2 *nated, or set aside.*

3 “(C) *NOTIFICATION TO ADMINISTRATION.*—
 4 *A copy of a petition filed under subparagraph*
 5 *(B) shall be forthwith transmitted by the clerk of*
 6 *the court to the Administrator, and thereupon*
 7 *the Administrator shall file in the court the*
 8 *record in the proceeding, as provided in section*
 9 *2112 of title 28, United States Code.*

10 “(D) *COURT JURISDICTION.*—*Upon the fil-*
 11 *ing of a petition under subparagraph (A)—*

12 “(i) *the court shall have jurisdiction,*
 13 *which, upon the filing of the record under*
 14 *subparagraph (C), shall be exclusive, to af-*
 15 *firm, modify, terminate, or set aside, in*
 16 *whole or in part, the order of the Adminis-*
 17 *trator, except as provided in the last sen-*
 18 *tence of paragraph (3)(B);*

19 “(ii) *review of such proceedings shall*
 20 *be had as provided in chapter 7 of title 5,*
 21 *United States Code; and*

22 “(iii) *the judgment and decree of the*
 23 *court shall be final, except that the judg-*
 24 *ment and decree shall be subject to review*
 25 *by the Supreme Court of the United States*

1 upon certiorari, as provided in section 1254
2 of title 28, United States Code.

3 “(E) JUDICIAL REVIEW NOT A STAY.—The
4 commencement of proceedings for judicial review
5 under this paragraph shall not, unless specifi-
6 cally ordered by the court, operate as a stay of
7 any order issued by the Administrator under
8 this section.”.

9 **SEC. 6. REDUCTION OF FEES.**

10 (a) TWO-YEAR REDUCTION OF SECTION 7(a) FEES.—

11 (1) GUARANTEE FEES.—Section 7(a)(18) of the
12 Small Business Act (15 U.S.C. 636(a)(18)) is amend-
13 ed by adding at the end the following:

14 “(C) TWO-YEAR REDUCTION IN FEES.—
15 With respect to loans approved during the 2-year
16 period beginning on October 1, 2002, the guar-
17 antee fee under subparagraph (A) shall be as fol-
18 lows:

19 “(i) A guarantee fee equal to 2 percent
20 of the deferred participation share of a total
21 loan amount that is not more than
22 \$250,000.

23 “(ii) A guarantee fee equal to 3 percent
24 of the deferred participation share of a total
25 loan amount that is more than \$250,000.”.

1 (2) *ANNUAL FEES.*—Section 7(a)(23)(A) of the
 2 *Small Business Act* (15 U.S.C. 636(a)(23)(A)) is
 3 amended by adding at the end the following: “With
 4 respect to loans approved during the 2-year period be-
 5 ginning on October 1, 2002, the annual fee assessed
 6 and collected under the preceding sentence shall be in
 7 an amount equal to 0.25 percent of the outstanding
 8 balance of the deferred participation share of the
 9 loan.”.

10 (b) *REDUCTION OF SECTION 504 FEES.*—Section 503
 11 of the *Small Business Investment Act of 1958* (15 U.S.C.
 12 697) is amended—

13 (1) in subsection (b)(7)(A)—

14 (A) by redesignating clauses (i) and (ii) as
 15 subclauses (I) and (II), respectively, and moving
 16 the margins 2 ems to the right;

17 (B) by striking “not exceed the lesser” and
 18 inserting “not exceed—

19 “(i) the lesser”; and

20 (C) by adding at the end the following:

21 “(ii) 50 percent of the amount estab-
 22 lished under clause (i) in the case of a loan
 23 made during the 2-year period beginning on
 24 October 1, 2002, for the life of the loan;
 25 and”; and

1 (2) *by adding at the end the following:*

2 “(i) *TWO-YEAR WAIVER OF FEES.—The Administra-*
3 *tion may not assess or collect any up front guarantee fee*
4 *with respect to loans made under this title during the 2-*
5 *year period beginning on October 1, 2002.”.*

6 (c) *BUDGETARY TREATMENT OF LOANS AND*
7 *FINANCINGS.—Assistance made available under any loan*
8 *made or approved by the Small Business Administration*
9 *under section 7(a) of the Small Business Act (15 U.S.C.*
10 *636(a)) or financings made under title III or V of the Small*
11 *Business Investment Act of 1958 (15 U.S.C. 697a), during*
12 *the 2-year period beginning on October 1, 2002, shall be*
13 *treated as separate programs of the Small Business Admin-*
14 *istration for purposes of the Federal Credit Reform Act of*
15 *1990 only.*

16 (d) *USE OF FUNDS.—The amendments made by this*
17 *section shall be effective only to the extent that funds are*
18 *made available under appropriations Acts, which funds*
19 *shall be utilized by the Administrator to offset the cost (as*
20 *such term is defined in section 502 of the Federal Credit*
21 *Reform Act of 1990) of such amendments.*

- 1 *(e) EFFECTIVE DATE.—The amendments made by this*
- 2 *section shall become effective on October 1, 2002.*

Attest:

Clerk.

107TH CONGRESS
1ST SESSION

S. 1196

AMENDMENT