

**AUTHORIZING STATUTORY AND REGULATORY PROVISIONS**

INFORMATION COLLECTION 3245-0301

SBA FORM 1941A: FINANCING ELIGIBILITY STATEMENT – SOCIAL DISADVANTAGE (Member of a designated group)

SBA FORM 1941B: FINANCING ELIGIBILITY STATEMENT – SOCIAL DISADVANTAGE (Not a member of a designated group)

SBA FORM 1941C: FINANCING ELIGIBILITY STATEMENT – ECONOMIC DISADVANTAGES SBA FORM 480: SIZE STATUS DECLARATION

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**A. Small Business Investment Act of 1958, codified at 15 U.S.C §§ 681-688**

• **Sec. 308. MISCELLANEOUS**

(h) CERTIFICATIONS OF ELIGIBILITY.—

(1) CERTIFICATION BY SMALL BUSINESS CONCERN.—Prior to receiving financial assistance from a company licensed pursuant to section 301, a small business concern shall certify in writing that it meets the eligibility requirements of the Small Business Investment Company Program or the Specialized Small Business Investment Company Program, as applicable.

(2) CERTIFICATION BY COMPANY.—Prior to providing financial assistance to a small business concern under this Act, a company licensed pursuant to section 301 shall certify in writing that it has reviewed the application for assistance of the small business concern and that all documentation and other information supports the eligibility of the applicant.

(3) RETENTION OF CERTIFICATIONS.—Certificates made pursuant to paragraphs (1) and (2) shall be retained by the company licensed pursuant to section 301 for the duration of the financial assistance.

(i) (1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation). In this paragraph, the term “interest” includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2) with respect to any loan if such loan is made before the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is

made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

- (4) (A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.

• **Sec. 310. EXAMINATIONS AND INVESTIGATIONS**

(c) **Examinations of small business investment companies**

Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not—

- (1) it has engaged solely in lawful activities and those contemplated by this subchapter;
- (2) it has engaged in prohibited conflicts of interest;
- (3) it has acquired or exercised illegal control of an assisted small business;
- (4) it has made investments in small businesses for not less than 1 year;
- (5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable;
- (6) it has engaged in relending, foreign investments, or passive investments; or
- (7) it has charged an interest rate in excess of the maximum permitted by law:

Provided, That the Administration may waive the examination

(A) for up to one additional year if, in its discretion, it determines such a delay would be appropriate, based upon the amount of debentures being issued by the company and its repayment record, the prior operating experience of the company, the contents and results of the last examination and the management expertise of the company, or

(B) if it is a company whose operations have been suspended while the company is involved in litigation or is in receivership.

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**B. Omnibus Consolidated Appropriations Act of 1997**

**TITLE II--AMENDMENTS TO SMALL BUSINESS INVESTMENT ACT**

**SEC. 208. SMALL BUSINESS INVESTMENT COMPANY IMPROVEMENTS.**

(3) **Specialized small business investment companies.--**

(A) **Repeal.--**Section 301(d) (15 U.S.C. 681(d)) is repealed.

(B) **Effect on existing licenses.--**The repeal under subparagraph (A) shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 before the date of enactment of this Act.

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**C. Code of Federal Regulations:**

• **13 CFR §§107.50;610;690**

§107.50 Definition of terms.

*Disadvantaged Business* means a Small Business that is at least 50 percent owned, and controlled and managed, on a day to day basis, by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

§107.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. Except for information and documentation prepared under paragraphs (f)(2) and (3) of this section, you must keep these documents in your files and make them available to SBA upon request.

- (c) SBA Form 1941 (for Section 301(d) Licensees only), executed both by you and by the concern you are financing. By executing this document, both parties certify that the concern is a Disadvantaged Business.

§107.690 Examinations.

SBA will examine all Licensees for the purpose of evaluating regulatory compliance.

• **13 CFR §124.105(b)**

§ 124.105 Social disadvantage.

(b) *Members of designated groups.* (1) In the absence of evidence to the contrary, the following individuals are presumed to be socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section.

(2) An individual seeking socially disadvantaged status as a member of a designated group may be required to demonstrate that he/she holds himself/herself out and is identified as a member of a designated group if SBA has reason to question such individual's status as a group member.