

Public Law 89-779

AN ACT

November 6, 1966
[H. R. 18021]

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Investment Act Amendments of 1966".

SEC. 2. Section 201 of the Small Business Investment Act of 1958 is amended to read as follows:

Small Business
Investment Act
Amendments of
1966.
72 Stat. 690.
15 USC 671.

"ESTABLISHMENT OF SMALL BUSINESS INVESTMENT DIVISION

"SEC. 201. There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration."

SEC. 3. Section 308 of the Small Business Investment Act of 1958 is amended—

15 USC 687.

(1) by striking out the last two sentences of subsection (c); and

(2) by inserting after subsection (e) the following new subsections:

"(f) In the performance of, and with respect to the functions, powers, and duties vested by this Act, the Administrator and the Administration shall (in addition to any authority otherwise vested by this Act) have the functions, powers, and duties set forth in the Small Business Act, and the provisions of sections 13 and 16 of that Act, insofar as applicable, are extended to the functions of the Administrator and the Administration under this Act.

72 Stat. 384.
15 USC 631 note.

"(g) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act, a full and detailed account of its operations under this Act. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year."

75 Stat. 666.
15 USC 639.

SEC. 4. (a) Section 309 of the Small Business Investment Act of 1958 is amended by striking out the section heading and inserting in lieu thereof the following:

75 Stat. 753.
15 USC 687a.

"REVOCATION AND SUSPENSION OF LICENSES; CEASE AND DESIST ORDERS".

(b) Section 309(a) of such Act is amended—

(1) by inserting "revoked or" before "suspended";

(2) by striking out in paragraph (1) "Administration, for the purpose of obtaining the license" and inserting in lieu thereof "Administration"; and

(3) by striking out in paragraph (2) "for the purpose of obtaining the license."

(c) Section 309(b) of such Act is amended to read as follows:

"(b) Where a licensee or any other person has not complied with any provision of this Act, or of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such Act or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The

Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with the Act and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order."

75 Stat. 753.
15 USC 687a.

(d) Section 309(c) of such Act is amended—

(1) by inserting after "licensee", the first place it appears, the following: "and any other person";

(2) by striking out "inform the licensee" and inserting in lieu thereof the following: "set forth";

(3) by inserting after "licensee", the last place it appears, the following: "and any other person involved"; and

(4) by inserting before "suspending", each place it appears, the following: "revoking or".

(e) Section 309(e) of such Act is amended by inserting after "licensee", the first place it appears, the following: ", or other person against whom an order is issued,".

(f) Section 309(f) of such Act is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following: "If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a transcript of the record upon which the order complained of was entered."; and

(2) by inserting "or other person" before the period at the end of the second sentence.

15 USC 687b.

SEC. 5. Section 310 of the Small Business Investment Act of 1958 is amended—

(1) by striking out the section heading and inserting in lieu thereof "EXAMINATIONS AND INVESTIGATIONS"; and

(2) by inserting "(a)" after "SEC. 310.", and by adding at the end thereof a new subsection as follows:

"(b) Each small business investment company shall be subject to examinations made by direction of the Administration by examiners selected or approved by the Administration, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements."

54 Stat. 789.
15 USC 80a-51.

75 Stat. 755.
15 USC 687c.

SEC. 6. Section 311 of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new subsection:

"(c) The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved."

72 Stat. 691.
15 USC 681-
687d.

SEC. 7. Title III of the Small Business Investment Act of 1958 is further amended by adding at the end thereof the following new sections:

"REMOVAL OR SUSPENSION OF DIRECTORS AND OFFICERS OF LICENSEES

"SEC. 313. (a) The Administration may serve upon any director or officer of a licensee a written notice of its intention to remove him from office whenever, in the opinion of the Administration, such director or officer—

"(1) has willfully and knowingly committed any substantial violation of—

"(A) this Act,

"(B) any regulation issued under this Act, or

"(C) a cease-and-desist order which has become final, or

"(2) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of his fiduciary duty as such director or officer, and that such violation or such breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer.

"(b) In respect to any director or officer referred to in subsection (a), the Administration may, if it deems it necessary for the protection of the licensee or the interests of the Administration, by written notice to such effect served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (d), shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) and until such time as the Administration shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer, until the effective date of any such order. Copies of any such notice shall also be served upon the interested licensee.

"(c) A notice of intention to remove a director or officer, as provided in subsection (a), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Administration at the request of (1) such director or officer and for good cause shown, or (2) the Attorney General of the United States. Unless such director or officer shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Administration shall find that any of the grounds specified in such notice has been established, the Administration may issue such orders of removal from office as it deems appropriate. Any such order shall become effective at the expiration of thirty days after service upon such licensee and the director or officer concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Administration or a reviewing court.

"(d) Within ten days after any director or officer has been suspended from office and/or prohibited from participation in the conduct of the affairs of a licensee under subsection (b), such director or officer may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director

or officer under subsection (a), and such court shall have jurisdiction to stay such suspension and/or prohibition.

“(e) Whenever any director or officer of a licensee is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administration may, by written notice served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. A copy of such notice shall also be served upon the licensee. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administration. In the event that a judgment of conviction with respect to such offense is entered against such director or officer, and at such time as such judgment is not subject to further appellate review, the Administration may issue and serve upon such director or officer an order removing him from office. A copy of such order shall be served upon such licensee, whereupon such director or officer shall cease to be a director or officer of such licensee. A finding of not guilty or other disposition of the charge shall not preclude the Administration from thereafter instituting proceedings to suspend or remove such director or officer from office and/or to prohibit him from further participation in licensee affairs, pursuant to subsection (a) or (b).

Hearing and judicial review.

“(f) (1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the principal office of the licensee is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within ninety days after the Administration has notified the parties that the case has been submitted to it for final decision, the Administration shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Administration may modify, terminate, or set aside any such order with permission of the court.

Ante, p. 380.

“(2) Any party to such proceeding may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the director or officer concerned, or an order issued under subsection (e) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Administration, and thereupon the

Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

72 Stat. 941.

Ante, p. 392.

62 Stat. 928.

“(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administration.

“UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIRECTORS, EMPLOYEES,
OR AGENTS; BREACH OF FIDUCIARY DUTY

“SEC. 314. (a) Wherever a licensee violates any provision of this Act or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

“(b) It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

“(c) Except with the written consent of the Administration, it shall be unlawful—

“(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if—

“(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

“(B) he has been found civilly liable in damages, or has been 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; 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.

"PENALTIES AND FORFEITURES

"SEC. 315. (a) 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 310(b) of this Act, 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) 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.

"JURISDICTION AND SERVICE OF PROCESS

"SEC. 316. Any suit or action brought under section 308, 309, 311, 313, or 315 by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this Act, 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."

SEC. 8. (a) Section 4(b) of the Small Business Act is amended by striking out "three Deputy Administrators" and inserting in lieu thereof "a Deputy Administrator and three Associate Administrators (including the Associate Administrator specified in section 201 of the Small Business Investment Act of 1958)".

(b) Such section is further amended by adding at the end thereof the following: "The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator."

(c) (1) Section 5315 of title 5 of the United States Code is amended by adding at the end thereof the following:

"(78) Deputy Administrator of the Small Business Administration."

(2) Section 5316(11) of such title is amended by changing "Deputy Administrators of the Small Business Administration (4)" to read "Associate Administrators of the Small Business Administration (3)".

SEC. 9. (a) The table of contents of the Small Business Investment Act of 1958 is amended—

(1) by striking out the items describing the contents of sections 309 and 310 and inserting in lieu thereof the following:

"Sec. 309. Revocation and suspension of licenses; cease and desist orders,

"Sec. 310. Examinations and investigations.";

and

Ante, p. 1360.

72 Stat. 694;
75 Stat. 753.
15 USC 687,
687a, 687c.
Ante, p. 1361.

SBA Administra-
tors.
72 Stat. 384.
15 USC 633.

Ante, p. 1359.

Ante, p. 461.

(2) by inserting at the end of that part which describes the contents of title III the following new items:

"Sec. 313. Removal or suspension of directors and officers of licensees.

"Sec. 314. Unlawful acts and omissions by officers, directors, employees, or agents; breach of fiduciary duty.

"Sec. 315. Penalties and forfeitures.

"Sec. 316. Jurisdiction and service of process."

Approved November 6, 1966.

Public Law 89-780

AN ACT

November 6, 1966
[S. 3675]

To amend title V of the International Claims Settlement Act of 1949 to provide for the determination of the amounts of claims of nationals of the United States against the Chinese Communist regime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 501 of the International Claims Settlement Act of 1949 (22 U.S.C. 1643) is amended as follows:

(1) After "the Government of Cuba" at each place it appears in such section insert ", or the Chinese Communist regime,"; and

(2) After "since January 1, 1959," insert "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,".

SEC. 2. Section 502 of such Act (22 U.S.C. 1643a) is amended as follows:

(1) In paragraph (3), after "the Government of Cuba" at each place it appears insert "or the Chinese Communist regime"; and

(2) Add the following new paragraph at the end thereof:

"(5) The term 'Chinese Communist regime' means the so-called Peoples Republic of China, including any political subdivision, agency, or instrumentality thereof."

SEC. 3. Section 503 of such Act (22 U.S.C. 1643b) is amended as follows:

(1) After "the Government of Cuba" at each place it appears in subsections (a) and (b) thereof insert ", or the Chinese Communist regime,";

(2) After "since January 1, 1959," at each place it appears in subsections (a) and (b) thereof insert "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,";

(3) After "within sixty days after the enactment of this title" insert "or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime,"; and

(4) After "carrying out its functions" insert "with respect to each respective claims program authorized,".

SEC. 4. Section 505(a) of such Act (22 U.S.C. 1643d) is amended by inserting before the period at the end thereof a comma and the following: "or the Chinese Communist regime".

SEC. 5. Section 510 of such Act (22 U.S.C. 1643i) is amended by inserting "with respect to each respective claims program authorized" after "carrying out its functions".

Approved November 6, 1966.

Communist
China.
Claims of U.S.
nationals.
78 Stat. 1110;
79 Stat. 988.

Chinese Communist
regime.