recommendation to proceed with the termination of the Order.

This proposed rule is intended to solicit input and other available information from interested parties on whether the Order should be terminated. AMS will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 Fruit Crops. AMS will extract the remaining apricot marketing order-related forms from the forms package during the next three-year renewal process, should the Order be terminated.

This rule would effectuate the removal of reporting and recordkeeping requirements on apricot handlers, both small and large. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, AMS has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meetings were widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Meetings were held virtually or in a hybrid style with participants having a choice on whether to attend in person or virtually.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the proposed termination of Marketing Order No. 922, which regulates the handling of apricots grown in designated counties in Washington. A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 922.64 of the Order, AMS is considering termination of the Order. If AMS decides to terminate the Order, trustees would be appointed to conclude and liquidate the Committee affairs and would continue in that capacity until discharged by AMS. In addition, AMS would notify Congress 60 days in advance of termination pursuant to § 608c(16)(A) of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, the Agricultural Marketing Service proposes to remove part 922.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–22695 Filed 10–18–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107 and 121

RIN 3245–AH90

Small Business Investment Company Investment Diversification and Growth

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (''SBA'' or ''Agency'') is proposing to revise the regulations for the Small Business Investment Company (''SBIC'') program to significantly reduce barriers to program participation for new SBIC fund managers and funds investing in underserved communities and geographies, capital intensive investments, and technologies critical to national security and economic development. This proposed rule introduces an additional type of SBIC (''Accrual SBICs'') to increase program investment diversification and patient capital financing for small businesses and modernize rules to lower financial barriers to program participation. This proposed rule will help SBA implement the Executive Order (''E.O.''), Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, by reducing financial and administrative barriers to participate in the SBIC program and modernizing the program's license offerings to align with a more diversified set of private funds investing in underserved small businesses. The proposed rule also incorporates the statutory requirements of the Spurring Business in Communities Act of 2017, which was enacted on December 19, 2018.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: You may submit comments, identified by RIN 3245–AH90, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Bailey G. DeVries, Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov*. If you wish to submit confidential business information (''CBI''), as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Bailey G. DeVries, Associate Administrator of the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, or send an email to *oii.frontoffice@sba.gov* with ''RIN 3245–AH90 Proposed Rule'' in the subject heading. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT:

Policy: Bailey G. DeVries, Associate Administrator of the Office of Investment and Innovation, Small Business Administration, *oii.frontoffice@sba.gov,* 202–941–6064. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

*Regulatory Comments/**Federal Register** Docket:* Louis Cupp, Office of Investment and Innovation, Small Business Administration, *oii.frontoffice@sba.gov,* 202–699–1746. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech

disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Small Business Investment Company Program

The mission of the Small Business Investment Company (SBIC) program is to enhance small business access to capital by stimulating and supplementing ''the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.'' SBA carries out this mission by licensing and monitoring privately owned and managed investment funds that raise capital from private investors (''Private Capital'') and issue SBA-guaranteed Debentures (''Debentures'') to make private long-term equity and debt investments = into qualifying small businesses.

SBA currently has two types of Debentures available for private funds that have received an SBIC license: a current pay (or ''Standard'') Debenture and a ''Discount'' Debenture. The vast majority of licensed SBICs applying for SBA leverage use the Standard Debenture with a ten-year maturity and interest due and payable on a semi-annual basis. This structure aligns with the cash flows of a subset of private fund strategies, including funds with mezzanine, private credit, and leveraged buyout strategies. The Standard Debenture aligns with these strategies because private funds utilizing such mezzanine, private credit, or leveraged buyout strategies typically generate fund-level cash liquidity within the time period required to meet semi-annual interest payments. The Discount Debenture is issued at a steep discount to face value and accrues to face value over five years, at which time the SBICs must pay current interest; this Debenture is only available for low and moderate income (LMI) investments and Energy Saving Qualified Investments (as defined in 13 CFR 107.50). Although SBICs have invested almost 20% of their investments in LMI areas, as of December 31, 2021, less than 0.5% of Debentures committed and issued since Fiscal Year (''FY'') 2000 used the Discount Debenture to make such investments. (*Note:* The Federal Government FY is the period of October 1 through September 30, where the FY is designated by the calendar year in which the FY ends.) No SBIC has used the Discount Debenture for Energy Saving Qualified Investments. Market feedback suggests that the reason SBICs do not utilize the Discount Debenture is due to the steep discount at issue and the misalignment of the required interest payments commencing at year five to the typical cash flow patterns of patient capital investors, such as long-duration private equity funds. Between FYs 1994 through 2004, SBA was authorized to issue Participating Securities, which were an SBIC Program instrument designed to support equity investors. The program ceased due to losses in that program.

Based on SBA's analysis of SBICs licensed for the legacy Participating Securities instrument, SBA found widespread evidence that participating security SBIC losses were largely due to the instruments' statutorily mandated structural flaws and regulations which enabled high risk portfolio construction decisions. These issues were further exacerbated by macro-economic conditions, concentration in early-stage venture (which, at the time, was an emerging alternative investment strategy), and pervasive information asymmetry in the venture market in the early 2000s. One of the major flaws in the participating security was that SBA advanced interest payments (known as ''prioritized payments'') on behalf of the Licensee and was only repaid out of the Licensee's capped profits. Once the Licensee achieved the capped time-based return, SBA could no longer meaningfully ''participate'' in the profit distributions of the Licensee. As a result of the cap and the time dependency, less than half of the $2.8 billion in prioritized payments advanced by SBA were reimbursed by SBICs licensed in the participating securities program. Further, statutory complexities created further unnecessary complexities in the distribution waterfall. Due to the complexities associated with the statutory distribution waterfall, computing a single distribution required a significant amount of time and effort on the part of the Licensee and SBA. For example, Licensees were required to file hard copies of the computation documents with the SBA for regulatory monitoring and examination purposes. These complications increased the workload on SBA to calculate each distribution, increased fund administration expenses for the Licensee, and created loopholes whereby Licensees could sequence profits distributions such that SBA would receive only its capped share of profits (typically less than 10%). In several cases, private investors received substantial returns based on early profit distributions and the SBIC would subsequently incur losses, resulting in SBA being the only party not fully repaid. Further, Licensees in the Participating Securities program typically did not have diverse portfolios and SBA did not consider portfolio diversification at the fund-of-fund level as a means to mitigate risk, an important consideration in modern portfolio theory. As a result, about half of the participating securities financings prior to 2001 were in computers, information technology, and related professional technical services. Additionally, almost half of the participating securities financings prior to 2001 were in companies under 2 years of age at first financing. As a result, when the ''Dot Com'' bubble financial downturn arrived in 2000, the SBIC portfolio was not appropriately diversified for sustained portfolio financial performance.

Between October 1, 2016, and September 30, 2021, SBICs provided over $29 billion in financings to small businesses. However, only 18% of Debenture SBIC financings were in the form of patient capital equity investments, and less than a quarter of SBICs licensed were focused on equity. Over 75% of all financings of small businesses by Debenture SBICs included a debt component. During this same timeframe, SBA licensed 116 SBICs with almost $7.8 billion in initial Private Capital, and two-thirds of licenses were approved for subsequent funds from asset management firms that had previously received an SBIC license. As of December 31, 2021, SBA had 298 operating SBICs across 207 asset management firms with almost $35 billion in Regulatory Capital and Debentures, including undrawn commitments.

B. Underserved Focus

SBA is proposing changes to 13 CFR part 107 to reduce barriers to program participation for new SBIC fund managers and funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. This proposed rule will help SBA implement Executive Order (''E.O.'') 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government by reducing financial and administrative barriers to participation in the SBIC program and modernizing the program's license offerings to align with a more diversified set of new funds

investing in underserved small businesses. SBA notes that newly managed funds are consistently among top performers based on net total value to paid-in capital as of June 30, 2019, data from Cambridge Associates, LLC.

One of the key proposed changes is the implementation of a new type of Debenture (''Accrual Debenture'') designed to align with the cash flows of long-term, equity-oriented funds (''Accrual SBICs''). As evidenced by a December 2020 Fairview Capital study, among private market funds, the largest opportunity set to invest in a manner that advances racial and gender equity exists among new equity-oriented funds. This is even more pronounced in the universe of private venture equity strategies. Equity-oriented funds currently account for 18% of SBA leverage and credit/debt-oriented strategies account of ~82% of capital from Debenture SBICs. In order to promote E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, it is essential that SBA offer SBICs an opportunity to issue Debentures capable of aligning with the financial structure of equity strategies.

To further promote E.O. 13985, SBA is proposing to revise the existing prohibited investment requirements under § 107.720 that permit SBICs to invest in relenders or reinvestors under specific circumstances. As evidenced by consistent and broad industry feedback, SBA expects this revision should improve the SBIC program's investment diversification and likely mitigate default risk across the SBIC program while creating more program entry points for new fund managers. According to a 2017 Preqin study (Preqin-Special-Report-Private-Equity-Funds-of-Funds-November-2017), institutional fund-of-funds and similar pooled primary fund investment structures are almost twice as likely to invest in first-time funds as other institutional investors. Furthermore, fund-of-funds and similar pooled investment vehicles, which diversify investment across underlying funds, can limit investment performance volatility and protect against downside risk through benefits of enhanced diversification. It should also be noted that fund-of-funds and similar pooled vehicles frequently require additional fees to compensate for the construction, implementation, and management of the portfolio of primary fund investments. Investors in such vehicles, as with any investment, must contemplate the net-of-fee risk/return potential of the investment rather than its gross-of-fee risk/return potential. The proposed revisions under § 107.720 will provide greater clarity to the market, and additional capital to underserved markets, while fostering a more inclusive and equitable asset management industry, capable of supporting access to capital for a broader base of small businesses across all corners of the U.S. while enhancing the diversification of SBA's invested capital and reducing risk of default or losses to SBA.

SBA is also proposing to modernize the licensing, operations, and examinations rules to lower cost and administrative barriers faced by new funds applying to the SBIC program. These proposed changes include reducing licensing fees for first- and second-time funds, adding an exception to the conflict-of-interest rules for follow-on financings in small businesses, reducing regulatory examinations fees for non-Debenture and smaller funds, and permitting Leveraged funds to access a qualified line of credit without SBA approval, subject to certain conditions. SBA is also proposing measures to strengthen SBIC program investment and operational risk controls to safeguard the program's ability to operate at zero subsidy across market cycles. These modernization activities include implementing a formal licensee ''enhanced monitoring'' process and a consistent approach to investor and SBA distributions to help (a) ensure that Debentures are repaid and (b) reduce the time to repayment. This proposed rule also includes several technical corrections and clarifications to increase SBIC program accessibility for new funds.

C. Spurring Business in Communities Act of 2017 (Pub. L. 115–333)

On December 19, 2018, the Spurring Business in Communities Act, Public Law 115–333, was enacted. This legislation gives priority in licensing to SBIC applicants located in under licensed States with below median financing. In September 2019, SBA issued a notice that gives priority in licensing to such applicants. This proposed rule implements Public Law 115–333 and provides an opportunity for the public to comment.

D. Modernization Improvements

On August 15, 2017 (82 FR 38617), SBA published a request for information seeking input from the public on SBA regulations that should be repealed, replaced or modified because they are obsolete, unnecessary or burdensome. On October 13, 2017 (82 FR 47645), SBA extended the comment period. SBA received one set of comments regarding the SBIC program. During 2018, SBA held three roundtables with SBIC program stakeholders (May 22, July 17, and August 7) to solicit additional feedback regarding SBIC program regulations. Based on the feedback from these round tables and subsequent discussions with industry since that time, SBA is also proposing changes to reduce burden for SBICs.

II. Section by Section Analysis

A. Section 107.50 Definition of Terms

SBA proposes to add two terms associated with the new Accrual Debenture discussed in paragraph I.B. of this rule: ''Accrual Debenture'' and ''Accrual SBIC.'' The Accrual Debenture would mean a Debenture issued at face value that would accrue interest over its ten-year term where SBA guarantees all principal and unpaid accrued interest. As discussed in the preamble, SBA believes that the Standard Debenture does not align with the cash flows needed for patient capital strategies solely investing in the equity of small businesses. Although SBA considered a zero coupon (an instrument issued at a steep discount from face value that then matures over its term to full value), SBA believes issuing the leverage at full face value (subtracting only the 2% draw fee) is far more attractive to potential applicants. The Accrual Debenture would only be available to Accrual SBICs to align with the types of equity investing they perform. Standard SBICs may only issue Standard Debentures and Discount Debentures. The proposed definition also provides that if a Licensee that issued an Accrual Debenture is unable to pay the principal and accrued interest at its ten-year maturity, that Licensee may apply for a roll-over Accrual Debenture which would have a five-year term. Approval would be subject to SBA credit procedures and statutory limitations. SBA proposes this to provide a longer horizon for private funds seeking to make longer term investments that might require more patient capital.

The proposed rule defines an Accrual SBIC as a Section 301(c) Licensee that will (a) invest at least 75% of its total financings (based on dollar amount) in Equity Capital Investments (as defined in § 107.50); (b) will generally own no more than 50% of the small business concern at initial Financing; and (c) elect at the time of licensing to issue Accrual Debentures. SBA expects that Accrual SBICs will most commonly be formed as limited partnerships that are subject to 13 CFR 107.160. Given SBA's additional risk associated with the

Accrual Debentures, SBA proposes to limit the Accrual Debenture to SBICs that focus on Equity Capital Investments. SBA believes that a 75% equity investment threshold for Accrual SBIC's financings reasonably describes an equity focus.

SBA is reserving the Accrual Debenture only for those Licensees that generally will own no more than 50% of a small business concern at initial Financing. SBA believes that its Standard Debenture fully supports Licensees performing private credit, mezzanine, and buyout transactions. While Licensees performing buyout transactions may perform a high percentage of equity, based on program licensing and cash flow data, SBA believes its Standard Debenture already supports these investment strategies.

SBA recognizes that some multi-strategy funds that include venture and growth equity investments might want more flexibility than will be afforded by the terms of the Accrual Debenture. One such limitation is the percentage of equity investment required. Some multi-strategy funds may want to do a more balanced blend between equity and debt. Another limitation is a fund's investment strategy which contemplates the performance of buyout transactions in which the fund would take 50% or more ownership of a small business concern at initial financing. Still another limitation is the amount of SBA leverage available to Accrual SBICs. In order to determine the maximum amount of leverage that Accrual SBICs may have outstanding, SBA will aggregate the total principal leverage plus ten years of accrued interest on such principal to determine the total Accrual Debentures that the Accrual SBIC may issue. For example, if an Accrual SBIC has $100 million in Regulatory Capital, the total Accrual Debenture principal they may be approved for may be only $118 million if the forecast interest would accrue to approximately $57 million over a ten-year timeframe at a 4% interest rate, since higher amounts would result in total SBA guaranteeing outstanding leverage amounts in excess of $175 million. It is not SBA's intent to discourage such funds from applying if they can make a case for their business plan as a standard SBIC. SBIC Applicants will be required to identify whether they intend to use Standard or Discount Debentures or if they intend to use the Accrual Debenture as an Accrual SBIC. SBA will evaluate and approve a license as either a standard SBIC or as an Accrual SBIC.

SBA proposes to revise the definition of ''Associate'' regarding the status of an entity Institutional Investor based on its ownership interest in a Partnership. Currently an entity Institutional Investor whose ownership represents over 33 percent of the Licensee's private capital is considered an ''Associate''. SBA proposes to change this to 50 percent or more to align with the financing practices of Community Development Corporations and other institutional investors seeking patient capital investment funds and first-time funds. Under this proposal, an entity Institutional Investor, as a limited partner in a partnership Licensee, will not be considered an Associate solely because that entity's investment in the Partnership, including commitments, represents 10 percent or more but less than 50 percent of the Licensee's Private Capital, provided that such investment also represents no more than five percent of the entity's net worth.

The proposed rule defines the term ''Annual Charge'' that is currently defined as ''Charge'' in the current 13 CFR 107.50. SBA proposes this change because this is typically the term used to refer to the annual fee associated with SBA-guaranteed Leverage in both its website and much of its documentation and more appropriately refers to the recurring payment associated with this Leverage fee. SBA would maintain the term ''Charge'' in its regulations for backwards compatibility, but indicate it has the same meaning as ''Annual Charge''. Currently, the term ''Charge'' is defined as the annual fee on Leverage issued to or after October 1, 1996. Since there is no outstanding Leverage issued prior to October 1, 1996, this language would be removed from the definition. The current definition also states that the Leverage is subject to the terms and conditions set forth in § 107.1130(d). This proposed rule adds a reference to § 107.585. Although current § 107.585 identifies restrictions regarding reductions in Regulatory Capital (which are typically performed in conjunction with a distribution to its private investors), this proposed rule expands § 107.585 to define new distribution requirements for SBICs issuing leverage. (See § 107.585 later in this proposed rule.)

SBA proposes amending the definition of ''Control Person'' under section 107.50 to clarify what constitutes a controlling relationship over a Limited Partnership Licensee with a government sponsored non-profit management company relationship. Section 107.50 would be amended to state that when over 30% of the private capital managed by the licensee comes from unaffiliated and unassociated entities (outside of their association as an investor in the Licensee), the management company of the Licensee is a government sponsored non-profit entity and the general partners of the licensee are bound by a fiduciary duty to the investors in the licensee, the management of the licensee can be determined to be free from outside control.

The term ''Equity Capital Investments'' refers to equity and equity-like investments, defined in § 107.50 to include common or preferred stocks, limited partnership interests, certain subordinated debt, and warrants. SBA recognizes that venture capital and private equity transactions continue to evolve and is seeking public input for any suggested changes to ''Equity Capital Investments'' that SBA should consider.

The proposed rule includes under § 107.50 the terms ''Final Licensing Fee'' and ''Initial Licensing Fee,'' as these terms have been defined in § 107.300 and used in § 107.410.

SBA also proposes to define the term ''GAAP'' as ''Generally Accepted Accounting Principles'' as established by the Financial Accounting Standards Board (FASB), which refer to financial accounting and reporting standards for public and private companies and not for profit organizations in the United States. The U.S. Securities and Exchange Commission has recognized the financial accounting and reporting standards of the FASB as ''generally accepted'' under section 108 of the Sarbanes-Oxley Act. SBA is proposing to define this term as the proposed rule will refer to GAAP in various locations in the proposed regulations.

SBA proposes to amend the term ''Leverage'' to remove the inclusion of ''Participating Securities'' and ''Preferred Securities'' which are no longer available in the SBIC program and no longer outstanding in operating SBICs. While SBICs with outstanding Participating Securities Leverage remain in the Office of SBIC Liquidation, those Licensees are subject to the regulations at the time that Leverage was issued. SBA also proposes to clarify that Leverage and SBA's guarantee would apply to both the principal and unpaid accrued interest associated with the Accrual Debenture. This definition would clarify SBA's guarantee in relation to the new security and the Leverage maximum restrictions regarding Accrual Leverage. For example, SBA will not approve Accrual Debentures for an amount in which the principal balance and ten years of accrued interest exceed $175 million. This definition also clarifies the total capital that SBA is guaranteeing at any

time. For example, if an Accrual SBIC had $20 million principal in Accrual Debentures that accrued $4 million in interest, SBA's guarantee would be $24 million, as SBA's guarantee extends to the accrued interest. SBA would also consider this in its overall commitment authorization level. SBA is required under statute to guarantee both principal and interest on outstanding leverage. This proposed rule requires SBA to estimate the interest rate associated with any Accrual Debenture commitment in a conservative manner to ensure that the total capital that SBA guarantees does not exceed its overall authority set forth in the Small Business Investment Act of 1958, as amended (the ''Act''), or other applicable federal laws. For example, if SBA has a $5 billion Debenture authorization and has approved $4 billion in Standard Debentures for regular SBICs, SBA would need to estimate the interest rate for the Accrual Debentures over the 10-year accrual period in a manner that safeguards the SBA from exceeding its authorization ceiling.

SBA is proposing the terms ''Leveraged Licensee'' and ''Non-leveraged Licensee'' in § 107.50. Current regulations provide greater flexibility to Licensees that do not have outstanding leverage and do not intend to issue leverage since SBA has no credit risk. This proposed rule would provide further benefits and flexibility to such Licensees. In order to simplify the regulations, Leveraged Licensees would include any Licensee with outstanding Leverage, Leverage commitments, Earmarked Assets (which are only associated with Licensees that issued Participating Securities), and any Licensee that intends to issue Leverage in the future. The intent of the certification is to ensure that SBA applies the appropriate scrutiny to any Licensee that intends to seek SBA Leverage in the future. This regulation is not intended to prohibit subsequent SBIC funds from seeking Leverage. This proposed rule also defines Non-leveraged Licensee as a Licensee that has no outstanding Leverage or Leverage commitment, certifies (in writing) that such Licensee will not seek Leverage throughout the life of the fund, and has no Earmarked Assets. For example, if ABC, LP has outstanding Leverage of $10 million and subsequently (a) fully repays its outstanding Leverage, (b) has no further Leverage commitments, (c) has no Earmarked Assets, and (d) certifies that it will not seek any Leverage in the future, ABC, LP would be considered a Non-leveraged Licensee, even if the management company of ABC, LP also has a Leveraged Licensee (ABC II, LP) with outstanding Leverage of $20 million. As another example, if DEF, LP is granted an SBIC License and certifies to SBA (in writing) that it does not intend to issue Leverage, SBA would consider DEF, LP to be a Non-leveraged Licensee.

SBA proposes to define the term ''Qualified Line of Credit'', which would be as defined in the proposed § 107.550(c). (See Section 107.550 under this Part II.)

SBA proposes to modify the term ''Retained Earnings Available for Distribution'' to include the acronym ''READ'' and to clarify that READ distributions must be performed in accordance with proposed § 107.585. As discussed in that section, SBA will propose clarifications to distributions for existing Licensees and new distribution rules for Licensees licensed on or after October 1, 2023. (See § 107.585 under this Part II.)

SBA proposes to add the terms ''SBIC'' or ''Small Business Investment Company'' to have the same meaning as Licensee. SBA uses the terms ''SBIC'' and ''Licensee'' interchangeably throughout the regulations and in its policies and documents.

SBA proposes to add the term ''SBIC website'' as *www.sba.gov/sbics* which is the public website that SBA maintains all information on the SBIC program, including all standard operating procedures, policies, SBIC forms, and any reports that SBA publishes from time to time. Regulations refer to this site throughout the regulations.

This proposed rule adds the terms ''State'' and ''Underlicensed State'' in § 107.50 to support implementation of Public Law 115–333 which gives priority in Licensing to applicants headquartered in underlicensed states with below median SBIC financing. The term ''State'' would include all of the fifty States, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territories with permanent populations (Guam, U.S. Virgin Islands, Northern Mariana Islands, and American Samoa). The term ''Underlicensed State'' means a State in which the number of operating licensees per capita is fewer than the median number for all States. To determine the per capita per State, SBA would use the most recent resident population from the U.S. Census as of the date of the calculation. SBA would publish the list of Underlicensed States periodically on the SBIC website.

SBA is proposing to add the term ''Total Leverage Commitment'' to have the meaning as defined in proposed § 107.300. As discussed under that section, SBA proposes to approve the Total Leverage Commitment at the time of licensing.

SBA proposes to add the term ''Enhanced Monitoring'' as defined in the proposed § 107.1850. As discussed under that section, SBA is implementing an Enhanced Monitoring process to better monitor its SBICs.

SBA proposes to change the term ''Wind-up'' Plan to ''Wind-down'' plan throughout part 107 because SBA believes that it better reflects the wind-down of a fund at the end of its life cycle.

B. Section 107.150 Management Ownership Diversification Requirements

This regulation identifies the SBIC ownership diversification requirement under section 302(c) of the Act (also referenced in Part 107 as the ''diversification requirement''). That section requires SBIC ownership be ''sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.'' To ensure independence per statute, current § 107.150 paragraph (b) requires that ''no Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.'' SBA proposes to remove the ''indirectly'' requirement to provide greater clarification as to sources of Regulatory Capital available to an SBIC.

As an exception to the diversification ownership requirement under § 107.150(b)(1), SBA allows an investor that is a Traditional Investment Company (a term defined in 13 CFR 107.150(b)(2)) to own and control more than 70 percent of the Licensee's Regulatory Capital. Such SBICs are essentially drop-down funds for that Traditional Investment Company and are structured exclusively to pool capital from more than one source for the purpose of investing and generate profits. SBA proposes also to include non-profit entities to also own more than 70 percent of the Licensee's Regulatory Capital to facilitate capital raising efforts, particularly for first-time funds and funds targeting investments in underserved geographies and critical technologies.

By meeting the requirements of § 107.150(c)(2), such non-profit entities would be exempt from requirements under § 107.150(c)(1) which state that the management of the Licensee must be unaffiliated from the sources of Regulatory Capital. It should be noted

that SBA will continue to review and monitor such entities to ensure that the SBIC is a for-profit vehicle for the non-profit, the management of the Licensee is bound by a fiduciary duty to investors, and to ensure such entities do not pose undue investment or operational risk to SBA.

C. Section 107.210 Minimum Capital Requirements for Licensees

This section identifies minimum private capital requirements for SBICs. SBA proposes to amend the term ''Wind-up'' to ''Wind-down'' as previously discussed in paragraph II.A discussing § 107.50. SBA also proposes to remove all references to ''Participating Securities'' since SBA no longer issues such leverage and any SBICs in SBA's portfolio that issued such leverage are either in Wind-down or are monitored by the Office of SBIC Liquidations.

Paragraph (a)(1) requires SBICs (with the exception of Early Stage SBICs) to have Regulatory Capital of at least $5 million, but provides an exception for SBA, in its sole discretion and based on a showing special circumstances and good cause, to license an applicant with only $3 million if the applicant: (i) meets its licensing standards with the exception of minimum capital; (ii) has a viable business plan reasonably projecting profitable operations; and (iii) has a reasonable timetable for achieving Regulatory Capital of at least $5 million. Public Law 115–333 specifically allows an applicant licensed under this exception and located in an Underlicensed State to receive up to 1 tier of Leverage until the Licensee meets the $5 million minimum Regulatory Capital requirement. SBA proposes to specify that one example of ''good cause'' would be the applicant is headquartered in an Underlicensed State. If licensed, Leveraged Licensees from Underlicensed States would be eligible for up to 1 tier of Leverage until they raise the $5 million minimum Regulatory Capital requirement.

D. Section 107.300 License Application Form and Fee

This regulation identifies the process and rules regarding applying for a License and the associated Licensing Fees. SBA proposes to amend the introductory paragraph to give priority to applicants headquartered in Underlicensed States with below median SBIC financing dollars, in accordance with Public Law 115–333. Applicants may have branch offices in other locations, but the headquarters for the applicant must be in an Underlicensed State with below median SBIC financing dollars to receive priority. The proposed regulation provides that SBA will publish the list of states in a notice on the SBIC website, which was previously discussed under II.A. of this rule. SBA also proposes that once priority is established, such applicants will continue to receive priority throughout the licensing process. For example, if Iowa is identified as an Underlicensed State with below median financing and an applicant headquartered in Iowa applies to receive an SBIC license, SBA would give them priority in licensing. If SBA then published a new list of states qualifying for licensing priority after the applicant was given priority, the applicant would continue to have priority in both phases of the licensing process (initial review and final licensing) even if Iowa is no longer identified as an Underlicensed State with below median SBIC financing dollars.

SBA proposes to amend paragraph (b) to identify that SBA will approve the total leverage commitments for the life of the Licensee at licensing. SBA believes that similar to private investors, SBA should approve the entire leverage commitment at licensing, based on the evaluation criteria set forth in § 107.305 and the maximum leverage commitment limits set forth in § 107.1150. This change is intended to (1) reduce the burden associated with separate commitment requests performed after the fund has been licensed and (2) reduce the uncertainty with regard to SBA's leverage commitment and consequently reduce the private capital raise timeframe for a prospective Licensee. SBA recognizes that Licensees often raise capital after licensing. However, SBA notes that it is important for Licensees to raise their capital prior to submitting their Licensing application for Final Review, as this practice will help SBA better evaluate applicants, monitor for potential risks, and process applications faster. SBA will continue to maintain its right to deny any new issuance of Leverage at draw and other rights and remedies as discussed in part 107, subpart J in the event of regulatory violations, including capital impairment. SBA is also seeking to better diversify its leverage portfolio for maximum impact across underserved sectors as proposed under § 107.320.

SBA proposes to modify its Licensing fees to lower financial barriers for new funds. Effective October 1, 2022, the Initial Licensing Fee is $11,500 and the Final Licensing Fee is $40,200 for a combined Licensing Fee of $51,700. Each year, SBA adjusts these fees based on the Consumer Price Index. Although larger more established funds can easily afford these fees, smaller funds and new fund managers view the fees as prohibitive to SBIC program participation given their smaller size. Additionally, SBA charges the same fee for applicants seeking to issue Debentures as those who do not intend to issue Debentures. SBA is proposing to revise the Initial Licensing Fees based on its fund sequence (meaning the order of succession of the fund) as follows:

Fund sequence	Initial licensing fee
Fund I	$5,000
Fund II	10,000
Fund III	15,000
Fund IV+	20,000

SBA will determine the applicant's Fund Sequence based on the applicant's management team composition and experience as a team, including the business plan (also known as the strategy) of the fund provided in Phase I of the application process. For example, if the management team of applicant DEF I consists primarily of the same team members of funds ABC I and ABC II, SBA will consider the fund sequence of DEF I as a Fund III, regardless of the number in the applicant's name.

SBA proposes to change the Final Licensing Fee as the Final Licensing Base Fee plus 1.25 basis points multiplied by the Leverage dollar amount requested by the applicant, where the Final Licensing Base Fee would be as follows:

Fund sequence	Final licensing base fee
Fund I	$10,000
Fund II	15,000
Fund III	25,000
Fund IV+	30,000

For example, a fourth time fund seeking $175 million in Leverage would pay a Final Licensing Base Fee of $51,875, computed as $30,000 plus 1.25 basis points (or .0125%) times $175 million.

SBA believes that its Non-leveraged Licensees present less credit risk to SBA, while accomplishing the SBIC mission of providing equity and long-term loans to small business concerns. SBA's proposed changes would effectively lower the combined Licensing Fee for all Non-leveraged applicants and lower the fees for applicants with less SBA capital at risk and new funds. Fund managers seeking a 4th or later fund and seeking leverage

would pay a higher fee and the fee would scale with the dollar amount of SBA's capital commitment. SBA notes that SBA's licensing costs are substantially higher than even the highest proposed combined Licensing Fee. SBA believes this modernized licensing fee model, which is designed to make fees commensurate with years of participation in the SBIC program and the dollar amount of SBA's capital at risk, will reduce cost barriers for small funds and new funds applying to the SBIC program.

SBA is also proposing an application resubmission penalty fee of $10,000 for any applicant that has previously withdrawn or otherwise is not approved for a license that must be paid in addition to the Initial and Final Licensing Fees. SBA's proposed licensing fees remain below SBA's expenses required to process such applications. The intent of the resubmission fee is to impose a penalty for each time an applicant resubmits its application to offset the requirement of additional SBA time and resources. Applicants can request SBA approval to waive the resubmission penalty fee that SBA may consider on a case-by-case basis.

E. Section 107.305 Evaluation of License Applicants

Current § 107.305 discusses how SBA evaluates an applicant to the program. Paragraph (a) describes management qualifications. SBA is proposing to amend paragraph (a) to include two additional management qualifications. The first is relevant industry operational experience, which may be combined with investment skill to demonstrate managerial capacity. The second, if applicable, is the applicant's experience in managing a regulated business, including but not limited to an SBIC. Paragraph (b) describes how SBA evaluates an applicant's track record. SBA is amending paragraph (b) to include two additional performance qualifications. The first is the inclusion of an applicant's operating experience, which when combined with an investment team's prior relevant industry investing experience, is relevant in assessing an applicant's investment performance. The second addition, when applicable, is the applicant's past adherence to statutory and regulatory SBIC program requirements. This addition will be considered for applicants with past SBIC program experience.

Paragraph (c) describes how SBA evaluates the applicant's investment strategy. SBA is amending paragraph (c) to clarify that the applicant's investment strategy is to be contained in its business plan, as well as to underscore the importance of section 102 ''Statement of Policy'' of the Act which describes the public purpose of the SBIC program.

F. Section 107.320 Leverage Portfolio Diversification

Current § 107.320 discusses how SBA evaluates Early Stage SBICs and reserves the right for SBA to maintain diversification among Early Stage SBICs with respect to the year they commence operations and their geographic location. In light of the fact that SBA used its entire Leverage authorization in FY 2021, SBA proposes to modify this regulation to reserve SBA's right to maintain Leverage Portfolio Diversification in approving Leverage commitments with respect to the year in which they commenced, the SBIC's geographic location, giving first priority to Licensees from Underlicensed States with below median SBIC financing dollars, their asset class and investment strategy. SBA's intent is to maximize the SBIC program's economic impact to underserved small business concerns while managing risk through portfolio diversification. SBA notes that SBA will continue to license all qualified applicants based on its evaluation criteria and will not take into consideration any projected shortage or unavailability of leverage when reviewing and processing SBIC license applications.

G. Section § 107.503 Licensee's Adoption of an Approved Valuation Policy

This regulation requires Licensees to prepare and maintain a valuation policy that must be approved by SBA for use in determining the value of its investments. Current regulations require that Licensees adopt without change the model valuation policy set forth in SBA's Valuation Guidelines for SBICs or obtain SBA's prior approval of an alternative valuation policy. SBA established this requirement to ensure it could adequately monitor the SBIC portfolio, that valuations were performed in a reasonable and standard fashion, and to minimize Leverage losses in order to maintain zero subsidy cost. SBA recognizes that private equity typically uses valuations performed in accordance with GAAP and that many SBIC private investors require GAAP. This causes many SBICs to maintain two sets of valuations. SBA is currently working to re-evaluate this requirement for Leveraged Licensees. SBA is requiring both valuations based on SBA Valuation guidelines and those reported to their private investors in accordance with GAAP to assess the potential impact. SBA is also working with its valuation contractor to evaluate what changes to SBA's Valuation Guidelines would be necessary to make them GAAP compliant and the impact to SBA's monitoring and risk should SBA adopt GAAP compliant guidelines. SBA is seeking input from the public on this issue as part of this proposed rule. However, SBA recognizes that Non-leveraged Licensees pose no credit risk to SBA. SBA is therefore proposing that Non-leveraged Licensees (which include both those licensed as Non-leveraged Licensees and Licensees that fully repay Leverage and seek no further Leverage) may adopt a Valuation Policy in accordance with GAAP. SBA believes this will lower the burden associated with current regulations.

Current paragraph (d) requires licensees with outstanding Leverage or Earmarked assets to value their portfolio twice a year (at the end of the second quarter and the end of the fiscal year). SBA is proposing to clarify that this requirement applies to all Leveraged Licensees and increase reporting from semi-annually to quarterly, commensurate with the required quarterly reporting of the Form 468.

H. Section § 107.504 Equipment and Office Requirements

This regulation identifies the equipment and office requirements needed by SBICs to operate within the program. The current regulation requires a personal computer with a modem and internet access under paragraph (a) and the need for a facsimile capability under paragraph (b). SBA received industry comments that this regulation was outdated. Some SBICs indicated that they bought facsimile machines to ensure they complied with the requirement. The intent of this regulation is to ensure that SBICs can properly communicate with SBA, receive official correspondence, prepare and provide electronic reporting, and apply for Leverage. The proposed changes would eliminate the modem requirement under paragraph (a); eliminate the facsimile requirement under paragraph (b); and modify paragraph (a) to more broadly require that SBICs must have technology to securely send and receive emails, scan documents, and prepare and submit electronic information and reports required by SBA. This language would allow for reasonable changes in technology without the need to modify regulations. All SBICs already utilize this technology in their day-to-day operations. This change should reduce

costs by eliminating unnecessary equipment.

I. Section 107.550 Prior Approval of Secured Third-Party Debt of Leveraged Licensees

This regulation requires SBICs to obtain prior SBA approval for secured third-party debt for Leveraged Licensees.

Section 107.550(a) defines secured third-party debt to include Temporary Debt, a defined term in § 107.570 that applies only to SBICs with outstanding Participating Securities. Since there are no operating SBICs with outstanding Participating Securities, except in the Office of SBIC Liquidation, SBA proposes to remove § 107.570 and references to Temporary Debt and Participating Securities throughout this section.

Section 107.550(c) identifies rules associated with secured lines of credit in existence on April 8, 1994. This proposed rule would remove that requirement since it is obsolete.

This proposed rule would replace § 107.550(c) with a secured ''Qualified Line of Credit'' which SBICs could utilize without SBA prior approval. Current § 107.550(b) requires Licensees with Leverage to obtain SBA approval for any secured third-party debt, including lines of credit secured by unfunded commitments. Any third-party debt (secured and unsecured) increases SBA's credit risk because SBA leverage is generally never senior to the claims of other creditors: under § 107.560, the first $10 million of SBA leverage is generally subordinated to other debt of an SBIC, and leverage above $10 million is *pari passu* (on equal footing) with other debt. Nonetheless, SBA recognizes that it is typical practice for investment funds to use a line of credit to help bridge capital needs for financings and can generally draw on a line of credit more quickly than investors pay in capital when called. SBA regularly approves third party debt for lines of credit as discussed under TechNote 5—Credit Management Procedures, issued in November 2000 (*www.sba.gov/document/technote-5-technote-number-5*). In order to streamline this process, based on those lines of credit SBA has historically regularly approved, SBA is proposing a new ''Qualified Line of Credit'' that would be exempt from mandatory SBA prior approval if it meets certain requirements regarding the overall size, term, the holder, and the borrowings under the credit facility as follows:

(1) The line of credit is limited to 20% of total unfunded binding commitments from Institutional Investors. The 20% of unfunded commitments was based on the Institutional Limited Partnership Association's document, ''Subscription Lines of Credit and Alignment of Interests: Considerations and Best Practices for Limited and General Partners'' published in June 2017 which recommended the line of credit be limited to between 15–25% of unfunded commitments. Although this proposed rule would allow up to 20%, this is a maximum only and limited partners may further reduce this amount in the SBIC's limited partnership agreement.

(2) *The term of the line of credit does not exceed 12 months.* Based on feedback from industry, SBA understands that most lines of credit are renewed on an annual basis and generally have a duration of 12 months. In this proposed rule, SBA is proposing a 12-month limitation on the duration of the line of credit, which may be renewable on an annual basis if it remains in compliance with this regulation.

(3) *The line of credit is held by a federally regulated financial institution.* SBA proposes this requirement, that the lender be regulated by a federal financial institution regulator (*e.g.,* the FDIC, OCC, or NCUA) to ensure that the lender is creditworthy, that the credit terms are reasonable and customary, and that the lender will not seek unusual remedies in the event of a default.

(4) *All borrowings under the line of credit meet certain conditions:* (i) Are only secured by unfunded Regulatory Capital up to 100 percent of the amount of the borrowing and 90 days of interest; (ii) Are for the purpose of maintaining the SBIC's operating liquidity or providing funds for a particular Financing of a Small Business; (iii) Must be fully repaid within 90 days after the date they are drawn; and (iv) Must be fully paid off for at least 30 consecutive days during the SBIC's fiscal year so that the outstanding third-party debt is zero for at least 30 consecutive days. SBA proposes these requirements to ensure that such debt is unsecured except for the amount of the borrowing and interest which may only be secured by unfunded Regulatory Capital, since secured third party debt presents a higher credit risk to SBA and must be approved by SBA under § 107.550. Further, the third-party debt must be solely for the purpose of maintaining the SBIC's operating liquidity or providing funds for a particular financing of a small business. Finally, since such borrowings are temporary in nature, the line of credit should be repaid quickly and not continuously refinanced. SBA believes these requirements are typical or provide greater latitude than for a typical line of credit and would provide SBICs with access to a standard industry tool while minimizing SBA's credit risk. SBA is seeking comments from industry as to whether these requirements present any issues.

SBA notes that SBIC investors may negotiate more stringent rules regarding how its SBIC may use a line of credit as part of its limited partnership agreement. These proposed regulations only present the minimum standards which SBICs must utilize to avoid requiring SBA prior approval. For example, the limited partnership agreement may specify that the line of credit may be no greater than 15 percent of uncalled private capital. Although the proposed regulations allow for a line of credit up to the total uncalled private capital, private investors may establish a lower level.

Since this rule would provide an exemption for most instances of third-party debt that SBA would likely approve, the proposed rule eliminates paragraphs (d) and (e) which discuss conditions for SBA approval and automatic approval. The proposed Qualified Line of Credit obviates the need for these requirements. Any other third-party debt would require SBA review to ensure that such line of credit does not increase the risk to repayment of SBA-guaranteed Leverage.

J. Section 107.570 Restrictions on Third-Party Debt of Issuers of Participating Securities

This regulation identifies restrictions on third-party debt for SBICs that issued Participating Securities. As discussed under paragraph II.J, no operating SBICs have outstanding Participating Securities and SBA is no longer authorized to provides such Leverage. SBA proposes to remove this regulation.

K. Section 107.585 Distributions and Reductions in Regulatory Capital

This section is currently titled, ''Voluntary decrease in Licensee's Regulatory Capital'' and requires Licensees to obtain SBA's prior written approval to reduce Regulatory Capital by more than two percent in any fiscal year. Current § 107.1000(b)(2) exempts Non-Leveraged Licensees from § 107.585 if the decrease does not result in Regulatory Capital below what is required by the Act and the regulations and is reported to SBA within 30 days. Typically, reductions in capital are performed in conjunction with a distribution that represents a return of capital, to its private investors. SBA

allows profit distributions, also known as ''Retained Earnings Available for Distribution'' or ''READ'' without SBA prior approval, unless the Licensee was licensed as an Early Stage SBIC or if the SBIC issued Participating Securities.

SBA received comments from private investors that the regulations were unclear as to when a Licensee could distribute to its investors. SBA has also had instances in which Leveraged Licensees made ''READ'' distributions, and subsequently wrote down assets that would have reduced or removed ''READ''. Leveraged Licensees must consider such write-downs before making such distributions to avoid ''improper'' distributions. SBA is also concerned that Licensees may distribute profits without repaying Leverage. In particular, equity investors often have returns that are less consistent than private creditor or mezzanine funds. SBA has incurred losses in several Licensees that returned profits to its private investors through early profit distributions and then wrote down assets later in the fund's life.

SBA is proposing to retitle this regulation to ''Distributions and Reductions in Regulatory Capital'' and modify the requirements to address these concerns. SBA proposes to separate distribution requirements based on three categories of SBICs: (1) Non-Leveraged Licensees; (2) Leveraged Licensees licensed prior to October 1, 2023, and Leveraged Licensees wholly owned by Business Development Companies (''BDCs'') that are not Accrual SBICs; and (3) Leveraged Licensees licensed on or after October 1, 2023, not wholly owned by BDCs and Accrual SBICs. The rationale for these categories and the specific requirements follows.

(1) *Non-leveraged Licensees.* SBA proposes a separate set of requirements for Non-leveraged Licensees because they pose no credit risk to SBA. Proposed rules would allow Non-leveraged Licensees to distribute to their private investors without SBA prior approval as long as they retain sufficient Regulatory Capital to meet minimum capital requirements under § 107.210, unless such amounts are in accordance with their SBA approved Wind-up Plan. If a Non-leveraged Licensee does not have an SBA approved Wind-up Plan, they may make distributions, as long as such Non-leveraged Licensees retain sufficient Regulatory Capital to meet minimum capital requirements under 107.210. If a Non-leveraged Licensee has an SBA-approved Wind-down Plan, their Regulatory Capital can drop below the minimum capital requirements if such amounts are in accordance with that plan. This requirement should provide even greater flexibility to Non-leveraged Licensees. In accordance with current policies, the proposed rule would clarify that Non-leveraged Licensees must report any reductions in Regulatory Capital to SBA within 30 days on an updated Capital Certificate, which is Exhibit K in SBA form 2181.

(2) *Leveraged Licensees licensed prior to October 1, 2023, and Leveraged Licensees wholly owned by BDCs that are not Accrual SBICs.* SBA recognizes that existing licensees and current applicants to the program expect to be able to distribute READ based on current regulations. SBA also recognizes that SBICs wholly owned by BDCs (''BDC–SBICs'') must distribute profits to their investors. SBA proposes that SBICs licensed prior to October 1, 2023, and BDC–SBICs should remain under the current rules with some clarifications, as long as they are not Accrual SBICs. Since Accrual SBICs perform at least 75% in equity, which has the highest variance in returns, SBA proposes that any Accrual SBIC be excluded from this category. For SBICs licensed prior to October 1, 2023, and BDC–SBICs, SBA proposes substantively the same requirements as in the current regulations except to clearly identify that such SBICs may distribute READ only after considering any material adverse changes to its portfolio. In accordance with current policies, the proposed rule would clarify that these Licensees must report any reductions in Regulatory Capital to SBA within 30 days on an updated Capital Certificate.

(3) *Leveraged Licensees licensed on or after October 1, 2023, and not wholly owned by a BDC and Accrual SBICs.* SBA proposes for these SBICs a distribution waterfall that repays SBA the principal balance on outstanding Leverage on at least a pro rata basis with private investors. SBICs must repay Leverage at its ten-year maturity and may prepay Leverage at any time. SBA proposes the following waterfall:

a. Payment of Annual Charges and accrued interest associated with Leverage. (Interest will be paid to the bond holders based on the Leverage terms.)

b. Calculate SBA's share based on the ratio of Total Leverage Commitments and Initial Regulatory Capital established as follows: SBA Share = Total Distributions × [Total Leverage Commitment/(Total Leverage Commitment + Initial Regulatory Capital)].

c. Repay SBA Leverage to bond holders in an amount no less than SBA's Share to the extent of outstanding Leverage. If SBA's share is more than the outstanding Leverage held by the Licensee and the Licensee has unfunded Leverage Commitments, the Licensee must submit a Leverage Commitment cancellation equal to SBA's share minus the SBA Leverage redemptions. The rationale for this cancellation requirement is to minimize the risk that the SBIC will distribute significant profits to its private investors, then issue additional SBA leverage that results in losses, leaving SBA with losses after the private investors made significant profits.

d. Distribute to private investors the remaining amount.

e. Report the distribution to SBA. You must report the distribution and calculations to SBA on your Form 468 submission(s).

If permitted under a Licensee's partnership agreement, a Licensee may choose to reserve capital or reinvest all or a portion of it instead of distributing to the SBA and investors. In this circumstance, a Licensee would decrease the amount to its investors so that the private investors receive no more on a pro rata basis as the repayment of SBA Leverage and interest due. SBA is only concerned that private investors have at least the same risk for loss as SBA.

L. Section 107.590 Licensee's Requirement To Maintain Active Operations

This regulation identifies requirements for Licensees to maintain active operations and submit a Wind-up Plan when they decide they are no longer making any new investments. SBA proposes to change the name to ''Wind-down Plan'' as discussed under II.A.

M. Section 107.620 Requirements To Obtain Information From Portfolio Concerns

This regulation specifies the threshold of information requested by SBICs from Portfolio Concerns. The SBA proposes to amend specified information collections for Financings after the effective date of the rule to provide certain optional demographic information on Portfolio Concerns. The SBA is amending information collections to enhance reporting accuracy and consistency around the small business demographic impact of the SBIC program.

N. Section 107.630 Requirement for Licensees To File Financial Statements With SBA (Form 468)

This regulation identifies requirements associated with Licensee's

financial statements on Form 468. Paragraph (a) requires the annual Form 468 to be submitted on or before the last day of the third month following the end of the fiscal year, except for information in paragraph (e). This is not consistent with § 107.650 which requires portfolio valuations which are submitted on the Form 468 within 90 days following the end of the fiscal year. Current § 107.630 also does not have a paragraph (e). SBA believes the entire Form 468 should be due at the same time. SBA therefore proposes to make the annual Form 468 due date consistent with § 107.650.

Paragraph (d) requires certain economic information regarding each Licensee's portfolio companies, so that SBA can assess the program's economic impact. SBA proposes adding information to help SBA determine net jobs created and total jobs created or retained, including identifying the number of jobs added due to a business acquisition versus growth in the business.

SBA is also proposing to add fund management contact information and optional demographic information. SBA is seeking to collect management contact information in order to improve its customer relationship management and to better assess relationships between its Licensees. Demographic information regarding fund management is requested for reporting purposes only and on a voluntary basis.

O. Section 107.640 Requirement To File Portfolio Financing Reports (SBA Form 1031)

This regulation currently requires Licensees to submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date of the Financing. In response to comments received as part of its modernization improvement efforts (see I.D), SBA is proposing to make this a quarterly submission in which the Licensee must report the financing within 30 calendar days of the calendar year quarter following the closing date of the Financing. For example, if a Licensee closes a financing on February 10, 2023, the Licensee will need to submit the related Form 1031 no later than April 30, 2023. If the Licensee is identified as requiring Enhanced Monitoring, as proposed under § 107.1850, SBA may require more frequent reporting.

P. Section 107.650 Requirement To Report Portfolio Valuations to SBA

This regulation currently requires Licensees to report portfolio valuations within 90 days of the end of the Licensee's fiscal year and quarterly valuations 30 days following the close of each quarter. SBA proposes to clarify that only Leveraged Licensees are required to report for quarterly reporting periods. All Licensees must report at least annually. In response to comments received as part of its modernization improvement efforts (see I.D), SBA proposes to expand the timeframe for quarterly valuations, including material adverse changes, to 45 calendar days following the close of each quarter. This is intended to give Licensees additional time to prepare reports.

Q. Section 107.660 Other Items Required To Be Filed by Licensee With SBA

This regulation identifies other items required by the Licensee. Paragraph (a) requires the Licensee to provide to SBA a copy of any report it gives to its private investors. Although the Licensee is required under current regulations to provide to SBA report they provide to their private investors, SBA proposes to specify valuation data items to improve clarity. SBA also proposes to specify that Licensees should submit to SBA any report it gives to its private investors no later than 30 days after the date these sent the report to its private investors. This requirement is intended to keep SBA aware of any important communications regarding the licensee in a timely fashion.

R. Section 107.692 Examination Fees

This regulation identifies how SBA calculates examination fees. Currently under paragraph (b), SBA charges a Minimum Base Fee + .024% of assets at cost up, not to exceed a Maximum Base Fee. SBA adjusts the Minimum Base Fee and the Maximum Base Fee annually. Although current regulations give Non-leveraged Licensees a lower Maximum Base Fee, this formula does not fully address the risk and additional monitoring required associated with Leveraged Licensees. SBA proposes to change and streamline this formula to $10,000 + .035% of their Total Leverage Commitment established at Licensing (see paragraph II.D.). By establishing the examination fee up front, SBA believes this will reduce uncertainty in cashflows. Because SBICs licensed prior to this proposed rule may not have a Total Leverage Commitment, SBA proposes that the formula for existing licensees be $10,000 + .035% of their outstanding Leverage plus SBA's undrawn commitment amount. Since this proposed formula would give all Non-leveraged licensees a flat rate of $10,000 and SBA incurs more costs based on the assets of the Licensee, SBA proposes that any Non-leveraged Licensee with over $50 million in assets at cost pay an additional $20,000. Although SBA recognizes that a Leveraged Licensee with over $50 million in assets at cost and $30 million in leverage commitments would only pay $20,500 in exam fees versus $30,000 for a Non-leveraged Licensee, SBA is nevertheless proposing this additional fee for larger Non-leveraged Licensees with over $50 million in assets based on the infrequency of requests for less than one tier of leverage.

S. Section 107.720 Small Businesses That May Be Ineligible for Financing

This regulation identifies small businesses in which Licensees may not invest. Paragraph (a) restricts Licensees from making investments into relenders or reinvestors as defined under paragraph (a)(1). Paragraph (a)(2) currently gives an exception for Venture Capital Financings to relenders or reinvestors that qualify as Disadvantaged Businesses unless the Disadvantaged Business is a bank or savings and loans not insured by agencies of the Federal Government and agricultural credit companies. SBA is proposing to modify this exception to equity investments in ''underserved'' relenders or reinvestors that make financings solely to Small Business Concerns that a Licensee may directly finance under part 107. SBA believes expanding this provision will significantly help improve its footprint to underserved communities. By more broadly defining ''underserved,'' SBA can more quickly adapt to the changing markets by clarifying what constitutes ''underserved'' through policy notices and increase its economic impact to underserved communities. While Disadvantaged Business would continue to be considered underserved, rural and low-and-moderate-income areas, as well as businesses owned by women or veterans may also be applicable to this group. To ensure that capital continues to be directed to SBIC's mission, SBA also proposes to restrict relender and reinvestor investments to those that existing SBICs could finance. This proposal also helps SBA grow its emerging fund manager pipeline.

T. Section 107.730 Financings Which Constitute Conflicts of Interest

Current § 107.730 prohibits Licensees from transactions that constitute conflicts of interest, as required by the Act. Paragraph (a) provides a general rule that Licensees may not self-deal to the prejudice of a Small Business, the Licensee, its shareholders or partners, or SBA, and must obtain prior written exemptions for transactions that may

constitute a conflict of interest and specifies certain transactions in paragraphs (a)(1) through (5) that would constitute a conflict of interest. Paragraph (a)(1) identifies (as one specific prohibition) a Financing to a Licensee's Associate, as defined in § 107.50, unless the Small Business being financed is only an Associate because another the Licensee's Associate investment fund holds a 10% or greater interest in the Small Business, the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions, and the Associate investment fund is providing a follow-on financing to the Small Business at the same time and on the same terms and conditions as the Licensee.

Based on market feedback and an analysis of conflict-of-interest approval requests from Licensees, the current safe harbor provisions for follow-on financings to small business portfolio companies are resulting in delays providing capital to small businesses. This potentially hurts the small businesses and increases the burden on Licensees and SBA. SBA proposes introducing a safe harbor for financing a portfolio concern by an Associate when an outside third-party participates in the equity financing of the Licensee's portfolio concern.

Paragraph (d) identifies that Financings with Associates also constitutes a conflict of interest requiring SBA prior approval but provides exceptions under paragraph (d)(3). Paragraph (d)((3)(iii) identifies exceptions for SBICs with outstanding Participating Securities. Since no operating Licensees remain in SBA's portfolio, SBA proposes to remove this exception. Paragraph (d)(3)(iv) identifies exceptions involving Non-leveraged Licensees. SBA proposes to revise this exception to incorporate the new Non-leveraged Licensee term and simplify this regulation.

U. Section 107.830 Minimum Duration/Term of Financing

Paragraph (c)(2) discusses ''prepayments'' and states: ''You [Licensee] must permit voluntary prepayment of Loans and Debt Securities by the Small Business. You must obtain SBA's prior written approval of any restrictions on the ability of the Small Business to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

SBA is considering whether it should make changes to § 107.830(c)(2) regarding prepayment restrictions for Loans and Debt Securities. Currently, any restriction on the ability of a small business to prepay (other than the imposition of a reasonable prepayment penalty) requires SBA's prior written approval. Recently, SBA has become concerned that certain terms in unitranche or multi-lender transactions that require voluntary prepayments to be distributed on a pro rata basis to all lenders in a transaction could be considered a prepayment restriction. Generally, SBA does not view a financing term that requires a portfolio concern to make prepayment distributions on a pro rata basis to all lenders in a transaction to be considered a prepayment restriction. To ensure that there is a consistent understanding of the appropriate treatment of such provisions, SBA is soliciting comments from the public on whether § 107.830(c)(2) should be modified to clarify pro rata distributions of prepayments in unitranche or multi-lender transactions (Loan and Debt Securities) do not require SBA's prior written approval.

Furthermore, SBA is considering providing safe harbor from pre-payment restrictions for SAFEs and convertible notes.

V. Section 107.865 Control of a Small Business by a Licensee

This regulation identifies limitations on the ability a Licensee to take ''Control'' as defined in Section 107.50, over a Small Business. In general, the regulations permit Licensees to take Control for up to 7 years. Although buyout funds often take control of a small business at first Financing, SBA believes that Accrual SBICs should limit ownership at first Financing to less than 50%. SBA is proposing to add this restriction to Accrual SBICs to ensure that such SBICs are performing growth and venture capital Financings and not buyout transactions. SBA recognizes that after financing a Portfolio Concern, the Licensee may need to own a higher percentage of the Small Business Concern to help protect its initial investment. SBA is proposing this restriction only at the initial Financing. SBA proposes that the less-than-50% ownership requirement restriction at Initial Financing would not apply to Financings of a re-lender or re-investor performed under § 107.720(a)(2). SBA recognizes that the relender/reinvestor may be a private equity or venture capital fund that is underserved based on the ownership and management or its geographic location. Regardless, if a Licensee is one of the first investors into the fund, serving as the anchor investor, initially it may own more than 50% of the fund. SBA does not want to discourage this practice, since such anchor investors have been cited as playing an important role in establishing Impact Funds that may be directed to critical underserved areas and attracting other investors into the fund. (See Harvard Business School: ''Anchors Aweigh: Analysis of Anchor Limited Partner Investors in Impact Investment Funds'', by Shawn Cole, T. Robert Zochowski, Fanele Mashwama, and Heather McPherson, 2020. Final-Anchors-Aweigh.pdf (*hbs.edu*)). SBA is seeking public comment.

W. Section 107.1000 Non-Leveraged Licensees—Exceptions to the Regulations

This regulation identifies exceptions to the regulations for Licensees without Leverage. SBA proposes to incorporate the term Non-leveraged Licensee as proposed in II.A.

X. Section 107.1120 General Eligibility Requirements for Leverage

This regulation identifies general requirements to be eligible for Leverage. Paragraph (c) references § 107.210 concerning minimum private capital requirements. SBA proposes to amend paragraph (c) to incorporate Public Law 115–133 by adding an exception to the $5 million minimum Regulatory Capital requirement if the SBIC was licensed because they are headquartered in an Underlicensed State. As identified in § 107.1150, such Licensees will be limited to Leverage up to 100% of Regulatory Capital until they raise $5 million in Regulatory Capital.

Y. Section 107.1130 Leverage Fees and Annual Charges

This regulation identifies the fees and charges associated with SBA guaranteed Leverage. Currently the title identifies Annual Charges as ''additional charges''. SBA proposes to change the title to clarify that the additional charge refer to the Annal Charge as discussed in § 107.50.

Paragraph (d)(1) discusses the Annual Charge required for Debentures, noting that it only applies to Debentures issued on or after October 1, 1996, and that it does not apply to Leverage issued prior to that date. Since all Debentures outstanding were issued on or after October 1, 1996, SBA proposes to remove this language.

SBA further proposes to set the minimum Annual Charge to 0.5% or 50 basis points. The fiscally responsible administration of the program requires a minimum Annual Charge on outstanding leverage be established to address the long-term variances in

losses. The historical losses vary greatly as a result of national economic health and private equity and venture fund vintage year performance. As a consequence, SBA experiences many years in which there are zero or minimal SBIC transfers to liquidation status and a few years in which there are numerous failures with resulting losses to SBA.

The change will protect the government from significant losses, increase the prospects of preserving a zero or negative subsidy cost across program cohorts, enhance the long-term ability of SBA to provide guarantees to SBICs, license more applicants, and indirectly provide greater patient capital to qualifying small businesses.

Z. Section 107.1150 Maximum Amount of Leverage

Current § 107.1150 identifies the maximum amount of a Leverage for a section 301(c) Licensee. SBA approves Leverage commitments for those Licensees that were licensed under the now repealed Section 301(d) for Specialized SBICs. SBA proposes to correct the language to apply to all Leveraged Licensees.

Paragraph (a) sets forth the maximum Leverage for an ''Individual Licensee.'' SBA proposes to clarify that per the proposed definition of ''Leverage,'' the maximum Leverage includes both the principal and accrued interest associated with the Accrual Debenture. SBA also proposes to add that if a Licensee is headquartered in an Underlicensed State and has less than $5 million in Regulatory Capital, they are limited to one tier of Leverage.

Paragraph (b) sets the maximum Leverage for multiple licensees under Common Control, as defined under § 107.50. SBA proposes to clarify that similar to the requirements for an ''Individual Licensee,'' the interest associated with the Accrual Debenture will be used to calculate the maximum Leverage across all Licensees under Common Control.

AA. Section 107.1220 Requirement for Licensee To File Quarterly Financial Statements

This regulation currently requires SBICs with outstanding Leverage commitments to submit quarterly Form 468s within 30 days after the close of each quarter. SBA proposes to clarify that this requirement pertains to all Leveraged Licensees and to allow 45 days after each quarter, commensurate with portfolio valuation due dates as proposed under § 107.503 and § 107.650.

BB. Section 107.1830 Licensee's Capital Impairment—Definition and General Requirements

This regulation currently requires Leveraged Licensees to calculate their capital impairment percentage (''CIP''), identifies the maximum CIP allowable, and requires them to report to SBA if they have a condition of capital impairment. Paragraph (a) currently identifies that this section only applies to leverage issued on or after April 25, 1994, and identifies alternate requirements for Leverage issued prior to that date. Since all Leverage currently held by operating SBICs was issued after April 25, 1994, SBA is removing obsolete language in this paragraph. Section 107.1850 applies to all Leveraged Licensees with outstanding Leverage.

Paragraph (e) requires Licensees to calculate their CIP and notify SBA if they have a condition of capital impairment. Paragraph (f) gives SBA the right to redetermine the CIP at any time. SBA is proposing to change this requirement such that SBA will calculate the Licensee's CIP each quarter and notify the SBIC if they are capitally impaired. Since SBA is calculating the CIP, SBA also proposes to remove paragraph (f).

CC. Section 107.1840 Computation of Licensee's Capital Impairment Percentage

This regulation defines how to compute a Licensee's CIP. Since SBA is proposing to calculate the CIP and notify Licensees if they have a condition of Capital Impairment, SBA proposes to make related changes to this regulation.

DD. Section 107.1845 Determination of Capital Impairment Percentage for Early Stage SBICs

This regulation defines how to compute an Early Stage SBIC's CIP. Since SBA is proposing to calculate the CIP and notify Licensees if they have a condition of Capital Impairment, SBA proposes to make related changes to this regulation.

EE. Section 107.1850 Enhanced Monitoring

For more than twenty years, Licensee Leverage default rates have averaged less than 16%. While this is a relatively small percentage of Licensees, these Licensees introduce risk to the sustainability of the SBIC program and SBA. In an effort to proactively identify and manage risk, SBA proposes to introduce Enhanced Monitoring. A Licensee can be added to Enhanced Monitoring status for a series of actions, bottom quartile performance relative to the Licensee's stated benchmark for more than four consecutive quarters, or reporting failures defined in SBIC program policies and procedures. While on Enhanced Monitoring status, the Licensee will be required to file Form 1031 on a more frequent basis, and upon request, conduct portfolio review meetings with the SBA. The Licensee will be notified of their Enhanced Monitoring status upon determination. Once the events that warranted Enhanced Monitoring are addressed to SBA's satisfaction, Licensees will be notified that they are removed from Enhanced Monitoring. A series of performance metrics will be reviewed collectively to assess a holistic picture of performance. Of those metrics, TVPI or DPI metrics in the bottom quartile for four consecutive quarters relative to the Licensee's primary benchmark for the applicable vintage year can result in a Licensee being added to the Enhanced Monitoring status.

FF. Section 121.103 Small Business Size Regulations: How does SBA determine affiliation?

In 13 CFR part 121, SBA sets forth size standards and defines a business's size to include the size of the affiliates of the business, subject to certain exceptions. One of these exceptions, § 121.103(b)(5)(vi), applies only to financial, management, and assistance under the Act and is intended to exclude Traditional Investment Companies from affiliation coverage. The term Traditional Investment Companies generally includes issuers that would be ''investment companies,'' as defined under the Investment Company Act of 1940 (the ''1940 Act''). It also includes all 3(c)(1) private funds ''not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.'' This exception to the SBA affiliation requirement was provided to allow SBIC Financings with other private equity, private credit, and venture capital funds since co-investment and syndication between such funds is typical and increases the amount of private capital available for small businesses. Under its modernization and improvement efforts (see I.D.), SBA received comments suggesting that this exception be expanded to include private funds that are exempt from registration requirements under 3(c)(7) of the 1940 Act. SBA's regulations and determinations are not determinative as

to whether a licensed Traditional Investment Company must comply with the 1940 Act. SBA invites public comment.

III. Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13175, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

A. Executive Order 12866

The Office of Management and Budget has determined that this proposed rule constitutes a ''significant regulatory action'' under Executive Order 12866. SBA has drafted a Regulatory Impact Analysis for the public's information below. SBA requests comments on the data and methods used to estimate the impact of this regulatory action. Each section begins with a core question.

1. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

This proposed rule is intended to reduce barriers to program participation for funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. In this proposed rule, SBA would introduce an additional type of SBICs (''Accrual'' SBICs) to increase program investment diversification and patient capital financing for small businesses and modernize rules to lower financial barriers to program participation. The new Accrual Debenture allows more flexibility in financing to increase participation of SBICs capable of addressing identified capital access gaps and vulnerability in the U.S. small business segment. Additionally, this proposed rule introduces a Qualified Line of Credit that does not require SBA approval while enabling greater access to a capital call line to fund commitments. The aforementioned benefits and attractiveness of the proposed Accrual Debenture will also reduce some of the previously perceived disadvantages to being an SBIC, as opposed to the non-SBIC private market. The proposed revisions to § 107.720 should improve the SBIC program's investment diversification and create more program entry points for new fund managers. This proposed rule also reduces barriers by revising reporting requirements that may allow increased use of valuation policies that are consistent with GAAP. This proposed rule will help SBA implement Executive Order (''E.O.'') 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government by reducing financial and time barriers to participate in the SBIC program and modernizing the program's license offerings to align with a more diversified set of funds investing in underserved small businesses. The proposed rule would also incorporate the statutory requirements under Public Law 115–333, titled ''Spurring Business in Communities Act of 2017'', enacted on December 19, 2018.

The Agency believes it is necessary to reduce barriers to participation and diversify its patient capital and long-term loan program for long-term program stability and mission effectiveness. This will simultaneously diversify the sources and types of financing available to underserved small businesses and small businesses manufacturing products and technologies critical to national security and U.S. economic competitiveness. The Agency also believes that to be effective in delivery, it needs to streamline and reduce regulatory burdens to facilitate robust participation in its patient capital and long-term loan program which are responsible for enabling access to capital for underserved U.S. small businesses across the country.

By offering an alternative to a semi-annual interest payment Debenture structure for all SBIC licensees not taking a control-position in small businesses, and to licensees with over 75% of capital earmarked for long-term equity investment in small businesses to help them grow and scale, SBA strives to increase equity funding available to underserved small business owners and unlock equity as a source of funding for many small business owners while still maintaining an expected zero subsidy cost in the program. This alternative structure accommodates a longer horizon for investments in small businesses that might require more patient capital. SBA has confidence this goal will be achieved while continuing to maintain a zero-subsidy based on extensive analysis of the performance of private funds over the last 20 years from Pitchbook and as supported by the *2021 Knight Diversity of Asset Manager Research Series* [1] which found that, ''diverse-owned firms have low levels of representation across each asset class; however, they exhibit returns that are not significantly different than non-diverse-owned firms.'' SBA is revising its Debenture and license regulations in response to continuing requests by SBA's participating SBIC licensees and the public. SBA believes that revising its Debenture and license regulations will result in expansion of access to capital for those who cannot obtain adequate patient capital from traditional sources of funding, while decreasing time and cost associated with applying for an SBIC license. Greater access to capital is bolstered by the revisions enabling SBA to offer a debenture with terms and regulations aligned to the cash flows of a broader base of private funds as well as a reduction in cost burden to apply for and participate in the SBIC Program.

2. Benefits and Costs of the Rule

What are the potential benefits and costs of this regulatory action?

SBA does not anticipate significant additional costs or impact on the subsidy to operate the SBIC program under these proposed regulations. Since the SBA has existing authority to license and provide funding to equity-oriented and debt-oriented private funds, there is no request for additional funding.

Currently SBICs distribute about $1.5 billion or more per year in profit distributions to Limited Partners. SBA's regulations permit SBICs to distribute profits to Limited Partners without any corresponding repayment of SBA Leverage. SBA is proposing that SBICs first pay all accrued interest and annual charges, then repay its Leverage on a pro rata basis (in step) with its Limited Partners. Based on analysis of average cash flows regarding private funds, our expectation is that this will improve the likelihood that SBA will be repaid on the same schedule as Limited Partners regardless of the investment strategy of the SBIC fund. SBA invites public comment.

Under these proposed regulations, the SBA anticipates SBIC program administrative costs to decline over time due to streamlining of regulatory filing and reduction in duplicative data reporting across multiple filings. Furthermore, the proposed regulations include changes which reduce bureaucratic processes, such as approving the SBIC's total commitment at licensing, reducing SBA approvals for certain conflicts of interest by creating additional safe harbors, and approving GAAP compliant valuations for Non-leveraged licensees. SBA believes such changes will help SBA improve its response times and enable personnel to focus on customer relationships and monitoring its funds. In revising the SBIC Debenture offering into two categories of Debentures, ''Debenture'' and ''Accrual Debenture'' available to eligible SBIC licensees under 13 CFR 107.50, SBA anticipates de minimis impact on the subsidy for the SBIC

[1] Knight Diversity of Asset Managers Research Series: Industry—Knight Foundation.

program. Currently, as part of its licensing process, SBA reviews approximately 70 license requests annually and declines 10 to 15 percent, or 8 to 10 requests, due to poor performance, negative diligence and/or regulatory conflict issues. These 70 applications represent the total annual license applications for non-levered and Debenture SBICs combined. Two-thirds of these applications are submitted by entities with existing SBIC licensees requesting a license for a subsequent licensed SBIC fund. The approximate total number of licenses approved annually in the SBIC program is 25. Additionally, federally regulated private equity funds must comply with the requirements from relevant Federal regulating entities. Private equity funds must also abide by the terms of their investor agreements, such as a limited partnership agreement, and fulfill their fiduciary obligation to their investors. Because of these requirements, the SBA anticipates these licensed SBIC funds will continue making investment decisions based on their fiduciary responsibility and terms of their investor agreements which limits risk to the SBA. Regulated SBIC licensees must comply with the business plan and investor agreements submitted to SBA while operating an SBIC license. Licensees will benefit by no longer being required to submit 1031 financing reports within 30-days of financing pursuant to § 107.640, instead filing at the end of each quarter, unless the licensee is subject to Enhanced Monitoring, as previously mentioned. This will reduce paperwork and the reporting burden on SBIC licensees. As a result of this revision, SBA expects a decrease in the time for small businesses to access capital at critical moments which will in turn help more small businesses grow and scale. Furthermore, this will decrease SBA's administrative costs.

SBA does not anticipate significant additional costs or impact on the subsidy to operate the SBIC program under the proposed regulations at 13 CFR 107.50 regarding the accrual license and accrual Debenture. One Debenture structure limits accessibility to SBA's patient equity and long-term private loan program, with an outsized impact on underserved small business owners who may struggle to access traditional sources of capital. SBA anticipates that providing clear and streamlined regulatory guidance, regulatory fees aligned with the size and scale of SBIC applicants and licensees, and a second Debenture structure to capital access gaps will result in an increase in the number of and diversity of participating SBIC licensees and will result in more underserved small business owners obtaining access to patient equity capital or long-term loans and invites public comment on this matter.

3. Alternatives

What alternatives have been considered?

SBA considered eliminating additional regulatory burdens, such as shifting entirely to FASB GAAP-compliant valuation reports and determined that the proposed rules strike the right balance in responsibly streamlining regulations without substantially increasing the risk of waste, fraud, or abuse of the programs or otherwise threatening the integrity of the SBIC program or taxpayer dollars. Possible alternatives included eliminating more regulatory burdens, but such a course would require more time for SBA to consider the impact of these eliminations. After considering feedback from stakeholders, SBA qualitatively determined that benefits of a timely issuance of a rule with the included regulatory relief and measures to implement Executive Order 13985 outweighed the benefits of a delay to give the agency more time to consider further eliminations of regulatory burdens. Regarding Debenture instrument structure and license type, SBA has implemented several variations of its SBIC Debentures to increase program alignment and accessibility for new patient capital funds in the past as discussed above, and SBA has determined from these past experiences the simplest rules proposed herein were the least burdensome.

B. Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

C. Executive Order 13132

This proposed rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive order. As such it does not warrant the preparation of a federalism assessment.

D. Executive Order 13175

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Executive Order 13563

1. Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (*e.g.,* identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

2. *Public participation:* Did the agency: (a) Afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among Government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on *Regulations.gov;* and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?

The proposed rule will have a 60-day comment period and will be posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions.

F. Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act. Generally, this rule proposes changes to two information collections used in the SBIC program: (1) SBA Form 468 ''SBIC Financial Reports'' to include GAAP financial performance metrics, the number of jobs sustained and created, and voluntary demographic information at the SBIC management level; and, (2) SBA Form 1031 ''Portfolio Financing Report'' to decrease the current frequency of

reporting on a per-financing basis as-of the date of a financing's close to quarterly reporting of all SBIC financings within a given quarter, no less than 30 days after the calendar year quarter-end.

The title, summary description of the information collection, and the proposed changes to SBA Form 468 and SBA Form 1031 are discussed below with an estimate of the revised annual burden. Included in the estimates are time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Portfolio Financing Report, SBA Form 468 (OMB Control Number 3245–0063).

Description of Respondents: Small Business Investment Companies.

Estimated Number of Respondents: 406.

Estimated Annual Responses: 1,002.

Estimated Annual Hour Burden: 24,708.

Summary: To obtain the information needed to carry out its oversight responsibilities under the Small Business Investment Act of 1958 (the ''Act''), SBA requires SBICs to submit financial statements and supplementary information on SBA Form 468. SBA uses this information to monitor SBIC financial condition and regulatory compliance, for credit analysis when considering SBIC leverage applications, and to evaluate financial risk and economic impact for individual SBICs and the program as a whole.

Section 310(d)(1)(C)(i) of the Act requires SBICs to submit audited financial statements to SBA at least annually. SBA regulations at 13 CFR 107.630 requires the use of SBA Form 468 when submitting the financial statements and supporting documentation. The information collected is used to determine the creditworthiness of an SBIC when considering its leverage application and to monitor its financial condition after assistance is provided. The information is also used to evaluate an SBIC's compliance with certain regulations, such as the activity requirements in 13 CFR 107.590 and the portfolio diversification requirements in 13 CFR 107.740.

To date, SBA's Form 468 reporting requirements have been tailored to satisfy SBA's specific regulatory and credit risk analytical requirements using SBA's guidelines on accounting principles and valuations. Many SBIC investors request GAAP financial information from SBICs, and SBA understands that all or substantially all SBICs currently prepare data under GAAP principles in addition to under SBA's accounting and valuation guidelines applicable to the SBA Form 468. Therefore, SBA anticipates the addition of GAAP financials in general to have a de minimis impact on calculating burden, as this information would be readily available to SBICs as part of the normal course of business.

Specifically, SBA will be requesting from SBICs on SBA Form 468 the following metrics that SBICs already calculate using GAAP-audited financial data for reports to their private investors: (1) Net Total Value to Paid In Capital (TVPI)—the total distributions, including both cash and distributed securities (valued as of the distribution date) plus the net asset value of a private fund's portfolio net of carried interest and expenses, divided by the capital that has been paid in by investors; (2) Net Distributions to Paid In Capital (DPI)—total distributions, including both cash and distributed securities (valued as of distribution date), a private fund has returned to investors net of fund expenses and carried interest, divided by the amount of money investors have paid into the fund; (3) Multiple on Invested Capital (MOIC)—the total gross realized and unrealized value generated by a private fund's portfolio, divided by the total amount of capital invested into the portfolio concerns by the fund; and, (4) Net Internal Rate of Return (IRR)—the rate at which the private investor cashflows and the unrealized net asset value minus any fund expenses and carried interest are discounted so that the net present value of cashflows equals zero.

Similarly, under this proposed rule, SBA seeks to obtain GAAP financial data related to valuations in SBA Form 468 supplemental valuation reports, which are currently requested semiannually. Under this proposed rule, the reporting frequency would increase from semiannually to quarterly to supplement the valuations data SBICs must already report on SBA Form 468 Short Form for quarterly reporting. Many SBIC investors request portfolio company valuations from SBICs using GAAP principles, and SBA understands that all or substantially all SBICs currently prepare such data under GAAP principles in addition to under SBA's valuation guidelines applicable to the SBA Form 468. Therefore, SBA anticipates the addition of GAAP financials in general to have minimal impact on calculating increase to burden, as this information should already be available to SBICs as part of the normal course of business.

Additionally, this proposed rule would add three new reporting requirements to the SBA Form 468. First, SBA will request the number of jobs sustained and the number of new jobs created per each portfolio company. Currently SBA request the number of employees per financing on SBA Form 1031 with updates per follow-on financings. Under this proposed rule, SBA seeks to ask for the number of jobs at the time of initial financing (*i.e.,* jobs sustained) with annual updates of new jobs created (or lost) to obtain numbers of net new jobs created as a result of SBIC financings. Second, under this proposed rule, SBA seeks to request annual management contact and optional demographic information at the SBIC management level. SBA seeks the mandatory updates to management contact information in order to maintain and improve customer relationship between Licensees and SBA Operations Analysts. SBA seeks the voluntary information for reporting purposes to assess the current SBIC program as related to efforts undertaken in this proposed rule to promote reducing barriers to program participation for new funds and promoting the diversification of SBIC investments. Third, SBA proposed to require Leveraged SBICs licensed on or after October 1, 2023, to provide a distribution waterfall that repays SBA the principal balance on outstanding Leverage on at least a pro rata basis with private investors. In order to provide consistency on the distribution calculations, SBA seeks to collect the information in a new ''Distribution Schedule'' from Leveraged SBICs licensed on or after October 1, 2023. These new reporting requirements to the SBA Form 468 seek information that SBICs would have readily available under the normal course of business and therefore should have a de minimis impact on burden per SBIC.

The current annual burden for SBA Form 468 is estimated at 24,708 hours. Based on the current size of the SBIC program, SBA estimates the new reporting requirements to increase the annual hourly burden by 1,950 hours for a total estimated annual burden of 26,658 hours.

Title: Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078).

Description of Respondents: Small Business Investment Companies.

Estimated Number of Respondents: 316.

Estimated Annual Responses: 2,695.

Estimated Annual Hour Burden: 728.

Summary: To obtain the information needed to carry out its program

evaluation and oversight responsibilities, SBA requires SBICs to provide information on SBA Form 1031 each time financing is extended to a small business concern. SBA uses this information to evaluate how SBICs fill market financing gaps and contribute to economic growth and monitor the regulatory compliance of individual SBIC. Currently, SBA regulations require all SBICs to submit a Portfolio Financing Report using SBA Form 1031 for each financing that an SBIC provides to a Small Business Concern within 30 days after closing an investment. Under this proposed rule, the reporting deadline for SBICs (except those subject to Enhanced Monitoring) would change to 30 days after the end of the calendar year quarter (March, June, September, and December) following the closing date of a financing that an SBIC provides to a Small Business Concern, rather than 30 days after the date of each financing. Therefore, there would be no change to the annual burden estimated at 728 hours.

In addition to the reporting and recordkeeping changes proposed under this rule, in an effort to ease burden, remove redundant or no longer necessary data elements, and improve overall SBIC customer experience, SBA will be submitting for OMB review and approval revisions to both information collections. SBA invites comments on: (1) whether the proposed changes to the SBA Form 468 and SBA Form 1031 adequately provide information for the assessment of SBIC program performance, including whether the information will have practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to the address set forth above in the **ADDRESSES** section and to Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503.

G. Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small businesses, small organizations, and small governmental jurisdictions. According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule likely will not impact a substantial number of small entities relative to the population of existing private market funds and private market asset management companies. Based on U.S. capital inflows to private markets funds, SBIC Licensees represent only about 1.4% of approximately 21,000 U.S. private equity, credit and venture funds launched in the last calendar year.[2] This rulemaking will likely affect only a limited population of these entities, specifically a limited population of existing and potential SBIC Licensees. Small entities affected by this proposed rule are a unique class comprised of SBIC Licensees. As of March 31, 2022, 294 SBIC Licensees were in operation.[3] SBA estimated that approximately 98 percent of these Licensees were small businesses based on NAICS subsector code 523 (Securities, Commodity Contracts, and Other Financial Investments and Related Activities) with annual receipts less than $41.5 million. Of these 294 SBICs, 57 were Non-Leveraged Licensees. The proposed rule distinguishes between Leveraged and Non-Leveraged Licensees in applicability of some of its changes and other proposed changes apply to all SBICs.

The proposed rule applies to all SBICs, 98 percent of which SBA estimates are small businesses. SBA estimates that the proposed rule may affect all of these small businesses. If SBICs are considered as a separate category from the other entities operating in the private equity, credit, and venture funds sector, then the rule does affect a substantial number of small businesses. However, the estimated burden of this proposed rule, detailed below, of a maximum of approximately $823 per SBIC before consideration of the offsetting cost savings of this proposed rule, would likely not constitute a significant economic impact on these small businesses, even where the significance threshold is as low as one percent of revenue impacted.

The proposed rule increases the frequency of filing Form 468 from semiannually to quarterly and requests more information on Form 468. SBA does not expect that these changes related to Form 468 will impose a significant burden because much of the required information is kept in the normal course of business. SBA also notes that the changes related to Form 468 are offset by reductions in other recordkeeping and compliance costs. The first proposed offset is the facilitation of non-leveraged SBICs' use of valuation policies that meet GAAP, which decreases costs of reporting, recordkeeping, and compliance. The proposed rule's second offset is the ''Qualified Line of Credit'' that provides an exemption from the SBA prior approval requirement for some lines of credit, thus reducing those SBICs' compliance costs.

Importantly, this proposed rulemaking does not directly impact small businesses receiving investments, nor any investors or small banks participating in the SBIC Licensee. This proposed rulemaking regulates the relevant SBIC Licensees. The courts have held that the RFA does not require a regulatory flexibility analysis for entities not directly regulated by the agency's proposed rulemaking. Thus, SBA is not required to conduct a reflexibility flexibility analysis on potential downstream benefits or costs to those entities.

Even so, this proposed rulemaking also does not have a significant economic impact on those small entities directly regulated under this rulemaking. SBA expects the changes in this proposed rule to increase program participation, access to capital, and diversity of investment strategies. The proposed rule does not impose significant new compliance requirements to SBIC program participants. The proposed rule introduces some measures to strengthen risk controls that may impose some reporting and compliance requirements to some program participants. However, these reporting and compliance requirements comprise nominal changes to frequency and content, particularly compared to existing industry standards apart from the SBIC program. The

[2] Data from Pitchbook May 31, 2022 and includes all U.S. private equity, credit and venture funds launched in the last calendar year. This includes large and small businesses. Please note that the non-SBIC inflows and asset management companies will be *understated by an estimated 15–20%* due to smaller firms not reporting publicly. As a result, the percentage of inflows and asset management companies in the industry that hold SBIC licenses are likely even smaller than reported in statements above.

[3] Small Business Investment Company (SBIC) Program Overview Report for the Quarter Ending March 31, 2022 (*sba.gov*).

current annual burden for SBA Form 468 is estimated at 24,708 hours. Based on the current size of the SBIC program, SBA estimates the new reporting requirements to increase the annual hourly burden by 1,950 hours for a total estimated annual burden of 26,658 hours. The current annual burden for SBA Form 1031 is estimated at 728 hours and because the deadline for reporting would only change to the quarter after the date of financing, rather than 30 days after the date of each financing, there would be no change.

This proposed rule also defines a new class of Debentures, called accrual Debentures, that align with cash flows of equity-focused strategies. SBA expects benefits to program participants from this ability to align cash flows but is not able to quantify these benefits.

While SBA is unable to quantify the benefits and costs from these various changes, it reasonably expects these changes to not have significant impacts to the small entities that are program participants.

Based on the foregoing, the Administrator of the SBA hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The SBA invites comments from the public on this certification.

List of Subjects

13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 107 and 121 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 662, 681–687, 687b–h, 687k–m.

■ 2. Amend § 107.50 by:
■ a. Adding in alphabetical order the definitions of ''Accrual Debenture'', ''Accrual Small Business Investment Company (''Accrual SBIC'')'', and ''Annual Charge'';
■ b. Revising paragraph (2) of the definition of ''Associate'', the definition of ''Charge'', and paragraph (3)(i) of the definition of ''Control Person'';
■ c. Adding in alphabetical order the definitions of ''Enhanced Monitoring'', ''Final Licensing Fee'', ''GAAP'', and ''Initial Licensing Fee'';
■ d. Revising the definition of ''Leverage'';
■ e. Adding in alphabetical order the definitions of ''Leveraged Licensee'', ''Non-Leveraged Licensee'', and ''Qualified Line of Credit'';
■ f. Revising the definition of ''Retained Earnings Available for Distribution'';
■ g. Adding in alphabetical order the definitions of ''SBIC'', ''SBIC website'', ''State'', ''Total Leverage Commitment'', ''Underlicensed State'', and ''Wind-down Plan''; and
■ h. Removing the definition of ''Wind-up Plan''.

The additions and revisions read as follows:

§ 107.50 Definition of terms.

Accrual Debenture means a Debenture issued at face value and accrues interest over its ten-year term of which SBA guarantees both the principal and unpaid accrued interest. Licensees that issue an Accrual Debenture which remains due at its ten-year maturity may apply to SBA for a roll-over five-year Accrual Debenture which has a five-year term.

Accrual Small Business Investment Company (''Accrual SBIC'') means a Section 301(c) Partnership Licensee, licensed under § 107.300 that performs or will perform at least 75% of its total financings in Equity Capital Investments in small businesses and elects at the time of licensing to issue Accrual Debentures.

* * * * *

Annual Charge means an annual fee on Leverage which is payable to SBA by Licensees, subject to the terms and conditions set forth in §§ 107.585 and 107.1130(d).

* * * * *

Associate * * *

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate Licensee or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership Licensee. However, an entity Institutional Investor, as a limited partner in a Partnership Licensee, is not considered an Associate solely because such Person's investment in the Partnership, including commitments, represents 10 percent or more but less than 50 percent of the Licensee's partnership capital, provided that such investment also represents no more than five percent of such Person's net worth.

* * * * *

Charge has the same meaning as Annual Charge.

* * * * *

Control Person * * *

(3) * * *

(i) Controls or owns, directly or through an intervening entity, at least 30 percent of a Partnership Licensee or any entity described in paragraphs (1) or (2) of this definition; and

* * * * *

Enhanced Monitoring has the meaning set forth in § 107.1850.

* * * * *

Final Licensing Fee has the meaning set forth in § 107.300.

* * * * *

GAAP means Generally Accepted Accounting Principles as established by the Financial Accounting Standards Board (FASB) and refers to established financial accounting and reporting standards for public and private companies and not-for-profit organizations.

* * * * *

Initial Licensing Fee has the meaning set forth in § 107.300.

* * * * *

Leverage means financial assistance provided to a Licensee by SBA, either through the purchase or guaranty of a Licensee's Debentures, and any other SBA financial assistance evidenced by a security of the Licensee. For the Accrual Debenture, Leverage includes principal and accrued unpaid interest.

* * * * *

Leveraged Licensee means a Licensee which has outstanding Leverage, Leverage commitments, or intends to issue Leverage in the future.

* * * * *

Non-leveraged Licensee means a Licensee which has no outstanding Leverage or Leverage commitment, no earmarked assets, and certifies to SBA (in writing) that it will not seek Leverage in the future.

* * * * *

Qualified Line of Credit has the meaning as set forth in § 107.550(c).

* * * * *

Retained Earnings Available for Distribution (READ) means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468) and represents the amount that a Licensee may distribute to investors (including SBA) in accordance with § 107.585 as a profit Distribution, or transfer to Private Capital.

* * * * *

SBIC means Small Business Investment Company and has the same

meaning as ''Licensee'' as set forth in this section.

SBIC website means the website maintained by SBA at *www.sba.gov/sbic,* which contains information on the SBIC program, including notices, policies, procedures, and forms pertaining to the program.

* * * * *

State means one of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa.

* * * * *

Total Leverage Commitment has the meaning set forth in § 107.300.

* * * * *

Underlicensed State means a State in which the number of operating licensees per capita is less than the median number of operating licensees per capita for all States, where the per capita per State is based on the most recent resident population published by the U.S. Census as of the date of the calculation. SBA publishes a notice with the current list of Underlicensed States on the SBIC website.

* * * * *

Wind-down Plan has the meaning set forth in § 107.590.

■ 3. Amend § 107.150 by revising the paragraph (a) heading, paragraphs (b)(1) and (2), the second sentence of paragraph (c)(1), and paragraph (c)(2) to read as follows.

§ 107.150 Management-ownership diversification requirement.

(a) *Diversification requirement. (Also referenced in this part as the ''diversity requirement.'')* * * *

(b) * * *

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, no Person or group of Persons who are Affiliates of one another may own, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(2) *Exception.* An investor that is a Traditional Investment Company, as determined by SBA, may own and control more than 70 percent of your Regulatory Capital and your Leverageable Capital. For purposes of this section, a Traditional Investment Company must be either a non-profit entity or a professionally managed firm. Such entity must be organized exclusively to pool capital from multiple sources for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors. Such sources must provide, in SBA's sole discretion, sufficient ownership diversification, in terms of number of owners and concentration of ownership. In determining whether a firm is a Traditional Investment Company for purposes of this section, SBA will also consider:

(i) The degree to which the managers of the firm are unrelated to and unaffiliated with the investors in the firm or non-profit entity.

(ii) Whether the managers of the firm are authorized and motivated to make investments that, in their independent judgment, are likely to produce significant returns to all investors in the firm or non-profit entity.

(iii) Whether the firm or non-profit entity benefits from the use of the SBIC only through the financial performance of the SBIC.

(iv) Other related factors.

(c) * * *

(1) * * * Such Persons must not be your Associates (except for their status as your shareholders, limited partners, or members). * * *

(2) *Look-through for Traditional Investment Company investors.* SBA, in its sole discretion, may consider the requirement in paragraph (c)(1) of this section to be satisfied if at least 30 percent of your Regulatory Capital and Leverageable Capital is owned and controlled indirectly, through a Traditional Investment Company, by Persons unaffiliated with your management.

* * * * *

■ 4. Amend § 107.210 by:

■ a. Removing the phrase ''Wind-Up Plan'' in paragraph (a) introductory text and adding in its place the phrase ''Wind-down Plan'';

■ b. Revising paragraph (a)(1) introductory text;

■ c. Removing paragraph (a)(2); and

■ d. Redesignating paragraph (a)(3) as paragraph (a)(2).

The revision reads as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) * * *

(1) *Licensees other than Early Stage SBICs.* Except for Early Stage SBICs, a Licensee must have Regulatory Capital of at least $5,000,000. As an exception to this general rule, SBA in its sole discretion and based on a showing of special circumstances and good cause, which includes applicants that are headquartered in an Underlicensed State, may license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant:

* * * * *

■ 5. Revise § 107.300 to read as follows:

§ 107.300 License application form and fee.

SBA evaluates license applicants, giving first priority to applicants headquartered in Underlicensed States with below median SBIC Financing dollars per state, as determined by SBA and published periodically in a notice on the SBIC website. Once priority is established, such applicants will continue to receive priority throughout the licensing process. SBA reviews and processes applications in two review phases (initial review and final licensing), as follows:

(a) *Initial review.* Except as provided in this paragraph, SBIC applicants must submit a Management Assessment Questionnaire (''MAQ'') consisting of SBA Form 2181 and Part I of SBA Form 2182 and the Initial Licensing Fee, as defined in paragraph (c) of this section. An applicant under Common Control with one or more Licensees must submit a written request to SBA, and the Initial Licensing Fee, to be considered for a license and is exempt from the requirement in this paragraph to submit a MAQ unless otherwise determined by SBA in SBA's discretion.

(b) *Final licensing.* An applicant may proceed to the final licensing phase only if notified in writing by SBA that it may do so. Following receipt of such notice, in order to proceed to the final licensing phase, the applicant must submit a complete license application, including SBA Forms 2181, 2182, and 2183 which are available on the SBIC website, within the timeframe identified by SBA and the Final Licensing Fee, as defined in paragraph (c) of this section. If you are seeking to be licensed as a Leveraged Licensee and SBA approves your License, SBA will also approve your Total Leverage Commitment, which means the total Leverage commitments available to you for the life of your SBIC, subject to the provisions of §§ 107.320 and 107.1150.

(c) *Licensing Fees.* SBIC Initial and Final Licensing Fees are non-refundable fees determined as set forth below in paragraphs (c)(1) and (c)(2).

(1) *Initial Licensing Fee.* The Initial Licensing Fee is based on the applicant's fund sequence, where the fund sequence means the order of succession of private equity or private credit funds for the same fund management team and same strategy. SBA will determine the applicant's fund sequence based on the management team's composition and experience as a team. The Initial Licensing Fees are as follows:

TABLE 1 TO PARAGRAPH (c)(1)

Fund sequence	Initial licensing fee
Fund I	$5,000
Fund II	10,000
Fund III	15,000
Fund IV+	20,000

Example 1 to paragraph (c)(1): If the management team members of applicant DEF I consists primarily of the same team members of fund ABC II and ABC II represented the second fund for those team members, SBA will consider the fund sequence of DEF I as a Fund III, regardless of the number in the applicant's name.

(2) *Final Licensing Fee.* The Final Licensing Fee is calculated as the Final Licensing Base Fee plus 1.25 basis points multiplied by the Leverage dollar amount requested by the applicant, where the Final Licensing Base Fee is based on the applicant's Fund Sequence as follows:

TABLE 1 TO PARAGRAPH (c)(2)

Fund sequence	Final licensing base fee
Fund I	$10,000
Fund II	15,000
Fund III	25,000
Fund IV+	30,000

(3) *Resubmission Penalty Fee.* The Resubmission Penalty Fee means a $10,000 penalty fee assessed to an applicant that has previously withdrawn or is otherwise not approved for a license that must be paid *in addition* to the Initial and Final Licensing Fees at the time the applicant resubmits its application.

(4) *Inflation adjustments.* SBA annually adjusts the Initial Licensing Fee, Final Licensing Base Fee, and Resubmission Penalty Fee using the Inflation Adjustment and will publish notification prior to such adjustment in the **Federal Register** identifying the amount of the fees.

■ 6. Amend § 107.305 by revising paragraphs (a), (b), and (c) to read as follows:

§ 107.305 Evaluation of license applicants.

* * * * *

(a) Management qualifications, including demonstrated investment skills and experience as a principal investor, or a combination of investment skill and relevant industry operational experience; business reputation; adherence to legal and ethical standards; record of active involvement in making and monitoring investments and assisting portfolio companies; managing a regulated business, if applicable; successful history of working as a team; and experience in developing appropriate processes for evaluating investments and implementing best practices for investment firms.

(b) Performance of proposed investment team's prior relevant industry investments as well as any supporting operating experience, including investment returns measured both in percentage terms and in comparison to appropriate industry benchmarks; the extent to which investments have been realized as a result of sales, repayments, or other exit mechanisms; evidence of previous investment or operational experience contributing to U.S. domestic job creation and, when applicable, demonstrated past adherence to statutory and regulatory SBIC program requirements.

(c) Applicant's proposed investment strategy as presented in its business plan, including adherence to the Statement of Policy as stated in Section 102 of the Act, clarity of objectives; strength of management's rationale for pursuing the selected strategy; compliance with this part 107 and applicable provisions of part 121 of this chapter; fit with management's skills and experience; and the availability of sufficient resources to carry out the proposed strategy.

* * * * *

■ 7. Revise § 107.320 to read as follows:

§ 107.320 Leverage Portfolio Diversification.

SBA reserves the right to maintain diversification in approving Total Leverage Commitments for Leveraged Licensees with respect to:

(a) The year in which they commence operations;

(b) The geographic location (giving first priority to applicants from Underlicensed States with below median SBIC Financing dollars per state); and

(c) The asset class and investment strategy.

■ 8. Amend § 107.503 by:

■ a. Revising the last sentence of paragraph (a);

■ b. Adding a second sentence in paragraph (b)(2); and

■ c. Revising paragraphs (d)(1) and (4).

The revisions and addition read as follows:

§ 107.503 Licensee's adoption of an approved valuation policy.

(a) * * * These guidelines may be obtained from the SBIC website.

(b) * * *

(2) * * * If you are or applying to be a Non-leveraged Licensee, SBA will generally approve a valuation policy that meets GAAP.

* * * * *

(d) * * *

(1) If you are a Leveraged Licensee, you must value your Loans and Investments at the end of each quarter of your fiscal year, and at the end of your fiscal year.

* * * * *

(4) You must report material adverse changes in valuations at least quarterly, within forty-five days following the close of the quarter.

* * * * *

■ 9. Revise § 107.504 to read as follows:

§ 107.504 Equipment and office requirements.

(a) *Technology.* You must have access to technology to securely send and receive emails, scan documents, and prepare and submit electronic information and reports required by SBA.

(b) *Accessible office.* You must maintain an office that is open to the public during normal working hours.

■ 10. Revise § 107.550 to read as follows:

§ 107.550 Prior approval of secured third-party debt of Leveraged Licensees.

(a) *Definition.* In this section, ''secured third-party debt'' means any non-SBA debt secured by any of your assets, including secured guarantees and other contingent obligations that you voluntarily assume, and secured lines of credit.

(b) *General rule.* If you are a Leveraged Licensee, you must get SBA's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *Qualified Line of Credit.* Without obtaining SBA's prior written approval, a Leveraged Licensee may have, incur, or refinance third party debt that meets all of the following conditions:

(1) The third-party debt is a line of credit with maximum availability limited to 20% of total unfunded

binding commitments from Institutional Investors.

(2) The term of the line of credit does not exceed 12 months, but may be renewable, provided that each renewal does not exceed 12 months and you remain in compliance with the conditions of this section.

(3) The line of credit is held by a Federally regulated financial institution.

(4) All borrowings under the line of credit:

(i) Are only secured by unfunded Regulatory Capital up to 100 percent of the amount of the borrowing and 90 days of interest;

(ii) Are for the purpose of maintaining your operating liquidity or providing funds for a particular Financing of a Small Business;

(iii) Must be fully repaid within 90 days after the date they are drawn; and

(iv) Must be fully paid off for at least 30 consecutive days during your fiscal year so that you have no outstanding third-party debt for at least 30 consecutive days.

§ 107.570 [Removed and Reserved]

■ 11. Remove and reserve § 107.570.

■ 12. Revise the undesignated center heading directly preceding § 107.585 and revise § 107.585 to read as follows:

Distributions and Reductions in Regulatory Capital

§ 107.585 Distributions and Reductions in Regulatory Capital.

(a) *Non-Leveraged Licensees.* If you are a Non-leveraged Licensee, you may make distributions to your private investors without SBA prior approval. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and in § 107.210, unless such amounts are in accordance with your SBA approved Wind-Down Plan (see § 107.590). You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate, Exhibit K in SBA Form 2183 (see § 107.300).

(b) *Leveraged Licensees licensed prior to October 1, 2023, and Leveraged Licensees wholly owned by Business Development Companies that are not Accrual SBICs.* If you are a Leveraged Licensee and an Early Stage SBIC, you are subject to the distributions identified in § 107.1180. If you are either a Leveraged Licensee wholly owned by a Business Development Company or a Leveraged Licensee licensed prior to October 1, 2023, and are not an Accrual SBIC, you may distribute READ to your private investors without SBA approval only after considering any material adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of § 107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate, Exhibit K in SBA Form 2183 (see § 107.300).

(c) *Leveraged Licensees not wholly owned by a Business Development Company licensed on or after October 1, 2023, and Accrual SBICs.* If you are a Leveraged Licensee licensed after October 1, 2023, or an Accrual SBIC, unless you receive prior approval from the SBA for the purposes of covering a tax distribution you may only distribute as follows:

(1) *Payment of Annual Charges and Accrued Interest.* Prior to any distribution to your private investors, you must pay any Annual Charges owed to SBA and all accrued interest on your outstanding Leverage.

(2) *Calculate SBA's share of Distribution.* You must make payments to SBA on a pro rata basis with any distributions to your private investors based on your Total Leverage Commitment relative to your Initial Regulatory Capital calculated as follows: SBA's Share = Total Distributions x [Total Leverage Commitment/(Total Leverage Commitment + Initial Regulatory Capital)] where:

(i) Total Distributions means the total amount of distributions you intend to make after paying accrued interest and Annual Charges.

(ii) Total Leverage Commitment is as defined in § 107.300.

(iii) Initial Regulatory Capital means the Regulatory Capital established at Licensing (see § 107.300).

(3) *Apply SBA Share.* You must repay SBA Leverage in an amount no less than SBA's Share to the extent of outstanding Leverage and report the SBA calculation to SBA. If SBA's Share is greater than outstanding Leverage and you have unfunded Leverage Commitments, you must submit a Leverage Commitment cancellation equal to SBA's Share minus the SBA Leverage redemption up to the unfunded Leverage Commitments.

(4) *Distribute to Private Investors.* After repaying accrued interest, Annual Charges, and Leverage calculated as SBA's Share, you may distribute READ to your private investors without SBA approval only after considering any adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of § 107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days.

(5) *Report distribution to SBA.* You must report to SBA the distribution, the calculations, and the amounts distributed to each party as part of your annual and quarterly Form 468 (see §§ 107.630 and 107.1220).

Example 1 to [§ 107.585(c)]: Your Total Leverage Commitments is $50 million, and your Initial Regulatory Capital is $25 million. You currently have $25 million in outstanding Leverage, $25 million in unfunded Leverage Commitments, and $15 million in Leverageable Capital. You owe $1 million in accrued interest and Annual Charges. You have $61 million to distribute.

Step 1: Payment of Annual Charges and Accrued Interest. You would first pay the $1 million in accrued interest and Annual Charges.

Step 2: Calculate SBA's Share of Distribution. SBA's share is calculated as $60 million × [$50 million/($50 million + $25 million)] = $40 million.

Step 3: Apply SBA Share. You would repay $25 million in outstanding Leverage and cancel $15 million of your outstanding Leverage Commitments.

Step 4: Distribute to Private Investors. You would distribute $35 million to Private Investors.

Step 5: Report Distribution to SBA. You would then report the distribution to SBA, detailing the amounts and calculations from each of the above steps.

§ 107.590 [Amended]

■ 13. Amend § 107.590(c) by removing the phrase ''Wind-up Plan'' wherever it appears and adding in its place the phrase ''Wind-down Plan''.

■ 14. Amend § 107.620 by redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5), respectively, and adding a new paragraph (b)(2) to read as follows:

§ 107.620 Requirements to obtain information from Portfolio Concerns.

* * * * *

(b) * * *

(2) Demographic information on the portfolio concern's ownership is requested for reporting purposes only and is on a voluntary basis.

* * * * *

■ 15. Amend § 107.630 by revising the last sentence of paragraph (a) introductory text, revising paragraph (d), and adding paragraph (e) to read as follows:

§ 107.630 Requirement for Licensees to file financial statements with SBA (Form 468).

(a) * * * You must file Form 468 within 90 calendar days of the end of your fiscal year.

* * * * *

(d) *Reporting of economic impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic impact of each Financing, specifying the full-time equivalent net jobs created and total jobs created or retained, and the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees.

(e) *Fund management contact and optional demographic information.* The Licensee shall provide and update management contact information. Demographic information is requested for reporting purposes only and on a voluntary basis.

■ 16. Revise § 107.640 to read as follows:

§ 107.640 Requirement to file Portfolio Financing Reports (SBA Form 1031).

For each Financing of a Small Business (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 calendar days of the end of the calendar year quarter (March, June, September, and December) following the closing date of the Financing. If you are on the Watchlist, SBA may require more frequent reporting (see § 107.1850).

■ 17. Revise § 107.650 to read as follows:

§ 107.650 Requirement to report portfolio valuations to SBA.

You must determine the value of your Loans and Investments in accordance with § 107.503. You must report such valuations to SBA within 90 calendar days of the end of the fiscal year in the case of annual valuations, and if you are a Leveraged Licensee within 45 calendar days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 45 calendar days following the close of the quarter.

■ 18. Amend § 107.660 by revising paragraph (a) to read as follows:

§ 107.660 Other items required to be filed by Licensee with SBA.

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, quarterly or annual valuation data, fund management demographic information, letter, or other publication concerning your financial operations or those of any Portfolio Concern no later than 30 calendar days after you submit the report to your private investors.

* * * * *

■ 19. Amend § 107.692 by revising paragraphs (b)(1) and (2) to read as follows:

§ 107.692 Examination fees.

* * * * *

(b) * * *

(1) The Base Fee is calculated as $10,000 plus 0.035% of Total Leverage Commitments (see § 107.300), rounded to the nearest dollar, with two exceptions:

(i) Non-leveraged Licensees with assets over $50 million at cost will be charged an additional $20,000; and

(ii) Leveraged Licensees licensed prior to [DATE 60 DAYS AFTER DATE OF FINAL RULE PUBLICATION IN THE **FEDERAL REGISTER**] will have a Base Fee calculated as $10,000 + .035% multiplied by (outstanding Leverage + SBA undrawn Leverage commitments).

(2) SBA annually adjusts the Base Fee using the Inflation Adjustment and will publish notification prior to such adjustment in the **Federal Register** identifying the amount of the fees.

* * * * *

■ 20. Amend § 107.720 by revising paragraph (a)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

(a) * * *

(2) *Exception.* You may provide Equity Securities to underserved relenders or reinvestors (except banks or savings and loans not insured by agencies of the Federal Government, and agricultural credit companies) that make financings solely to Small Business Concerns that a Licensee may directly finance under this part. Without SBA's prior written approval, total Financings under this paragraph (a)(2) that are outstanding as of the close of your fiscal year must not exceed your Regulatory Capital.

* * * * *

■ 21. Amend § 107.730 by revising paragraphs (a)(1) and (d)(3)(iii) and removing paragraph (d)(3)(iv).

The revisions read as follows:

§ 107.730 Financings which constitute conflicts of interest.

(a) * * *

(1) Provide Financing to any of your Associates, except for when the Small Business that receives the Financing is your Associate, pursuant to paragraph (8)(ii) of the definition of ''Associate'' in § 107.50, only because an investment fund that is your Associate holds a 10% or greater equity interest in the Small Business and either of the following conditions is met:

(i) You and the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions; and you and the Associate investment fund are providing follow-on financing to the Small Business at the same time, on the same terms and conditions, and in the same proportionate dollar amounts as your respective investments in the previous round(s) of financing.

Example 1 to paragraph (a)(1)(i): If you invested $2 million and your Associate invested $1 million in the previous round, your respective follow-on investments would be in the same 2:1 ratio.

(ii) An independent third party is investing in the Small Business at the same time, on the same terms and conditions as you, and represents a significant portion of the Financing.

* * * * *

(d) * * *

(3) * * *

(iii) You are a Non-leveraged Licensee, and your Associate either is not a Licensee or is a Non-leveraged Licensee.

* * * * *

■ 22. Amend § 107.865 by revising the first sentence of paragraph (a) and by adding paragraph (f) to read as follows:

§ 107.865 Control of a Small Business by a Licensee.

(a) * * * You, or you and your Associates (in the latter case, the ''Investor Group''), may exercise Control over a Small Business for purposes connected to your investment, through ownership of voting securities, management agreements, voting trusts, majority representation on the board of directors, or otherwise, except as identified under paragraph (f) of this section. * * *

* * * * *

(f) *Financings for Accrual SBICs.* Accrual SBICs may not own more than 50% of a Small Business at initial

Financing, unless the Financing is an Equity Capital Investment in a re-lender or re-investor pursuant to § 107.720(a)(2).

■ 23. Amend § 107.1000 by revising the section heading and introductory text to read as follows:

§ 107.1000 Non-leveraged Licensees—exceptions to the regulations.

The regulatory exceptions in this section apply to Non-leveraged Licensees.

* * * * *

■ 24. Amend § 107.1120 by revising paragraph (c)(1) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(c) * * *

(1) If you were licensed after September 30, 1996, under the exception in § 107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least $5,000,000, unless you were licensed because you are headquartered in an Underlicensed State.

* * * * *

■ 25. Amend § 107.1130 by revising the section heading and paragraph (d)(1) to read as follows:

§ 107.1130 Leverage fees and Annual Charges.

* * * * *

(d) * * *

(1) *Debentures.* You must pay to SBA an Annual Charge, not to exceed 1.38 percent per annum, on the outstanding amount of your Debentures, payable under the same terms and conditions as the interest on the Debentures. For Leverage issued pursuant to Leverage Commitments approved on or after October 1, 2023, the Annual Charge, established and published annually, shall not be less than 0.50 percent per annum.

* * * * *

■ 26. Amend § 107.1150 by:

■ a. Revising the section heading;

■ b. Removing the phrase ''Section 301(c) Licensee'' in the introductory text and adding in its place the phrase ''Leveraged Licensee''; and

■ c. Revising paragraphs (a) and (b).

The revisions read as follows:

§ 107.1150 Maximum amount of Leverage.

* * * * *

(a) *Individual Licensee.* Subject to SBA's credit policies, if you are a Leveraged Licensee and not an Accrual SBIC, the maximum amount of Leverage you may have outstanding at any time is the Individual Maximum. If you are an Accrual SBIC, the maximum amount of Leverage and accrued interest you may have outstanding at any time is the Individual Maximum. The Individual Maximum means the lesser of

(1) 300 percent of your Leverageable Capital;

(2) 100 percent of your Leverageable Capital if you have less than $5 Million in Regulatory Capital and you were Licensed because you are headquartered in an Underlicensed State; or

(3) $175 million.

(b) *Multiple Licensees under Common Control.* Subject to SBA's credit policies, two or more Licenses under Common Control may have maximum aggregate outstanding Leverage of $350 million. For any Accrual SBIC under Common Control, the aggregate accrued interest associated with Accrual Debentures will be included in determining whether this maximum has been exceeded. However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed the Individual Maximum, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. *See* also § 107.1120(d).

Example 1 to paragraph (b): If a fund manager has both a regular Leveraged Licensee with $250 million in outstanding Leverage and an Accrual SBIC with $50 million in Accrual Debentures that could accrue interest of $25 million at maturity, SBA will apply the principal from the regular Leverage plus the $50 million from the Accrual Debenture plus the $25 million in potential accrued interest for a combined total of $325 million.

* * * * *

■ 27. Revise § 107.1220 to read as follows:

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

Leveraged Licensees must submit to SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). You must file this form within 45 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this § 107.1220.

§ 107.1540 [Amended]

■ 28. Amend § 107.1540 by removing paragraphs (a) and (b).

■ 29. Revise the subpart J heading to read as follows:

Subpart J—Licensee's Noncompliance

* * * * *

■ 30. Amend § 107.1830 by revising paragraph (e) to read as follows:

§ 107.1830 Licensee's Capital Impairment—definition and general requirements.

* * * * *

(e) *Quarterly computation requirement and procedure.* SBA will determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. If SBA finds you capitally impaired, they will notify you.

* * * * *

■ 31. Amend § 107.1840 by revising paragraph (a), paragraph (b) introductory text, paragraph (c) subject heading, paragraph (c)(1), and paragraph (d)(6) to read as follows:

§ 107.1840 Computation of Licensee's Capital Impairment Percentage.

(a) *General.* This section contains the procedures SBA will use to determine your Capital Impairment Percentage. SBA will compare your Capital Impairment Percentage to the maximum permitted under § 107.1830(c) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and SBA will not have to perform any more procedures in this § 107.1840. Otherwise, SBA will continue with paragraph (c) of this section. You satisfy the test if the following amounts are both zero or greater:

* * * * *

(c) *How to compute Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, SBA will compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, SBA will continue with paragraph (c)(2) of this section.

* * * * *

(d) * * *

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, SBA will reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

■ 32. Amend § 107.1845 by revising paragraph (a) introductory text to read as follows:

§ 107.1845 Determination of Capital Impairment Percentage for Early Stage SBICs.

* * * * *

(a) To determine your Class 2 Appreciation under § 107.1840(d)(3), SBA will use the following provisions instead of § 107.1840(d)(3)(iii):

* * * * *

■ 33. Revise § 107.1850 to read as follows:

§ 107.1850 Enhanced Monitoring.

Under certain circumstances, SBA may place Licensees on Enhanced Monitoring. ''Enhanced Monitoring'' means that SBA has determined, based on certain triggers discussed in this section, a Licensee requires a heightened level of reporting and monitoring.

(a) *Enhanced Monitoring triggers.* SBA may place you on Enhanced Monitoring for any of the following:

(1) You perform an investment that is a direct violation of your fund's stated investment policy as identified in its limited partnership agreement (LPA) or as presented to SBA in its License Application under § 107.300.

(2) The key person clause in your LPA is invoked, due to a change in personnel of management team members identified as key persons.

(3) You or your General Partner has been named as a party in litigation proceedings.

(4) You have violated a material provision in your LPA or any Side Letter.

(5) You rank in the bottom quartile for your primary benchmark and vintage year after 3 years based on the private investor's Total Value to Paid-In capital (TVPI), where TVPI is calculated as (cumulative distributions to private investors plus net asset value minus expenses and carried interest)/ cumulative private investor paid in capital, where net asset value is based on GAAP valuations.

(6) Your Leverage Coverage Ratio (LCR) falls below 1.25, where LCR is calculated as (unfunded Regulatory Capital commitments plus net asset value minus outstanding Leverage)/ outstanding Leverage.

(7) You default on your interest payment and fail to pay within 30 days of the date it is due. (Note: This event represents an event of default under § 107.1810(f) for which SBA maintains its rights under § 107.1810(g) if the Licensee does not cure within 15 days.).

(b) *Requirements for Licensees on Enhanced Monitoring.* If SBA places you on Enhanced Monitoring, you will be required to comply with any or all of the following:

(1) You must submit Portfolio Company Financing Reports (SBA Form 1031s), required under § 107.640, within 30 calendar days of the financing date.

(2) You must participate in monthly portfolio reviews with SBA.

(3) You must file quarterly valuation reports on specific or all of your portfolio company holdings, as requested by SBA.

(4) You must submit a letter formally requesting whether you may submit a request for a subsequent fund if you are currently on Enhanced Monitoring or have managed any Licensee on Enhanced Monitoring within the last 12 months. If you have already submitted a request or are otherwise in the Licensing process (see § 107.300), SBA may suspend processing your request until it is satisfied that its concerns are resolved or disapprove your request for a subsequent fund. SBA maintains the right to deny approval of any request to submit a subsequent fund request or any subsequent fund request submitted under § 107.300.

(c) *Removal from Enhanced Monitoring.* SBA will remove you from Enhanced Monitoring if the event that triggered your addition to Enhanced Monitoring (see paragraph a in this section) is resolved to SBA's satisfaction. Accordingly, SBA may require any or all of the following resolutions:

(1) Successful completion of a portfolio review to confirm compliance of your adherence to your investment policy.

(2) SBA's written approval of your key person resolution.

(3) SBA's written acknowledgement of pending litigation.

(4) SBA's written consent to the resolution of the LPA or side letter violation.

(5) Two quarters of performance above bottom quartile based on the TVPI, as calculated under paragraph (a) of this section.

(6) Two quarters of consistent reporting of your LCR, as calculated under paragraph a, exceeding 1.25.

(7) You are current on your Leverage interest payments.

(d) *Enhanced Monitoring Communications*—(1) *Notification to Licensee.* If you trigger any of the events under paragraph a, SBA will notify you in writing that you have been placed on Enhanced Monitoring, identify the event(s) which triggered your placement on Enhanced Monitoring status, the actions you must take as noted under paragraph b, and the remedies as identified under paragraph (c) of this section.

(2) *Enhanced Monitoring Status Disclosure.* SBA will not disclose your Enhanced Monitoring status publicly.

(3) *Removal from Enhanced Monitoring Status Notification.* SBA will provide you with written notice after SBA determines that you have completed all remedies identified in your notification letter after it is satisfied you complied with the requirements of paragraph (c) of this section.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 34. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 35. Amend § 121.103 by revising paragraph (b)(5)(vi) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(5) * * *

(vi) Entities determined by SBA to be Traditional Investment Companies under 13 CFR 107.150(b)(2) and private funds exempt from registration under the 1940 Act under section 3(c)(7) or 3(c)(1) of the 1940 Act.

* * * * *

Isabella Casillas Guzman,

Administrator.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 206

[Docket No. FR–6151–P–02]

RIN 2502–AJ51

Adjustable Rate Mortgages: Transitioning From LIBOR to Alternate Indices

AGENCY: Office of Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: HUD is proposing to remove the London Interbank Offered Rate (LIBOR) as an approved index for adjustable interest rate mortgages (ARMs), and replace LIBOR with the Secured Overnight Financing Rate (SOFR) as a Secretary-approved index for newly originated forward ARMs. HUD also proposes to codify its removal of LIBOR and approval of SOFR as an index for newly-originated Home Equity Conversion Mortgage (HECM or reverse mortgage) ARMs. In addition, HUD is proposing to establish a spread-adjusted SOFR index as the Secretary-approved