other person participating in the conduct of the affairs of such institution is an amount not to exceed $2,394 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(15) *Civil money penalties assessed for violations of 15 U.S.C. 78u–2.* Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(1) in an amount not to exceed $9,054 for a natural person or $90,535 for any other person for violations set forth in 15 U.S.C. 78u–2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u–2(a)—$90,535 for a natural person or $452,677 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a), in an amount not to exceed $181,071 for a natural person or $905,353 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(16) *Civil money penalties assessed pursuant to 15 U.S.C. 1639e(k) for appraisal independence violations.* Pursuant to section 1472(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Appraisal Independence Rule) (15 U.S.C. 1639e(k)), civil money penalties may be assessed for an initial violation of the Appraisal Independence Rule in an amount not to exceed $11,053 for each day during which the violation continues and, for subsequent violations, $22,105 for each day during which the violation continues.

(17) *Civil money penalties assessed for false claims and statements pursuant to 31 U.S.C. 3802.* Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than $10,957 per claim or statement may be assessed for violations involving false claims and statements.

(18) *Civil money penalties assessed for violations of 42 U.S.C. 4012a(f).* Pursuant to the Flood Disaster Protection Act (FDPA) (42 U.S.C. 4012a(f)), civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed $2,090 per violation.

Dated at Washington, DC, this 21st day of December, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–31240 Filed 12–27–16; 8:45 am]

BILLING CODE 6714–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AG67

Small Business Investment Companies: Passive Business Expansion and Technical Clarifications

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is revising the regulations for the Small Business Investment Company (SBIC) program to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended (Act). SBIC program regulations provide for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first exception provides conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The second exception, prior to this final rule, enabled a partnership SBIC, with SBA's prior approval, to provide financing to a small business through a passive, wholly-owned C corporation (commonly known as a blocker corporation), but only if a direct financing would cause the SBIC's investors to incur Unrelated Business Taxable Income (UBTI). This final rule clarifies several aspects of the first exception and in the second exception eliminates the prior approval requirement and expands the purposes for which a blocker corporation may be formed. The final rule also adds new reporting and other requirements for passive investments to help protect SBA's financial interests and ensure adequate oversight and makes minor technical amendments. Finally, this rule makes a conforming change to the regulations regarding the amount of leverage available to SBICs under common control. This change is necessary for consistency with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage to $350 million.

DATES: This rule is effective January 27, 2017.

FOR FURTHER INFORMATION CONTACT: Theresa Jamerson, Office of Investment and Innovation, (202) 205–7563 or *sbic@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBIC Program is an SBA financing program authorized under Title III of the Small Business Investment Act of 1958, 15 U.S.C. 681 *et seq.* Congress created the Small Business Investment Company (SBIC) program to ''stimulate and supplement 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 . . . .'' 15 U.S.C. 661. Congress intended that the program ''be carried out in such manner as to insure the maximum participation of private financing sources.'' *Id.* In accordance with that policy, SBA does not invest directly in small businesses. Rather, through the SBIC Program, SBA licenses and provides debenture leverage (Leverage) to SBICs. SBICs are privately-owned and professionally managed for-profit investment funds that make loans to, and investments in, qualified small businesses using a combination of privately raised capital and Leverage guaranteed by SBA. SBA will guarantee the repayment of debentures issued by an SBIC based on the amount of qualifying private capital raised by an SBIC up to a maximum amount of $150 million in Leverage.

SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958. Prior to this final rule, the SBIC program regulations provided for the following two exceptions that allowed an SBIC to structure an investment utilizing a passive small business as a pass-through:

A. ''*Holding company exception*''—*§ 107.720(b)(2):* This exception provides

conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The regulation defines a subsidiary company as one in which the financed passive business directly or indirectly owns at least 50% of the outstanding voting securities. As an example, this exception allows an SBIC to finance ABC Holdings 1, a passive small business, with the proceeds flowing through ABC Holdings 2, another passive small business, and then to ABC Manufacturing, a non-passive small business in which ABC Holdings 1 owns directly or indirectly at least 50% of the outstanding voting securities.

B. ''*Blocker corporation exception*''—*§ 107.720(b)(3):* This exception enables a partnership SBIC, with SBA's prior approval, to provide financing to a small business through a passive, wholly-owned C corporation, but only if a direct financing would cause one or more of the SBIC's investors to incur Unrelated Business Taxable Income (UBTI). A passive C corporation formed under the second exception is commonly known as a blocker corporation.

On October 5, 2015, SBA published a proposed rule (80 FR 60077) to further expand the permitted use of passive businesses, provide clarification with regard to investments in such businesses, and make minor technical clarifications. SBA received three comments on the proposed rule, not including one comment that generally questioned the fairness of the Act as a whole and did not provide any specific comments on the rule. The three comments pertinent to the rule are addressed in Section II.

Section II also discusses a conforming regulatory change to implement Section 521 of the Consolidated Appropriations Act, 2016 which increased the maximum leverage available to two or more SBICs under common control from $225 million to $350 million.

II. Section-By-Section Analysis

A. Passive Business Rules

Section 107.720—Small Businesses That May Be Ineligible for Financing

1. *Changes to Holding Company Exception § 107.720(b)(2):* SBA proposed revisions to § 107.720(b)(2) to explicitly permit an SBIC to form and finance a passive business that will either pass the proceeds through to or use the proceeds to acquire all or part of a non-passive business. These changes were intended to codify SBA's existing interpretation of the regulations.

SBA received 2 comments on § 107.720(b)(2) indicating that the proposed changes would be more effective if the passive business directly financed was not required to own at least 50 percent of the underlying active business. Commenters suggested that SBICs be allowed to structure investments using passive investment vehicles ''irrespective of the number of parent entities involved so long as the parent entities in question directly or indirectly own or control at least 50 percent of the voting or economic interests of the active business.'' SBA received similar comments as part of the rulemaking process when it last proposed expanding the permitted use of passive businesses. SBA reconsidered these previous suggestions in developing this current rule; however, in light of the additional protections added in this final rule (see the discussion of § 107.720(b)(4) in paragraph II.A.3 of this preamble), neither set of comments was adopted. Although the new § 107.720(b)(4) should help address some of SBA's credit concerns, SBA believes that controlling ownership provisions are needed to facilitate access to information and records needed to effectively monitor these transactions and to aid in the recovery of assets in the event of a default. SBA also continues to maintain its position that effective monitoring of transactions with unlimited levels of passive companies would require resources well beyond those available to the Agency. Proposed § 107.720(b)(2) is adopted without change.

2. *Changes to Blocker Corporation Exception—§ 107.720(b)(3):* The proposed rule also included the following changes to § 107.720(b)(3):

a. Removing the requirement to obtain SBA's prior approval to form a blocker corporation;

b. Permitting an SBIC to form a blocker corporation to enable any foreign investors to avoid effectively connected income (ECI) under the Internal Revenue Code;

c. Permitting a blocker corporation to provide financing to a second passive small business that passes the proceeds through to a non-passive small business in which it owns at least 50 percent of the outstanding voting securities (effectively permitting an investment structured with two levels of passive companies, one of which is the blocker corporation); and

d. Removing outdated language indicating that an SBIC's ownership of a blocker corporation formed under § 107.720(b)(3) will not constitute a violation of § 107.865(a). This provision was rendered unnecessary by a rule change in 2002 (67 FR 64789) that revised § 107.865(a) to permit an SBIC to exercise control over a small business for up to seven years without SBA approval.

SBA received comments on proposed § 107.720(b)(3) as discussed below:

a. Regulated Investment Company (RIC) Exception. All 3 commenters asked that the regulations provide an additional exception for SBICs that are wholly owned subsidiaries of Business Development Companies (BDCs). A BDC typically elects to be taxed as a RIC pursuant to Subchapter M of the Internal Revenue Code of 1986. In general, a RIC is not subject to U.S. federal income taxes on income and gains that it distributes to stockholders, provided that it satisfies certain minimum distribution requirements. To qualify as a RIC, a BDC must satisfy certain source of income and asset-diversification tests; among other things, a RIC must generally derive at least 90% of its gross income for each taxable year from certain types of investment. In particular, the commenters explained that equity interests in pass-through tax entities generate operating income that, if received or deemed received directly by a BDC, could disqualify the BDC from maintaining RIC status, and therefore, such interests must often be held through a blocker corporation. The commenters requested that § 107.720(b)(3) be revised to permit an SBIC to form a blocker corporation to avoid adverse tax consequences to an investor that has elected to be taxed as a RIC. This final rule adopts the suggestion.

b. Blocker Entity Form of Organization. SBA also received two comments suggesting that non-corporate forms of organization should be permitted for blocker entities. The commenters explained that these structures are often ''more streamlined in terms of corporate formalities than a C corporation'' and suggested the regulations allow ''any entity that elects to be taxed as a corporation for Federal income tax purposes.'' SBA considered this suggestion to be overly broad, but partially adopted this suggestion in the final rule by allowing a blocker entity to be structured as an LLC that elects to be taxed as a corporation.

c. Two Level Holding Company Financing. Two commenters indicated that § 107.720(b)(3) should allow SBICs to structure a financing with a blocker entity and then two levels of passive holding companies as defined in § 107.720(b)(2). The commenters stated

that the proposed rule puts an SBIC that requires a blocker entity to accommodate its investors at a disadvantage compared to other SBICs that do not require a blocker entity, since the blocker entity can only finance a single passive business entity that in turn makes an investment into an active business. For example, an SBIC with a foreign investor would not be able to participate in a financing that is structured as a two-level passive business financing under 107.720(b)(2), if they also needed a separate passive business to serve as a blocker entity in order to avoid effectively connected income. However, SBA believes that one of the other passive businesses permitted under § 107.720(b)(2) could possibly be used as a blocker. The commenters' suggestion would effectively permit up to three levels of passive businesses between the SBIC and the operating business. SBA did not adopt this suggestion because additional levels of passive businesses impose a burden on SBA as regulator and increase the Agency's credit risk. SBA believes that two levels of passive businesses under either exception should provide SBICs with sufficient flexibility to operate successfully.

d. SBA did not receive any comments on the proposed change to § 107.720(b)(3) regarding the removal of outdated language. This rule adopts the change as proposed.

3. *Additional Passive Business Guidance—§ 107.720(b)(4):* The proposed rule identified SBA's concerns with regard to passive investments, including making sure the financing dollars go to the eligible non-passive small business, fees being charged at each passive business level, and SBA's ability to access passive business financial records, especially in the case of a defaulting SBIC. To address these concerns, SBA proposed making the the following changes in new § 107.720(b)(4), which would apply to any eligible passive investment made under § 107.720(b)(2) or (b)(3):

a. ''Substantially All'' Definition. Clarifying the meaning of ''substantially all'' in § 107.720(b)(2) and (b)(3) to mean 99 percent of the financing proceeds after deduction of actual application fees, closing fees, and expense reimbursements, which may not exceed those permitted under § 107.860.

b. Fee Requirements. Requiring fees charged by an SBIC or its Associate under §§ 107.860 and 107.900 to not exceed those permitted if the SBIC had directly financed the eligible Small Business and requiring any such fees received by an SBIC's Associate to be paid to the SBIC in cash within 30 days of receipt.

c. ''Portfolio Concern'' Clarification. Clarifying that both passive and non-passive businesses included in a financing are ''Portfolio Concerns'' and therefore subject to record keeping and reporting obligations with respect to any ''Portfolio Concern,'' defined in § 107.50 as ''a Small Business Assisted by a Licensee.''

SBA received 3 comments on proposed § 107.720(b)(4) as discussed below:

a. ''Substantially All'' Definition. Commenters suggested that the definition of ''substantially all'' be lowered to 95 percent of the proceeds instead of 99% of the proceeds because they were concerned that the 99 percent threshold ''may be too limiting and pose issues in deal structuring.'' SBA did not adopt this comment. The definition already excludes allowable fees and expense reimbursements permitted under §§ 107.860 and 107.900, and SBA believes that a 95 percent threshold could result in excessive expenses being charged in the passive businesses that is diverted from the intended operating business. Although this percentage may seem inconsequential, 4% of a $20 million financing represents $800,000 that could be diverted from the operating business.

b. Fee Requirements. Two commenters suggested removing the requirement that fees received by an Associate must be paid over in cash to the SBIC. They noted that SBIC program policy guidance known as TechNote 7a, which provides guidelines concerning allowable management expenses for leveraged SBICs (see *www.sba.gov/sbicpolicy*), already requires that 100% of fees collected under § 107.860 or § 107.900 must benefit the SBIC, either by being paid directly to the SBIC or (if paid to an Associate) through a corresponding reduction in the management fee paid by the SBIC, typically called a ''management fee offset.'' Commenters also indicated that management fee offsets have tax advantages relative to other approaches. Although SBA recognizes that management fee offsets can provide tax advantages, SBA did not adopt this suggestion because of the difficulty in monitoring investments utilizing passive businesses and identifying fees associated with each passive business in addition to those paid by the operating business.

c. ''Portfolio Concern'' Clarification. Two commenters indicated that the clarification of Portfolio Concern should be revised to apply only ''for the purposes of this part 107.720'' to avoid any unintended effects arising from the use of the term ''Portfolio Concern'' in other sections of the regulations. The commenters indicated that this adjustment would still allow SBA to retain the necessary information rights contemplated by the proposed rule. A search for the term ''Portfolio Concern'' within the regulations identified the following instances.

- § 107.50 defines ''Portfolio Concern'' as ''a Small Business Assisted by a Licensee.''
- §§ 107.600–107.660 describe record keeping and information requirements, including those for a Portfolio Concern.
- § 107.730 discusses conflicts of interest with regards to Portfolio Concerns.
- § 107.760 discusses how a change in size or activity affect the Licensee with regards to a Portfolio Concern.
- § 107.850 discusses restrictions on redemption of Equity Securities of a Portfolio Concern.

SBA believes that all of the requirements in these sections are applicable to passive business financings. Therefore, this suggestion was not adopted.

4. *Section 107.610 Required certifications for Loans and Investments.* The proposed rule also added a certification requirement to § 107.610 to require an SBIC that finances a business under § 107.720(b)(3) to certify as to the qualifying basis for such financing. The certification replaces the requirement for SBA prior approval of the formation and financing of a blocker corporation.

Although SBA received no comments on proposed § 107.610, because SBA adopted the suggestion to allow SBICs that are BDC subsidiaries to form blocker entities in order to maintain the BDC's RIC status under § 107.720 (b)(3), the language in the final rule adds compliance with this tax election as a permissible basis for a passive business formed under § 107.720(b)(3).

B. Technical Changes

SBA also proposed the following technical changes to the regulations.

1. *Section 107.50 Definition of terms.* Changing ''Associates's'' to ''Associate's''.

2. *Section 107.210 Minimum capital requirements for Licensees.* Modifying paragraph (a) of § 107.210 to allow both Leverageable Capital and Regulatory Capital to fall below the stated minimums if the reductions are performed in accordance with an SBA-approved wind-up plan per § 107.590(c), to conform with SBA's current oversight practices.

3. *Section 107.503 Licensee's adoption of an approved valuation*

policy. Changing the last sentence of § 107.503(a) to indicate that valuation guidelines for SBICs may be obtained from the SBIC program's public Web site, *www.sba.gov/inv.*

4. *Section 107.630 Requirement for Licensees to file financial statements with SBA (Form 468).* Removing current § 107.630(d), which provides a mailing address for submission of SBA Form 468, and re-designating paragraph (e) as paragraph (d). These instructions are no longer necessary because SBICs submit this information electronically using the SBA's web-based application.

5. *Section 107.1100 Types of Leverage and application procedures.* Correcting the misspelling of ''Yu'' to ''You'' and removing paragraph (c) which identifies where to send Leverage applications. This paragraph is unnecessary because the application forms provide these instructions.

None of the comments SBA received in response to the proposed rule were related to these technical changes. The final rule incorporates these changes as proposed.

C. Increase to Maximum Leverage to SBICs Under Common Control

Section 521 of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242, (December 22, 2015) amended section 303(b)(2) of the Small Business Investment Act of 1958 to increase the maximum amount of Leverage available to two or more SBICs under Common Control from $225 million to $350 million. SBA defines Common Control to mean a condition where two or more persons, either through ownership, management, contract, or otherwise, are under the control of one group or person. Under 13 CFR 107.50, SBA presumes that two or more SBICs are under Common Control if, among other things, they have common officers, directors, or general partners. Currently, 13 CFR 107.1150(b) limits two or more SBICs under Common Control to the maximum aggregate amount of outstanding Leverage of $225 million, which amount is subject to further limitations under SBA's credit policies. Solely as a conforming change, this rule increases the maximum amount set forth in the regulation from $225 million to $350 million. This statutory change was not addressed previously because it had not yet been enacted when the rule was proposed. Now that it has, the technical change is necessary to avoid public confusion and ensure consistency between the regulations and the current law.

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

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a ''significant'' regulatory action under Executive Order 12866. This is also not a ''major'' rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Executive Order 12988

This action meets applicable standards set forth in section 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 retroactive or presumptive effect.

Executive Order 13132

The final rule would not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this rule has no federalism implications warranting the preparation of a federalism assessment.

Executive Order 13563

This final rule was developed in response to comments received on previously proposed amendments to these regulations on investments in passive businesses. *See* 78 FR 77377 (December 23, 2013). SBA received one set of comments on that rule that suggested changes to further liberalize permitted financings to passive businesses under Sec. 107.720(b). In response to the comment, SBA indicated in the final rule (79 FR 62819) that it would further consider the suggested changes in a future rulemaking. As part of that reconsideration, SBA discussed the comments with industry representatives and solicited additional comments in the proposed rule published in October 2015 at 80 FR 60077. This final rule reflects the input received from those public outreach efforts.

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

SBA has determined that this rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act. In particular, this rule implements changes to the Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078), to clarify information to be reported in Parts A, B, and C of the form. The changes, described in detail below, also include designating current Part D as Part F and adding new Parts D and E.

The title, description of respondents, description of the information collection and the changes to it are discussed below with an estimate of the revised annual burden. Included in the estimate is the 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 1031 (OMB Control Number 3245–0078).

Summary: SBA Form 1031 is a currently approved information collection. SBA regulations, specifically § 107.640, 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. SBA uses the information provided on Form 1031 to evaluate SBIC compliance with regulatory requirements. The form is also SBA's primary source of information for compiling statistics on the SBIC program as a provider of capital to small businesses. The proposed rule (80 FR 60077) invited the public to provide comments on the following changes to SBA Form 1031:

(1) *Clarifying the SBIC should report the non-passive Small Business Concern information in the Form 1031.* SBA has noted that SBICs sometimes report data on the passive Small Business Concern rather than the non-passive Small Business Concern when reporting financing information. SBA has clarified that the SBIC should report data on the non-passive Small Business Concern when reporting information on financings using passive businesses in the Form 1031 Part A—the Small Business Concern; Part B—the pre-financing data; and Part C—the financing information, with the exception of the financing dollars in Question 29. The amount of financing dollars provided by the SBIC should be the total amount of such financing, regardless of whether the dollars were provided directly or indirectly to the non-passive business concern. Example: The SBIC provides $5 million in equity to ABC Holding Corporation, which passes $4.98 million to the non-passive business, Acme Manufacturing LLC. In addition, the SBIC provides $5 million in debt directly to Acme Manufacturing LLC. The SBIC would report information on Acme Manufacturing LLC in Parts A, B, and C. However, the

total financing dollars would be reported as $5 million in equity and $5 million in debt for a total of $10 million in total financing dollars.

(2) *Identifying financings using one or more passive businesses.* SBA has added a question on whether the financing utilizes one or more passive businesses as part of the financing, to help SBA identify these financings.

(3) *Adding information on passive business financings to aid in regulatory compliance monitoring.* SBA has also added a requirement for SBICs to upload a file in Portable Document Format (PDF) that contains the following information, which SBA will use to help assess whether the financing meets regulatory compliance:

(a) *Qualifying exception:* Identification of the passive business exception under which the financing is made (*i.e.,* § 107.720(b)(2) Exception for pass-through of proceeds to subsidiary, or § 107.720(b)(3) Exception for certain Partnership Licensees). If the SBIC indicates that the financing is made under § 107.720(b)(3), it would also indicate the qualifying basis for the financing (*i.e.,* financing would cause an investor in the fund to incur unrelated business taxable income or effectively connected income or to receive non-qualifying income for a regulated investment company).

(b) *Passive Business Entities:* Identification of the name and employer ID number for each passive business entity used within the financing. This is needed so that SBA can identify all Portfolio Concerns involved in the financing.

(c) *Financing Structure Description:* A description of the financing structure, including the flow of the money between the SBIC and the non-passive Small Business Concern that receives the proceeds (including amounts and types of securities between each entity), and the ownership from the SBIC through each entity to the non-passive Small Business Concern. This information will help SBA assess that the Small Business Concern receives ''substantially all'' the financing dollars and the ownership percentages are in compliance with the regulations. This will also help SBA with SBICs transferred to the Office of Liquidation to identify the structure of the financing and aid in recovery of SBA leverage.

(4) *Impact Fund Policy Initiative:* Finally, a new Part D, consisting of two questions concerning whether the investment is a fund-identified impact investment or SBA-identified impact investment has been added to the Form. This change provides a vehicle for SBICs licensed to participate in SBA's Impact Investment Fund (Impact SBICs to more clearly report whether they are reporting on an SBA-identified impact investment or a Fund-identified impact investment. The Impact Investment Fund was launched in April 2011 as part of President Obama's Start-Up America Initiative. See, [*https://www.sba.gov/about-sba/sba-initiatives/startup-america/about-startup-america.*] The initiative was amended in September 2014 to allow Impact SBICs to invest in self-identified impact investments. [*https://www.sba.gov/sites/default/files/articles/SBA%20Impact%20Investment%20Fund%20Policy%20-%20September%202014_1.pdf* or *https://www.sba.gov/content/new-2014-expanding-sbas-impact-fund*] While Impact SBICs, like all SBICS use Form 1031 to report on their financings, SBA has determined that it would be beneficial to Impact SBICs if SBA Form 1031 were to include questions specifically targeted towards impact investments.

SBA did not receive any comments on the changes; therefore, they are adopted as proposed.

Description of Respondents and Burden: There are approximately 299 licensed SBICs. All of these SBICs are required to submit SBA Form 1031 for each financing. The current estimated number of responses (*i.e.,* number of financings) is 2,021 based on a recent three year period (FY 2012 through 2014). The current estimate indicates that it takes approximately 12 minutes to complete the form, for a total annual burden of 404 hours.

Neither the number of respondents nor the number of responses per year is expected to be affected by this rule. However, SBA estimates a slight increase in the burden hour as a result of the additional reporting in new Parts D (Impact Investments) and Part E (Passive Business).

Impact Fund Reporting. This reporting is expected to have minimal impact. The estimated eight SBICs making impact investments would complete new Part D an estimated total 56 times annually. At an estimated 2 minutes per response, this additional reporting would add 2 hours to the annual burden for Form 1031.

Passive Business Reporting. SBA believes that the SBIC should be able to provide the passive business information since it should be readily available as part of the financing. SBA estimates that providing the information will take on average an additional 30 minutes for those financings utilizing passive businesses, with no incremental burden for those financings that do not use a passive business. SBA estimates that about 12% of the annual responses relate to passive businesses financings (based on financing data in 2014). Based on the number of SBICs reporting such financings the total estimated annual hour burden resulting from new Part E reporting would be 122.

Therefore the total estimated annual hour burden for all SBICs submitting SBA Form 1031s in a year would be 528 hours.

The current cost estimate for completing SBA Form 1031 uses a rate of $35 per hour for an accounting manager to fill out the form. Using that same rate, the cost per form would change from $7 per form to $9.14 per form. However, SBA has increased its estimate of an hourly rate for an accounting manager to $43 per hour (estimated using *www1.salary.com/Accounting-Manager-hourly-wages.html* in July 2015), which rate results in a new cost per form of $11.23 for an aggregate cost of $22,704 for the 2,021 estimated responses.

This final rule also identifies information that an SBIC must maintain in its files to support the required changes. SBA believes that the SBICs should already be maintaining this information since a passive business by definition is a Portfolio Concern and the SBIC should be maintaining all documents needed to support each financing. The rule makes this expectation explicit. Furthermore, currently, an SBIC must maintain this information for it to effectively monitor and evaluate an investment that uses a passive business to finance a non-passive business. Therefore, SBA does not believe this recordkeeping requirement increases the burden.

The rule also requires a certification under § 107.610 when the SBIC makes a financing using the exemption in § 107.720(b)(3). This includes maintaining records supporting the certification. Since this regulation effectively replaces the requirement for SBICs to seek prior SBA approval and maintain these records, SBA does not believe this change will increase the burden.

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 entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an Initial Regulatory Flexibility Act (IRFA) analysis which describes whether the impact of the rule will have a significant

economic impact on a substantial number of small entities. However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule would affect all SBICs, of which there are currently close to 300. SBA estimates that approximately 75 percent of these SBICs are small entities. Therefore, SBA has determined that this rule would have an impact on a substantial number of small entities. However, SBA has determined that the economic impact on entities affected by the rule would not be significant. As discussed under the Paperwork Reduction Act section, SBICs would need to provide descriptions of the transactions in the Form 1031, which based on the estimate would cost each SBIC approximately $28 per year. The changes in the passive business regulation provide SBICs with additional flexibility to employ transaction structures commonly used by private equity or venture capital funds that are not SBICs.

SBA asserts that the economic impact of the rule, if any, would be minimal and beneficial to small SBICs. Accordingly, the Administrator of the SBA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

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

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 107 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. 681, 683, 687(c), 687b, 687d, 687g, 687m.

§ 107.50 [Amended]

■ 2. Amend § 107.50 by removing from the definition of ''Lending Institution'' the term ''Associates's'' and adding in its place the term ''Associate's''.

■ 3. Amend § 107.210 by revising paragraph (a) introductory text to read as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) *Companies licensed on or after October 1, 1996.* A company licensed on or after October 1, 1996, must have Leverageable Capital of at least $2,500,000 and must meet the applicable minimum Regulatory Capital requirement in this paragraph (a), unless lower Leverageable Capital and Regulatory Capital amounts are approved by SBA as part of a Wind-Up Plan in accordance with § 107.590(c):

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■ 4. Amend § 107.503 by revising the last sentence of paragraph (a) to read as follows:

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

(a) * * * These guidelines may be obtained from SBA's SBIC Web site at *www.sba.gov/inv*.

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■ 5. Amend § 107.610 by adding paragraph (g) to read as follows:

§ 107.610 Required certifications for Loans and Investments.

* * * * *

(g) For each passive business financed under § 107.720(b)(3), a certification by you, dated as of the closing date of the Financing, as to the basis for the qualification of the Financing under § 107.720(b)(3) and identifying one or more limited partners for which a direct Financing would cause those investors:

(1) To incur ''unrelated business taxable income'' under section 511 of the Internal Revenue Code (26 U.S.C. 511);

(2) To incur ''effectively connected income'' to foreign investors under sections 871 and 882 of the Internal Revenue Code (26 U.S.C. 871 and 882); or

(3) For an investor that has elected to be taxed as a regulated investment company, to receive or be deemed to receive gross income that does not qualify under Section 851(b)(2) of the Internal Revenue Code (26 U.S.C. 851(b)(2)).

§ 107.630 [Amended]

■ 6. Amend § 107.630 by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

■ 7. Amend § 107.720 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

* * * * *

(b) * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may provide Financing directly to a passive business, including a passive business that you have formed, if it is a Small Business and it passes substantially all the proceeds through to (or uses substantially all the proceeds to acquire) one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which the financed passive business either:

(i) Directly owns, or will own as a result of the Financing, at least 50 percent of the outstanding voting securities; or

(ii) Indirectly owns, or will own as a result of the Financing, at least 50 percent of the outstanding voting securities (by directly owning the outstanding voting securities of another passive Small Business that is the direct owner of the outstanding voting securities of the subsidiary company).

(3) *Exception for certain Partnership Licensees.* If you are a Partnership Licensee, you may form one or more blocker entities in accordance with this paragraph (b)(3). For the purposes of this paragraph, a ''blocker entity'' means a corporation or a limited liability company that elects to be taxed as a corporation for Federal income tax purposes. The sole purpose of a blocker entity must be to provide Financing to one or more eligible, unincorporated Small Businesses. You may form such blocker entities only if a direct Financing to such Small Businesses would cause any of your investors to incur ''unrelated business taxable income'' under section 511 of the Internal Revenue Code (26 U.S.C. 511); incur ''effectively connected income'' to foreign investors under sections 871 and 882 of the Internal Revenue Code (26 U.S.C. 871 and 882); or (for an investor that has elected to be taxed as a regulated investment company) receive or be deemed to receive gross income that does not qualify under section 851(b)(2) of the Internal Revenue Code (26 U.S.C. 851(b)(2)). Your ownership and investment of funds in such blocker entities will not constitute a violation of § 107.730(a). For each passive business financed under this section 107.720(b)(3), you must provide a certification to SBA as required under § 107.610(g). A blocker entity formed under this paragraph may provide Financing:

(i) Directly to one or more eligible non-passive Small Businesses; or

(ii) Directly to a passive Small Business that passes substantially all the proceeds directly to (or uses substantially all the proceeds to acquire) one or more eligible non-passive Small Businesses in which the passive Small Business directly owns, or will own as a result of the Financing, at least 50% of the outstanding voting securities.

(4) *Additional conditions for permitted passive business financings.* Financings permitted under paragraphs (b)(2) or (b)(3) of this section must meet all of the following conditions:

(i) For the purposes of this paragraph (b), ''substantially all'' means at least ninety-nine percent of the Financing proceeds after deduction of actual application fees, closing fees, and expense reimbursements, which may not exceed those permitted by § 107.860.

(ii) If you and/or your Associate charge fees permitted by § 107.860 and/or § 107.900, the total amount of such fees charged to all passive and non-passive businesses that are part of the same Financing may not exceed the fees that would have been permitted if the Financing had been provided directly to a non-passive Small Business. Any such fees received by your Associate must be paid to you in cash within 30 days of the receipt of such fees.

(iii) For the purposes of this part 107, each passive and non-passive business included in the Financing is a Portfolio Concern. The terms of the financing must provide SBA with access to Portfolio Concern information in compliance with this part 107, including without limitation §§ 107.600 and 107.620.

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§ 107.1100 [Amended]

■ 8. Amend § 107.1100 by removing the term ''Yu'' in the second to the last sentence of paragraph (b) and adding in its place ''You'', and by removing paragraph (c).

§ 107.1150 [Amended]

■ 9. Amend § 107.1150 by removing the term ''$225 million'' in the first sentence of paragraph (b) and adding in its place ''$350 million''.

Dated: December 20, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–31291 Filed 12–27–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9537; Directorate Identifier 2016–SW–075–AD; Amendment 39–18759; AD 2016–24–51]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, which was sent previously to all known U.S. owners and operators of these helicopters. This AD requires inspecting certain bearings. This AD is prompted by a report of a failed bearing. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 12, 2017 to all persons except those persons to whom it was made immediately effective by Emergency AD 2016–24–51, issued on November 16, 2016, which contains the requirements of this AD.

We must receive comments on this AD by February 27, 2017.

ADDRESSES: You may send comments by any of the following methods:

Federal eRulemaking Docket: Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.

- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9537; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email: *wcs_cust_service_eng.gr-sik@lmco.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Blaine Williams, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7161; email *blaine.williams@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On November 16, 2016, we issued Emergency AD 2016–24–51 to correct an unsafe condition on Sikorsky Model S–92A helicopters with a TR pitch change shaft (TRPCS) assembly part number (P/N) 92358–06303–041 or P/N 92358–06303–042. Emergency AD 2016–24–51 was sent previously to all known U.S. owners and operators of these helicopters. Emergency AD 2016–24–51 requires removing TRPCS assemblies