that provide relevant, accurate and timely information and data.

12. Each regulated entity and the Office of Finance should have secure information systems that are supported by adequate contingency arrangements.

13. Each regulated entity and the Office of Finance should have effective channels of communication to ensure that all personnel understand and adhere to policies and procedures affecting their duties and responsibilities.

Monitoring Activities and Correcting Deficiencies

14. Each regulated entity and the Office of Finance should monitor the overall effectiveness of its internal controls and key risks on an ongoing basis and ensure that business units and internal and external audit conduct periodic evaluations.

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Applicable Laws, Regulations, and Policies

16. Each regulated entity and the Office of Finance should comply with all applicable laws, regulations, and supervisory guidance (*e.g.,* advisory bulletins) governing internal controls and information systems.

Standard 2—Independence and Adequacy of Internal Audit Systems

Audit Committee

1. The board of directors of each regulated entity and the Office of Finance should have an audit committee that exercises proper oversight and adopts appropriate policies and procedures designed to ensure the independence of the internal audit function. The audit committee should ensure that the internal audit department includes personnel who are appropriately trained and competent to oversee the internal audit function.

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3. The audit committee of the board of directors is responsible for monitoring and evaluating the effectiveness of the internal audit function of each regulated entity and the Office of Finance.

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Internal Audit Function

5. Each regulated entity and the Office of Finance should have an internal audit function that provides for adequate testing of the system of internal controls.

6. Each regulated entity and the Office of Finance should have an independent and objective internal audit department that reports directly to the audit committee of the board of directors.

7. The internal audit department of each regulated entity and the Office of Finance should be adequately staffed with properly trained and competent personnel.

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Applicable Laws, Regulations, and Policies

11. Each regulated entity and the Office of Finance should comply with applicable laws, regulations, and supervisory guidance (*e.g.,* advisory bulletins) governing the independence and adequacy of internal audit systems.

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Standard 8—Overall Risk Management Processes

Responsibilities of the Board of Directors

1. Regarding overall risk management processes, the board of directors is responsible for overseeing the process, ensuring senior management are appropriately trained and competent, ensuring processes are in place to identify, manage, monitor and control risk exposures (this function may be delegated to a board appointed committee), approving all major risk limits, and ensuring incentive compensation measures for senior management capture a full range of risks to the regulated entity or the Office of Finance.

Responsibilities of the Board and Senior Management

2. Regarding overall risk management processes, the board of directors and senior management should establish and sustain a culture that promotes effective risk management. This culture includes timely, accurate and informative risk reports, alignment of the overall risk profile of the regulated entity or the Office of Finance with its mission objectives, and the annual review of comprehensive self-assessments of material risks.

Independent Risk Management Function

3. A regulated entity or the Office of Finance should have an independent risk management function, or unit, with responsibility for risk measurement and risk monitoring, including monitoring and enforcement of risk limits.

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Risk Measurement, Monitoring, and Control

7. Each regulated entity and the Office of Finance should measure, monitor, and control its overall risk exposures, reviewing, as applicable, market, credit, liquidity, and operational risk exposures on both a business unit (or business segment) and enterprise-wide basis.

8. Each regulated entity and the Office of Finance should have the risk management systems to generate, at an appropriate frequency, the information needed to manage risk. As applicable, such systems should include systems for market, credit, operational, and liquidity risk analysis, asset and liability management, regulatory reporting, and performance measurement.

9. Each regulated entity and the Office of Finance should have a comprehensive set of risk limits and monitoring procedures to ensure that risk exposures remain within established risk limits, and a mechanism for reporting violations and breaches of risk limits to senior management and the board of directors.

10. Each regulated entity and the Office of Finance should ensure that it has sufficient controls around risk measurement models to ensure the completeness, accuracy, and timeliness of risk information.

11. Each regulated entity and the Office of Finance should have adequate and well-tested disaster recovery and business resumption plans for all major systems and have remote facilitates to limit the impact of disruptive events.

Applicable Laws, Regulations, and Policies

12. As applicable, each regulated entity and the Office of Finance should comply with all applicable laws, regulations, and supervisory guidance (*e.g.,* advisory bulletins) governing the management of risk.

* * * * *

Standard 10—Maintenance of Adequate Records

1. Each regulated entity and the Office of Finance should maintain financial records in compliance with Generally Accepted Accounting Principles (GAAP), FHFA guidelines, and applicable laws and regulations.

2. Each regulated entity and the Office of Finance should ensure that assets are safeguarded and financial and operational information is timely and reliable.

3. Each regulated entity and the Office of Finance should have a records retention program consistent with laws and corporate policies, including accounting policies, as well as personnel that are appropriately trained and competent to oversee and implement the records management plan.

4. Each regulated entity and the Office of Finance, with oversight from its board of directors, should conduct a review and approval of the records retention program and records retention schedule for all types of records at least once every two years.

5. Each regulated entity and the Office of Finance should ensure that reporting errors are detected and corrected in a timely manner.

6. Each regulated entity and the Office of Finance should comply with all applicable laws, regulations, and supervisory guidance (*e.g.,* advisory bulletins) governing the maintenance of adequate records.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2024–00731 Filed 1–18–24; 8:45 am]

BILLING CODE 8070–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107 and 121

RIN 3245–AH90

Small Business Investment Company Investment Diversification and Growth; Technical Amendments and Clarifications

AGENCY: U. S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule clarifies and provides technical updates to the *Small Business Investment Company Investment Diversification and Growth* final rule implemented on August 17, 2023 (SBIC IDG Final Rule), which reduced 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. In the SBIC IDG Final Rule, SBA introduced a new class of SBICs (''Accrual'' SBICs) to unlock more patient capital financing for small businesses through the SBIC program and implement changes to lower financial barriers to program participation for new fund managers. This direct final rule will help SBA implement Executive Order 13985, 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.

DATES: This rule is effective March 4, 2024, without further action, unless significant comment is received by February 20, 2024. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

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: Nathan Putnam, 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 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 and issue SBA-guaranteed Debentures to make private long-term equity and debt investments into qualifying Small Businesses.

B. Notice of Rulemaking

The following is an overview of changes made to 13 CFR part 107 as part of this Direct Final Rule to clarify and provide technical updates to the *Small Business Investment Company Investment Diversification and Growth* final rule (SBIC IDG Final Rule) implemented on August 17, 2023.

(a) *§ 107.50 Definition of terms clarification.* Clarifying the definition of Annual Charge, for certain investors clarifying the definition of Institutional Investor to eliminate the need for a ''dual commitment'' relative to the capital commitment of such investors and clarifying that the definition of Leverage is consistent across SBIC Debenture types.

(b) *§ 107.150 Management ownership diversity requirements clarification.*

Clarifying the exemption for non-profit entities to own more than 70 percent of the Licensee's Regulatory Capital to facilitate capital raising efforts, particularly for funds targeting investments in underserved geographies and critical technologies.

(c) *§ 107.230 Permitted sources of Private Capital for Licensees clarification.* Clarifying that while SBICs are not restricted in the amount of investment capital that can be contributed to SBICs directly or indirectly from local, State or Federal Government entities, the extent to which such investment capital from local, State or Federal Government entities is eligible to qualify as Leverageable Capital is limited by the Small Business Investment Act of 1958, as amended (''the Act''). The capital contributed by such entities can be included in an SBIC applicant's proposed formula to calculate management fees.

(d) *§ 107.305 Evaluation of license applicants clarification.* Clarifying that SBA does not require a ''certified'' track record as a part of the SBIC application process and would expect to see that a meaningful proportion of a prior SBIC fund's institutional investor base would return to support an anticipated subsequent SBIC fund.

(e) *§ 107.503 Licensee's adoption of an approved valuation policy technical correction.* Aligning the existing regulation with the statutory requirements.

(f) *§ 107.585 Distributions and reductions in Regulatory Capital technical correction.* Correcting the timeframe for payment of amounts due SBA by Accrual and Reinvestor Licensees making distributions other than those made solely for tax purposes.

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

Clarifying that Reinvestor SBIC Licensees must file Annual and Interim (Quarterly) Form 468s within 120 calendar days of the close of the calendar quarter.

(h) *§ 107.650 Requirement to report portfolio valuations to SBA clarification.*

Clarifying that Reinvestor SBIC Licensees must report valuations to SBA within 120 calendar days of the close of the calendar quarter.

(i) *§ 107.650 Requirement to report portfolio valuations to SBA technical correction.* Aligning the existing regulation with the statutory requirements.

(j) *§ 107.720 Small Businesses that may be ineligible for financing clarification.* Clarifying that Reinvestor SBIC Licensees may provide Equity Capital Investments to Disadvantaged Businesses that are relenders or reinvestors, including Community Development Financial Institutions (CDFIs) and Minority Deposit Institutions (MDIs). In addition to Equity Capital Investments, Reinvestor SBIC Licensees may provide long-term debt or loan financing to CDFIs and MDIs.

(k) *§ 107.720 Small Businesses that may be ineligible for financing technical correction.* SBA is expanding the exception that permits holding companies to be established by Licensees to mitigate implementation challenges for Accrual SBIC Licensees. Also, SBA is updating the regulation by including a provision that appeared in a prior rulemaking permitting SBIC Business Development Companies (BDCs) to form a blocker entity to avoid adverse tax consequences to an investor that has elected to be taxed as a registered investment company (RIC) under the Internal Revenue Code (26 U.S.C. 851(b)(2)).

(l) *§ 107.740 Portfolio diversification (''overline'' limitation) technical correction.* Aligning the existing regulation with the statutory requirements.

(m) *§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses (''Cost of Money'') technical correction.* Correcting regulations that misstate in 13 CFR 107.855(h)(2) the ''Cost of Money ceiling'' reference within § 107.855.

(n) *§ 107.1120 General eligibility requirements for Leverage technical correction.* Correcting regulations that erroneously state in 13 CFR 107.1120(d) that SBIC Licensees are limited to $150 million in outstanding Leverage.

(o) *§ 107.1130 Leverage fees and Annual Charges clarification.* Clarifying that Annual Charges on Debentures are based on the principal amount of Debentures.

(p) *§ 107.1150 Maximum amount of Leverage clarification.* Clarifying a statement from the preamble of the SBIC IDG Final Rule regarding the how SBA determines the Leverage available to Accrual SBICs and Reinvestor SBICs and how the Agency safely manages the risk of an outsized interest balance accruing.

(q) *§ 107.1850 Watchlist technical correction.* Correcting regulations that misstate the formula used to calculate the Leverage Coverage Ratio.

(r) *§ 121.103(b) How does SBA determine affiliation? clarification.* Clarifying that SBA does not consider the underlying fund of a Reinvestor SBIC to be the affiliate of a small business in which such underlying fund has made an equity investment.

II. Section by Section Analysis

A. Section 107.50 Definition of Terms

SBA seeks to clarify the definition of Institutional Investor to be consistent with rules implemented in the SBIC IDG Final Rule to provide regulatory flexibility for fund-of-fund investors that are required to be managed by SEC regulated Registered Investment Advisors. SBA considers the commitments of such fund-of-fund investors to not be of questionable collectability if the conditions set forth in the revised paragraph (1)(x) of the Institutional Investor definition are met, generally eliminating the requirement that a ''dual commitment'' be obtained relative to such investor's capital commitment.

SBA seeks to correct the definition of Annual Charge and correct text added to the definition of Leverage that could inadvertently lead to Annual Charges being charged on Accrual Debenture principal and accrued interest. Consistent with existing practices for Standard Debentures, the Annual Charge on Accrual Debentures is charged on Accrual Debenture principal only.

B. Section 107.150 Management Ownership Diversity Requirements

This regulation identifies the SBIC ownership diversity requirements under section 302(c) of the Act. 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.'' As an exception to the diversity ownership requirement under § 107.150(b)(1), SBA allows an investor that is a traditional investment company 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 generating profits. In the SBIC Investment Diversification and Growth rulemaking, SBA proposed also including non-profit entities to own more than 70 percent of the Licensee's Regulatory Capital to facilitate capital raising efforts, particularly for funds targeting investments in underserved geographies and critical technologies. In the final rulemaking, SBA clarified such non-profit entities could own and control a Licensee; however, did include the proposed reforms, which were supported in public comments, for such non-profit entities to own more than 70 percent of the Licensee's Regulatory Capital. SBA is clarifying in this rulemaking that such non-profit entities can own more than 70 percent of the Licensee's Regulatory Capital as originally stated in the proposed rulemaking.

C. Section 107.230 Permitted Sources of Private Capital for Licensees

SBA seeks to clarify that while SBICs are not restricted in the amount of investment capital that can be contributed to SBICs directly or indirectly from local, State or Federal Government entities, the extent to which such investment capital from local, State or Federal Government entities is eligible to qualify as Leverageable Capital is limited by the Small Business Investment Act of 1958, as amended (''the Act''). The capital contributed by such entities can be included in an SBIC applicant's proposed formula to calculate management fees.

D. Section 107.305 Evaluation of License Applicants

SBA seeks to clarify that a management team must have demonstrated investment acumen to apply for an SBIC license, as defined in § 107.305(b). SBA looks at a mosaic of factors when determining eligibility for an SBIC license and can rely upon third-party data sources and reference checks in conjunction with the initial license application to verify management team eligibility. For clarity, SBA is adding that while a track record is required to apply for an SBIC license, a certified track record is not required and is clarifying that SBA would expect to see that a meaningful proportion, in terms of the number of institutional investors, of a prior SBIC fund's investor base would return to support an anticipated subsequent SBIC fund.

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

SBA is correcting current regulations, which erroneously state in 13 CFR 107.503(d)(4) that SBIC Licensees must report material adverse changes within 45 days following the close of the quarter. The statutory requirement is within 30 days following the close of the quarter.

F. Section 107.585 Distributions and Reductions in Regulatory Capital

SBA is correcting the timeframe set forth in § 107.585(c), for both the mandatory payment of Annual Charges and accrued interest and the mandatory payment of the ''SBA share'' by Accrual and Reinvestor Licensees making distributions other than those made solely for tax purposes. Under the SBIC IDG Final Rule such Licensees are required to make mandatory payments on annual charges and accrued interest and the calculated SBA share of Leverage in connection with each distribution to private investors, other than a distribution approved in writing and in advance by SBA as solely for tax purposes. The SBIC IDG Final Rule provided inconsistent guidance as to the timing of such payments due to SBA. In order to reduce its risk, SBA corrects the regulation to require that each such payment to SBA be made on or before the date of the corresponding non-tax distribution to private investors.

Also, in view of the alignment of the ''overline'' formula of § 107.740 with the formula set forth in section 306 of the Act, SBA seeks to eliminate from § 107.585 two references to the former regulatory formula. Those references concern an ''add back'' of approved reductions of Regulatory Capital to the regulatory formula previously contained within § 107.740. Given that § 107.740 has now been aligned with the statutory overline formula, as to which such ''add backs'' are not applicable, the references within § 107.585 to such ''add backs'' are no longer relevant.

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

SBA seeks to clarify that Reinvestor SBICs are required to file Annual Form 468 within 120 calendar days of the end of your fiscal year and Interim Form 468 within 120 calendar days of the respective quarter.

H. Section 107.650 Requirement To Report Portfolio Valuations to SBA

Consistent with the clarification in 13 CFR 107.630, SBA similarly clarifies that Reinvestor SBICs must report valuations to SBA within 120 days of the end of the fiscal year and within 120 days following the close of other reporting periods.

In addition, SBA aligns the regulatory requirement for Licensees to report material adverse changes in valuations with the statutory requirement.

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

This regulation identifies small businesses that may be ineligible for financing by SBICs. Current 13 CFR 107.720(a)(2)(i) provides an exception to the limitation on investments in relenders or reinvestors in order to permit Reinvestor SBICs to provide Equity Capital Investments to underserved Small Business reinvestors (except banks, savings and loans not insured by agencies of the Federal Government, and agricultural credit companies). As part of this rulemaking, SBA is seeking to clarify its intent relative to § 107.720(a)(2)(i) by noting that Reinvestor SBIC Licensees may provide Equity Capital Investments to Disadvantaged Businesses that are relenders or reinvestors, including Community Development Financial Institutions (CDFIs) and Minority Deposit Institutions (MDIs). In addition to Equity Capital Investments, Reinvestor SBIC Licensees may provide long-term debt or loan financing to CDFIs and MDIs. SBA notes that such CDFIs and MDIs are excepted from the requirement to solely make investments or loans to eligible businesses pursuant to the requirements set forth in § 107.720(a)(2)(i).

Current 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, identified in § 107.720(b)(2), permits an investment utilizing up to two passive entities, as long as substantially all of the financing proceeds are passed through to one or more active ''subsidiary companies,'' each of which is an eligible small business. The second exception, identified in § 107.720(b)(3), allows a partnership SBIC to form and finance a passive, blocker entity that in turn provides financing to an active, unincorporated small business. Currently, this structure is permitted only if a direct financing of the unincorporated small business would cause at least one of the SBIC's investors to incur Unrelated Business Taxable Income (UBTI) under section 511 of the Internal Revenue Code, which may arise from an activity engaged in by a tax-exempt organization that is not related to the tax-exempt purpose of that organization.

SBA is clarifying that the exception set forth in 13 CFR 107.720(b)(2) permits an SBIC to structure an investment utilizing additional passive small businesses as a pass through, provided that (i) all financing proceeds are passed through to one or more active ''subsidiary companies,'' each of which is an eligible small business, (ii) SBA has adequate information to review information appropriate to each passive small business pursuant to 13 CFR 107.720(b)(4), and (iii) SBA is able to maintain enforcement rights against each of the small businesses financed pursuant to 13 CFR 107.720(b)(2), including the active Small Business. Further, SBA is clarifying that 13 CFR 107.720(b)(3) allows the formation of a blocker entity, in the case of an SBIC that either is a BDC licensed under the Investment Company Act of 1940 or is owned by a parent BDC, to avoid adverse tax consequences to an investor that has elected to be taxed as a registered investment company under the Internal Revenue Code (26 U.S.C. 851(b)(2)). SBA believes that these changes will provide SBICs with additional flexibility investments to eligible Small Businesses and increase the flow of private capital within the SBIC program.

J. Section 107.740 Portfolio Diversification (''Overline'' Limit)

SBA seeks to align the ''overline'' formula contained within § 107.740 with overline formula that is set forth in section 306 of the Act. Section 306 contains an aggregate limitation on the concentration of a Licensee's combined capital (Private Capital + guaranteed Leverage), precluding a Licensee from investing combined capital in excess of a threshold determined under the statutory formula. Previously, SBA regulations contained an overline limitation that was similar to the statutory requirement though different in important respects, thus subjecting Licensees to an additional overline requirement and potentially resulting in confusion in various circumstances. By aligning the regulation with the statute, SBA now effectively simplifies overline management and the burden of tracking the overline requirement under two separate formulae.

K. Section 107.855 Interest Rate Ceiling and Limitations on Fees Charged to Small Businesses (''Cost of Money'')

SBA seeks to correct a misstated reference by correcting 107.855(h)(2) to read as follows: ''Discount the cash flows back to the first disbursement date using the Cost of Money ceiling from paragraph (c) of this section as the discount rate.''

L. Section 107.1120 General Eligibility Requirements for Leverage

SBA seeks to correct current regulations, which erroneously state in 13 CFR 107.1120(d) that SBIC Licensees are limited to $150 million in outstanding Leverage. This provision does not reflect a change in the statutory outstanding Leverage maximum which is $175 million for an individual Licensee and $350 million in aggregate for SBIC Licensees that are under Common Control. Also, SBA has inserted language referring to the maximum Leverage allowed under the Act to ensure that any statutory changes are reflected in the regulations.

M. Section 107.1130 Leverage Fees and Annual Charge

SBA seeks to clarify the current regulations which are ambiguous as to the basis for which Annual Charges are calculated on outstanding Debentures. SBA clarifies the regulation by adding the word ''principal'' in front of ''amount'' in 13 CFR 107.1130(d)(1).

N. Section 107.1150 Maximum Amount of Leverage

SBA seeks to further clarify a statement from the preamble of the SBIC IDG Final Rule regarding how SBA determines the Leverage available to Accrual SBICs and Reinvestor SBICs. In the rule, SBA stated that ''In order to determine the maximum amount of leverage that Accrual SBICs and Reinvestor 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 based on the statutory limitation.'' SBA seeks to clarify that this aggregation is based on an estimate of potential interest which could accrue based on prevailing interest rates at the time of licensing. Furthermore, SBA seeks to clarify how

the Agency safely manages the risk of an outsized interest balance accruing by requiring Accrual Debentures to include a provision which requires the prompt payment of any interest that has accrued in excess of the limitation of SBA Leverage available at the end of each quarter. This clarification refers to the fact that SBA is performing a forecasting exercise in conjunction with other considerations during the Licensing process to ultimately make a determination on the Total Intended Leverage Commitment SBA will conditionally approve as part of the Green Light approval. It should be noted that all Total Intended Leverage Commitments and Leverage issued are bound by the statutory maxima applicable to Individual Licensees and Licensees under Common Control. (SBA may issue a subsequent Leverage Commitment which permits the Licensee to exceed the sum otherwise available under section 303(b)(2), up to an amount equal to the lesser of (a) 33 percent of the Licensee's Private Capital, and (b) the Licensee's Energy Saving Qualified Investment cost basis, subject to the limitations expressed in section 303 of the SBIC Act and its implementing regulations.)

O. Section 107.1850 Watchlist

SBA seeks to correct current regulations, which erroneously present in 13 CFR 107.1859 the formula used to calculate a metric that was among those included in the formal Licensee ''Watchlist'' process implemented by the SBIC IDG Final Rule to formalize monitoring practices that have existed in SBIC Program Standard Operating Procedures for several years. Among the ''Watchlist triggers'' described in paragraph 13 CFR 107.1850(a) was the Leverage Coverage Ratio (LCR). SBA now corrects clause 13 CFR 107.1850(a)(6) which presents the formula used to calculate LCR, which was misstated in the SBIC IDG Final Rule.

P. Section 121.103 How does SBA determine affiliation?

With the SBIC IDG Final Rule, SBA established within § 107.720(a)(2) a new type of SBIC, known as a Reinvestor SBIC, licensed to issue Accrual Debentures and approved by SBA to provide ''Equity Capital Investments to underserved Small Business reinvestors (except banks, savings and loans not insured by agencies of the Federal Government, and agricultural credit companies) that make direct financings'' to certain qualifying Small Businesses. With the advent of Reinvestor SBICs, questions have arisen concerning the applicability of SBA affiliation rules to the relationship between such underserved Small Business reinvestors and the qualifying Small Businesses in which they invest. Although 13 CFR 121.103(b)(1), in current form, provides clarity as to the lack of regulatory affiliation between licensed SBICs and the Small Businesses to which they provide Financing, the SBIC IDG Final Rule failed to answer the related question of whether a Small Business reinvestor is affiliated with the qualifying Small Business in which it reinvests. SBA now modifies clause 13 CFR 121.103(b)(1) to respond to this question and resolve that no affiliation results from this relationship.

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 rule is not a ''significant regulatory action'' under Executive Order 12866.

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 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 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

Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), requires agencies to adopt regulations through a process that involves public participation, and to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this rule in a manner consistent with these requirements, and the public will have the opportunity to provide comments prior to the effective date of this direct final rule.

F. Congressional Review Act, 5 U.S.C. 801–808

The Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804(2).

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

SBA has determined that this rule would not impose new reporting or recordkeeping requirements under the Paperwork Reduction Act.

H. 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 rule likely will not impact a substantial number of small entities. This rulemaking is intended to update and clarify comments received in connection with prior SBA rules, and accordingly will affect only a limited population of existing and potential SBIC Licensees. Importantly, this rule does not directly impact small businesses receiving investments, nor any investors or small banks participating in the SBIC Licensee. This 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 regulatory flexibility analysis on potential downstream benefits or costs to those entities.

Further, this 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 rule does not impose any significant new compliance requirements to SBIC 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.

Justification for Direct Final Rule—Administrative Procedure Act

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act. 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, when an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest.

SBA is publishing this rule as a direct final rule because public participation is unnecessary. SBA views this as a non-controversial administrative action because all technical corrections and updates are consistent with public comments received throughout the SBIC IDG Final Rule rulemaking process. This rule will be effective on the date shown in the **DATES** section unless SBA receives significant adverse comment on or before the deadline for comments. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. SBA does not expect to receive any significant adverse comments because these technical corrections and updates are consistent with broad stakeholder comments received during the prior SBIC IDG Final Rule rulemaking process.

If SBA receives significant adverse comment, SBA will publish a notice in the **Federal Register** withdrawing this rule before the effective date. If SBA receives no significant adverse comments, the rule will be effective 45 days after publication without further notice.

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 is implementing regulations to amend 13 CFR parts 107 and 121 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

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

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

■ 2. Amend § 107.50 by revising the definitions of Annual Charge, paragraph (1)(x) of Institutional Investor, and Leverage to read as follows:

§ 107.50 Definition of terms.

* * * * *

Annual Charge means:

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

* * * * *

Institutional Investor means:

(1) * * *

(x) An entity managed by an SEC regulated Registered Investment Adviser in good standing, provided the Licensee's limited partnership agreement (or other governing agreement) contains sufficient provisions to ensure collectability.

* * * * *

Leverage means:

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.

* * * * *

■ 3. Amend § 107.150 by revising paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(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 a non-profit entity, or a professionally managed firm organized exclusively to pool capital from more than one source for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors. In determining whether a firm is a traditional investment company for purposes of this section, SBA will also consider:

* * * * *

■ 4. Amend § 107.230 by:

■ a. Adding a heading to paragraph (e); and

■ b. Adding paragraph (f).

The revisions read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(e) *Borrowed funds exclusion.* * * *

(f) *Public sector contributions.* The Act limits the extent to which funds invested directly or indirectly by local, State or Federal Government entities are eligible to qualify as Leverageable Capital. However, SBICs are not restricted from accepting funds invested directly or indirectly from local, State or Federal Government entities. The funds contributed by such entities may be included in an SBIC applicant's proposed formula to calculate management fees.

■ 5. Amend § 107.305 by adding a sentence at the end of paragraph (b) and revising (e)(1)(iii) to read as follows:

§ 107.305 Evaluation of license applicants.

* * * * *

(b) * * * While a track record is required to apply for an SBIC license, a ''certified'' track record is not required.

* * * * *

(e) * * *

(1) * * *

(iii) *Consistent limited partnership (LP)-general partnership (GP) dynamics.* No new limited partner will represent ≥33 percent of the Private Capital of the licensee upon reaching final close at target fund size or hard cap. SBA would expect to see that a meaningful proportion of a prior SBIC fund's institutional investor base would return to support an anticipated subsequent SBIC fund. The most recent limited partnership agreement (LPA) of the active Licensee and all side letters will have no substantive changes for the applicant fund.

* * * * *

■ 6. Amend 107.503 by revising paragraph (d)(4) to read as follows:

§ 107.503 Permitted sources of Private Capital for Licensees.

* * * * *

(d) * * *

(4) You must report material adverse changes in valuations at least quarterly,

within 30 days following the close of the quarter.

* * * * *

■ 7. Amend § 107.585 by:
■ a. In paragraph (b), removing the fourth sentence;
■ b. Revising the introductory text of paragraph (c), paragraph (c)(1), paragraph (c)(2) introductory text, and paragraph (c)(2)(i); and
■ c. In paragraph (c)(4) removing the fifth sentence.

The revisions read as follows:

§ 107.585 Distributions and reductions in Regulatory Capital.

* * * * *

(c) *Accrual SBICs and Reinvestor SBICs.* If you are an Accrual SBIC or Reinvestor SBIC, unless you receive prior written approval from SBA to make a distribution solely to cover tax liabilities, you may only distribute as follows:

(1) *Payment of Annual Charges and accrued interest.* Prior to any non-tax distribution, you must pay any Annual Charges owed to SBA and all accrued interest on your outstanding Leverage.

(2) *Calculate SBA's share of distribution.* Prior to any non-tax distribution, you must make payments to SBA on a pro rata basis with any distributions based on your SBA Total Intended Leverage Commitment relative to your Total Private Capital Commitments, inclusive of Qualified Non-Private Funds, determined within 12 months of Licensure calculated as follows: SBA's Share = Total Distributions × [Total Intended Leverage Commitment/(Total Intended Leverage Commitment + Total Private Capital Commitments)] where:

(i) Total Distributions means any prior tax distributions plus the total amount of distributions, whether profit or return of capital, you intend to make after paying all accrued interest and Annual Charges;

* * * * *

■ 8. Amend § 107.630 by adding a sentence at the end of paragraphs (a) introductory text and (b) to read as follows:

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

(a) * * * Reinvestor SBICs must file Annual Form 468 within 120 calendar days of the end of your fiscal year.

* * * * *

(b) * * * Reinvestor SBICs must file such reports within 120 calendar days of the end of the reporting period.

* * * * *

■ 9. 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. Reinvestor SBICs must report valuations to SBA within 120 calendar days of the end of the fiscal year in the case of annual valuations, and within 120 calendar days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

■ 10. Amend § 107.720 by:
■ a. Adding two sentences at the end of paragraph (a)(2)(i);
■ b. Revising the first sentence of paragraph (b)(2) introductory text;
■ c. Revising the fourth sentence of paragraph (b)(3) introductory text; and
■ d. Revising paragraph (b)(4)(iii).

The additions and revisions read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

(a) * * *

(2) * * *

(i) * * *A Reinvestor SBIC may make Equity Capital Investments to Disadvantaged Businesses that are relenders or reinvestors, including Community Development Financial Institutions (CDFIs) and Minority Deposit Institutions (MDIs), and any such investments in CDFIs or MDIs pursuant to this section are not subject to the requirement that such CDFIs or MDIs make direct financings solely to Small Businesses. In addition to Equity Capital Investments, Reinvestor SBIC Licensees may provide long-term debt or loan financing to CDFIs and MDIs.

* * * * *

(b) * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may provide Financing directly to passive businesses, including passive businesses 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.

* * *

(3) * * * 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) or 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 (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)). * * *

(4) * * *

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

* * * * *

■ 11. Revise § 107.740 to read as follows:

§ 107.740 Portfolio diversification ("Overline" limitation).

If you are a Leveraged Licensee, the aggregate amount of financings you may provide and commitments you may issue to a Small Business and its affiliates may not, without SBA's prior written approval, exceed 10 percent of the sum of:

(a) Your Private Capital; and

(b) The total amount of Leverage principal (excluding any interest which may become due or accrue at any point following the issuance of Leverage) projected to be issued in the business plan that was approved by SBA at the time you were licensed.

■ 12. Amend § 107.855 by revising paragraph (h)(2) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money").

* * * * *

(h) * * *

(2) Discount the cash flows back to the first disbursement date using the Cost of Money ceiling from paragraph (c) of this section as the discount rate.

* * * * *

■ 13. Amend § 107.1120 by revising paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of the amount permitted under Section 303(b)(2)(A)(ii) of the Act,

which, as of June 21, 2018, is $175,000,000, certify that none of the Licensees has a condition of Capital Impairment. See also § 107.1150(b).

* * * * *

■ 14. Amend § 107.1130 by revising paragraph (d)(1) introductory text to read as follows:

§ 107.1130 Leverage fees and Annual Charge.

* * * * *

(d) * * *

(1) *Debentures.* You must pay to SBA an Annual Charge, not to exceed 1.38 percent per annum, on the outstanding principal 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, shall not be less than 0.10 percent per annum, subject to the following provisions:

* * * * *

■ 15. Amend § 107.1850 by revising paragraph (a)(6) to read as follows:

§ 107.1850 Watchlist.

* * * * *

(a) * * *

(6) Your leverage coverage ratio (LCR) falls below 1.25, where LCR is calculated as ((Total Assets − Liabilities excluding SBA Leverage − Other Assets) + Unfunded Private Commitments)/ Outstanding Leverage, or a Capital Impairment Percentage approaching your threshold set forth in § 107.1830.

* * * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 16. 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.

■ 17. Amend § 121.103 by revising paragraph (b)(1) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(1) Business concerns owned in whole or substantial part either by investment companies licensed, or by development companies qualifying, under the Small Business Investment Act of 1958, as amended, or by investment companies to which a Reinvestor SBIC (within the meaning of 13 CFR 107.720(a)(2)) has provided a meaningful percentage of Equity Capital are not considered affiliates of such investment companies or development companies.

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2024–00559 Filed 1–18–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31526; Amdt. No. 4095]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 19, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 19, 2024.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies