

§ 107.1840

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fiscal quarter. If SBA finds you capitally impaired, they will notify you.

(f) *SBA’s right to determine Licensee’s Capital Impairment condition.* SBA may make its own determination of your Capital Impairment condition at any time.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5873, Feb. 5, 1998; 88 FR 46012, July 18, 2023]

§ 107.1840 Computation of Licensee’s Capital Impairment Percentage.

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

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

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468, and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

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

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.* (1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your “Net Appreciation”.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your “Class 1 Appreciation”.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the satisfaction of SBA (this is your “Class 2 Appreciation”):

(i) The Small Business that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm’s length transaction by a sophisticated new investor in the issuer’s securities; and

(iii) Except as provided for Early Stage SBICs in §107.1845, such financing occurred within 24 months of the date of the Capital Impairment computation, or the Small Business’s pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of the Small Business’s average contributed capital for such fiscal year.

(4) Except as provided for Early Stage SBICs in §107.1845, perform the appropriate computation from the following table:

ADJUSTED UNREALIZED GAIN BEFORE ESTIMATED TAX EFFECTS

| If: | And: | Then adjusted unrealized gain before taxes is: |
|---|--|---|
| Class 1 Appreciation ≤Net Appreciation | Class 1 Appreciation + Class 2 Appreciation ≤Net Appreciation. | (80% × Class 1 Appreciation) + (50% × Class 2 Appreciation). |
| Class 1 Appreciation ≤Net Appreciation | Class 1 Appreciation + Class 2 Appreciation >Net Appreciation. | (80% × Class 1 Appreciation) + [(50% × (Net Appreciation – Class 1 Appreciation))]. |

ADJUSTED UNREALIZED GAIN BEFORE ESTIMATED TAX EFFECTS—Continued

| If: | And: | Then adjusted unrealized gain before taxes is: |
|---|-------|---|
| Class 1 Appreciation >Net Appreciation | | 80% × Net Appreciation. |

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

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

[61 FR 3189, Jan. 31, 1996, as amended at 77 FR 25054, Apr. 27, 2012; 88 FR 46013, July 18, 2023]

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

This section applies to Early Stage SBICs only. Except as modified by this section, all provisions of §107.1840 apply to an Early Stage SBIC.

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

(1) Such financing occurred within 24 months of the date of the Capital Impairment computation. At the end of the 24 month period following the financing, you may request SBA’s written approval to retain the use of the original Class 2 Appreciation on the investment for up to 24 additional months.

(2) In considering your request, SBA may obtain its own valuation of the investment, require you to obtain a valuation performed by an independent third party acceptable to SBA, and may consider any other information that it deems relevant. To the extent that the valuation and any other relevant information conclusively support the original Class 2 appreciation, SBA

may approve an extension to use all or part of the original Class 2 Appreciation for up to an additional 24 months (the “extension period”).

(3) At the end of any extension period, you may submit a new request to retain the use of the original Class 2 Appreciation, repeating the steps in paragraphs (a)(1) and (2) of this section.

(4) SBA may reconsider its approval to retain the use of the original Class 2 Appreciation at any time based on information that may affect the value of an investment.

(b) Any time you submit a request for SBA approval to retain the use of the original Class 2 Appreciation under paragraph (a) of this section, you may also request SBA’s written approval to modify your computation of Adjusted Unrealized Gain under §107.1840(d)(4) as provided in paragraph (c) of this section.

(c) If SBA determines that the appreciation on an investment, based on its current fair value, is at least two times the original Class 2 Appreciation on the investment, SBA may allow you, based on relevant information, to compute your Adjusted Unrealized Gain for the duration of the extension period as follows:

(1) Compute Adjusted Unrealized Gain in accordance with §107.1840(d)(4).

(2) If your result in paragraph (c)(1) of this section was computed using the first line of the table in §107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c), and

(ii) Add it to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

(3) If your result in paragraph (c)(1) of this section was computed using the second line of the table in §107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c).