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 pretax 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)].
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, you must 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]

§ 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), 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).

(ii) Subtract your Class 1 Appreciation from your Net Appreciation, and multiply the result by 50 percent.

(iii) Add the lesser of (c)(3)(i) and (ii) of this section to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

[77 FR 25054, Apr. 27, 2012]

§ 107.1850 Exceptions to Capital Impairment provisions for Licensees with outstanding Participating Securities.

The provisions in this §107.1850 apply only if at least two-thirds of your outstanding Leverage consists of Participating Securities, and at least two-thirds of your Loans and Investments (at cost) consist of Equity Capital Investments.

(a) *Forbearance period for Participating Securities issuers.* During the first forty-eight (48) months following your first issuance of Participating Securities, you will not have a condition of Capital Impairment if your Capital Impairment Percentage is below 85 percent.

(b) *Extended forbearance period for early stage investors.* If at least two-thirds of your Loans and Investments (at cost) are in Start-Up Financings, the forbearance period in paragraph (a) of this section is extended to 60 months.

(c) *Forbearance based on actions by Licensee.* The provisions of this paragraph (c) apply only during the fifth and sixth years following your first issuance of Participating Securities. If your Capital Impairment Percentage, as determined either by you or by SBA, exceeds the maximum permitted under §107.1830(c) but is below 85 percent, you will not have a condition of Capital Impairment if you do either of the following within thirty (30) days of such determination:

(1) Increase your Regulatory Capital by a cash contribution placed in an escrow account or other account satisfactory to SBA, for its benefit. The contribution must equal, during the fifth year, 15 percent of your outstanding Leverage or, during the sixth year, 30 percent.

(2) Provide a guarantee, satisfactory to SBA and for its benefit, for the amount of the cash contribution required in paragraph (c)(1) of this section. SBA will credit any escrowed funds or guarantee received in the fifth year toward the requirements for the sixth year.

(d) *Conditions for forbearance under paragraph (c) of this section.* (1) You cannot count any funds placed in an escrow or other account under paragraph