behalf of a person or entity other than yourself, you must also list that person's or entity's work contact information, including name, title, address, phone number, and email.

(2) *Explanation of Need.* Provide a detailed statement explaining the particular need for and intended use of the information. This statement must include:

(i) The extent to which a particular function is dependent upon access to the information;

(ii) Why the function cannot be achieved or performed without access to the information;

(iii) An explanation of whether other information is available to the requester that could facilitate the same objective;

(iv) How long the information will be needed;

(v) Whether or not the information is needed to participate in a specific proceeding (with that proceeding identified); and

(vi) An explanation of whether the information is needed expeditiously.

(3) *Signed Non-Disclosure Acknowledgement/Agreement.* Provide an executed Non-Disclosure Acknowledgement (if the requester is a Federal entity) or an executed Non-Disclosure Agreement (if the requester is not a Federal entity) requiring adherence to limitations on the use and disclosure of the information requested.

(4) *DOE evaluation.* Upon receiving a request for CEII, the CEII Coordinator shall contact the DOE Office or Federal agency that created or maintains the CEII. In consultation with the DOE Office, the CEII Coordinator shall carefully consider the statement of need provided by the requester and determine if the need for CEII and the protection afforded to the CEII should result in sharing CEII for the limited purpose identified in the request. If the CEII Coordinator or Coordinator's designee denies the request, the requestor may seek reconsideration, as provided in paragraph (i) of this section.

(l) *Disclosure*—(1) *Disclosure by submitter of information.* If the submitter of information deliberately discloses to the public information that has received a CEII designation, then the Department reserves the right to remove its CEII designation.

(2) *Disciplinary Action for Unauthorized Disclosure.* DOE employees or contractors who knowingly or willfully disclose CEII in an unauthorized manner will be subject to appropriate sanctions, including disciplinary action under DOE or DOE Office personnel rules or referral to the DOE Inspector General. Any action by a Federal or non-federal Entity who knowingly or willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry to obtain CEII may also constitute a violation of other applicable laws and is potentially punishable by fine and imprisonment.

(3) *Whistleblower protection.* In accordance with the Whistleblower Protection Enhancement Act of 2012 (Pub. L. 112–199, 126 Stat. 1465), the provisions of this rule are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute relating to:

(i) Classified information;

(ii) Communications to Congress;

(iii) The reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

(iv) Any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling statutory provisions are not affected by this rule.

[FR Doc. 2020–04640 Filed 3–13–20; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 225 and 238

[Regulations Y and LL; Docket No. R–1662]

RIN 7100–AF 49

Control and Divestiture Proceedings

Correction

In rule document 2020–03398, appearing on pages 12398 through 12430 in the issue of Monday, March 2, 2020 make the following correction.

§ 238.2 [Corrected]

On page 12426, in the first column, in Subpart A, in instruction 6, on the second line, ''(e), (r)(2), and (tt)'' should read ''(e) and (r)(2) and adding paragraph (tt)''.

[FR Doc. C1–2020–03398 Filed 3–13–20; 8:45 am]

BILLING CODE 1300–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 134

RIN 3245–AH05

Implementation of the Small Business 7(a) Lending Oversight Reform Act of 2018

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (''SBA'' or ''Agency'') is amending its business loan program regulations to implement the Small Business 7(a) Lending Oversight Reform Act of 2018 (''Act'') and make other amendments that will strengthen SBA's lender oversight and ensure the integrity of the business loan programs. The key amendments in this rule codify SBA's informal enforcement actions, new civil monetary penalties and certain appeal rights for 7(a) Lenders, clarify certain enforcement actions for Microloan Intermediaries, and adopt statutory changes to the credit elsewhere test. The rule also makes other technical amendments, updates, and conforming changes including clarifying oversight and enforcement related definitions.

DATES: This rule is effective April 15, 2020.

FOR FURTHER INFORMATION CONTACT: Bethany Shana, Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 205–6402; email: *Bethany.Shana@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

SBA is authorized under sections 7(a) and 7(m) of the Small Business Act and title V of the Small Business Investment Act of 1958 (the ''SBI Act'') to conduct small business loan programs. 15 U.S.C. 636(a) and (m) and 695 *et seq.* For purposes of this rule, SBA's business loan programs consist of the 7(a) Loan Program, the Microloan Program, and the Development Company Loan Program (''504 Loan Program''). These programs provide critical access to credit for America's small businesses, bridging the lending gap that exists in the market for our nation's smallest companies. Along with the authority to offer government guarantees, Congress provided SBA the authority to supervise lenders participating in these programs. 15 U.S.C. 634, 636, 650, and 697.

Growth in lending in the 7(a) Loan Program prompted Congress to undertake a thorough examination of

the tools available at SBA to ensure that comprehensive oversight is accomplished. Following that review, Congress enacted the Small Business 7(a) Lending Oversight Reform Act of 2018, Public Law 115–189 (June 21, 2018) (the ''Act''). The Act strengthened SBA's 7(a) Lender, Certified Development Company (''CDC''), and Microloan Intermediary (''Intermediary'') supervision authorities and the office charged with that responsibility, SBA's Office of Credit Risk Management (''OCRM'').

The Act required SBA to promulgate regulations to implement certain of its provisions. Accordingly, on June 21, 2019, SBA published a notice of proposed rulemaking to implement the legislation by proposing updates to its lender oversight and related regulations, as codified in parts 120 and 134 of title 13 of the Code of Federal Regulations (''CFR''). 84 FR 29092. The proposed updates also included technical corrections and clarifications to better inform lenders and to strengthen enforcement. Because some provisions in the legislation covered ''any Lending Partner or Intermediary participant . . . in a lending program of . . . [SBA's] Office of Capital Access'' and because SBA's 7(a) oversight framework is generally interwoven with that of the 504 Loan Program and the Microloan Program, SBA proposed to extend certain specific updates to CDCs and Intermediaries. The comment period for the proposed rule closed on August 20, 2019.

II. Summary of Comments

The Agency received 43 comments. Sixteen comments were submitted by or on behalf of 7(a) Lenders. Twenty-one comments were submitted by or on behalf of CDCs (this group includes 4 CDCs that are also Intermediaries and/or Community Advantage (''CA'') Lenders). In addition, SBA received comments from two trade associations, one law firm, and three anonymous commenters.

Many comments were supportive of the proposed rule and SBA's efforts to preserve the integrity of the business loan programs. These comments also expressed appreciation of the Agency's efforts to improve oversight. The comments included some suggestions for the rule, including amendments to proposed provisions that commenters contended were not or did not appear to be consistent with the language of the statute or its intent. Some commenters, primarily CDCs, generally opposed the rule but made few specific comments or suggestions. SBA appreciates all comments received and has incorporated many of the suggestions into the final rule. The following is a section-by-section analysis [1] of the final rule including section-specific comments received and changes made.

III. Section-by-Section Analysis With Discussion of Comments Received

A. Section 120.10—Definitions. SBA proposed to update three definitions in § 120.10. First, SBA proposed to update the definition of ''Federal Financial Institution Regulator'' by deleting the reference to the Office of Thrift Supervision (''OTS'') as OTS has been abolished and merged into the Office of the Comptroller of the Currency (''OCC'') and other banking agencies. SBA received no comments on this update and is adopting the change to the definition as proposed.

Second, SBA proposed to revise the definition of ''Lender Oversight Committee'' (''LOC'') to state that LOC membership and duties are derived from the Small Business Act; that the LOC meets quarterly; and that it votes on formal enforcement action recommendations.

Eighteen commenters [2] stated that the proposed definition ''provides only an abridgement of the LOC definition as provided in the statute.'' The commenters suggested that SBA provide a more complete enumeration of LOC duties in this definitional section of part 120. SBA notes that the LOC's duties can be found in section 48 of the Small Business Act and in SBA's Delegations of Authority 12–G for lender oversight and enforcement activities at 79 FR 56842, 56844 (September 23, 2014), as updated by 83 FR 48681, 48682 (September 26, 2018). Nevertheless, SBA has considered this request and has expanded the final rule definition to specifically include the significant LOC duties as well as a reference to the specific statutory provision enumerating the LOC duties. A complete listing of the LOC's statutory duties and its membership, however, can be found in the Lender Oversight Delegations of Authority as referenced above.

In § 120.10, SBA also proposed to clarify the term ''Loan Program Requirements.'' Specifically, the proposed rule provided that this term may also be referred to as ''SBA Loan Program Requirements'' and that it includes **Federal Register** notices and applicable government-wide regulations. In addition, SBA proposed to make the definition applicable to Intermediaries.

In response to the proposal, eighteen commenters requested that SBA exclude ''official SBA notices,'' ''forms,'' and ''agreements'' from the definition of Loan Program Requirements. Commenters stated it was their understanding that the intent of Congress was to assure that performance requirements being imposed on lenders would be only those imposed by statute or those formally and publicly announced by SBA in regulations, SOPs or Policy Notices. SBA notes that official SBA notices, forms, and agreements have long been a part of SBA's regulatory definition of Loan Program Requirements and are an integral part of SBA supervision. SBA did not propose any changes to that portion of the definition. Official SBA notices (*i.e.,* SBA Policy, Procedural, and Information Notices) and SBA business loan forms are available to the public on SBA's website. In addition, the Small Business Act, SBI Act, and SBA regulations formally and specifically provide for the use of agreements in SBA's loan programs (see 15 U.S.C. 636, 650(d), and 696 and 13 CFR 120.400, 120.440, 120.434, 120.474, 120.613). Accordingly, SBA is finalizing the definition of ''Loan Program Requirements'' as proposed.

B. Section 120.101—Credit not Available Elsewhere. One of the primary goals of the Act was to ensure that the ''Credit Elsewhere Test'' is being applied correctly and consistently by lenders and that it is being appropriately verified by SBA. Proposed § 120.101 codified the new definition for credit elsewhere as contained in the legislation. Under § 120.101 as proposed, credit elsewhere means that credit is unavailable to the small business applicant on reasonable terms and conditions from non-Federal, non-State, and non-local government sources without SBA assistance, taking into consideration the factors associated with conventional lending practices enumerated in the statute.

7(a) Lender commenters generally concurred with proposed § 120.101, with some slight amendments. Specifically, commenters requested that the regulation state that the credit elsewhere requirement is statutorily mandated to make clear that the requirement is imposed by statute. The credit elsewhere requirement is found in 15 U.S.C. 636(a)(1)(A) and 697(b)(2); however, SBA does not believe it is necessary to revise the regulation to include the specific statutory cites.

[1] For additional details on each proposed rule section, see 84 FR 29092 (June 21, 2019).

[2] The 18 commenters consisted mostly of a trade association and 7(a) Lenders that ''fully agree[d] with and support[ed]'' the trade association's comments. References to 18 commenters later in this Section-by-Section Analysis refer to the same group of 18 commenters.

The proposed rule listed the five statutory factors for determining credit elsewhere. SBA received no comments specific to factors 1–3. The fourth factor provided for consideration of the loan term necessary to reasonably assure repayment from business cash flow. Eighteen commenters requested that the section specifically allow either ''actual'' or ''projected'' cashflow of the business, as referenced in the statute. SBA agrees with this comment and is adding the clarifying language to the final regulation.

The fifth factor is a catch-all provision to cover ''other factors'' relating to a particular credit application. The preamble to the proposed rule provided examples of the ''other factors'' that SBA Lenders should consider for the credit elsewhere determination. The examples included management experience, leverage ratio, global cashflow, loan size relative to the age of the business, or personal resources of the owners of the business. The preamble stated that the other factors must be specifically explained and documented with relevant supporting documentation in the lender's credit memorandum.[3] Eighteen commenters requested that SBA include the ''other factors'' identified in the preamble to the proposed rule, as well as other examples, in future versions of SBA's Standard Operating Procedures (''SOPs'') to provide guidance to lenders on the interpretation of the regulatory provision.[4] SBA agrees with this comment. SBA will incorporate a list of ''other factors'' and other relevant examples for credit elsewhere in the relevant SOPs.

Approximately twenty-four commenters requested that SBA not apply the credit elsewhere provision (or any of the other provisions in the proposed rule) to CDCs. These commenters claimed that ''extending provisions of [the Act] to the 504 program [including the credit elsewhere provision] has no basis in law . . . .'' SBA does not agree, and believes that there is ample support for applying the credit elsewhere provision to the 504 Loan Program. The § 120.101 credit elsewhere provision has been a longstanding feature of the 504 Loan Program in SBA regulations for many years and dates back to at least 1986. See 13 CFR 108.8(a) ''Borrower Requirements and Prohibitions'' (1987). There is also statutory support for applying this provision to the 504 Loan Program. Section 503(b)(2) of the SBI Act provides that ''[n]o guaranty may be made with respect to any debenture under subsection (a) unless . . . . Necessary funds for making such loans are not available to such company from private sources on reasonable terms.'' In addition, section 503(a) of the SBI Act authorizes SBA to guarantee 504 program debentures ''on such terms and conditions as the Administration may by regulation determine to be appropriate.'' Further, section 308(f) of the SBI Act states that ''[i]n the performance of, and with respect to the functions, powers, and duties vested by this Act,[5] the Administrator and the Administration shall (in addition to any authority otherwise vested by this Act) have the functions, powers, and duties set forth in the Small Business Act . . . .'' Finally, SBA's Congressional oversight committee is well aware of and has acknowledged the credit elsewhere requirement as an eligibility standard for small businesses in the 504 Loan Program. For example, in her hearing memo, dated December 10, 2019, to Members of the House Small Business Committee Subcommittee on Investigations, Oversight, and Regulations, Chairwoman Judy Chu stated that, ''In order to qualify for a 504 loan, a business must: . . . demonstrate the need for the desired credit and that the funds are not available from alternative sources, including personal resources of the principals; and be certified by a lender that the desired credit is unavailable to the applicant on reasonable terms and conditions from nonfederal sources without SBA assistance.'' [6] Consequently, it is well-established that the credit elsewhere requirement applies to the 504 Loan Program.

In addition, the commenters argued that economic development and job requirements, not credit elsewhere, properly govern when a business or project is eligible for the 504 Loan Program. SBA agrees that the program has important economic development and job creation objectives; however, it is also important that SBA not use taxpayer dollars to finance those loans that can be financed by the private sector on reasonable terms and conditions.

These commenters also opposed the application of other provisions of the Act to CDCs, arguing that the process, title, and content of the Act make it clear that the statute is for the 7(a) program only.[7] Contrary to that statement, SBA notes that the opening provision of the legislation, which statutorily established the Office of Credit Risk Management, granted the office the authority to supervise ''any Lending Partner or Intermediary participant . . . in a lending program of the Office of Capital Access . . . .'' As CDCs are a Lending Partner in a lending program of the Office of Capital Access, SBA is not persuaded by this argument.

Two 7(a) Lenders commented that the credit elsewhere requirement will be difficult to comply with because lenders cannot know what terms and conditions competitors offer. As stated above, credit elsewhere is a statutory requirement that requires the consideration of several factors. Based on these factors, an institution can make a reasonable determination as to whether an Applicant has credit available without a government guaranty. The key here, for purposes of compliance, is that each lender documents in its credit memorandum its reasonable consideration of the factors relevant to the particular application and that the lender makes that documentation available for SBA review.

In light of the statutory and regulatory authorities cited above and the well-established history of the credit elsewhere regulation as applicable to both programs, SBA believes it is reasonable to apply the amendments to the credit elsewhere regulations, and certain other sections as noted within the final rule, to the 504 Loan Program. Accordingly, SBA is finalizing the section as proposed with the change to the fourth factor discussed above.

C. Section 120.180—Compliance with Loan Program Requirements. Sections 3 and 4 of the Act provide that SBA is to oversee lender compliance with SBA Loan Program Requirements, including credit elsewhere. SBA proposed changes to § 120.180 to facilitate that oversight. The rule proposed to codify SBA's current requirement that SBA Lenders maintain documentation to support that

[3] SOP 50 10 provides that the SBA Lender's credit memorandum includes substantiation that credit is not available elsewhere by discussing acceptable factors that demonstrate an identifiable weakness in the credit. The specific reasons why the Applicant does not meet the lender's conventional loan policy requirements are to be included in the credit memorandum.

[4] The commenters' request to include the other factors in future SOPs was made ''subject to'' comments on the personal resources test made on the proposed rule for the Express Loan Programs; Affiliations Standards (Express rule). SBA has addressed comments on the personal resources test in the interim final rule published on February 10, 2020 at 85 FR 7622.

[5] The functions, powers, and duties include the authority to make such rules and regulations as the agency deems necessary to carry out the authority vested in the agency. 15 U.S.C. 634(b)(6).

[6] *https://smallbusiness.house.gov/uploadedfiles/12-10-19_hearing_memo.pdf.*

[7] The commenters also noted that the legislation made no change to the Small Business Investment Act of 1958, the primary governing statute for the 504 Loan Program.

Loan Program Requirements, including those regarding credit elsewhere, have been met. SBA examines these documents during reviews and exams. This documentation facilitates prudent lending, and maintaining records is a practice that all prudent lenders already undertake. The proposed amendments to § 120.180 also clarified that Intermediaries, in addition to 7(a) Lenders and CDCs, are expected to comply with Loan Program Requirements.

SBA received no comments on proposed § 120.180 and is adopting the section as proposed.

D. Section 120.1000—Risk-Based Lender Oversight; § 120.1010—SBA Access to SBA Lender and Intermediary Files; § 120.1015—Risk Rating System; § 120.1025—Monitoring; § 120.1050—Reviews and Examinations; and § 120.1051—Frequency of Reviews and Examinations. SBA proposed updating these sections to remove references to Non-lending Technical Assistance Providers (''NTAPs''), as SBA has not issued technical assistance grants to NTAPs in many years. Technical assistance in the Microloan Program is being administered directly by Intermediaries. SBA received no comments on the proposed changes to these sections. SBA is, therefore, adopting the changes to these sections as proposed.

E. Section 120.1055—Review and Examination Results. Section 120.1055 covers SBA review and examination reports, corrective actions and plans, lender required responses, and lender implementation of corrective actions. SBA proposed to extend the timeframe for a lender or Intermediary to respond to a review/examination report from 30 to 45 calendar days. Eighteen commenters requested that SBA modify the general timeframe for a lender or Intermediary to respond from 45 calendar days to 45 business days. Commenters stated that ''business'' days was more in-line with the statute and requested that the additional time be provided to better enable lenders to respond to reports. SBA agrees with the requested modification of the general timeframe and is revising the section accordingly.

The commenters also noted that though the proposed rule allows SBA to establish a different time period for a lender to respond, the rule did not specify whether the time period could be shorter or longer. This is true. SBA did not so specify because the statute gives SBA needed flexibility to either extend or shorten the response timeframe on a case-by-case basis.[8] SBA has decided to retain this flexibility but is clarifying in the final rule that SBA may extend or shorten the timeframe.

For example, SBA may extend the timeframe when a lender's management is in transition or until after a lender attends a required Headquarters meeting on its significant findings and corrective actions. Alternatively, SBA may shorten the timeframe if, for example, the deficiencies are few in number but so significant that delay could cause losses to SBA or the lender. This might occur if a lender, using delegated authority, is making ineligible loans.

In § 120.1055 SBA also proposed to clarify when a lender is considered to have received a report for purposes of the regulation (*i.e.,* the report is considered received on the date it is emailed to the last known email address for the lender or Intermediary, unless the lender or Intermediary can provide compelling evidence that it was received on a different date). Eighteen commenters had no objection to SBA's proposal that lender's date of receipt be the date it was emailed to the last known email address. These commenters, however, recommended that the regulation be amended to also require that reports be sent by mail or other delivery service to the head of the lender institution (or other party deemed appropriate by SBA) at its last known business address. They made this suggestion as they believe that the gravity of the oversight report requires a more formal transmission of the report to the lender. SBA has considered the comment and has determined not to include the commenters' suggested change. While in some cases it may be helpful to also send the report by mail or other delivery service, such duplicative effort may not be justified in all cases. For example, where a review report conveys an assessment of ''Acceptable'', it may not be necessary or appropriate to incur additional costs to duplicate delivery by mail. SBA will use judgment and discretion in making the determination on a case-by-case basis.

The eighteen commenters also requested that SBA amend the regulation to include the statutory timeframe for SBA to issue a review/examination report. The statute provides, in general, that SBA will deliver a written review report not later than 60 business days after the date a review is concluded or, if SBA expects to submit the report after the end of the 60-day period, the Agency will notify the 7(a) Lender of the expected date of submission and the reason for the delay. The commenters requested this addition citing a historical lack of timeliness on behalf of the Agency in issuing review reports and because, without timely information regarding perceived violations, lenders questioned whether they would be able to correct their performance and begin to take steps necessary to mitigate potential risk to the Agency. While the commenters stated that OCRM is committed to, and has made good progress in, getting reports out more timely, they believe it is imperative to amend the rule to include this provision. SBA agrees to make this addition and is incorporating the general timeframe into the final regulation.

Finally, SBA proposed to revise § 120.1055 to clarify that a response must address recommendations in addition to findings and corrective actions; to delete reference to NTAPs; and to codify SBA's 90-day timeframe for lenders and Intermediaries to implement corrective actions. The proposed 90-day timeframe included flexibility for a shorter or longer period, as warranted. SBA received no comments specific to these proposed changes. SBA is adopting these amendments to § 120.1055 as proposed.

F. Section 120.1060—Confidentiality of Reports, Risk Ratings and Related Confidential Information. SBA proposed to update § 120.1060 to remove references to NTAPs for the reasons explained in paragraph III.D. above. SBA received no comments on this proposed change. SBA is adopting § 120.1060 as proposed.

G. Section 120.1300—Informal Enforcement Actions. The Act required SBA to codify its informal enforcement actions for 7(a) Lenders into regulations. Accordingly, SBA proposed a new § 120.1300 on informal enforcement actions for 7(a) Lenders. Under the proposed regulation, informal actions would consist of, for example, a commitment letter, mandatory training, and an agreement between SBA and the 7(a) Lender. In addition to listing the types and descriptions of informal enforcement actions, the proposed rule discussed the circumstances that may lead SBA to take such actions (*e.g.,* when problems are narrow in scope and are correctible, and SBA is confident of the 7(a) Lender's Board and management commitment and ability to correct such problems; where violations

[8] The statute states that if a response to a review report is requested, SBA is to require the lender to submit responses to the Administrator ''not later than'' 45 business days after the date the lender receives the report (*i.e.,* 45 business days is the outside limit); however, the Administrator ''may extend the time frame'' as he/she determines necessary. 15 U.S.C. 657t(d)(2).

are less frequent or less severe but still warrant enforcement; or while SBA more fully assesses risk). The circumstances that SBA proposed are, for the most part, set forth in SBA's current SOPs.

The Act also provided that 7(a) Lenders could appeal informal enforcement actions to Federal district court or to SBA's Office of Hearings and Appeals (''OHA''). Under proposed § 120.1300, a 7(a) Lender would have 20 calendar days to appeal. The proposed rule further provided that an informal enforcement action would remain in effect pending resolution of the appeal, if any, and that SBA would not be precluded from taking other action, including but not limited to, a formal enforcement action under § 120.1500, or as otherwise authorized by law, while the appeal was pending.

Eighteen commenters recommended that § 120.1300 specifically state that the Director of the Office of Credit Risk Management (the ''D/OCRM'') (as opposed to ''SBA'') takes informal enforcement actions. The commenters requesting this change cited statutory language that authorizes the D/OCRM to take these actions. SBA has considered the request and has adopted it in the final rule. The Act provides that the D/OCRM is authorized to take informal enforcement actions and does not restrict the D/OCRM's authority to delegate this authority. The final regulation, therefore, states that the D/OCRM may undertake informal enforcement actions but does not restrict delegation.

The eighteen commenters also opposed the 20-day appeal time proposed for informal enforcement actions. The commenters requested 45 business days instead, ''to allow sufficient time for the lender to assess its situation, hire counsel, and decide on an appropriate strategy.'' The commenters also suggested that the SBA's ability to address risks identified during a review would not be adversely impacted by the extended timeframe to request an appeal because the enforcement action would remain in effect pending resolution of the appeal and SBA could pursue formal enforcement action. SBA has considered the request and will retain the 20-day appeal timeframe contained in the proposed rule because these are informal enforcement actions consisting mostly of voluntary agreements and required training designed to bring lenders into compliance and reduce lender and SBA risk of losses. In addition, informal enforcement actions (*e.g.,* supervisory letters and required training) are generally informative and corrective in nature, non-public, and less likely to impose a significant burden or have a negative effect on a 7(a) Lender. SBA also notes that the 20-day timeframe is the same timeframe that Congress afforded SBA Supervised Lenders for appeals of enforcement actions under section 23(f) of the Small Business Act. Moreover, it provides a longer appeal time than the 14-day appeal timeframe that the banking agencies provide to financial institutions for appeals relating to the immediate issuance of certain final directives and orders under 12 CFR 6.21(a)(2) and 30.5(a)(2) (OCC); 12 CFR 308.201(a)(2) and 308.304(a)(2) (Federal Deposit Insurance Corporation); and 12 CFR 263.202(a)(2) and 263.304(a)(2) (Federal Reserve Board).

SBA received no other comments on proposed § 120.1300. Accordingly, SBA is adopting the section as proposed with the change discussed above.

H. Section 120.1400—Grounds for Enforcement Actions—SBA Lenders. Section 120.1400 sets forth the grounds for SBA's enforcement actions for SBA Lenders. SBA proposed amendments to 13 CFR 120.1400 to implement several provisions of the new legislation and to provide clarifications. First, the rule proposed to amend § 120.1400(b) to explicitly state, and thereby formally recognize, that § 120.1400 grounds extend to both informal and formal enforcement actions. Second, in accordance with the new legislation, the proposed regulation stated that SBA would consider the severity or frequency of a violation in determining the type of enforcement action to take. Third, § 120.1400(c)(6), as proposed, clarified that an action ''detrimental to an SBA program'' means an action detrimental to ''the integrity or reputation of'' an SBA program. Fourth, SBA proposed clarifying paragraph (c)(9) to further inform the public that SBA considers an SBA Lender's failure to properly oversee Agent activity to be an example of SBA Lender action/inaction that increases SBA's financial risk. While Agents can be helpful in assisting SBA Lenders in making, servicing, liquidating, and litigating SBA loans, an SBA Lender must exercise due diligence and prudently oversee third-party activity. SBA's policy of holding lenders responsible for third-party activity is neither new to the program nor unusual for regulated lenders. In fact, the Federal Financial Institution Regulators generally expect a financial institution to conduct robust, comprehensive, and appropriately documented due diligence and ongoing risk management of each of the institution's third-party service providers that support critical activities. A financial institution's risk management process may include, for example, assessing the quantity of risk posed to the institution by use of the third-party service provider and the ability of the institution to monitor and control risk; contract structuring and review; ongoing benchmarking of service provider performance; and monitoring the third party's actions on behalf of the bank for compliance with applicable laws and regulations.[9] For purposes of this section, the term ''Agent'' means all parties included in the definition of ''Agent'' in 13 CFR part 103 that assist the 7(a) Lender or CDC with making, servicing, liquidating, or litigating their SBA business loans (*e.g.,* lender service providers, consultants, brokers/referral agents).

SBA also proposed clarifying paragraphs (c)(11) and (12) of this section, which cover grounds for immediate suspension of delegated authority and program authority, respectively. SBA proposed revising these paragraphs to better define the circumstances in which SBA would seek an immediate suspension. The proposed paragraphs stated that SBA may take such immediate action upon a determination that: (i) One of the grounds in paragraph (c) or (f) of that section, as applicable, exists; and (ii) immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity). Situations that may warrant immediate suspension may include, but are not limited to, where there are significant findings relating to the SBA Lender's determination of eligibility (*e.g.,* credit elsewhere, etc.) or on the credit review, or the underwriting, approval, loan servicing and/or liquidation processes; evidence of fraud; significant concerns as to the SBA Lender's financial condition, capital levels, or solvency; or where an SBA Lender is no longer licensed or lacks staff capable of making, servicing, or liquidating loans, as determined by SBA in its discretion. In addition, SBA proposed revisions to paragraphs (d)(1)(iii) and (d)(3)(i) and (ii) to clarify that an SBA Supervised Lender's violation of ''the Small Business Act'' or ''SBA regulations'' is a violation of

[9] OCC Bulletin 2017–21 (June 2017), Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29. See also, FDIC Financial Institution Letter, FIL–19–2019, Technology Service Provider Contracts (April 2, 2019) and FIL–44–2008, Third-Party Risk Guidance for Managing Third-Party Risk (June 6, 2008).

''Loan Program Requirements'' [10] consistent with SBA's use of this term in § 120.1400(c)(2). In conjunction with this conforming change, SBA proposed deleting the word ''agreement'' from paragraph (d)(1)(iv) as it is redundant with paragraph (d)(1)(iii) as revised.

SBA received no comments on § 120.1400 and is adopting the amendments as proposed.

I. Section 120.1425—Grounds for Formal Enforcement Actions—Intermediaries Participating in the Microloan Program. SBA proposed that § 120.1425 be updated to remove references to NTAPs. SBA also proposed that paragraphs (c)(1) and (c)(2)(vii) on violations of law and Loan Program Requirements be clarified and harmonized with the corresponding provision for SBA Lenders. In addition, the rule proposed to reorder and establish a more logical grouping of the grounds for enforcement. SBA also proposed an additional performance-related ground for enforcement action: A failure to ''[m]aintain the financial ability to sustain the Intermediary's operations (including, but not limited to, adequate capital), as determined by SBA.'' Consistent with equivalent provisions for SBA Lenders, the proposal added three general grounds to the Microloan Program regulations: (i) Failure to take corrective actions; (ii) engaging in uncooperative or detrimental behavior; and (iii) action or inaction that SBA determines may increase SBA's financial or program risk, as well as a specific ground for immediate suspension of Intermediaries. Finally, SBA proposed a catch-all provision, paragraph (c)(7), for other grounds otherwise authorized by law.

SBA received one comment on § 120.1425. The commenter objected to SBA's proposal to include an Intermediary's failure to maintain the financial ability to sustain its operations (*e.g.,* maintain adequate capital) as a ground for enforcement action. The commenter contended that the provision can have a broad interpretation. The commenter also stated that Intermediaries operate under vastly different business models than traditional 7(a) Lenders and that most have a business model requiring them to raise 10% to 40% of operational funds on a yearly basis. The commenter requested that SBA recognize these differences in the regulatory language.

SBA recognizes that Intermediaries, as non-profit community lenders, may operate very differently than traditional 7(a) Lenders and that some Intermediaries may plan to raise 10% to 40% of their operational funds yearly. However, all Intermediaries must maintain finances sufficient to sustain operations and repay the SBA Promissory Note(s). SBA must evaluate the financial health of Intermediaries as part of its oversight responsibilities. SBA evaluates whether an Intermediary has sufficient financial strength to sustain its Microloan operations by examining an Intermediary's financial information and related metrics, such as amount of unrestricted net assets and changes in net assets year over year. Through this evaluation, SBA may be able to identify any negative trends early so that it can work with the Intermediary to maintain the ability to successfully operate its Microloan program. This provision is necessary to protect the integrity of the Microloan program. Accordingly, SBA is adopting the regulation in the final rule as proposed.

J. Section 120.1500—Types of Formal Enforcement Actions—SBA Lenders. SBA proposed in § 120.1500 several technical amendments and other changes to implement the Act. Technical changes included the addition of the term ''formal'' before ''enforcement action'' to distinguish this section from the proposed new § 120.1300 on informal enforcement actions. Proposed substantive revisions to implement the new legislation within § 120.1500 centered on incorporation of civil monetary penalties (''CMPs'') as a 7(a) Lender enforcement tool.[11] CMPs create a monetary incentive for 7(a) Lenders to comply with SBA Loan Program Requirements. This tool can be particularly effective as a deterrent against financial related non-compliance (*e.g.,* Lender nonpayment or late payment of amounts it owes to SBA for borrower payments, recoveries received, denials of liability, SBA loan purchase repairs, or fees owed). CMPs may also be warranted in certain critical circumstances (*e.g.,* where there is a violation of an order, directive, or agreement, or where there is fraud). SBA might also use CMPs where there are reporting failures or delays (*e.g.,* for failure to timely submit complete purchase packages following SBA Secondary Market purchase). These examples are not all inclusive. The proposed provision included a list of considerations for SBA in determining whether and in what amount to assess a CMP. The considerations are the same as those in 13 CFR 120.465(b) governing CMPs for reporting failures by SBA Supervised Lenders. Specifically, the considerations/factors include, but are not limited to, the following: The gravity (*e.g.,* severity and frequency) of the violation; history of violations; financial resources and good faith of the 7(a) Lender; and such other matters as justice may require. The list of considerations is also very similar to those in the CMP structures of other Federal agencies (*e.g.,* the OCC, the Federal Deposit Insurance Corporation, and the Department of Housing and Urban Development's Mortgagee Review Board). SBA assessment of CMPs, as with SBA's other enforcement tools, helps to protect the integrity of the 7(a) Loan Program. In addition to the incorporation of CMPs, proposed § 120.1500 referenced the LOC's role in formal enforcement actions, with its responsibilities set forth in Delegations of Authority and as authorized by the Act.

Eighteen commenters recommended that § 120.1500 state specifically that the D/OCRM (as opposed to ''SBA'') takes formal enforcement actions with the approval of the LOC. The commenters requested this change given statutory language that specifically authorizes the D/OCRM to take these actions. SBA has considered the request and agrees to specify that the D/OCRM will take these actions for the same reasons as set forth above in the discussion of § 120.1300.[12] The final regulation, therefore, states that the D/OCRM may undertake formal enforcement action, but does not restrict delegation.

The eighteen commenters also recommended that the section be amended to reference the ''$250,000 penalty maximum'' provided for by Congress in the new legislation, with the further provision that this maximum may be amended from time to time by notice published in the **Federal Register**. SBA makes annual adjustments to its civil penalty amounts in accordance with section 701 of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.[13] SBA agrees with this recommendation to state the maximum starting point for the penalty under the statute and is incorporating this change.

[10] Also known as ''SBA Loan Program Requirements''.

[11] Prior to the enactment of the Act, SBA's CMP authority was limited to certain reporting violations against SBA Supervised Lenders. 15 U.S.C. 650(j).

[12] It is noted that the final rule retains the language ''with the involvement of the LOC . . .'' rather than the requested language of ''with the approval of the LOC''. This is because the LOC does not approve all formal enforcement actions. Certain actions against SBA Supervised Lenders under section 23 of the Small Business Act are recommended by the LOC and approved by the Administrator.

[13] Public Law 114–74 (November 2, 2015).

SBA is finalizing the proposal with the two revisions described above.

K. Section 120.1540—Types of Formal Enforcement Actions—Intermediaries Participating in the Microloan Program. Proposed § 120.1540, like proposed § 120.1500, included a technical amendment to include the term ''formal'' before ''enforcement action'' to distinguish the actions under this section from informal enforcement actions for Intermediaries, which are set forth in SOP 50 53, ''Lender Supervision and Enforcement.'' SBA also proposed to update § 120.1540 to delete references to NTAPs. In addition, SBA proposed revisions to the provision on suspension and pre-revocation sanctions to more closely conform the section to the suspension provision in § 120.1500 for SBA Lenders. Specifically, proposed § 120.1540 provided that suspension may include, but is not limited to, suspension of the authority to make, service, liquidate, and/or litigate SBA microloans. It also provided that it may include a freeze on an Intermediary's Microloan Revolving Fund (''MRF'') and Loan Loss Reserve Fund (''LLRF'') accounts. Finally, proposed § 120.1540 specified that SBA may undertake an ''immediate'' suspension action (*i.e.,* a suspension that is effective immediately), and that revocation actions may include a portfolio surrender.

One commenter recommended that § 120.1540 state specifically that the D/OCRM (as opposed to ''SBA'') take formal enforcement actions. SBA has considered the request and has adopted it in the final rule (with a clarification that the D/OCRM takes that action with the involvement of the LOC, as appropriate) for the same reasons as set forth above in the discussion of § 120.1300. The final regulation does not restrict delegation. SBA received no other comments on § 120.1540. SBA is adopting the remainder of the regulation as proposed.

L. Section 120.1600—General procedures for formal enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, and Intermediaries. Proposed changes to § 120.1600 included a technical amendment to add the term ''formal'' before enforcement action in this section. It also included a technical amendment that referenced alternate procedures under law, including but not limited to, those under current § 120.465 governing procedures for assessing CMPs against SBA Supervised Lenders for reporting failures. SBA also proposed to update § 120.1600 to remove NTAPs from the regulation. In addition, the section proposed provisions to implement the new legislation on enforcement action appeals. Specifically, 7(a) Lenders could appeal most formal enforcement actions to OHA or proceed directly to the appropriate Federal district court. (The proposed rule excluded those formal enforcement actions against SBA Supervised Lenders under §§ 120.1500(c) and (d) and 120.465 because the statutory provisions at 15 U.S.C. 650 provide for separate procedures, which are covered in §§ 120.1600(b) or (c) and 120.465.) Finally, SBA proposed that any 7(a) Lender appeal to OHA be submitted within 20 calendar days of the final agency decision. As proposed, the enforcement action would remain in effect pending resolution of any appeal.

Eighteen commenters requested a 45-business day timeframe for appeals. The commenters requested 45 business days ''to allow sufficient time for the lender to assess its situation, hire counsel, and decide on an appropriate strategy for its appeal.'' SBA proposed a 20-day timeframe because it is the same appeals timeframe that Congress afforded SBA Supervised Lenders under section 23(f) of the Small Business Act. While SBA continues to believe that the 20 calendar days proposed is reasonable, SBA has decided to extend the timeframe to 30 calendar days. Thirty calendar days provide for additional time for a party to appeal than what was proposed, yet appropriately limits risk and allows SBA to carry out its oversight responsibilities in a judicious manner. SBA also believes that 30 days is reasonable, because at the time a 7(a) Lender would be required to file an appeal, the 7(a) Lender would have gone through the process associated with a notice of proposed enforcement action or immediate suspension and should be knowledgeable of the issues and equipped with the information necessary to file an appeal. Accordingly, the final rule provides that 7(a) Lenders have 30 calendar days to appeal to OHA. As indicated above, the final rule also clarifies that it is the final agency decision on a formal enforcement action (as opposed to a notice of proposed enforcement action or immediate suspension [14]) that is appealable under SBA regulations. SBA received no other comments on this section. Therefore, SBA is adopting the remainder of this section as proposed.

M. Section 134.102—Jurisdiction of OHA. SBA proposed to amend § 134.102(d), which is currently reserved, to provide OHA jurisdiction to hear appeals on enforcement actions against 7(a) Lenders, as contemplated by the Act. Such jurisdiction does not include appeals for certain actions against SBA Supervised Lenders under § 120.1500(c) and (d) or § 120.465 (including, but not limited to, Cease and Desist Orders, Suspensions, and Revocations). Procedures for those actions are provided for separately in 15 U.S.C. 650 and 13 CFR 120.1600(b) and (c) and 120.465 as discussed above. SBA received no comments specific to § 134.102 jurisdiction. Therefore, SBA is adopting the regulation as proposed, with revisions to clarify that it is the final agency decision on a formal enforcement action (as opposed to a notice of proposed enforcement action or immediate suspension) that may be appealable.

N. Section 134.205—The appeal file, confidential information, and protective orders. Section 134.205 governs the appeal file, confidential information, and protective orders when an action is appealed to OHA. Paragraph (c) lists types of information in the appeal file that are exempt from public access. The exempt information includes, but is not limited to, sensitive, confidential and other exempt information. SBA proposed to add to the list of exempt information, ''documents and information covered under § 120.1060 of this title''. SBA received no comments on this section. SBA is adopting the section as proposed.

O. Part 134—Further Revisions. The proposed rule stated that any further revision to part 134, if needed, would be contained in a separate rulemaking. Eighteen commenters contended that in order to appropriately implement the statutory provision giving lenders the right to appeal enforcement actions to either the appropriate Federal district court or to SBA's OHA, it is recommended that SBA immediately begin the process to promulgate regulations to implement the statutory OHA appeal process. The commenters further claimed that additional regulations are necessary to provide guidance and to clarify the logistics of the OHA appeal process. SBA has considered the comments and determined that, at this time, the appeal provisions in §§ 120.1600 and 134.102, along with OHA's general rules of practice contained in 13 CFR 134.201 through 134.229, provide a sufficient framework for the appeal process for

[14] Under 13 CFR 120.1600(a)(2)(ii), an SBA Lender or Intermediary receiving a notice of proposed enforcement action or immediate suspension must first exhaust the administrative remedy of filing a written objection to preserve its objection for an appeal.

7(a) Lenders. If SBA determines that there is a need for further amendment, SBA will promulgate regulations.

Compliance With Executive Orders 12866, 13563, 12988, 13132, 13771, the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Order 12866

This final rule implements a proposed rule that the Office of Management and Budget (OMB) determined was not a ''significant'' regulatory action for the purposes of Executive Order 12866. Although it was not required, in the interest of transparency SBA included a Regulatory Impact Analysis (''RIA'') in the proposed rule. See 84 FR 29092, 29096 (June 21, 2019). The non-significant designation has not changed for this final rule; it is therefore unnecessary to reiterate the RIA. This is also not a major rule under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Executive Order 13563

Executive Order 13563 supplements and reaffirms the principles and requirements of Executive Order 12866, including providing the public notice and an opportunity to comment on regulatory changes. During 2019, the Agency participated in 16 public forums and meetings that included outreach to hundreds of its lending partners from which it gained valuable insight for the program. These forums included, but were not limited to, the National Association of Government Guaranteed Lenders Technical and Annual Conferences; the National Association for Development Companies Conference; the Southeast Regional Lenders' Conference; the America East Lenders Conference; the Florida Association of Government Guaranteed Lenders' Conference, the Great Lakes Lenders' Conference; and the Mid-America Lenders' Conference. Feedback received during these events, in addition to the comments in response to the proposed rule, helped to inform the final regulations.

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 retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this final rule 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. Therefore, for the purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This final rule is not subject to Executive Order 13771 because the rule is not significant under Executive Order 12866.

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

SBA has determined that this final rule will not impose additional recordkeeping or reporting requirements under the Paperwork Reduction Act (''PRA''). The only provision relating to recordkeeping is the revision to § 120.180, in which SBA clarifies that SBA Lenders and Intermediaries must maintain documentation to support compliance with SBA Loan Program Requirements. Recordkeeping requirements associated with this provision are covered by currently approved information collections for SBA's business loan programs, including but not limited to, collections under OMB Control Numbers 3245–0071, Application for Section 504 Loan (SBA Forms 1244 and 2450); 3245–0074, Certified Development Company (CDC) Annual Report Guide (SBA Form 1253); 3245–0080 and 0178, Statement of Personal History (SBA Forms 1081 and 912); 3245–0131, Transaction Report on Loans Serviced by Lender (SBA Form 172); 3245–0132, Lender's Transcript of Account (SBA Form 1149); 3245–0201, Compensation Agreement (SBA Form 159); 3245–0346, PCLP Quarterly Loan Loss Reserve Report and PCLP Guarantee Request (SBA Forms 2233 and 2234 Parts A, B, and C); 3245–0348, Borrower Information Form (SBA Form 1919), Lenders Application for Guaranty (SBA Form 1920), Religious Eligibility Worksheet (SBA Form 1971), 7(a) Loan Post Approval Action Checklist (SBA Form 2237); 3245–0352, Microloan Program Electronic Reporting System (MPERS) (MPERsystem); and 3245–0365, SBA Lender, Microloan Intermediary and NTAP Reporting Requirements. Prudent lenders should already be maintaining such documentation.

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

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment an initial regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' 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.

In the proposed rule, SBA certified that the rulemaking would not have a significant economic impact on a substantial number of small entities. SBA invited comment from the public on that certification. SBA received one short comment specific to economic impact. That comment, however, primarily addressed 7(a) program requirements in general rather than those contained in the proposed rule. No other comments were received on that topic.

The changes to current regulations in the final rule would generally fall into one of two categories: (i) Technical amendments/clarifications, or (ii) codifications of the new legislation or existing practices. Examples of the technical amendments and clarifications include the change to: The definition for Federal Financial Institution Regulator in § 120.10 to delete reference to the Office of Thrift Supervision, which was merged into other Federal banking agencies; the removal of references to NTAPs in §§ 120.1000, 120.1010, 120.1015, 120.1025, 120.1050, 120.1051, 120.1055, 120.1060, 120.1425, 120.1540, and 120.1600 as SBA has not issued technical assistance grants to NTAPs in many years and such assistance is being administered directly by Microloan Intermediaries; and the incorporation into § 120.180 of the current requirement that Intermediaries must comply with the Microloan Program requirements.

Although the technical corrections/clarifications portion of the final rule might affect some of the approximately 3,500 7(a) Lenders (approximately 2000 of which are small); 209 CDCs (all of which are small); and 147 Microloan Intermediaries (all of which are small), SBA does not believe the technical corrections and clarifications in the final rule will have a significant economic impact on those small entities. Rather, the clarifications to some extent might reduce the burdens by better informing SBA Lenders and Intermediaries of how the Agency may apply a regulation or requirement. As such, SBA Lenders and Intermediaries may potentially avoid the need to spend extra time and resources interpreting the regulations.

The second category consists of regulatory changes that codify or implement the new legislation or existing practices. Examples of the regulatory changes that codify or implement the new legislation include: The incorporation of the new statutory definition for credit elsewhere in § 120.101; the revision to the timeframe from 30 calendar days to 45 business days for an SBA Lender or Intermediary to respond to findings and corrective actions in § 120.1055; the inclusion of an OHA appeal for a 7(a) Lender enforcement action in §§ 120.1300, 120.1600, and 134.102; and the addition of CMPs for a 7(a) Lender in § 120.1500(b). Examples of regulatory changes that codify current practices and procedures include: The addition of a timeframe (90 days) for implementation of corrective actions in § 120.1055; the inclusion of voluntary agreements and Board Resolutions as informal enforcement actions in § 120.1300; and the adoption of the same grounds for informal as formal enforcement actions for an SBA Lender in § 120.1400.

While a few of the codifying provisions might have the potential of a significant economic impact, SBA does not expect them to impact a substantial number of small businesses. In particular, SBA does not consider the changes to the enforcement regulations, including the incorporation of a CMP for 7(a) Lenders in § 120.1500(b), to be burdensome to a substantial number of small lenders. This is because SBA has historically taken only a small number of enforcement actions, in part because the Agency initially seeks to educate and work with SBA Lenders and Intermediaries using graduated processes for the entity to reduce risk and come into compliance before taking any enforcement action. Specifically, SBA educates SBA Lenders and Intermediaries on SBA Loan Program Requirements through notices, webinar and teleconference training venues, and at conferences. In addition, when SBA identifies risk or noncompliance through monitoring or reviews, SBA generally seeks to work with the SBA Lender or Intermediary through the corrective action process or increased supervision to address SBA concerns. As a result, most SBA Lenders and Intermediaries come into compliance and avoid facing enforcement actions. SBA generally takes enforcement action only when the entity cannot sufficiently reduce risk, cannot correct serious noncompliance, or does not have the willingness or ability to correct. In FY 2019, SBA took five enforcement or other related actions against SBA Lenders and Intermediaries, which is not a substantial number.

One of the final rule changes to SBA's current enforcement regulations is the implementation of the statutory authority to charge a CMP. The CMP provisions are applicable only to 7(a) Lenders and by statute can be assessed in an enforcement action up to $250,000. The CMP provisions in the final rule provide flexibility to allow SBA to take into account factors, including the financial resources of a 7(a) Lender (especially for small lenders), in determining whether and in what amount to assess a CMP. SBA believes that the CMP provisions will not have a significant economic impact on a substantial number of small 7(a) Lenders, as most 7(a) Lenders generally comply with SBA Loan Program Requirements and given that only five enforcement or other related actions were taken against 7(a) Lenders in FY2019. In FY 2020, SBA does not anticipate that it will need to assess CMPs with any frequency. Further, given the flexibility in determining the amount of the penalty, even if imposed, the proposed penalty could be assessed in an amount much less than $250,000.

For the reasons stated above, SBA certifies that this final action will not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 120

Community development, Loan programs—business, Small businesses.

13 CFR Part 134

Appeal procedures, Confidential business information.

For the reasons stated in the preamble, SBA is amending 13 CFR parts 120 and 134 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e), and note.

■ 2. Amend § 120.10 by revising the definitions for ''Federal Financial Institution Regulator'', ''Lender Oversight Committee'', and ''Loan Program Requirements'' to read as follows:

§ 120.10 Definitions.

* * * * *

Federal Financial Institution Regulator is the Federal banking regulator of a 7(a) Lender and may include the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration.

* * * * *

Lender Oversight Committee (LOC) is a committee established within SBA by legislation, which meets at least quarterly, and which has the membership and duties set forth in section 48 of the Small Business Act as further outlined in Delegations of Authority published in the **Federal Register**. The LOC's duties include, but are not limited to, reviewing (in an advisory capacity) any lender oversight, portfolio risk management, or program integrity matters brought by the Director of the Office of Credit Risk Management (D/OCRM), and voting on formal enforcement action recommendations.

* * * * *

Loan Program Requirements or *SBA Loan Program Requirements* are requirements imposed upon Lenders, CDCs, or Intermediaries by statute; SBA and applicable government-wide regulations; any agreement the Lender, CDC, or Intermediary has executed with SBA; SBA Standard Operating Procedures (SOPs); **Federal Register** notices; official SBA notices and forms applicable to the 7(a) Loan Program, 504 Loan Program or Microloan Program; and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in § 120.802. For Intermediaries, this term also includes requirements imposed by promissory notes, collateral documents, and grant agreements.

* * * * *

■ 3. Amend § 120.101 by revising the first and second sentences to read as follows:

§ 120.101 Credit not available elsewhere.

SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-Federal, non-State, and non-local government sources. Accordingly, SBA requires the Lender or CDC to certify or otherwise show that the desired credit is unavailable to the applicant on reasonable terms and conditions from non-Federal, non-State, and non-local government sources without SBA assistance, taking into consideration factors associated with conventional lending practices, including: The business industry of the loan applicant;

whether the loan applicant has been in operation two years or less; the adequacy of collateral available to secure the loan; the loan term necessary to reasonably assure repayment of the loan from actual or projected business cash flow; and any other factor relating to the particular loan application that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards. * * *

■ 4. Revise § 120.180 to read as follows:

§ 120.180 Compliance with Loan Program Requirements.

SBA Lenders and Intermediaries must comply and maintain familiarity with Loan Program Requirements for the 7(a) Loan Program, 504 Loan Program, and the Microloan Program, as applicable, and as such requirements are revised from time to time. Loan Program Requirements in effect at the time that an SBA Lender or Intermediary takes an action in connection with a particular loan govern that specific action. For example, although loan closing requirements in effect when an SBA Lender closes a loan will govern the closing actions, an SBA Lender's liquidation actions on the same loan are subject to the liquidation requirements in effect at the time that a liquidation action is taken. An SBA Lender or Intermediary must maintain sufficient documentation to demonstrate that Loan Program Requirements have been satisfied.

■ 5. Revise § 120.1000 to read as follows:

§ 120.1000 Risk-Based Lender Oversight.

(a) *Risk-Based Lender Oversight.* SBA monitors, supervises, examines, regulates, and enforces laws against SBA Supervised Lenders and the SBA operations of SBA Lenders and Intermediaries.

(b) *Scope.* Most rules and standards set forth in this subpart apply to SBA Lenders as well as Intermediaries; however, SBA has separate regulations for enforcement grounds and formal enforcement actions for Intermediaries at §§ 120.1425 and 120.1540.

§ 120.1010 [Amended]

■ 6. Amend § 120.1010 by removing the phrase ''SBA Lender, Intermediary, and NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender and Intermediary''.

§ 120.1015 [Amended]

■ 7. Amend § 120.1015(a) by removing the phrase ''SBA Lenders, Intermediaries, and NTAPs'' and adding in its place the phrase ''SBA Lenders and Intermediaries''.

■ 8. Revise § 120.1025 to read as follows:

§ 120.1025 Monitoring.

SBA may conduct monitoring of SBA Lenders and Intermediaries including, but not limited to, SBA Lenders' or Intermediaries' self-assessments.

§ 120.1050 [Amended]

■ 9. Amend § 120.1050(c) by removing the phrase ''and NTAPs'' wherever it appears.

■ 10. In § 120.1051, revise the first sentence of the introductory text and paragraph (a) to read as follows:

§ 120.1051 Frequency of reviews and examinations.

SBA may conduct reviews and examinations of SBA Lenders and Intermediaries on a periodic basis. * * *

(a) Results of monitoring, including an SBA Lender's or Intermediary's Risk Rating;

* * * * *

■ 11. Amend § 120.1055 by:
■ a. Revising paragraphs (a) and (b); and
■ b. In paragraph (d):
■ i. Removing the phrase ''SBA Lender, Intermediary, or NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender or Intermediary'';
■ ii. Removing ''Subpart I'' and adding in its place ''this subpart''; and
■ iii. Removing the reference ''§ 120.1500 through § 120.1540'' wherever it appears and adding in its place the phrase ''this subpart''.

The revisions to read as follows:

§ 120.1055 Review and examination results.

(a) *Written Reports.* SBA will provide an SBA Lender and Intermediary a copy of SBA's written report prepared as a result of the SBA Lender or Intermediary review or examination (''Report''). SBA will provide the Report generally within 60 business days following SBA's conclusion of the review/examination unless SBA notifies the SBA Lender or Intermediary of a later date and the reason for the delay. The Report may contain findings, conclusions, corrective actions, and recommendations. Each director (or manager, in the absence of a Board of Directors) of the SBA Lender or Intermediary, in keeping with his or her responsibilities, must become fully informed regarding the contents of the Report.

(b) *Response to review and examination Reports.* SBA Lenders and Intermediaries must respond to Report findings, recommendations, and corrective actions, if any, in writing to SBA and, if requested, submit proposed corrective actions and/or a capital restoration plan. An SBA Lender or Intermediary must respond within 45 business days from the date the Report is received unless SBA notifies the SBA Lender or Intermediary in writing that the response, proposed corrective actions or capital restoration plan is to be filed within a different time period (either shortened or extended in SBA's discretion). The SBA Lender or Intermediary response must address each finding, recommendation, and corrective action. In proposing a corrective action or capital restoration plan, the SBA Lender or Intermediary must detail the steps it will take to correct the finding(s); the time within which each step will be taken; the timeframe for accomplishing the entire corrective action plan; and the person(s) or department at the SBA Lender or Intermediary charged with carrying out the corrective action or capital restoration plan, as applicable. In addition, SBA Lenders and Intermediaries must implement corrective actions within 90 calendar days from the date the Report or SBA's letter requiring corrective action is received, unless SBA provides written notice of another timeframe. For purposes of this paragraph (b), a Report will be deemed to have been received on the date it was emailed to the last known email address of the SBA Lender or Intermediary unless the SBA Lender or Intermediary can provide compelling evidence to the contrary.

* * * * *

§ 120.1060 [Amended]

■ 12. Amend § 120.1060 by:
■ a. Removing the phrase ''SBA Lender, Intermediary, or NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender or Intermediary'';
■ b. Removing the phrase ''SBA Lender, Intermediary, and NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender and Intermediary'';
■ c. Removing the phrase ''SBA Lenders, Intermediaries, and NTAPs'' and adding in its place the phrase ''SBA Lenders and Intermediaries''; and
■ d. Removing the phrase ''SBA Lender's, Intermediary's, or NTAP's'' and adding in its place the phrase ''SBA Lender's or Intermediary's''.

■ 13. Add § 120.1300 immediately following the undesignated center heading ''Enforcement Actions'' to read as follows:

§ 120.1300 Informal enforcement actions—7(a) Lenders.

(a) Upon a determination that the grounds in § 120.1400 exist, the D/

OCRM may undertake, in his/her discretion, one or more of the informal enforcement actions listed in this section and is not restricted from delegating as appropriate. SBA will consider the severity or frequency of the violation or action triggering the ground and the circumstances in determining whether and what type of informal action to take. Circumstances that may lead to SBA taking informal enforcement action rather than formal enforcement action include, for example, when problems are narrow in scope and are correctible and SBA is confident of a 7(a) Lender's Board of Directors (''Board'') and management commitment and ability to correct; where violations are less frequent or less severe but warrant enforcement; or while more fully assessing risk.

(b) Informal enforcement actions include, but are not limited to:

(1) *An SBA supervisory letter.* The letter may discuss serious or persistent supervisory concerns, as determined by SBA, and expected corrective action by the 7(a) Lender. Supervisory letters include, for example, Notices of Material Non-Compliance;

(2) *Mandatory training.* SBA may require a 7(a) Lender to complete training to address certain findings, weaknesses, and deficiencies;

(3) *A commitment letter or Board resolution.* SBA may require a 7(a) Lender to submit a commitment letter or Board resolution, satisfactory to SBA, signed by the 7(a) Lender's Board on behalf of the entity that may:

(i) Include specific written commitments to take corrective actions in response to the 7(a) Lender's acknowledged deficiencies;

(ii) Identify the person(s) responsible for taking the corrective action; and

(iii) Set forth the timeframe for taking the corrective action. The document may be drafted by SBA or the 7(a) Lender;

(4) *Agreements.* SBA may request that a 7(a) Lender enter into a written agreement with, and drafted by, SBA to address and correct identified weaknesses and/or limit or mitigate risk. The agreement may provide, for example, that a 7(a) Lender take certain actions or refrain from certain actions; and

(5) *Other informal enforcement actions.* Others as SBA determines appropriate on a case by case basis.

(c) A 7(a) Lender may appeal informal enforcement actions to the appropriate Federal district court or SBA's Office of Hearings and Appeals (OHA) within 20 calendar days of the date of the decision, and in the event of an OHA appeal, OHA will issue its decision in accordance with part 134 of this title. The enforcement action will remain in effect pending resolution of the appeal, if any. SBA is not precluded from taking one or more formal enforcement actions under § 120.1500, or as otherwise authorized by law, while an appeal of an informal enforcement action is pending.

■ 14. Amend § 120.1400 by:

■ a. Revising the first sentence and adding a sixth sentence in paragraph (b);

■ b. Revising the first sentence in paragraph (c)(6) and paragraph (c)(9);

■ c. Removing the word ''and'' at the end of paragraph (c)(10); and

■ d. Revising paragraphs (c)(11) and (12), (d)(1)(iii) and (iv), and (d)(3)(i) and (ii).

The revisions read as follows:

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

* * * * *

(b) *Scope.* SBA may undertake one or more of the enforcement actions listed in §§ 120.1300 and 120.1500, or as otherwise authorized by law, if SBA determines that the grounds applicable to the enforcement action exist. * * * SBA considers the severity or frequency of a violation in determining whether to take an enforcement action and the type of enforcement action to take.

(c) * * *

(6) Engaging in a pattern of uncooperative behavior or taking an action that SBA determines is detrimental to the integrity or reputation of an SBA program, that undermines management or administration of a program, or that is not consistent with standards of good conduct. * * *

(9) Any other reason that SBA determines may increase SBA's financial risk (for example, repeated Less Than Acceptable Risk Ratings (generally in conjunction with other indicators of increased financial risk); failure to properly oversee Agent activity (''Agent'' as defined in part 103 of this title); or, indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA loans for the SBA Lender);

* * * * *

(11) For immediate suspension of all SBA Lenders from delegated authorities—upon a determination by SBA that:

(i) One or more of the grounds in paragraph (c) or (f) of this section, as applicable, exists; and

(ii) Immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity); and

(12) For immediate suspension of all SBA Lenders (except SBA Supervised Lenders, which are covered under paragraph (d)(2) of this section) from the authority to participate in the SBA loan program, including the authority to make, service, liquidate, or litigate 7(a) or 504 loans—upon a determination by SBA that:

(i) One or more of the grounds in paragraph (c) or (f) of this section, as applicable, exists; and

(ii) Immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity).

(d) * * *

(1) * * *

(iii) A willful or repeated violation of SBA Loan Program Requirements; or

(iv) A willful or repeated violation of any condition imposed by SBA with respect to any application or request with SBA; or

* * * * *

(3) * * *

(i) A violation of SBA Loan Program Requirements; or

(ii) Where an SBA Supervised Lender or Other Person engages in or is about to engage in any acts or practices that will violate SBA Loan Program Requirements.

* * * * *

■ 15. Amend § 120.1425 by:

■ a. Revising the section heading and paragraphs (a) and (b);

■ b. In paragraph (c) introductory text:

■ i. Removing the dash after the paragraph heading and adding a period in its place; and

■ ii. Removing the phrase ''Intermediary or NTAP'' wherever it appears and adding in its place the phrase ''Intermediary'';

■ c. Revising paragraph (c)(1);

■ d. Removing the phrase ''Intermediaries and NTAPs'' and adding in its place the phrase ''Intermediaries'' in paragraph (c)(2)(i);

■ e. Revising paragraphs (c)(2)(vii) and (viii);

■ f. Adding paragraphs (c)(2)(ix) and (x) and (c)(3) through (7);

■ g. Removing paragraphs (d) and (e).

The revisions and additions read as follows:

§ 120.1425 Grounds for formal enforcement actions—Intermediaries participating in the Microloan Program.

(a) *Agreement.* By participating in the SBA Microloan Program, Intermediaries

automatically agree to the terms, conditions, and remedies in this part as if fully set forth in their participation agreement and all other agreements jointly executed by the Intermediary and SBA.

(b) *Scope.* SBA may undertake one or more of the formal enforcement actions listed in § 120.1540, or as otherwise authorized by law, if SBA determines that any of the grounds listed in paragraph (c) of this section exist.

(c) * * *

(1) Failure to comply materially with any requirement imposed by Loan Program Requirements;

(2) * * *

(vii) Maintain a staff trained in Microloan Program issues and Loan Program Requirements;

(viii) Maintain the financial ability to sustain the Intermediary's operations (including, but not limited to, adequate capital), as determined by SBA;

(ix) Satisfactorily provide in-house technical assistance to Microloan borrowers and prospective Microloan borrowers; or

(x) Close and fund the required number of microloans per year under § 120.716;

(3) Failure within the time period specified to correct an underwriting, closing, disbursing, servicing, liquidation, litigation, or reporting deficiency, or failure in any material respect to take other corrective action, after receiving notice from SBA of a deficiency and the need to take corrective action;

(4) Engaging in a pattern of uncooperative behavior or taking an action that SBA determines is detrimental to the integrity or reputation of the Microloan Program, that undermines management or administration of the program, or that is not consistent with standards of good conduct. Prior to issuing a notice of a proposed formal enforcement action or immediate suspension under § 120.1540 based upon the grounds discussed in this paragraph (c)(4), SBA must send prior written notice to the Intermediary explaining why the Intermediary's actions were uncooperative, detrimental to the program, undermined SBA's management of the program, or were not consistent with standards of good conduct. The prior notice must also state that the Intermediary's actions could give rise to a specified formal enforcement action, and provide the Intermediary with a reasonable time to cure the deficiency before any further action is taken;

(5) Any other reason that SBA determines may increase SBA's financial or program risk (for example, repeated Less Than Acceptable Risk Ratings (generally in conjunction with other indicators of increased risk) or indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA programs for the Intermediary);

(6) For immediate suspension of an Intermediary—upon a determination by SBA that:

(i) One or more of the grounds in paragraph (c) of this section exists; and

(ii) Immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity); and

(7) As otherwise authorized by law.

■ 16. Amend § 120.1500 by revising the section heading, the introductory text, paragraph (a) heading, paragraph (b), paragraph (c) introductory text heading, paragraph (c)(4), paragraph (d) introductory text heading, and paragraph (e) introductory text heading to read as follows:

§ 120.1500 Types of formal enforcement actions—SBA Lenders.

Upon a determination that the grounds set forth in § 120.1400 exist, the D/OCRM may undertake, in his/her discretion (and with the involvement of the LOC as appropriate and consistent with its assigned responsibilities), one or more of the following formal enforcement actions for each of the types of SBA Lender listed, and is not restricted from delegating as appropriate. SBA will consider the severity or frequency of the violation or action and the circumstances triggering the ground in determining whether and what type of enforcement action to take. SBA will take formal enforcement action in accordance with procedures set forth in § 120.1600. If formal enforcement action is taken under this section and the SBA Lender fails to implement required corrective action in any material respect within the required timeframe in response to the formal enforcement action, the D/OCRM may take further enforcement action, as authorized by law. SBA's decision to take a formal enforcement action will not, by itself, invalidate a guaranty previously provided by SBA.

(a) *Formal enforcement actions for all SBA Lenders.* * * *

(b) *Formal enforcement actions specific to 7(a) Lenders.* In addition to those formal enforcement actions applicable to all SBA Lenders, SBA may take the following actions:

(1) Secondary market suspension or revocation (other than temporary suspension and revocation under § 120.660). SBA may suspend or revoke a 7(a) Lender's authority to sell or purchase loans or certificates in the Secondary Market; or

(2) Civil monetary penalty (other than SBA Supervised Lender civil monetary penalty under § 120.465). SBA may assess a civil monetary penalty against a 7(a) Lender. The civil monetary penalty will be in an amount not to exceed the maximum published in the **Federal Register** from time to time, which will be $250,000 plus any increases required under law. In determining whether to assess a civil monetary penalty and, if so, in what amount, SBA may consider, for example, the following: The gravity (*e.g.,* severity and frequency) of the violation; the history of previous violations; the financial resources and good faith of the 7(a) Lender; and any other matters as justice may require.

(c) *Formal enforcement actions specific to SBA Supervised Lenders and Other Persons (except Other Regulated SBLCs).* * * *

(4) *Civil monetary penalties for report filing failure under § 120.465.* SBA may seek civil penalties, in accordance with § 120.465, against an SBA Supervised Lender that fails to file any regular or special report by its due date as specified by regulation or SBA written directive.

(d) *Formal enforcement actions specific to SBLCs.* * * *

(e) *Formal enforcement actions specific to CDCs.* * * *

17. Revise § 120.1540 to read as follows:

§ 120.1540 Types of formal enforcement actions—Intermediaries participating in the Microloan Program.

Upon a determination that any ground set out in § 120.1425 exists, the D/OCRM may undertake, in his/her discretion (and with the involvement of the LOC as appropriate and consistent with its assigned responsibilities), one or more of the following formal enforcement actions against an Intermediary, and is not restricted from delegating as appropriate:

(a) S*uspension.* SBA may suspend an Intermediary's authority to participate in the Microloan Program, which may include, but is not limited to, the authority to make, service, liquidate, and/or litigate SBA microloans, and the imposition of a freeze on the Intermediary's MRF and LLRF accounts.

(b) *Immediate suspension.* SBA may suspend, effective immediately, an Intermediary's authority to participate in the Microloan Program, which may include, but is not limited to, the

authority to make, service, liquidate, and/or litigate SBA microloans, and the imposition of an immediate freeze on the Intermediary's MRF and LLRF accounts. Section 120.1425(c)(6) sets forth the grounds for SBA Microloan Program immediate suspension of an Intermediary.

(c) *Revocation.* SBA may revoke an Intermediary's authority to participate in the Microloan Program which may include, but is not limited to:

(1) Removal from the program;

(2) Liquidation of the Intermediary's MRF and LLRF accounts by SBA, and application of the liquidated funds to any outstanding balance owed to SBA;

(3) Payment of outstanding debt to SBA by the Intermediary;

(4) Forfeiture or repayment of any unused grant funds by the Intermediary;

(5) Debarment of the organization from receipt of Federal funds until loan and grant repayments are met; and

(6) Surrender of possession of Intermediary's SBA microloan portfolio to SBA, with the microloan portfolio and all associated rights transferred on a permanent basis to SBA, in accordance with SBA's rights as a secured creditor.

(d) *Other actions.* Such other actions available under law.

■ 18. Amend § 120.1600 by:

■ a. Revising the section heading;

■ b. Removing the phrase ''SBA Lender, Intermediary, or NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender or Intermediary'';

■ c. Removing the phrase ''SBA Lender, Intermediary, or NTAP's'' wherever it appears and adding in its place the phrase ''SBA Lender's or Intermediary's'';

■ d. Revising the introductory text to paragraph (a);

■ e. Adding the word ''formal'' before the word ''enforcement'' wherever it appears in paragraphs (a)(1) through (4);

■ f. Removing the phrase ''SBA Lender, Intermediary, NTAP or SBA,'' and adding in its place the phrase ''SBA Lender, Intermediary, or SBA,'' in paragraph (a)(1)(ii);

■ g. Removing the phrase ''final decision'' wherever it appears and adding in its place the phrase ''final agency decision'' in paragraphs (a)(2) through (4);

■ h. Removing the phrase ''SBA Lender, Intermediary, NTAP or other parties'' and adding in its place the phrase ''SBA Lender, Intermediary or other parties'' in paragraph (a)(3)(iii);

■ i. Revising the headings for paragraphs (a)(3) and (4) and paragraph (a)(5); and

■ j. Adding the word ''formal'' before the word ''enforcement'' in the headings for paragraphs (b) and (c).

The revisions read as follows:

§ 120.1600 General procedures for formal enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, and Intermediaries.

(a) *In general.* Except as otherwise set forth for the formal enforcement actions listed in paragraphs (a)(6), (b), and (c) of this section and in § 120.465, SBA will follow the procedures listed in this section.

* * * * *

(3) *SBA's notice of final agency decision on a formal enforcement action where an SBA Lender or Intermediary filed objection to the proposed action or immediate suspension.* * * *

(4) *SBA's notice of final agency decision on a formal enforcement action where no filed objection or untimely objection not considered.* * * *

(5) *Appeals.* An SBA Lender or Intermediary may appeal the final agency decision to the appropriate Federal district court. Alternatively, 7(a) Lenders may appeal such decisions (except for decisions against SBA Supervised Lenders that are covered by procedures in § 120.1600(b) or (c) or § 120.465) to SBA's Office of Hearings and Appeals (''OHA'') within 30 calendar days of the date of the decision, and in the event of such an appeal, OHA will issue its decision in accordance with part 134 of this title. The enforcement action will remain in effect pending resolution of the appeal, if any.

* * * * *

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 19. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t, and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

■ 20. Amend § 134.102 by adding paragraph (d) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(d) 7(a) Lender appeals from informal enforcement actions and final agency decisions on 7(a) Lender formal enforcement actions, and any other appeal that is specifically authorized by part 120 of this title, but not including appeals of actions against SBA Supervised Lenders under § 120.1600(b) or (c) or under § 120.465;

* * * * *

■ 21. Amend § 134.205 by revising paragraph (c) to read as follows:

§ 134.205 The appeal file, confidential information, and protective orders.

* * * * *

(c) *Public access.* Except for confidential business and financial information; source selection sensitive information; income tax returns; documents and information covered under § 120.1060 of this title; and other exempt information, the appeal file is available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

* * * * *

Jovita Carranza,

Administrator.

[FR Doc. 2020–04663 Filed 3–13–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0979; Product Identifier 2019–NM–182–AD; Amendment 39–19868; AD 2020–05–18]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report of incorrectly engaged lock washer tabs of the main landing gear (MLG) forward pintle bearing (FPB) at the forward face of the trunnion block. This AD requires detailed inspections of the left-hand (LH) and right-hand (RH) side MLG FPB nuts and lock washer tabs, and depending on findings, accomplishment of repetitive detailed inspections or corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 20, 2020.

The Director of the Federal Register approved the incorporation by reference