

economic developments suggest the absence of notable risks to financial stability. Indeed, for it to be most effective, the CCyB should be deactivated or reduced in a timely manner. This would reduce the likelihood that advanced approaches institutions would significantly pare their risk-weighted assets in order to maintain their capital ratios during a downturn.

The pace and magnitude of changes in the CCyB will depend importantly on the underlying conditions in the financial sector and the economy as well as the desired effects of the proposed change in the CCyB. If vulnerabilities are rising gradually, then incremental increases in the level of the CCyB may be appropriate. Incremental increases would allow banks to augment their capital primarily through retained earnings and allow policymakers additional time to assess the effects of the policy change before making subsequent adjustments. However, if vulnerabilities in the financial system are building rapidly, then larger or more frequent adjustments may be necessary to increase loss-absorbing capacity sooner and potentially to mitigate the rise in vulnerabilities.

The Board will also consider whether the CCyB is the most appropriate of its available policy instruments to address the financial-system vulnerabilities highlighted by the framework's judgmental assessments and empirical models. The CCyB primarily is intended to address cyclical vulnerabilities, rather than structural vulnerabilities that do not vary significantly over time. Structural vulnerabilities are better addressed through targeted reforms or permanent increases in financial system resilience. Two key factors for the Board to consider are whether advanced approaches institutions are exposed—either directly or indirectly—to the vulnerabilities identified in the comprehensive judgmental assessment or by the quantitative indicators that suggest activation of the CCyB and whether advanced approaches institutions are contributing—either directly or indirectly—to these highlighted vulnerabilities.

The Board, in setting the CCyB for advanced approaches institutions that it supervises, plans to consult with the OCC and FDIC on their analyses of financial-system vulnerabilities and on the extent to which banking organizations are either exposed to or contributing to these vulnerabilities.

5. Communication of the U.S. CCyB With the Public

The Board expects to consider at least once per year the applicable level of the U.S. CCyB. The Board will review financial conditions regularly throughout the year and may adjust the CCyB more frequently as a result of those monitoring activities.

Further, the Board will continue to communicate with the public in other formats regarding its assessment of U.S. financial stability, including financial-system vulnerabilities. For example, the Board's biannual Monetary Policy Report to Congress, usually published in February and July, will continue to contain a section that reports on developments pertaining to the

stability of the U.S. financial system.¹² That portion of the report will be an important vehicle for updating the public on how the Board's current assessment of financial-system vulnerabilities bears on the setting of the CCyB.

6. Monitoring of the Effects of the U.S. CCyB

The effects of the U.S. CCyB ultimately will depend on the level at which it is set, the size and nature of any adjustments in the level, and the timeliness with which it is increased or decreased. The extent to which the CCyB may affect vulnerabilities in the broader financial system depends upon a complex set of interactions between required capital levels at the largest banking organizations and the economy and financial markets. In addition to the direct effects, the secondary economic effects could be amplified if financial markets extract a signal from the announcement of a change in the CCyB about subsequent actions that might be taken by the Board. Moreover, financial market participants might react by updating their expectations about future asset prices in specific markets or broader economic activity based on the concerns expressed by the regulators in communications announcing a policy change.

The Board will monitor and analyze adjustments by banking organizations and other financial institutions to the CCyB. Factors that will be considered include (but are not limited to) the types of adjustments that affected banking organizations might undertake. For example, it will be useful to monitor whether a change in the CCyB leads to observed changes in risk-based capital ratios at advanced approaches institutions, as well as whether those adjustments are achieved passively through retained earnings, or actively through changes in capital distributions or in risk-weighted assets. Other factors to be monitored include the extent to which loan growth and spreads on loans issued by affected banking organizations change relative to loan growth and loan spreads at banking organizations that are not subject to the buffer. Another key consideration in setting the CCyB and other macroprudential tools is the extent to which the adjustments by advanced approaches institutions to higher capital buffers lead to migration of credit market activity outside of those banking organizations, especially to the nonbank financial sector. Depending on the amount of migration and which institutions are affected, those adjustments could cause the Board to favor either a higher or a lower value of the CCyB.

The Board will also monitor information regarding the levels of and changes in the CCyB in other countries. The Basel Committee on Banking Supervision is expected to maintain this information for member countries in a publically available form on its Web site.¹³ Using that data in conjunction with supervisory and publicly

available datasets, Board staff will be able to draw not only upon the experience of the United States but also that of other countries to refine estimates of the effects of changes in the CCyB.

By order of the Board of Governors of the Federal Reserve System, December 21, 2015.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2016-01934 Filed 2-2-16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG66

Small Business Investment Company Program—Impact SBICs

AGENCY: U.S. Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proposed rule, the U.S. Small Business Administration (SBA) is defining a new class of small business investment companies (SBICs) that will seek to generate positive and measurable social impact in addition to financial return. With the creation of this class of "Impact SBICs," SBA is seeking to expand the pool of investment capital available primarily to underserved communities and innovative sectors as well as support the development of America's growing impact investing industry. This proposed rule sets forth regulations applicable to Impact SBICs with respect to licensing, leverage eligibility, fees, reporting and compliance requirements.

DATES: Comments on the proposed rule must be received on or before March 4, 2016.

ADDRESSES: You may submit comments, identified by RIN 3245-AG66, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail, Hand Delivery/Courier: Mark Walsh, Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Nate T. Yohannes, Office of Investment and Innovation, 409 Third Street SW., Washington, DC 20416. Highlight the information that you consider to be CBI

¹² For the most recent discussion in this format, see box titled "Developments Related to Financial Stability" in Board of Governors of the Federal Reserve System, *Monetary Policy Report to Congress*, July 2015, pp. 24–25.

¹³ BIS, Countercyclical capital buffer (CCyB), www.bis.org/bcbcs/ccyb/index.htm.

and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether or not it will publish the information.

FOR FURTHER INFORMATION CONTACT: Nate T. Yohannes, Office of Investment and Innovation, (202) 205-6714.

SUPPLEMENTARY INFORMATION:

I. Background Information

“Impact investing” is a term used to describe an investment approach that combines the pursuit of financial return with the goal of generating measurable social, environmental or economic impact. The term “social impact investing” is often used synonymously with the term impact investing, and refers, collectively, to all types of impact investing, including social, environmental and economic. Impact investors are active throughout the capital markets, and though their strategies may vary, according to the Global Impact Investing Network, a non-profit organization dedicated to increasing the scale and effectiveness of impact investing, impact investors share three defining traits. First, impact investors invest with the explicit intention of generating a positive social impact. This is in contrast to other types of investors who attempt to avoid generating negative social impacts or who are entirely indifferent to the social outcomes resulting from their investments. Second, though their return requirements vary, impact investors are not grant providers and always expect a return on their invested capital. Finally, impact investors share a commitment to measure the effect of their investments on the employees, customers and communities of the companies in which they invest. *See*, The Global Impact Investing Network, *About Impact Investing*, <http://www.thegiin.org/cgi-bin/iowa/resources/about/index.html>.

Impact investing currently constitutes a small segment of global investment activity. Each year, J.P. Morgan and the Global Impact Investing Network (“GIIN”) publish an annual survey of leading impact investors. In their May 2015 findings, available at <http://www.thegiin.org/cgi-bin/iowa/resources/research/662.html>, 146 survey respondents reported managing a collective total of \$60 billion in impact investments. Compared with the \$64 trillion in global assets under management, a figure drawn from PricewaterhouseCoopers’ (“PwC”) 2014 report *Asset Management 2020: A Brave New World*, available at [\[publications/asset-management-2020-a-brave-new-world.jhtml\]\(http://www.pwc.com/gx/en/asset-management-2020-a-brave-new-world.jhtml\), impact investments comprise a small fraction of invested capital worldwide.](http://www.pwc.com/gx/en/asset-management/</p>
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However, the size of the impact industry belies both its growth potential and that of the broader sustainable finance sector. This is a sector focused on “creating economic and social value through financial models, products and markets that are sustainable over time.” *See*, Center for Responsible Business, Haas School of Business, University of California Berkeley, *Sustainable Finance*, <http://responsiblebusiness.haas.berkeley.edu/programs/sustainable-finance.html>. The Forum for Sustainable and Responsible Investment estimates that U.S.-domiciled assets managed using sustainable, responsible or impact investing strategies increased by a compound annual rate of 33% between 2012 and 2014. If that trend continues, sustainable finance will continue to outpace overall market growth. According to the 2014 PwC report, global AUM will grow at a compound annual growth rate of just nearly 6 percent in coming years.

SBA’s formal efforts in the impact investing space began on April 7, 2011, when it announced the launch of the SBIC program’s Impact Investing Initiative (the “Initiative”), building upon SBA’s belief that targeting capital investments into segments of the U.S. economy where capital formation gaps exist, such as small businesses located in low-to-moderate income (“LMI”) and other underserved areas, has the potential to effect meaningful and sustained economic development impact in those areas. The Initiative made available \$1 billion in debenture leverage, over the course of 5 years, to SBICs that committed to deploy at least 50 percent of their total invested capital in “impact investments.” Under the Initiative, investments in small businesses located in LMI areas, economically-distressed areas and rural areas generally qualified as impact investments, as did investments in small businesses active in the education and clean energy sectors.

Since 2011, SBA has made several changes to the Initiative in an effort to enhance its effectiveness. Most recently, in September 2014, SBA expanded the scope of the Initiative and renamed it the “Impact Investment Fund” to reflect SBA’s commitment to extend its impact investing efforts beyond the Initiative’s initial 5-year term.

This rule follows from that commitment and seeks to recognize, within the SBIC program’s regulations, the important role impact investors can play in helping the SBIC program

achieve its goal of providing capital and long-term loan funds for the growth, expansion and modernization of small businesses.

II. Section by Section Analysis

§ 107.50—*Definitions*. SBA proposes to add the defined terms “Fund-Identified Impact Investment,” “Impact Investment,” “Impact SBIC” and “SBA-Identified Impact Investment.”

“Fund-Identified Impact Investment,” “Impact Investment,” and “SBA-Identified Impact Investment”

The definition of “Impact Investment” included in this proposed rule consists of two categories, each of which is also a defined term in the proposed rule: (1) SBA-Identified Impact Investments, which are investments in geographic areas and sectors of national priority that SBA designates in notices published from time to time on SBA’s SBIC program Web site (www.sba.gov/inv); and (2) Fund-Identified Impact Investments, which are investments that meet an SBIC’s own definition of an “Impact Investment” and which an SBIC applicant must propose and SBA must approve during the licensing process, as described in proposed § 107.331—Evaluation and selection of Impact SBICs.

“Impact SBIC”

The regulatory definition of an Impact SBIC has several key points. First, an Impact SBIC must be organized as a limited partnership. Although the current regulations permit other forms of organization, the vast majority of existing SBICs are limited partnerships. SBA believes that having a degree of uniformity in organizational structure will facilitate a more timely and efficient licensing process for Impact SBICs.

Second, the “Impact SBIC” designation would apply only to SBICs licensed under this rule as well as those licensees designated as Impact SBICs after the launch of the Initiative in 2011 and before the effective date of this rule.

Third, an Impact SBIC must invest at least 50 percent of its financing dollars in small business concerns that meet the criteria set forth in the definition of Impact Investment in this rule (referred to hereafter as the “50 percent requirement”). SBA believes the 50 percent threshold indicates a significant focus, while still giving Impact SBICs flexibility in developing their portfolios. Per the proposed rule, follow-on investments in a portfolio company that qualified as an “Impact Investment” at the time of the SBIC’s initial financing

would count towards the 50 percent requirement.

An Impact SBIC may satisfy the 50 percent requirement exclusively through SBA-Identified Impact Investments or Fund-Identified Impact Investments, but may also satisfy the 50 percent requirement through a combination of these investments. Per proposed § 107.331, SBA must approve all Fund-Identified Impact Investment definitions and strategies during the licensing process, regardless of whether such investments will be used to meet all or only a portion of the 50 percent requirement.

§ 107.301—*Impact SBIC licensing fee discount.* This section proposes a 60% reduction in the licensing fees Impact SBIC applicants must pay under § 107.300. The discount is intended to incentivize the formation of Impact SBICs. Despite the fee reduction, SBA will devote neither less time nor fewer resources to the assessment of Impact SBIC applications than it devotes to the assessment of standard SBIC applications.

However, § 107.301 would provide that in the event an Impact SBIC applicant were to ultimately be approved for an SBIC license as anything other than an Impact SBIC, SBA would be entitled to recover the value of any discounts the applicant received prior to licensing. This provision was added to cover cases in which an applicant decides mid-process, with SBA permission, to seek a standard SBIC license instead of an Impact SBIC license. These types of changes sometimes occur during the fundraising process as fund managers adjust to the expectations of private capital providers. Although licensees designated as Impact SBICs under the Initiative would be eligible for fee discounts as of the effective date of this rule, SBA will not return any fees these licensees paid prior to that date.

Finally, any Impact SBIC, whether licensed under the Initiative or under this rule, may submit a written request to SBA seeking to convert to a standard SBIC license. SBA would generally expect to grant such a request, provided that SBA recovers the value of any discounts the licensee received.

§ 107.310—*When and how to apply for licensing as an Early Stage SBIC.* America's impact investment industry includes fund managers focused on making equity investments in early stage companies. In order to accommodate these fund managers, proposed § 107.310 permits applicants to apply simultaneously for an Impact SBIC and Early Stage SBIC license. Further, such dual applicants will be

permitted to submit their application at any time and will not be subject to the submission deadlines specified in Early Stage Notices SBA may publish in the **Federal Register**. However, those applicants licensed as both Early Stage and Impact SBICs will be subject to every regulation pertaining to either type of licensee.

§ 107.330—*Evaluation and selection of Impact SBIC license applicants making SBA-Identified Impact Investments.* Impact SBIC license applicants proposing to meet their impact investment requirements exclusively through SBA-Identified Impact Investments will be evaluated and selected based on the standards outlined in § 107.305, which are used to assess all SBIC applicants. In addition, SBA will evaluate the managers' skills and experience in building and managing a portfolio of impact investments. However, an applicant's potential to generate social, environmental or economic impact will be considered relevant only to its eligibility to participate in the SBIC program as an Impact SBIC and will not serve as a substitute for any of the factors cited in § 107.305.

§ 107.331—*Evaluation and selection of Impact SBIC license applicants making Fund-Identified Impact Investments.*

Under proposed § 107.331, Impact SBIC license applicants seeking approval to make Fund-Identified Impact Investments will be subject first and foremost to the evaluation process and qualification standards outlined in § 107.305, which are used to assess all SBIC applicants. An applicant's potential to generate social, environmental or economic impact will be considered relevant only to its eligibility to participate in the SBIC program as an Impact SBIC and will not serve as a substitute for any of the factors cited in § 107.305.

Using SBA Form 2181 (Applicant Narrative), applicants will be expected to provide definition(s) of the Fund-Identified Impact Investments they intend to make for the purposes of complying with the requirement that 50 percent of the total dollar amount of their financings be deployed in Impact Investments. Applicants will also be required to describe, using qualitative and quantitative analysis, the expected social, environmental or economic impact of their proposed Fund-Identified Impact Investments.

SBA will review any Fund-Identified Impact Investment definition(s), along with an applicant's overall investment strategy, in order to determine whether the proposed definitions and strategy

are consistent with SBA's mission, as well as the letter and spirit of the SBIC program's regulations. For instance, a Fund-Identified Impact Investment definition that targets financial intermediaries would not be approved if SBA determines it risks running afoul of the regulatory prohibition on financing "relenders" or "reinvestors."

SBA will next determine whether the applicant's proposed Fund-Identified Impact Investments are likely to yield a positive impact when all the potential social, environmental and economic effects of the investments are considered. SBA's evaluation may consider factors such as whether the strategy will include investments in Portfolio Concerns that increase services to low income communities, engage in environmentally sustainable business practices or manufacture environmentally sustainable products, or that operate in industries of national priority other than in the sectors identified by SBA as an SBA-Identified Impact Investment. The Agency acknowledges that reaching a definitive and objective conclusion regarding a strategy's overall impact may be challenging. Impact is often described in qualitative, rather than quantitative terms. In anticipation of that challenge, the proposed rule has been drafted to mitigate the risk that SBA would be put in the position of having to accept or reject a proposed definition based solely on a value judgment.

Applicants will be expected to make reasonable arguments, supported by convincing evidence, that their proposed definitions can meet the impact requirements of this rule. In this regard, the process SBA will use to evaluate proposed Fund-Identified Impact Investment definitions differs little from the process used to assess fund manager qualifications. SBA will use its standard due diligence tools, including principal interviews and reference calls, to test the strength of an applicant's proposal and the validity of the evidence presented therein. Just as a standard SBIC applicant might be rejected for making unsubstantiated track record claims, so too could a Fund-Identified Impact Investment definition be turned down if diligence suggests it lacks credibility.

SBA takes a nuanced approach to its licensing decisions and does not rely solely on easy-to-measure financial metrics. An applicant's past financial performance is always carefully weighed against less tangible factors such as the level of cohesion among the proposed management team members; the alignment of incentives between the fund manager and private investors; and

the quality of the proposed investment strategy, among other variables.

SBA expects to receive few, if any, Fund-Identified Impact Investment definition proposals that are intended solely to obtain the fee reduction benefits of an Impact SBIC license. The fee reductions in the proposed rule are not material compared to the amount of capital raised by an SBIC applicant, and Impact SBIC licensees are subject to enhanced regulatory reporting requirements. Moreover, fund managers that have expressed interest in SBA's impact investing efforts have, to-date, all proposed strategies with clear benefits and no obvious risk of yielding negative effects. The following are examples of the types of impact investments being made in the market today and which SBA anticipates Impact SBICs applying under this section may target:

- Healthcare companies that offer affordable, high-quality services to low-income consumers
- Education companies that provide evidence-based, supplemental learning services designed to enhance student achievement
- Energy efficiency and sustainability consulting firms
- Agricultural businesses that employ humane and environmentally sustainable farming practices
- Businesses that collect and reprocess industrial waste for alternative use
- Alternative credit scoring firms that enhance access to financial services for low-income consumers

In addition to approving an applicant's proposed definition of a Fund-Identified Impact Investment, SBA must be satisfied with the applicant's impact measurement and assessment plan, which an applicant must submit in accordance with proposed § 107.331(b). Under this section, the applicant must outline its plan to comply with proposed § 107.665, which requires Impact SBICs making Fund-Identified Impact Investments to obtain an assessment of their impact (1) from an independent, third-party assessment provider, (2) using an SBA-approved impact measurement standard, a list of which SBA will publish on its Web site from time to time, and (3) using an assessment process that is both transparent and comprehensive.

Impact measurement is a defining characteristic of impact investors. Without it, impact fund managers and their capital providers face a much bigger challenge in determining whether their goal of generating positive social impact has been met. Unfortunately,

determining whether a fund has reached its impact target is far more complicated than evaluating its financial performance. The process requires establishing a standard by which the targeted outcomes will be measured, then crafting an evaluation framework capable of weighing the resulting measurements to yield an overall assessment of impact.

With regard to measurement, the proposed rule would require Impact SBICs licensed under this section to measure their impact using one of several pre-approved measurement standards. At the outset, SBA intends to approve the use of the three sets of standards listed below, although SBA may approve additional standards as they become more widely adopted by the impact investing industry:

- The Impact Reporting and Investment Standards (“IRIS”), an impact evaluation framework created by GIIN;
- The G4 Sustainability Reporting Standards, produced by the Global Reporting Initiative (“GRI”); and
- The standards produced and maintained by the Sustainability Accounting Standards Board (“SASB”).

The purpose of these standards is to establish a common language companies and investors can use to report the positive and negative impacts that result from their activities. These standards are part of a broader industry effort to bring to impact measurement what the Generally Accepted Accounting Standards (“GAAP”) provide for financial reporting. When comparing the GAAP-compliant financial statements of two different companies, an investor can be confident the same set of rules was used to report items such as revenue, inventory and operating cash flow in both statements. GAAP does not provide guidance on how to interpret the data, but it does ensure consistency in reporting.

Impact measurement standards were developed to offer the same proposition. Consider the simple example of two Impact SBICs, both of which are pursuing similar strategies to create high-wage jobs in a particular region. In the absence of a measurement standard, the tasks of defining a “job” and calculating a “wage” are left to the funds themselves, which leaves room for methodological discrepancies. One fund may include the value of benefits in its calculation of wages, while the other restricts its definition to direct cash payments. An investor trying to determine which fund has been more effective in reaching its impact goal

would have difficulty in this scenario. Measurement standards help reduce these definitional challenges. Were the two funds to use IRIS metrics, for instance, they could both rely on the IRIS definition of a “full-time” or “permanent” employee and use the method IRIS has established for calculating the wages of those employees.

The impact investing industry has yet to coalesce around a single set of measurement standards and may never do so. However, the three standards SBA intends to approve were selected, in part, because of their prominence in the industry and the flexibility they provide for different types of impact strategies. Of the three, IRIS is likely the best-known and most widely used set of standards. GRI has a focus on sustainability, which may provide environmentally focused Impact SBICs additional flexibility. Finally, SASB's standards are designed primarily for public corporations and may facilitate reporting for Impact SBICs with portfolio companies that are already public or intend to go public.

With clear options available for the measurement of impact, Impact SBICs can turn to the second component of SBA's proposed evaluation system, which deals with the assessment of impact. As noted above, impact measurement standards only provide guidance on how to report impact data. They are silent on how to interpret that data. Returning to the example above, the two fund managers may report IRIS-compliant employee and wage data to their investors, but an assessment framework is needed to determine what constitutes a “strong” level of employment growth, what threshold determines a wage is “high”, or how to weigh the growth in wages against the growth in employment when evaluating the funds' overall impact.

As with financial performance, each individual investor is empowered to reach his or her own conclusions about what constitutes “success” with regard to impact. While numbers, such as an internal rate of return, cannot be easily manipulated by a fund manager, investors could receive biased reports on impact returns if a fund manager were to selectively choose metrics and the weighting associated with those metrics. The use of independent and transparent assessment systems not only helps reduce the risk of selective reporting, but it also promotes the use of best practices across the industry.

For these reasons, SBA considers the assessment component of its proposed impact evaluation system critical to the credibility of the program. Impact SBIC

applicants seeking a license under this section of the proposed rule must identify the assessment providers they expect to use to fulfill their reporting requirements and describe the systems those providers employ. Further, the applicant must provide evidence that each assessment provider is independent, that the criteria and weightings the providers use are publicly available and that each provider is capable of conducting a comprehensive assessment of the Impact SBIC's impact. A comprehensive assessment is one capable of evaluating the social, environmental and economic impacts of the applicant's proposed strategy.

One assessment system SBA has already approved for use under its current Impact Investment Fund policy is the Global Impact Investment Ratings System ("GIIRS"), a product of the non-profit organization B Lab, which uses a standard set of IRIS impact metrics. GIIRS was created to bring to the impact investment industry the kind of consistent and comparable rating reports traditional finance has had for decades in the form of mutual fund ratings or credit ratings. With each investment fund they rate, B Lab staff collects a standard set of IRIS impact metrics from each company in the portfolio. That data is then run through the GIIRS assessment criteria, each of which is assigned a specific weight. The end result is a ratings report with an overall impact score and scores for each individual sub-component of the overall assessment. Since each rating uses the same set of core metrics, assessment criteria and weightings, one investment fund's score can be compared to that of another.

With each new Impact SBIC licensed under this section, SBA will build a portfolio of investment strategies and impact reports that it hopes will help guide future applicants to the program. Both to facilitate that learning process and to ensure program transparency, Section 107.331(d) allows the Agency to publish information about the investment strategies and assessment systems the Impact SBICs licensed under this section have employed.

However, the provisions of paragraph (d) will not release SBA from its responsibility to protect the confidential business information of its licensees. SBA intends only to publish general descriptions of the investment strategies it has approved and will not reveal any details that might compromise an applicant or licensee's confidential business information. Similarly, the Agency will make public the names of assessment providers it has approved

and descriptions of the assessment systems those providers use, but will not reveal the results of any individual impact assessment.

§ 107.502—Representations to the public. SBA is proposing to add new paragraphs (b) and (c) to this section, which would require Impact SBIC license applicants and Impact SBICs to identify themselves as impact investment funds when marketing their funds to prospective investors. This requirement is meant to ensure that investors are made aware that the Impact SBIC applicant intends to participate, or that a licensed Impact SBIC is participating, in the SBIC program as an Impact SBIC. Requiring Impact SBICs to identify themselves as such will also help deter applicants whose sole interest in obtaining an Impact SBIC license is to benefit from the associated fee discounts.

§ 107.610—Required certifications for Loans and Investments. Proposed new paragraph (g) would provide for new certifications by Impact SBICs and the small businesses in which they make Impact Investments, certifying the basis for which each investment qualifies as an Impact Investment. As with most of the existing certifications in this section, the Impact certifications would be retained in the SBIC's files and be available for SBA's review.

The paragraph would require different levels of certification depending on the type of Impact Investment. SBA-Identified Impact Investments will be based on certifications from both the Impact SBIC and its portfolio concerns; Fund-Identified Impact Investments will only require the certification of the Impact SBIC. Since SBA-Identified Impact Investments will be based on definitions in federal regulation and will generally depend on specific statistics collected at the company level, it is reasonable to expect the leaders of those businesses to certify the accuracy of their information. By contrast, Fund-Identified Impact Investments may be based on sector data or other information outside the control of the small business being financed. Therefore, for Impact SBICs making Fund-Identified Impact Investments, the regulation places the full certification burden on the Impact SBIC.

As noted above, per the proposed rule, follow-on financings in Impact Investments would count towards the 50 percent requirement, and therefore, SBA will not require Impact SBICs to re-certify the investment as part of a follow-on financing. SBA believes that requiring Impact SBICs to re-certify their follow-on financings as Impact Investments might deter them from

making long-term capital commitments out of concern that future financings might not count towards the "50 percent requirement." Nonetheless, SBA is soliciting comments from the public on whether such follow-on investments should count towards the 50 percent requirement only if the Impact SBIC recertifies the investment as an Impact Investment at the time a follow-on investment is made.

§ 107.665—Measurement and reporting requirements for Impact SBICs making Fund-Identified Impact Investments. This proposed section would require Impact SBICs making Fund-Identified Impact Investments to obtain independent assessments of the social, environmental and economic impact of their investment strategy. Unless the licensee obtains SBA approval to do otherwise, these assessments must be prepared in manner consistent with the plan approved during the licensing process.

Impact SBICs subject to this section will face penalties if they fail to obtain impact assessments, but SBA will neither penalize nor reward an Impact SBIC based solely on the results of those impact assessments. One purpose of permitting Impact SBICs to make Fund-Identified Impact Investments is to encourage innovative approaches to social, environment and economic challenges. Penalizing licensees that fail to meet their impact goals, despite their best efforts, would be counterproductive. Instead, the Agency trusts that successful fund managers will earn their rewards in the market place, using the strength of their financial and social returns to attract private capital. SBA will also look favorably on subsequent Impact SBIC applicants with a record of strong social and financial performance. By contrast, Impact SBICs with poor impact assessments are more likely to face difficulty raising private capital and obtaining a subsequent Impact SBIC license.

§ 107.693—Impact SBIC examination fee discount. This new proposed section would allow a 10% reduction in the examination "base fee" that would otherwise be applicable to Impact SBICs under existing § 107.692. SBA will devote neither less time nor fewer resources to the examination of Impact SBIC licensees as a result of this discount. Under the proposed rule, licensees designated as Impact SBICs prior to the effective date of this rule will be eligible for fee discounts on a going-forward basis, but SBA will not return fees already paid.

§ 107.1120—General eligibility requirements for Leverage. Proposed

new paragraph (l) would provide for a new certification by Impact SBICs seeking an SBA leverage commitment or draw. The Impact SBIC would be required to certify that it will invest at least 50 percent of the aggregate dollar amount of its financings in Impact Investments, in compliance with the Impact Investment and Impact SBIC definitions in § 107.50. This prospective certification is consistent with the other certifications required by § 107.1120. SBA intends to monitor Impact SBICs' performance in making Impact Investments to ensure that they are making investments that meet this requirement.

§ 107.1810—Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures. SBA is proposing two changes in this section that would apply only to Impact SBICs. First, under proposed § 107.1810(f)(13), it would be an event of default if an Impact SBIC fails to meet the requirement to invest at least 50 percent of its financing dollars in Impact Investments, as defined in proposed § 107.50. If the Impact SBIC fails to cure to SBA's satisfaction, SBA could invoke the remedies in existing § 107.1810(g), which includes the right to declare outstanding debenture leverage immediately due and payable. SBA would generally not expect to invoke such remedies if an Impact SBIC's failure to meet the 50 percent requirement appears to be temporary.

Second, under proposed § 107.1810(f)(14), it would be an event of default if an Impact SBIC licensed under an SBA-approved plan to make Fund-Identified Impact Investments fails to obtain an acceptable independent, third-party assessment to measure the social, environmental or economic impact of the fund's Impact Investment strategy within the time frames required by proposed § 107.665. If the Impact SBIC fails to cure to SBA's satisfaction, SBA could invoke the remedies in existing § 107.1810(g), which include the right to declare outstanding debenture leverage immediately due and payable.

§ 107.1940—Impact SBIC licensee noncompliance with regulations. SBA proposes creating in this new section a series of actions the Agency may take with respect to Impact SBICs that fail to meet the 50 percent requirement and Fund-Identified Impact SBICs that fail to meet assessment requirements. Regardless of whether an Impact SBIC has outstanding leverage, if an event of default would have been triggered under proposed § 107.1810(f)(13) or (14), SBA will have the authority, upon written

notice, to take any or all of the following actions: (1) Convert the licensee's Impact SBIC license to a standard SBIC license (including, in SBA's discretion, requiring the licensee to notify its private investors of the conversion); and (2) require the licensee to return to SBA up to the full dollar amount of any licensing or examinations fee discounts it has received prior to the date of the written notice. However, SBA will be authorized to take these actions only after giving the licensee at least 15 days to resolve its non-compliance and only after the licensee fails to resolve its non-compliance within the time period given.

SBA included these additional remedies to address two areas of concern. First, the events of default proposed under § 107.1810(f) would only apply to Impact SBICs with outstanding leverage. As a result, Impact SBICs that are licensed as non-leveraged funds or those that pre-pay their leverage in full would not be subject to any remedies if they were to fall out of compliance with the 50 percent requirement or, as applicable, the assessment requirement. Second, the fee discounts proposed under this rule generally reward Impact SBIC applicants and licensees for future, rather than past behavior. For instance, an Impact SBIC will be eligible for a 60 percent discount on its licensing fee based on its proposal to deploy at least 50 percent of its capital in Impact Investments. Without the provisions proposed under this section, SBA would have limited authority to recover those benefits or otherwise take action against the fund if it fails to follow through on that commitment.

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

Executive Order 12866

The Office of Management and Budget has determined that this rule is a "significant" regulatory action under Executive Order 12866. The Regulatory Impact Analysis is set forth below.

1. Need for Regulation

The Small Business Investment Act of 1958, as amended, established the SBIC program to "stimulate and supplement the flow of private equity capital and long-term loan funds" to U.S.-based small businesses. 15 U.S.C. 661. As part of that effort, the Act contains several provisions aimed at promoting the flow of capital to several special categories of small business, including those located

in low income geographic areas, those engaged in energy-saving activities and "smaller" businesses. 15 U.S.C. 683(b)(2)(C), 683(b)(2)(D), 683(d).

Over the past several years, SBA's focus on achieving these economic development goals has yielded results, but progress has come at a slower pace than anticipated. Despite the recent growth in the number of SBIC-financed businesses located in LMI areas, which rose from 216 in fiscal year ("FY") 2012 to 229 in FY 2014, the program has yet to return to the high level achieved in FY 2011, during which SBICs financed 351 businesses located in LMI areas. The LMI Debenture, a leverage instrument meant to help facilitate these types of investments, is rarely used. Similarly, there has yet to be a single draw of SBA's Energy Savings Debenture, which has been available since 2012 to help finance small businesses involved in reducing the use of non-renewable energy sources.

The proposed rule was crafted to enhance the SBIC program's effectiveness in channeling much-needed capital to these and other underserved segments of the U.S. economy. From an overall economic development perspective, SBA believes that capital investments made into small businesses located in LMI and other underserved areas have the potential to have the most meaningful and sustained impact due to the capital formation gaps in those areas.

2. Alternative Approaches to Regulation

SBA considered several alternatives to the proposed regulation, each of which will be discussed below. First, SBA considered pursuing its impact investment objectives solely through existing policy initiatives. Based on extensive feedback received from SBIC fund managers, lower-middle market industry representatives, impact investment fund managers, impact policy thought leaders and others, SBA rejected this alternative. SBA's existing impact investing policies impose additional burdens without providing sufficient incentives to attract Impact SBIC fund managers to the program. Further, given that SBIC licensees have operational lives of ten years or more, the market will be reluctant to embrace SBA's impact investing efforts unless the Agency demonstrates a lasting commitment to the space by promulgating regulations.

SBA faced a challenge in developing a definition of an "Impact Investment" that dealt appropriately with the subjectivity inherent in any non-financial measure of performance. Initially, SBA considered restricting the

definition of an Impact Investment to financings that meet requirements already outlined in federal regulations, such as Energy-Savings Investments, LMI Investments or investments in rural areas. These investments are aligned with federal policy priorities and are easy to define and monitor. The original Impact Investment Initiative policy launched in 2011 was structured in this manner and was slow to attract applicants. Given the nascence of the impact investing industry, which supports a diverse range of investment strategies, SBA determined a more accommodative approach would be more effective.

The proposed rule has been drafted to allow Impact SBIC applicants to make SBA-Identified Impact Investments, which target federal priority areas, or make Fund-Identified Impact Investments that align with their own definitions of impact. This approach expands the reach of SBA's impact investing efforts beyond the limited subset of investments that meet existing regulatory criteria. The Agency also recognizes the complexities Fund-Identified Impact Investments may introduce to the SBIC licensing and monitoring process.

SBA had to carefully consider the bases on which it would approve an Impact SBIC's proposed Fund-Identified Impact Investment definition. One option the Agency considered was to outline, as part of this regulation, a series of sector-specific eligibility requirements that Fund-Identified Impact Investments would have to satisfy. Working with colleagues at the U.S. Department of Education, SBA staff made an initial attempt at preparing guidelines for investments in the education sector but quickly discovered the impracticality of the approach. Even within a single sector, there exists such a tremendous diversity of economic activity that establishing requirements specific-enough to be useful would require an inordinate commitment of time and resources.

An alternative approach would be to remove SBA from the approval process altogether and give Impact SBIC applicants complete latitude to pursue Fund-Identified Impact Investments of their choice. Under this approach, SBA would evaluate Impact SBICs using its existing licensing process without any additional consideration of the impact-related aspects of the applicant's proposal. A key advantage of this approach is that it would allow SBA to fully cede the definitional challenge of impact to fund managers and their private investors. It would also ensure

the program remains open to innovative impact strategies.

SBA will always encourage applicants to propose innovative investment strategies, but the Agency must retain the ability to review and approve proposed Fund-Identified Impact Investment definitions. Not only must the Agency ensure that SBICs are making investments that are consistent with the letter and spirit of program regulations, but it must also consider the reputation of the SBIC program within the private investor community. The statute underlying the SBIC program, known as the Small Business Investment Act, makes clear that the program should be implemented in a manner that "insure[s] the maximum participation of private financing sources." 15 U.S.C. 661. Were SBA to ignore an applicant's proposed Fund-Identified Impact Investment definitions, private impact investors might take the Agency's approach as a signal of indifference to market development.

In fact, the approach SBA has taken reflects the Agency's interest in not only enhancing the impact of the SBIC program, but also promoting industry best practices. SBA is as concerned with the process used to make Fund-Identified Impact Investments as it is with the outcomes of those investments. Each Impact SBIC applicant will have the burden of demonstrating, with qualitative or quantitative analysis, that its investment strategy will, in aggregate, generate a measurable positive impact. SBA staff will supplement their evaluation of the applicant's analysis and its other application materials with the results obtained using the standard tools of due diligence, such as interviews with the management team, reference calls, consultations with industry experts, public record searches and other research.

As long as a fund manager is qualified and its definition does not run afoul of the Agency's mission, statutes, regulations or policies, SBA intends to give applicants substantial leeway in defining their Fund-Identified Impact Investments. The measurement and assessment requirements of the proposed rule ensure that even those Impact SBICs that fail to meet their targeted social returns will contribute to market development. Measuring results, good and bad, contributes to the industry's understanding of the relationship between financial and social returns and helps investors identify the most talented managers.

SBA confronted two key questions as it considered how to create a robust

measurement and assessment process. First, what means should SBA use to assess the impact of Fund-Identified Impact Investments? Second, what consequences, if any, should Impact SBICs face based on the result of their impact assessments?

With regard to the first question, SBA could have assumed the full burden of evaluating each Fund-Identified Impact Investment to determine its impact. This alternative was rejected because SBA staff lack sufficient time, resources and expertise to properly evaluate the full range of potential Fund-Identified Impact Investments. A second alternative was to leverage the expertise of Impact SBIC fund managers themselves and allow them to prepare their own assessments. While it may be appropriate to have Impact SBIC applicants argue the merits of their Fund-Identified Impact Investment definitions during the licensing process, SBA considered it imprudent to allow Impact SBICs to evaluate their own success.

The proposed rule instead requires Impact SBICs to obtain independent, third-party impact evaluations based on industry-adopted standards. The use of independent third parties helps reduce the bias inherent in a fund's own impact evaluation and relieves SBA of the potentially significant burden of assessing a wide range of impact investment strategies.

With regard to the second question, SBA has chosen not to penalize licensees based on the results of their impact assessments. As noted above, assessments provide private capital with greater transparency regarding an applicant's track record of generating impact. Given that most fund managers seek to follow their first investment vehicle with a second, the assessment process itself creates sufficient risk that investors will decline to invest in a second fund. Accordingly, SBA does not believe that an Impact SBIC should incur regulatory penalties based on the results of an impact assessment.

3. Potential Benefits and Costs

The proposed rule offers two primary benefits to SBA and its stakeholders. First, it offers the potential to enhance the overall social, environmental and economic impact of the SBIC program. Existing SBICs already have tremendous impact on America's small business economy. In FY 2014, SBICs together invested nearly \$5.5 billion in more than 1,000 small business concerns, helping them to grow and modernize their operations. The introduction of Impact SBICs will increase the portion of those annual financings that are

intentionally directed towards economically-distressed communities and companies taking innovative approaches to social problems.

SBA also hopes the proposed rule will support the development of the impact investing industry more broadly. The rule has been drafted to incorporate impact investing best practices, especially with regard to the measurement and assessment of impact. As more and more SBA- and Fund-Identified Impact Investments are made, the SBIC program will have more data to contribute to the industry on the balance between financial and social performance.

In terms of costs, Impact SBICs are anticipated to have an additional 3% higher loss rate than regular SBICs, due to the risks that may be associated with Impact Investments contemplated under the proposed rule. Although SBA is targeting \$200 million in commitments per year in terms of licensing, the number of Impact SBICs that SBA may license or the amount of debenture leverage commitments that may be approved for Impact SBICs in any year is subject to the limitations set forth in annual appropriations acts or in other statutes or regulations. In addition, both newly licensed Impact SBICs and previously licensed Impact SBICs have the opportunity to receive new leverage commitments in any year. The SBIC program subsidy model for FY 2017 has been formulated to reflect the provision proposed in this rule that Impact SBICs are allowed to be licensed as Early Stage SBICs. Early Stage SBICs are expected to have approximately a 10% higher loss rate than regular SBICs. The resulting fee of 34.7 basis points for FY 2017 remains well within historical ranges for the SBIC Debenture annual fee.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

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

Executive Order 13563

In drafting this proposed rule, SBA considered the input of impact investment industry experts on ways to facilitate the growth of private-sector led impact investing as a strategy to create jobs and strengthen communities. With the assistance of the White House Office of Social Innovation and Civic Participation, which included a White House hosted event in June 2014 (see, <https://www.whitehouse.gov/blog/2014/06/25/executive-actions-accelerate-impact-investing-create-jobs-and-strengthen-communities>), SBA held roundtable discussions with representatives from endowments, foundations, institutional asset managers, high net worth individuals, investment funds, standard SBICs, existing Impact SBICs, not-for-profit entities, banks, and other federal government agencies. The roundtables covered topics such as: (1) Increasing the flow of private capital toward sustainable business models; (2) supporting private sector investment in high-impact sectors and underserved communities; (3) making innovative impact enterprises investment-ready; (4) removing regulatory barriers that keep capital on the sidelines; and (5) growing the impact economy through policy interventions.

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

SBA has determined that this rulemaking proposes additional reporting requirements as defined by the Paperwork Reduction Act. Specifically, as discussed above, all Impact SBICs utilizing a Fund-Identified Impact strategy would be required to submit to SBA independent, third-party evaluations of the impacts of such investments. This proposed rule would also codify two other reporting requirements that are already imposed on Impact SBICs based on the terms and conditions of the Impact Investment Fund established by SBA on April 11, 2011, as amended on September 25, 2014, available at <https://www.sba.gov/content/impact-investment-fund-overview>. First, at the time of application, Impact SBIC applicants are currently required to outline in their proposed investment strategy whether a particular strategy is an "Impact Investment." This requirement is not being changed by this rule; it is merely being codified in the regulations. Furthermore, this requirement is already approved as part of SBA Form 2181, Appendix 2 (OMB Control Number 3245-0062). Second, as part of reporting on their portfolio financings, Impact

SBICs are also currently required to identify whether a completed financing is an Impact Investment. Therefore, this requirement is also not being imposed for the first time by this rule but rather merely being codified in the regulations. To make it easier for SBICs to meet this requirement, SBA recently proposed adding two questions to the Portfolio Financing Report (an existing information collection approved under OMB Control Number 3245-0078), to enable Impact SBICs to specifically identify whether a particular investment qualifies as an SBA-Identified or Fund Identified investment. This particular change will be made in conjunction with other revisions to Form 1031 as a result of other amendments to the SBIC program in the proposed rule, *Small Business Investment Companies; Passive Business Expansion & Technical Clarifications*. (RIN: 3245-AG67) (80 FR 60077, October 5, 2015). The description, number of respondents, and the purpose of the information collection that would be imposed by this rule is discussed below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the requirements for the collection of information.

A. Impact Evaluations

Title: Independent, Third-Party Impact Evaluations.

Summary: The proposed rule requires Impact SBICs licensed to make Fund-Identified Impact Investments to submit two impact evaluations to SBA. Each assessment must be completed by an independent third-party based on industry standards. One assessment is due within two years of licensing, while the second must be submitted between the 5th and 7th year after licensing. These independent evaluations are required only of Impact SBICs that make Fund-Identified Impact Investments. Impact SBICs that restrict themselves to SBA-Identified Impact Investments bear no additional reporting burden beyond what is required of all SBICs.

Description and Number of Respondents: Only those Impact SBICs licensed to make Fund-Identified Impact Investments will be required to complete this requirement.

Annual Estimated Number of Responses: SBA estimates that it may receive approximately 2 responses each year based on an annual average of 6 Impact SBICs requiring assessments during years 1-2 and again in years 5-7 of their lifecycle.

Estimated Annual Hour and Cost Burden: Impact SBICs licensed to make Fund-Identified Impact Investments will be required to obtain an impact evaluation and may incur costs. SBA estimates that it may have approximately 6 Impact SBICs making Fund-Identified Impact Investments in any given year. One independent provider charges between \$3,500 and \$7,500 for a full portfolio rating, depending on the size of the fund and the number of portfolio companies. Two ratings completed at the maximum price of \$7,500 would require an Impact SBIC to spend a total of \$15,000 over the course of its 10 year fund life. On an annualized basis, the cost would be \$1,500 per year. The total annual cost burden for the estimated 6 Impact SBICs making Fund-Identified Impact Investments is \$9,000.

The hourly burden for these respondents would be negligible, as the assessment work would be completed by an independent third-party. The total time required to contact the provider and initiate an assessment is estimated at a total of 24 hours per assessment. Impact SBICs subject to the third-party assessment requirement must submit a total of two assessments over the course of their 10 year fund life. On an annualized basis, these applicants each will spend 4.8 hours per year. With an estimated 6 Impact SBICs making Fund-Identified Impact Investments in the portfolio at any given time, the total annual hourly burden is estimated at 28.8 hours.

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

When an agency promulgates a rule, the Regulatory Flexibility Act requires the agency to prepare an initial regulatory flexibility analysis (IRFA) which describes the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would affect all SBICs issuing debentures, of which there are currently 193, most of which are small entities. Therefore, SBA has determined that this proposed rule would have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule will not be significant. SBA keeps the SBIC program at a zero subsidy cost to taxpayers by charging up front and annual fees on its leverage. SBA

calculates the annual fee each year using historical data to assess the appropriate fee to keep the program at zero subsidy cost. Because SBA expects Impact SBICs to be riskier than standard SBICs, SBA adjusted the SBIC debenture program budget formulation model which determines the annual fee needed to keep the debenture program at a zero subsidy cost.

The projected leverage allocation to Impact SBICs would increase the annual fee charged to all SBICs seeking new debenture commitments by approximately 6.1 basis points. The annual fee would remain in line with historical levels. Since 2000, the annual fee has ranged from a high of 100 basis points (1 percent) to a low of 29 basis points, with a 15-year median of 83 basis points. The annual fee for FY 2015 is approximately 74.2 basis points. Although the cost will vary in the future based on economic factors and assumptions used to develop the annual fee, SBA expects the fee to remain under 1 percent, comparable to historical annual fees and below the statutory maximum of 1.38 percent. Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant impact on a substantial number of small entities. SBA welcomes comment from members of the public who believe there will be a significant impact either on SBICs, or on companies that receive funding from SBICs.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Licensing fees, Examination fees, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

- 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g, 687m.

- 2. Amend § 107.50 by adding in alphabetical order definitions of “Fund-Identified Impact Investment,” “Impact Investment,” “Impact SBIC” and “SBA-Identified Impact Investment” to read as follows:

§ 107.50 Definition of terms.

* * * * *

Fund-Identified Impact Investment means a Financing by an Impact SBIC that meets the definition of an Impact Investment proposed by the SBIC and

approved by SBA in writing at the time of licensing, as described in § 107.331.

* * * * *

Impact Investment means an SBA-Identified Impact Investment or Fund-Identified Impact Investment.

Impact SBIC means any Section 301(c) Partnership Licensee that must make at least 50 percent of all of its Loans and Investments (in dollars) in Impact Investments and is designated by SBA as an “Impact SBIC.”

* * * * *

SBA-Identified Impact Investment means a Financing that meets SBA’s definition of an Impact Investment, which SBA will publish from time to time on its Web site and which will include geographies and sectors of national priority.

* * * * *

- 3. Add § 107.301 to read as follows:

§ 107.301 Impact SBIC licensing fee discount.

(a) All applicants seeking to be licensed as an Impact SBIC will receive a 60 percent discount, rounded to the nearest one-hundred dollars, on any fees to which they are subject under § 107.300.

(b) In the event an applicant seeking to be licensed as an Impact SBIC is licensed as anything other than an Impact SBIC, SBA reserves the right to recover, prior to licensing, the full dollar amount of any licensing fee discounts the applicant has received.

- 4. In § 107.310, designate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 107.310 When and how to apply for licensing as an Early Stage SBIC.

* * * * *

(b) *Impact SBIC applicants.* An applicant may elect to apply simultaneously for licensing as both an Early Stage SBIC and an Impact SBIC. Such applicants may apply as described in § 107.300 at any time and are not subject to the submission deadlines set forth in paragraph (a) of this section. Applicants seeking a dual license must comply with the regulations in this part pertaining to Early Stage SBICs and Impact SBICs, and to any requirements, other than submission deadlines, specified in the most recently published Early Stage Notice in the **Federal Register**.

- 5. Add §§ 107.330 and 107.331 to read as follows:

§ 107.330 Evaluation of Impact SBIC license applicants.

SBA will evaluate each applicant seeking to be licensed as an Impact SBIC based on the same factors applicable to

other license applicants, as set forth in § 107.305, with particular emphasis on the managers' skill and experience in originating, evaluating, executing and monitoring Impact Investments consistent with the applicant's investment strategy.

§ 107.331 Evaluation of Fund-Identified Impact Investments and measurement plans.

If an applicant intends to qualify for an Impact SBIC license based on investments in Fund-Identified Impact Investments, SBA will evaluate the applicant's proposed definition(s) of a Fund-Identified Impact Investment and its plan to comply with the measurement and reporting requirements of § 107.665, and will approve the same in writing at the time of licensing based the applicant's satisfaction of the following:

(a) *Fund-Identified Impact Investments.* Using the submitted application materials, any interviews with the applicant's management team, the results of public record searches and any other due diligence conducted by SBA, SBA will assess the likelihood that the applicant's proposed investment strategy and Fund-Identified Impact Investment definition(s) will generate, in the aggregate, beneficial social, environmental or economic impacts. SBA's evaluation may consider factors such as whether the strategy will include investments in Portfolio Concerns that increase services to low income communities, engage in environmentally sustainable business practices or manufacture environmentally sustainable products, or that operate in industries of national priority other than in the sectors identified by SBA as an SBA-Identified Impact Investment.

(b) *Measurement and reporting plan.* During licensing, each applicant seeking an Impact SBIC license under § 107.331 must identify the assessment provider(s) and assessment system(s) it intends to use in order to comply with the requirements of § 107.665. Using the submitted application materials, any interviews with the applicant's management team, the results of public record searches and any other due diligence conducted by SBA, SBA will assess the applicant's proposed measurement and reporting plan based on the following factors:

(1) The applicant's proposed assessment system(s) must employ at least one approved measurement standard, from a list of approved standards published by SBA on its Web site from time to time.

(2) The applicant's proposed assessment system must comply with the following:

(i) The assessment system's criteria and weightings are publicly available; and

(ii) The assessment system is capable of producing an assessment of the social, environmental and/or economic effects of impact investments.

(3) The applicant's proposed assessment provider(s) must each be an independent, third-party. An assessment provider will not be considered an independent third-party if any of the following conditions exist at the time of licensing or assessment:

(i) The assessment provider is an Associate of the Impact SBIC or any of its Portfolio Concerns; or

(ii) The assessment provider is materially financed by an association that represents the interests of the specific industry in which the Impact SBIC or its Portfolio Concerns are engaged.

(c) *Publication.* SBA may periodically publish on its Web site:

(i) General descriptions of impact investment strategies pursued by Impact SBICs licensed to make Fund-Identified Impact Investments; and

(ii) Detailed descriptions of the assessment systems SBA has approved for use by Impact SBICs licensed to make Fund-Identified Impact Investments.

■ 6. In § 107.502, designate the existing text as paragraph (a) and add paragraphs (b) and (c) to read as follows:

§ 107.502 Representations to the public.

* * * * *

(b) Impact SBIC applicants must declare their intention to apply for an Impact SBIC license in any solicitation to investors.

(c) Impact SBIC licensees must indicate that they have obtained an Impact SBIC license from SBA in any solicitation to investors.

■ 7. Amend § 107.610 by adding paragraphs (g) and (h) to read as follows:

§ 107.610 Required certifications for Loans and Investments.

* * * * *

(g) For each SBA-Identified Impact Investment:

(i) A certification by the concern, dated as of the date of application for SBIC financing, as to the basis for its qualification as an Impact Investment; and

(ii) A certification by the Impact SBIC, made contemporaneously with the certification of the concern, that the concern qualifies as an Impact Investment as of the date of the

concern's certification and the basis for such qualification.

(h) For each Fund-Identified Impact Investment, a certification by the Impact SBIC, as of the date of the financing, that the concern qualifies as a Fund-Identified Impact Investment under the definition(s) approved in writing by SBA and the basis for such qualification.

■ 8. Add § 107.665 to read as follows:

§ 107.665 Measurement and reporting requirements for Impact SBICs making Fund-Identified Impact Investments.

Impact SBICs that SBA approved in writing to make Fund-Identified Impact Investments must obtain an assessment of their impact investment strategy from an independent, third-party provider within two years after licensing and again between five and seven years after licensing. Without prior written SBA approval, the Impact SBIC may not use an assessment system(s) or assessment provider(s) different from those the Impact SBIC identified and SBA approved during the licensing process. Each assessment must be submitted to SBA within 30 days of its completion.

■ 9. Add § 107.693 to read as follows:

§ 107.693 Impact SBIC examination fee discount.

An Impact SBIC will receive a 10% discount on its examination base fee, rounded to the nearest one-hundred dollars, subject to the following:

(a) The discount will be calculated based on the examination base as determined prior to any adjustments provided for under § 107.692.

(b) Impact SBICs also licensed as Early Stage SBICs are entitled to any additional discounts, but exempt from any premium, that Early Stage SBICs would otherwise be required to pay under § 107.692.

■ 10. Amend § 107.1120 by adding paragraph (l) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(l) If you are an Impact SBIC, certify in writing that, in accordance with § 107.1810(f)(13), at least 50 percent of the aggregate dollar amount of your Financings will qualify as Impact Investments defined in § 107.50.

■ 11. Amend § 107.1810 by adding paragraphs (f)(13) and (14) to read as follows:

§ 107.1810 Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures.

* * * * *

(f) * * *

(13) *Failure by an Impact SBIC to meet investment requirements.* You are

an Impact SBIC and, beginning on the first fiscal quarter end when your cumulative total Financings (in dollars) are at least equal to your Regulatory Capital, you have not made at least 50 percent of such Financings to Small Businesses that at the time of your initial Financing were Impact Investments.

(14) *Failure by an Impact SBIC to meet assessment requirements.* You are an Impact SBIC making Fund-Identified Impact Investments and you fail to obtain an independent, third-party assessment within two years of your licensing date and, again, between five and seven years from your licensing date, pursuant to the requirements under § 107.665.

* * * * *

■ 12. Add § 107.1940 to read as follows:

§ 107.1940 Impact SBIC licensee noncompliance with regulations.

(a) For any occurrence (as determined by SBA) of one or more of the events in this paragraph (a), SBA may avail itself of one or more of the remedies in paragraph (b) of this section.

(1) Failure by an Impact SBIC to meet investment requirements. You are an Impact SBIC and, beginning on the first fiscal quarter end when your cumulative total Financings (in dollars) are at least equal to your Regulatory Capital, you have not made at least 50 percent of such Financings to Small Businesses that at the time of your initial Financing were Impact Investments.

(2) Failure by an Impact SBIC to meet assessment requirements. You are an Impact SBIC making Fund-Identified Impact Investments and you fail to obtain an independent, third-party assessment within two years of your licensing date and, again, between five and seven years from your licensing date, pursuant to the requirements under § 107.665.

(b) SBA may exercise any or all of the following rights:

(1) Convert your Impact SBIC license to a standard SBIC license (including, in SBA's discretion, requiring you to promptly notify your investors of the conversion); and

(2) Require you to refund to SBA up to the full dollar amount of any licensing or examination fee discounts you have received prior to the date of your written notice.

(c) SBA may invoke the remedies in paragraph (b) of this section only if:

(1) It has given you at least 15 days to cure the noncompliance;

(2) You fail to cure the noncompliance to SBA's satisfaction within the allotted time.

Dated: October 7, 2015.

Maria Contreras-Sweet,
Administrator.

Editorial Note: This document was received for publication by the Office of the Federal Register on January 29, 2016.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2015-8060; Airspace Docket No. 15-ASW-4]

Proposed Establishment of Class E Airspace; Moriarty, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Moriarty, NM. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Moriarty Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 21, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2015-8060; Docket No. 15-ASW-4, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202-267-8783. The Order is also available for inspection at the

National Archives and Records Administration (NARA). For information on the availability of FAA order 7400.9Z at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817-222-5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Moriarty Airport, Moriarty, NM.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2015-8060/Airspace Docket No. 15-ASW-4." The postcard will be date/time stamped and returned to the commenter.