

Signed in Washington, DC, on September 22, 2020.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 107

RIN 3245-AG93

#### Regulatory Reform Initiative: Small Business Investment Company—Regulatory Streamlining

**AGENCY:** U. S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (“SBA” or “Agency”) is proposing to remove from the Code of Federal Regulations (“CFR”) eighteen regulations that are no longer necessary because they are obsolete, inefficient or redundant. Many of the regulations SBA is proposing to remove apply to Specialized Small Business Investment Companies (“SSBICs”) licensed under the now-repealed Section 301(d) of the Small Business Investment Act of 1958, as amended, and certain other types of Small Business Investment Companies (“SBICs”) that SBA no longer licenses, such as Participating Securities SBICs and Early Stage SBICs. The removal of these regulations will assist the public by simplifying SBA’s regulations in the CFR. In addition, SBA is proposing to amend its regulations, consistent with recent statutory changes, to increase the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million.

**DATES:** Comments must be received on or before November 30, 2020.

**ADDRESSES:** You may submit comments, identified by RIN: 3245-AG93, by any of the following methods:

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

- *Mail or Hand Delivery/Courier:* Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on <https://www.regulations.gov>. If you wish to submit confidential business information (“CBI”), as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Louis Cupp, New

Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 Third Street SW, Washington, DC 20416, or send an email to [Louis.Cupp@sba.gov](mailto:Louis.Cupp@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:**

Louis Cupp, New Markets Policy Analyst, 202-619-0511, [Louis.Cupp@sba.gov](mailto:Louis.Cupp@sba.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background Information

##### A. Small Business Investment Company Program

SBA’s SBIC program is designed to enhance small business access to capital by stimulating and supplementing “the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.” Small Business Investment Act of 1958, as amended, 15 U.S.C. 661, *et seq.* (the “Act”). The SBIC program’s primary objective is to “improve and stimulate the national economy in general and the small-business segment thereof in particular.” *Id.*

SBICs are privately owned and managed investment funds, licensed and regulated by SBA, that use capital raised from private investors (what SBA generally refers to as “Regulatory Capital”) to make equity and debt investments in qualifying small businesses. SBICs pursue investments in a broad range of industries, geographic areas, and stages of investment. SBA licenses many SBICs to issue SBA-guaranteed debentures (“Debentures”), an unsecured debt instrument, typically with a 10-year term, the repayment of which is guaranteed by SBA using the full faith and credit of the United States. SBA typically authorizes SBICs to issue Debentures up to a maximum of two times an SBIC’s Regulatory Capital, but not to exceed \$175 million per SBIC. Debentures are typically sold in public offerings twice a year. This process allows SBICs to borrow at favorable interest rates and increases the amount of investable capital available to SBICs to invest in small businesses.

From the inception of the SBIC program to December 31, 2019, SBICs have invested approximately \$103.5 billion in approximately 184,135 financings to small businesses. In fiscal

year 2019, SBICs invested \$5.86 billion in 1,191 small businesses. As of December 31, 2019, there were a total of 299 licensed and operating SBICs with Regulatory Capital of approximately \$17 billion. In addition, as of December 31, 2019, SBA had guaranteed outstanding Debentures or had outstanding commitments to guarantee Debentures to SBICs in the approximate aggregate amount of \$14.5 billion.

##### B. Part 107, Small Business Investment Companies

SBA is proposing to remove from the CFR eighteen regulations that are no longer necessary, because the rules reflect statutes that have been repealed, do not have any current or future applicability, or are otherwise inefficient or unnecessary. Specifically, SBA is proposing to remove eight regulations relating to SSBICs (also referred to as “Section 301(d) Licensees”). Prior to 1996, Section 301(d) of the Act authorized SBA to issue licenses to SSBICs, which were required to invest “solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages[.]” Section 301(d) was repealed by Section 208(b)(3)(A) of Public Law 104-208, enacted September 30, 1996 (the “Improvement Act of 1996”). Section 208(b)(3)(B) of the Improvement Act of 1996 provided, “[t]he repeal under subparagraph (A) shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 before the date of enactment of this Act.” As a result, no new SSBIC licenses have been issued since October 1, 1996, but existing SSBICs have been allowed to remain in the program. The Improvement Act of 1996 also repealed the special kinds of financial assistance (“Subsidized Leverage”) that SBA previously made available to SSBICs under former Section 303(c) of the Act. Such Subsidized Leverage was previously available to SSBICs in the form of Debentures with an interest rate subsidy or certain types of preferred stock (“Preferred Securities”) with a specified dividend. Although Subsidized Leverage can no longer be issued, the Improvement Act of 1996 did not require SSBICs to prepay or redeem such Subsidized Leverage prior to its scheduled maturity. Approximately six SSBICs are currently operating, but no Subsidized Leverage

remains outstanding, so SBA proposes to remove the regulations related to Subsidized Leverage. The SSBICs remaining in the program will not be impacted by the changes proposed in this rule and, if eligible, those SSBICs may continue to apply to issue standard Debentures.

SBA is proposing to remove four regulations relating to Participating Securities (as defined in 13 CFR 107.50) and SBICs that issued Participating Securities (“Participating Securities SBICs”). The fees payable by Participating Securities SBICs were not sufficient to cover the projected net losses of the Participating Securities program and no funds have been appropriated for this program for over 15 years. As a result, since October 1, 2004, SBA has not been able to issue new commitments for Participating Securities. Approximately 25 Participating Securities SBICs remain operating in the program, but the last Participating Securities issued by Participating Securities SBICs were required to be redeemed by February 2019. The changes proposed in this rule will not impact any licensed Participating Securities SBIC.

SBA is proposing to remove two regulations relating to a category of SBICs created in 2012 by regulation, in which SBICs were required to invest at least fifty percent of their capital in early stage small businesses (“Early Stage SBICs”). The final rule (77 FR 25042, April 27, 2012) defining this category of Early Stage SBICs stated that SBA’s intent was to license Early Stage SBICs over a 5-year period (fiscal years 2012 through 2016). SBA published a rule on September 19, 2016 (81 FR 64075) proposing to make the Early Stage SBIC initiative a permanent part of the SBIC program, but withdrew the proposed rule on June 11, 2018 (83 FR 26875) because, among other things, few qualified funds applied to the Early Stage SBIC initiative and the comments to the proposed rule did not demonstrate broad support for a permanent Early Stage SBIC program. SBA proposes to remove the licensing regulations related to Early Stage SBICs since SBA is no longer licensing these funds. The removal of these regulations will have no impact on the Early Stage SBICs remaining in the program.

Finally, SBA is proposing to remove four regulations that are duplicative, redundant, or otherwise inefficient or unnecessary. In connection with this rulemaking, SBA proposes certain non-substantive amendments to other regulations to remove internal references to the removed regulations or make certain other clarifying changes.

SBA is also proposing one clarifying change unrelated to the removal of these regulations, but which is required by amendments to the Act that occurred in 2018. SBA is proposing to increase the maximum amount of Leverage (as defined in 13 CFR 107.50) available to a single SBIC from \$150 million to \$175 million.

### *C. Comments Received in Response To Request for Information*

On August 15, 2017 (82 FR 38617), SBA published in the **Federal Register** a request for information seeking input from the public on identifying which of the Agency’s regulations should be repealed, replaced, or modified because they are obsolete, unnecessary, ineffective, or burdensome. On October 13, 2017 (82 FR 47645), SBA extended the comment period. SBA has reviewed the comments submitted by the public in response to that request. Further, in an effort to obtain additional feedback from SBIC program stakeholders, SBA held a series of roundtables with SBICs, third-party service providers, and investors on May 22, 2018, July 17, 2018, and August 7, 2018, respectively.

The comments SBA received addressed many aspects of the SBIC program and provided SBA with a better understanding of certain focus-areas of the regulations that program participants and stakeholders are concerned about. In this rule, SBA is proposing to remove certain regulations that commenters suggested removing—*e.g.*, certain Participating Securities SBIC and Early Stage SBIC regulations—and proposing to remove certain others, which SBA believes will have broad support among program participants. SBA understands that this rulemaking does not address all comments and suggestions SBA has received from the public. To that end, SBA is continuing to review the regulations in part 107, and those in part 121 that are applicable to the SBIC program, to determine which regulations SBA believes are most appropriate for removal, streamlining, clarification, or updating. Once that process is complete, SBA intends to propose certain additional changes to its regulations.

### *D. Executive Order 13771*

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency’s regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless

prohibited by law, this Executive Order requires the agency to: (i) Identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation. SBA believes the removal of the regulations identified herein will make part 107 less confusing and less burdensome for the reader and quantifies the amount of cost savings that may result from this rulemaking in the Executive Order 13771 discussion in Section III below.

### *E. Executive Order 13777*

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: Eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified. SBA has engaged in this process and has identified the regulations in this rulemaking as appropriate for removal in accordance with Executive Order 13777.

## **II. Section by Section Analysis**

### *A. Section 107.50—Definition of Terms*

SBA is proposing to amend 13 CFR 107.50 to revise the definition of “Venture Capital Financing.” Currently, this definition states that the term is as defined in 13 CFR 107.1160. SBA is proposing to remove 13 CFR 107.1160, but needs to retain this definition in the regulations because other sections use the defined term. Therefore, SBA is proposing to move the current definition in 13 CFR 107.1160 to 13 CFR 107.50. SBA is not proposing substantive changes to the definition.

In addition, SBA is proposing to revise the definition of “Early Stage SBIC” in 13 CFR 107.50 to remove the reference to 13 CFR 107.310, because SBA is proposing to remove that regulation. SBA is proposing to revise the definition to clarify that an Early Stage SBIC is one that was licensed in connection with SBA’s Early Stage SBIC

initiative. SBA is also proposing to revise the definition to reference redesignated 13 CFR 107.1810(f)(10) rather than current 13 CFR 107.1810(f)(11) but is not proposing any substantive changes to the definition.

*B. Section 107.120—Special Rules for a Section 301(d) Licensee Owned by Another Licensee*

This regulation currently addresses the requirements for ownership of an SSBIC by another SBIC. SBA no longer licenses SSBICs and no SBIC has utilized the structure authorized under this regulation in the recent history of the program. Further, because Subsidized Leverage is no longer available to SSBICs, such a structure would provide little to no benefit to an SBIC, economic or otherwise. For that reason, SBA believes that no SBIC will seek to be structured in the form authorized under this regulation going forward and, accordingly, proposes to remove this section.

*C. Section 107.160—Special Rules for Licensees Formed as Limited Partnerships*

This regulation currently provides for special rules applicable to SBICs formed as limited partnerships. SBA is not proposing substantive changes to this regulation. Rather, since this regulation contains a reference to a regulation that SBA is proposing to remove, 13 CFR 107.460, SBA is proposing to amend subsection (d) of 13 CFR 107.160 solely to remove this reference.

*D. Section 107.250—Exclusion of Stock Options Issued by Licensee From Management Expenses*

This regulation currently provides that stock options issued by any SBIC are not considered compensation and do not count as part of an SBIC's management expenses. Substantially all SBICs are formed as limited partnerships, which do not issue stock options. Further, Management Expenses are expressly defined in current 13 CFR 107.520(a), and that definition does not include stock options. Accordingly, the few SBICs formed as corporations do not rely on current 13 CFR 107.250. SBA proposes to remove this section, because it is no longer necessary.

*E. Section 107.310—When and How To Apply for Licensing as an Early Stage SBIC*

This regulation currently sets forth the application procedures for Early Stage SBIC applicants. As described above, SBA no longer licenses Early Stage SBICs. Therefore, SBA proposes to remove this section.

*F. Section 107.320—Evaluation of Early Stage SBICs*

This regulation currently sets forth the special evaluation requirements for Early Stage SBIC applicants. Since SBA no longer licenses Early Stage SBICs, SBA is proposing to remove this section.

*G. Section 107.460—Restrictions on Common Control or Ownership of Two (or More) Licensees*

This regulation currently provides that certain individuals and entities may not, without SBA's prior written approval, exercise control over, or have a greater than ten percent beneficial ownership interest in, two or more SBICs. This regulation is duplicative of the requirements in other SBA regulations. Specifically, sections 107.160, 107.400, and 107.410 require SBA prior approval for any individual or entity to exercise control over, or have a greater than ten percent beneficial ownership interest in, any individual SBIC. Accordingly, this section is not necessary, and SBA proposes to remove it.

*H. Section 107.585—Voluntary Decrease in Licensee's Regulatory Capital*

SBA does not propose substantive changes to this section but proposes to amend this section to remove internal references to 13 CFR 107.1160 and 107.1170, which sections SBA is proposing to remove in this rulemaking.

*I. Sections 107.830—Minimum Duration/Term of Financing and 107.840—Maximum Term of Financing*

13 CFR 107.830 (Minimum duration/term of financing) and 13 CFR 107.840 (Maximum term of Financing) each address the term of financing permissible in the SBIC Program—the minimum term and maximum term, respectively. SBA believes that having two regulations that address the same concept is inefficient. Accordingly, SBA is proposing to streamline these regulations by moving the substance of section 107.840 into section 107.830 and proposes to remove section 107.840. SBA does not intend any substantive changes to the minimum or maximum term of financing permitted under the regulations.

*J. Section 107.1120—General Eligibility Requirements for Leverage*

Subsection (d) of this regulation currently requires, in connection with any Leverage draw that would cause an SBIC and any other commonly controlled SBIC to have aggregate outstanding Leverage in excess of \$150 million, that the SBIC drawing such Leverage certify that none of the

commonly controlled SBICs has a condition of capital impairment. Consistent with the Small Business Investment Opportunity Act of 2017 (Pub. L. 115–187, June 21, 2018), which increased the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million, SBA proposes to amend this regulation to revise the dollar amount from \$150 million to \$175 million. In addition, in connection with the proposed redesignation of certain regulations discussed below, SBA is proposing to amend a reference in subsection (k) of this regulation to refer to 13 CFR 107.1810(f)(10). SBA is not proposing any substantive changes to subsection (k).

*K. Section 107.1140—Licensee's Acceptance of SBA Remedies Under §§ 107.1800 Through 107.1820*

This regulation provides that all SBICs issuing Leverage after April 25, 1994, automatically agree to the terms and conditions in sections 107.1800 through 107.1820, as they exist at the time of issuance. The section is duplicative of 13 CFR 107.1800, 13 CFR 107.1810 and 13 CFR 107.1820. SBA proposes to remove the section because it is unnecessary. For the avoidance of doubt, all outstanding Leverage remains subject to 13 CFR 107.1810 or 107.1820, as applicable.

*L. Section 107.1150—Maximum Amount of Leverage for a Section 301(c) Licensee*

This regulation currently addresses the maximum amount of Leverage that SBICs other than SSBICs and Early Stage SBICs may draw. SBA is proposing three changes to this section. First, consistent with the Small Business Investment Opportunity Act of 2017 (Pub. L. 115–187, June 21, 2018), SBA proposes to amend this regulation to increase the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million. Second, SBA proposes to amend this regulation to make it expressly applicable to Section 301(d) Licensees. Currently, 13 CFR 107.1160 (the regulation that applies to Subsidized Leverage for Section 301(d) Licensees) limits Section 301(d) Licensees to the maximum amount of non-Subsidized Leverage available to Section 301(c) licensees. Because SBA is proposing in this rulemaking to remove 13 CFR 107.1160, SBA is proposing to amend 13 CFR 107.1150 to clarify that it applies to Section 301(d) Licensees. Third, SBA is proposing to remove 13 CFR 107.1150(d)(2). Paragraph (d)(2) implemented Section 303(b)(2)(C)(ii) of

the Act, which gave SBICs access to additional Leverage if they made at least fifty percent (in dollar amount) of their investments in low-income geographic areas. See Public Law 111–5 (Feb. 17, 2009). When the maximum Leverage available under Section 303(b)(2)(A)(ii) of the Act to an individual SBIC and under Section 303(b)(2)(B) of the Act to SBICs under common control was increased to \$175 million (Pub. L. 115–187, June 21, 2018) and \$350 million (Pub. L. 114–113, Dec. 18, 2015), respectively, no corresponding change was made to Section 303(b)(2)(C)(ii). As a result, the maximum Leverage limits set forth in that Section of the Act and the implementing regulation at 13 CFR 107.1150(d)(2) are currently lower than the maximum amounts of Leverage available to all debenture SBICs. Paragraph (d)(2) of the regulation, therefore, is not necessary and SBA proposes to remove it.

*M. Section 107.1160—Maximum Amount of Leverage for a Section 301(d) Licensee*

This regulation currently addresses Subsidized Leverage for Section 301(d) Licensees. No Section 301(d) Licensee currently has any form of Subsidized Leverage outstanding, and, as a result of the Improvement Act of 1996 discussed above, no Section 301(d) Licensee is authorized to issue or draw Subsidized Leverage in the future. SBA proposes to remove this section because it is no longer necessary.

*N. Section 107.1170—Maximum Amount of Participating Securities for Any Licensee*

This regulation addresses the maximum amount of Participating Securities an SBIC may issue. As discussed above, since October 1, 2004, SBA has not been able to issue new commitments for Participating Securities. Because this section is no longer necessary, SBA proposes to remove it.

*O. Sections 107.1400—107.1450 Preferred Securities Leverage—Section 301(d) Licensees*

Sections 107.1400 through 107.1450 currently address Subsidized Leverage for Section 301(d) Licensees. No Section 301(d) Licensee currently has any form of Subsidized Leverage outstanding, and, as a result of the Improvement Act of 1996 discussed above, no Section 301(d) Licensee is authorized to issue or draw Subsidized Leverage in the future. SBA proposes to remove these sections because they are no longer necessary.

*P. Section 107.1585—Exchange of Debentures for Participating Securities*

This section currently addresses the requirements of an exchange of Debentures for Participating Securities. No Participating Securities will be issued in the future. This section, therefore, is obsolete, and SBA proposes to remove it.

*Q. Section 107.1590—Special Rules for Companies Licensed on or Before March 31, 1993*

This regulation applies to SBICs licensed on or before March 31, 1993, that apply to issue Participating Securities. No SBIC may apply to issue Participating Securities and this rule does not have any current applicability. SBA proposes to remove this section.

*R. Section 107.1810—Events of Default and SBA’s Remedies for Licensee’s Noncompliance With Terms of Debentures*

SBA proposes to remove 13 CFR 107.1810(f)(9) in its entirety, which is an event of default based solely on the failure to satisfy the investment ratios required under 13 CFR 107.1160(c), a regulation which SBA is proposing to remove in this rulemaking.

*S. Section 107.1820—Conditions Affecting Issuers of Preferred Securities and/or Participating Securities*

SBA is proposing to amend 13 CFR 107.1820(e)(9) to remove the events of default triggered by noncompliance with 13 CFR 107.1160, a regulation which SBA is proposing to remove in this rulemaking.

*T. Section 107.1850—Exceptions to Capital Impairment provisions for Licensees With Outstanding Participating Securities*

This regulation currently provides for a forbearance period from application of SBA’s capital impairment regulations for Participating Securities SBICs but only up to the first six years after the first issuance of Participating Securities. Since the last Participating Securities were required to be redeemed in February of 2019, this section has not applied to any SBIC for at least four years. This section is obsolete, and SBA proposes to remove it.

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

*A. Executive Order 12866*

The Office of Management and Budget (“OMB”) has determined that this

proposed rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

*B. Executive Order 13771*

This proposed rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of \$16,694 and a net present value of \$238,485, both in 2016 dollars. This rule would remove information that is redundant or about obsolete programs, which would reduce confusion around whether these programs still exist. In addition, SBA proposes to increase the maximum amount of Leverage available to a single SBIC from \$150 million to \$175 million, consistent with the Small Business Investment Opportunity Act of 2017 (Pub. L. 115–187, June 21, 2018).

There are currently 300 SBIC licensees in operation. These calculations assume that 20% of SBIC licensees (60) read the regulations per year and that they will save 4 hours each from reading less burdensome and less confusing regulations because they will no longer contain obsolete information. This time is valued at \$75.57 per hour—the median wage of an attorney based on 2018 Bureau of Labor Statistics (“BLS”) data adding 30% more for benefits. This produces total savings per year of \$18,137.

In the first year this rule is published, it is expected that 25% of existing SBIC licensees (75) will read this **Federal Register** notice, which will take 2 hours to read. Assuming \$75.57 per hour, the cost in the first year will be \$11,336. This cost is not expected to continue into subsequent years.

Quantifying the effect of an increase in the maximum amount of Leverage available to a single SBIC is difficult, but this will provide SBICs more flexibility and will be beneficial to these entities.

Table 1 displays the costs and savings of this rule over the first two years it is published, with the savings and costs in the second year expected to continue into perpetuity. Table 2 presents the annualized net savings in 2016 dollars.

**TABLE 1—SCHEDULE OF COSTS/(SAVINGS) OVER 2 YEAR HORIZON, CURRENT DOLLARS**

	Savings	Costs
Year 1 .....	240 hours (\$18,137)	150 hours \$11,336
Year 2 .....	240 hours (\$18,137)	0 hours \$0

TABLE 2—ANNUALIZED SAVINGS IN PERPETUITY WITH 7% DISCOUNT RATE, 2016 DOLLARS

	Estimate
Annualized Savings .....	(\$17,406)
Annualized Costs .....	712
Annualized Net Savings .....	(16,694)

C. 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.

D. Executive Order 13132

This proposed rule does not have federalism implications as defined in Executive Order 13132. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

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

SBA has determined that this proposed rule does not affect any existing collection of information and does not propose any new collection of information.

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

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (“RFA”) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

There are currently 300 SBIC licensees in operation and this rule can affect all SBIC licensees. This rule would remove regulations that are no longer necessary, because they are either redundant, inefficient or obsolete. These changes will afford these entities more certainty on how to operate their business in a regulated environment. The annualized net savings to these SBIC licensees is about \$16,694 in current dollars or \$56 per SBIC licensee, as quantified in 2016 dollars in the

Executive Order 13771 discussion above. Quantifying the effect of an increase in the maximum amount of Leverage available to a single SBIC is difficult, but this will provide SBICs more flexibility and will be beneficial to these entities.

Therefore, SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comments from the public on this certification.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR part 107 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. 662, 681–687, 687b–h, 687k–m.

■ 2. Amend § 107.50 by revising the definitions of “Early Stage SBIC” and “Venture Capital Financing” to read as follows:

§ 107.50 Definition of terms.

\* \* \* \* \*

*Early Stage SBIC* means a Section 301(c) Partnership Licensee, licensed pursuant to SBA’s Early Stage initiative, in which at least 50 percent of all Loans and Investments (in dollars) must be made to Small Businesses that are “early stage” companies at the time of the Licensee’s initial Financing (see also § 107.1810(f)(10)). For the purposes of this definition, an “early stage” company is one that has never achieved positive cash flow from operations in any fiscal year.

\* \* \* \* \*

*Venture Capital Financing* means an investment represented by common or preferred stock, a limited partnership interest, or a similar ownership interest; or by an unsecured debt instrument that is subordinated by its terms to all other borrowings of the issuer. A debt secured by any agreement with a third party is not a Venture Capital Financing, whether or not you have a security interest in any asset of the third party or have recourse against the third party. A Financing that originally qualified as a Venture Capital Financing will continue to qualify (at its original cost), even if you later must report it on SBA Form 468 under either Assets Acquired

in Liquidation of Portfolio Securities or Operating Concerns Acquired.

\* \* \* \* \*

§ 107.120 [Removed and Reserved]

■ 3. Remove and reserve § 107.120.  
 ■ 4. Amend § 107.160(d) by revising the second sentence to read as follows:

§ 107.160 Special rules for Licensees formed as limited partnerships.

\* \* \* \* \*

(d) \* \* \* The term Licensee, as used in §§ 107.30 and 107.680, includes all of the Licensee’s Control Persons. \* \* \*

\* \* \* \* \*

§§ 107.250, 107.310, 107.320, and 107.460 [Removed and Reserved]

■ 5. Remove and reserve §§ 107.250, 107.310, 107.320, and 107.460.

■ 6. Amend § 107.585 by revising the second sentence to read as follows:

§ 107.585 Voluntary decrease in Licensee’s Regulatory Capital.

\* \* \* At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 107.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150.

■ 7. Amend § 107.830 by revising the section heading, and paragraphs (a) and (c)(1) to read as follows:

§ 107.830 Duration/term of financing.

(a) *General rule.* The duration/term of all your Financings must be for a minimum period of one year and the maximum term of any Loan or Debt Security Financing must be no longer than 20 years.

\* \* \* \* \*

(c) \* \* \*

(1) *Term.* The term for Loans and Debt Securities starts with the first disbursement of the Financing.

\* \* \* \* \*

§ 107.840 [Removed and Reserved]

■ 8. Remove and reserve § 107.840.

■ 9. Amend § 107.1120 by revising paragraphs (d) and (k) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

\* \* \* \* \*

(d) For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of \$175 million, certify that none of the Licensees has a condition of Capital Impairment. See also § 107.1150(b).

\* \* \* \* \*

(k) If you are an Early Stage SBIC, certify in writing that in accordance with § 107.1810(f)(10), at least 50 percent of the aggregate dollar amount of your financings will be provided to “early stage” companies as defined under the definition of Early Stage SBIC in § 107.50 of this part.

#### § 107.1140 [Removed and Reserved]

- 10. Remove and reserve § 107.1140.
- 11. Amend § 107.1150 by:
  - a. Revising the section heading;
  - b. Revising the first sentence of the introductory paragraph;
  - c. Revising paragraph (a)(2);
  - d. Revising the second sentence of paragraph (b); and
  - e. Removing paragraph (d)(2).

The revisions read as follows:

**§ 107.1150 Maximum amount of Leverage. A Licensee, other than an Early Stage SBIC, may have maximum outstanding Leverage as set forth in paragraphs (a), (b), (d), and (e) of this section. \* \* \***

(a) \* \* \*

(2) \$175 million.

(b) \* \* \* However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed \$175 million, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. See also § 107.1120(d).

\* \* \* \* \*

#### §§ 107.1160, 107.1170, 107.1400 through 107.1450, 107.1585, and 107.1590 [Removed and Reserved]

- 12. Remove and reserve § 107.1160, 107.1170, 107.1400 through 107.1450, 107.1585, and 107.1590.

#### § 107.1810 [Amended]

- 13. Amend § 107.1810 by removing paragraph (f)(9) and redesignating paragraphs (f)(10) through (f)(12) as (f)(9) through (f)(11).
- 14. Amend § 107.1820 by revising paragraph (e)(9) to read as follows:

**§ 107.1820 Conditions affecting issuers of Preferred Securities and/or Participating Securities.**

\* \* \* \* \*

(e) \* \* \*

(9) *Failure to meet investment requirements.* You fail to make the amount of Equity Capital Investments required for Participating Securities (§ 107.1500(b)(4)), if applicable to you.

\* \* \* \* \*

#### § 107.1850 [Removed and Reserved]

- 15. Remove and reserve § 107.1850.

**Jovita Carranza,**  
*Administrator.*

[FR Doc. 2020-19432 Filed 9-29-20; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 660

**RIN 3084-AB63**

#### Duties of Furnishers of Information to Consumer Reporting Agencies Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) requests public comment on its Duties of Furnishers of Information to Consumer Reporting Agencies Rule (“Furnisher Rule”) as part of the FTC’s systematic review of all current Commission regulations and guides. In addition, the FTC is proposing to amend the Rule to correspond to changes made to the Fair Credit Reporting Act (“FCRA”) by the Dodd-Frank Act.

**DATES:** Written comments must be received on or before December 14, 2020.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Furnisher Rule, 16 CFR part 660, Project No. P205408” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** David Lincicum (202-326-2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. The Furnisher Rule

The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) was signed into law on December 4, 2003. Public Law 108-159, 117 Stat. 1952. Section 312 of the FACT Act amended section 623<sup>1</sup> of the FCRA by requiring the FTC, with other agencies, to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies (“CRAs”) and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also required the Commission and the other agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate direct consumer disputes concerning the accuracy of information provided by the furnisher to a CRA. On July 1, 2009, the Commission issued the Furnisher Rule and the accompanying guidelines that became effective July 1, 2010.<sup>2</sup>

The Rule requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a CRA.<sup>3</sup> The Rule also requires that furnishers respond to direct disputes from consumers.<sup>4</sup>

### B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was signed into law in 2010.<sup>5</sup> The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (“CFPB”) the Commission’s rulemaking authority under portions of the FCRA.<sup>6</sup> Accordingly, in 2012, the Commission rescinded several of its FCRA rules that had been replaced by rules issued by the CFPB.<sup>7</sup> The FTC retained rulemaking authority for other rules to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the

<sup>1</sup> 15 U.S.C. 1681s-2.

<sup>2</sup> 74 FR 31484.

<sup>3</sup> 16 CFR 660.3.

<sup>4</sup> 16 CFR 660.4.

<sup>5</sup> Public Law 111-203 (2010).

<sup>6</sup> 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for section 615(e) of the FCRA (“Red Flag Guidelines and Regulations Required”) and section 628 of the FCRA (“Disposal of Records”). See 15 U.S.C. 1681s(e).

<sup>7</sup> 77 FR 22200 (April 13, 2012); 12 U.S.C. 5519.