



SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245-AH04

SBA Supervised Lenders Application Process

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) is proposing to update the regulations applicable to Small Business Lending Companies (SBLCs) and state-regulated lenders (Non-Federally Regulated Lenders (NFRLs)) in order to improve efficiencies and potentially reduce costs related to the application and review process.

The rule proposes to establish a comprehensive application and review process for SBLC and NFRL applicants (collectively referred to as SBA Supervised Lenders), including for transactions involving a change of ownership or control, and to clarify and incorporate into the regulations the factors SBA considers in its evaluation of an application. The rule also proposes to address SBA's requirements for the minimum amount of capital needed to be maintained by SBA Supervised Lenders, some of which have not been updated since 1996.

DATES: SBA must receive comments on this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AH04, by any of the following methods:

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

- Mail: Bethany J. Shana, Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- Hand Delivery/Courier: Bethany J. Shana, Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all 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 Bethany J. Shana, Office of Credit Risk Management, Office of Capital Access, 409 Third Street SW, Washington, DC 20416. 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 whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Susan E. Streich, Director, Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416; email address: susan.streich@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 7(a) Loan Program is a business loan program authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and is governed primarily by the regulations in part 120 of Title 13 of the Code of Federal Regulations (CFR). The core mission of the 7(a) Loan Program is to provide SBA-guaranteed financial assistance to small

businesses that lack access to capital on reasonable terms and conditions in order to support our nation's economy.

Under the 7(a) Loan Program, a lender (Lender) participates with SBA by making loans directly to eligible small businesses and SBA guarantees a portion of each loan made by Lenders in the program. The Lender is responsible for funding and servicing the loan and must comply with SBA's Loan Program Requirements (as defined in 13 CFR 120.10) throughout the life of the loan. SBA may delegate to a Lender the authority to approve small business loans made under the 7(a) Loan Program. The Lender may also sell the guaranteed portion of a 7(a) loan in SBA's secondary market and, in certain circumstances, may securitize or sell a participating interest in the unguaranteed portion of a 7(a) loan. In the event that a borrower defaults on a 7(a) loan, the Lender must conduct the liquidation efforts and, if applicable, litigation efforts in accordance with SBA Loan Program Requirements. The Lender and SBA share in the loss, if any, in accordance with their respective interests in the loan.

Most Lenders participating in the 7(a) Loan Program are depository institutions that have a primary Federal regulator (e.g., the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA)) that oversees the Lender's lending activities. SBA also has the statutory authority under section 7(a)(17) of the Small Business Act to authorize non-federally regulated entities to make 7(a) loans, including entities that have state-regulators. Under this authority, SBA has authorized SBA Supervised Lenders to make loans in the 7(a) Loan Program. SBA Supervised Lenders are defined in 13 CFR 120.10

to include SBLCs and NFRLs, and are subject to SBA regulation, oversight and enforcement, including the imposition of civil monetary penalties.

SBLCs, as defined in 13 CFR 120.10, are non-depository lending institutions that are authorized only to make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. SBLCs are regulated, supervised and examined solely by SBA, except for the subset of SBLCs defined as Other Regulated SBLCs in 13 CFR 120.10. In January of 1982, SBA imposed a moratorium on issuing additional SBA lending authorities (referred to as SBLC Licenses) to SBLCs. Today, there are fourteen (14) SBLCs with full authority to make 7(a) loans up to the maximum loan amount (currently \$5 million).¹ An entity may purchase one of the fourteen SBLC Licenses from an existing SBLC with SBA's prior written approval.

NFRLs, as defined in 13 CFR 120.10, are business concerns that are subject to regulation, supervision and oversight by a state regulator that must be satisfactory to SBA. By definition, an NFRL's lending activities are not regulated by a Federal Financial Institution Regulator (as defined in 13 CFR 120.10). Typically, NFRLs are organized as state licensed Business and Industrial Development Companies (BIDCOs), but may also include other types of state-regulated lending institutions, such as non-profit

¹ SBA waived certain regulations for the purpose of permitting mission-oriented lenders to participate in SBA's Community Advantage Pilot Program (referred to as CA Lenders), a pilot program within the 7(a) Loan Program. Each CA Lender is identified as either an SBLC or NFRL, depending on whether the lender is subject to regulation by a state. CA Lenders are limited to making loans in the CA Pilot Program, which generally requires a CA Lender to make loans to underserved markets (e.g., low-to-moderate income communities, rural areas, opportunity zones, veteran-owned businesses) and in an amount not to exceed \$250,000. The CA Pilot Program is governed by all regulations applicable to the 7(a) Loan Program generally and to SBA Supervised Lenders specifically unless waived or modified in the Federal Register Notices published in connection with the CA Pilot Program. SBA is not proposing to apply the changes in this proposed rule to the CA Pilot Program. For more information about the CA Pilot Program please refer to the CA Participant Guide, Version 5.0 (October 1, 2018), available at <https://www.sba.gov/document/support--community-advantage-participant-guide>.

corporations or financial institutions without Federal deposit insurance or share insurance protection.

To become an SBA Supervised Lender, a prospective applicant must be qualified as determined by SBA in its sole discretion. Applicants must meet, inter alia, the participation criteria and ethical requirements for all Lenders set forth in the regulations at 13 CFR 120.140 and 120.410, the regulations specific to SBA Supervised Lenders (13 CFR 120.460 through 120.465) and, if applicable, the regulations specific to SBLCs (13 CFR 120.470 through 120.490). An entity interested in becoming an SBA Supervised Lender must submit an application to SBA containing the information specified in SBA's Standard Operating Procedures 50 10, Lender and Development Company Loan Programs, as amended from time to time (SOP 50 10).²

II. Summary of Proposed Changes

In this proposed rule, SBA aims to enhance the application and review process for organizations seeking to participate as an SBA Supervised Lender in the 7(a) Loan Program and to mitigate the risk inherent in their participation in the program. The proposed changes would improve efficiencies associated with applications submitted to SBA by prospective SBLCs and NFRLs, including transactions involving a change of ownership or control, without compromising performance or increasing risk to the 7(a) Loan Program.

² The current version of the SOP is the 50 10 5(K), effective April 1, 2019. The application requirements can be found in this SOP in Subpart A, Chapter 1, Paragraph II.C.2 with respect to NFRLs and Subpart A, Chapter 2, Paragraph II with respect to SBLCs. The SOP is available at <https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs>.

This rule also proposes to incorporate into the regulations the factors SBA considers in its evaluation of an SBA Supervised Lender application, including an assessment of the applicant's capitalization, organizational structure, the risk associated with its business plan, the professional qualifications and the historical loan performance record of the applicant and its management team (including key employees), the prior history or involvement of the Applicant or its management team (including key employees) with any SBA program, and other relevant information obtained by SBA through due diligence.

Typically, SBA Supervised Lenders are non-depository institutions, and, as such, rely on secondary market loan sales, warehouse lines of credit, participations or securitizations to support their lending operations. These activities, by their nature, create additional risk to SBA. Many of the changes in this proposed rule, including changes related to the safety and soundness and the lending activities of SBA Supervised Lenders (e.g., capital maintenance requirements), seek to mitigate the increased risk associated with the operations of SBA Supervised Lenders.

III. Section-by-Section Analysis of Proposed Changes

SBA proposes to amend the following sections in 13 CFR part 120:

A. Substantive Changes

1. Section 120.460 What are SBA's additional requirements for SBA Supervised Lenders?

SBA proposes to add new paragraphs (c) and (d) to §120.460. Paragraph (c) would incorporate into the regulations a requirement that NFRLs must employ qualified full-time professional management, as is currently required of SBLCs. This new

paragraph would clarify the meaning of qualified full-time professional management for SBA Supervised Lenders to include, at a minimum, the employment of a chief executive officer or equivalent to manage daily operations, a chief credit/risk officer, and at least one other full-time employee qualified by training and experience to carry out the SBA Supervised Lender's business plan. Existing SBA Supervised Lenders would not be required to comply with the new regulatory definition of qualified full-time professional management unless, after the effective date of a final rulemaking, they make or acquire any 7(a) loans or engage in a transaction that constitutes a change of ownership or control of the SBA Supervised Lender. Based on the quarterly condition reports and the annual reports that are required to be submitted to the Agency by SBA Supervised Lenders (including audited financial statements), most SBA Supervised Lenders already comply with the proposed new definition of qualified full-time professional management. SBA believes this proposed rule represents the minimum level of oversight and responsibility necessary for a lender receiving the benefit of SBA loan guarantees.

SBA is proposing to add a new paragraph (d) to limit an NFRL's lending area for 7(a) loan originations to the state in which the NFRL's primary state regulator is located. A number of NFRLs participating in the 7(a) Loan Program currently have limitations imposed by state law or by their state regulator that restrict their lending activities to the state in which their primary state regulator is located. In recent years, however, certain state regulators have permitted NFRLs to expand their business plan and lending area to make loans outside of the state or even nationwide. SBA is concerned that state regulators may not have sufficient resources or capacity to adequately supervise, regulate and examine NFRLs with a business plan to make or acquire 7(a) loans outside of their

state, and SBA does not have the resources necessary to fill in the gaps in oversight and enforcement.

SBA has also found that many NFRLs lack the experience and expertise necessary to manage the risks associated with multistate lending, such as the financial risks inherent in the servicing and liquidation of 7(a) loans in other state jurisdictions. With the exception of two NFRLs, approximately 90% of the lending by NFRLs within the 7(a) Loan Program is done within the state where the NFRL's primary state regulator is located. In an effort to manage the risks associated with NFRLs participating in the 7(a) Loan Program, SBA proposes to incorporate a new paragraph (d) to limit the lending area of NFRLs (with respect to 7(a) loans only) to the state in which their primary state regulator is located, except that an NFRL's lending area may include a local trade area that is contiguous to such state (e.g., a city or metropolitan statistical area that is bisected by a state line) if the NFRL receives SBA's prior written approval. This is consistent with the general understanding that state-regulated lenders focus on economic development in their state and local communities. Existing NFRLs would not be subject to this requirement unless, after the effective date of a final rulemaking, they make or acquire any 7(a) loans or engage in a transaction that constitutes a change of ownership or control of the NFRL. For further discussion on the impact of this proposed rule see the initial regulatory flexibility analysis (IRFA) below.

2. Section 120.462 What are SBA's additional requirements on capital maintenance for SBA Supervised Lenders?

SBA is authorized to supervise the safety and soundness of NFRLs and regulate their lending activities pursuant to section 23(a) of the Small Business Act. *See* 15

U.S.C. 650(a). Currently, NFRLs must maintain the minimum amount of capital established by their state regulator to meet SBA's regulatory requirements for capital maintenance. *See* 13 CFR 120.462(d). SBA has determined, however, that the minimum level of capital established by an NFRL's state regulator may not be sufficient to manage the credit risk associated with an NFRL's lending operation or the potential loss to SBA due to an NFRL's financial failure.³ This rule proposes to amend the regulations to require NFRLs to maintain a baseline minimum amount of capital necessary for participation in the 7(a) Loan Program. The proposed minimum amount of capital that an NFRL would need to maintain would be equal to the higher of (1) the minimum amount of capital required by the NFRL's state regulator, or (2) \$2,500,000. Existing NFRLs that have capital amounts less than the proposed minimum would have three years after the effective date of a final rulemaking to reach the new minimum capital amount. An NFRL that does not meet the new minimum capital requirement by the end of the three-year period could remain in the program but would not be permitted to make or acquire 7(a) loans after such date, until it satisfies the requirement. In addition, the new minimum capital requirement would apply immediately in the event of a change of ownership or control of an NFRL during the three-year time frame.

³ In 2017, a state licensed lender participating as an NFRL in the 7(a) Loan Program was put into liquidation by order of its state regulator and under the supervision of a state court. After approximately two years, the appointed liquidator sold the lender's assets. The events leading up to the lender's liquidation indicate that although the lender was in compliance with the minimum capital required by its state regulator, the NFRL did not have a sufficient amount of capital to manage the credit risk associated with its 7(a) lending activities. Because the NFRL did not maintain a sufficient amount of capital SBA was put in a position to sustain a loss at the time of the lender's financial failure.

SBA believes that most NFRLs already comply with this requirement⁴ and that it represents the baseline minimum level of capital necessary for an NFRL to maintain while making loans with the benefit of SBA loan guarantees. The proposed new minimum level of capital is equal to one-half the amount of minimum capital proposed for SBLCs in this rulemaking (see Section III.A.6 below), consistent with SBA's intent in this proposed rule to limit 7(a) loan making by NFRLs to the state in which their primary state regulator is located (as opposed to nationwide for SBLCs).

3. Section 120.466 SBA Supervised Lender application.

SBA proposes to add a new §120.466 to incorporate into the regulations a new application and review process for prospective SBA Supervised Lenders. SBA proposes to evaluate applications through an initial review and, if warranted, a final review.

The initial review, as proposed under §120.466(a), would require an SBA Supervised Lender applicant to submit a written plan (known as a Lender Assessment Plan (LAP)). The LAP would allow SBA to more effectively review key elements of an application and reach a preliminary assessment about the qualifications of an applicant more quickly and efficiently. SBA recognizes that the current SBA Supervised Lender application process can be costly for the applicant and represents an inefficient use of SBA's time and limited resources.

An initial review phase would assist SBA in identifying incomplete applications and unqualified applicants much earlier in the review process. The initial review will include an initial assessment of the applicant's business plan, capitalization and

⁴ Of the twenty-one NFRLs that are participating in the 7(a) Loan Program, three do not currently meet the proposed new minimum capital requirement of \$2.5 million based on information submitted to SBA periodically in quarterly condition reports or annual reports. See 13 CFR 120.464.

professional management team (including key employees). As part of this initial review, SBA may also require an in-person interview between the applicant and appropriate employees of the Office of Capital Access. The interview will serve as an opportunity for the applicant to explain the information provided in its LAP and answer any preliminary questions posed by SBA. During the initial review phase, SBA may also contact listed and unlisted references and verify the accuracy of the information provided in the LAP.

If SBA determines, based on the information provided in the LAP and in the in-person interview (if required), that the applicant may proceed to the final review phase, it will notify the applicant in writing. Notification by SBA that the applicant may proceed to final review does not mean that the applicant will be favorably assessed or approved by SBA to participate as an SBA Supervised Lender in the 7(a) Loan Program. If SBA notifies an applicant in writing that it may not proceed to the final review, the applicant may not submit a new LAP until nine months from the date of such notification. This nine month time period should allow sufficient time for the applicant to address any issues identified by SBA during the initial review phase without overburdening SBA with premature resubmissions. SBA will determine whether a LAP submitted during this nine month time period is being submitted by the same applicant.

The final review, as proposed under §120.466(b), would require each SBA Supervised Lender applicant to submit a complete application as further described in official SBA policies and procedures.⁵ A complete application would update the information disclosed in the LAP and would provide additional information for SBA's

⁵ The information required to be submitted in a complete application would not be set forth in SBA's regulation but would continue to be in SBA's official policies and procedures. See SOP 50 10.

review, such as the applicant's organizational documents, operational plan, credit policies, internal control policies, loan risk rating system, capital adequacy plan, proposed credit facilities, organizational chart, audited financial statements, bank statements, legal opinions and other necessary documentation. After completion of the final review, SBA (the Director, Office of Financial Assistance, in consultation with the Director, Office of Credit Risk Management) will issue a final decision to approve or deny the application. SBA believes the proposed new application and review process will provide greater clarity and transparency, will expedite SBA's review of applications, and may be less burdensome for applicants and on SBA's limited administrative resources.

SBA recognizes that in some instances an SBA Supervised Lender applicant may be able to cure certain deficiencies in its application over a period of time, such as raising additional capital to support its business plan, adding more experienced members to its management team, or demonstrating to SBA a longer track record of successful loan making performance. This proposed rule provides that if an SBA Supervised Lender's application is denied, the applicant may submit a new LAP and restart the application process anytime after 18 months from the date of denial. SBA believes this 18 month time period is necessary to avoid resubmissions from declined applicants before sufficient time has elapsed for meaningful changes to occur and to be reflected in an SBA Supervised Lender application.

Lastly, under §120.466(c), SBA is proposing to require an entity seeking to become an NFRL to have at least one year of current operating and relevant commercial lending experience before the entity may submit an application to become an SBA

Supervised Lender. The requirement of having at least one year of experience is consistent with the standards that have been established for other SBA business loan programs, such as the Microloan Program, where entities are required to have at least one year of prior experience in order to be eligible to participate in the program as an Intermediary.

4. Section 120.467 Evaluation of SBA Supervised Lender applicants.

SBA proposes to add a new §120.467 to incorporate into the regulations the factors that SBA currently considers in evaluating an SBA Supervised Lender applicant. SBA's evaluation includes a review of, among other things, the applicant's business plan, organizational structure, operational plan, management qualifications, the historical performance of the loans originated by the applicant or attributable to its management team, the applicant's capitalization, financial projections and liquidity, and prior history or involvement of the applicant or its management team (including key employees) with any SBA guaranteed lending program or any other Federal or state lending program. In addition, SBA reviews the results of background investigations (e.g., through SBA Form 1081) and other information obtained through due diligence, such as reference checks.

In addition, this proposed rule makes it clear that SBA may prohibit individuals or entities from participating as an officer, director, manager, owner or key employee of an applicant if such individual or entity: (1) has a previous record of failing to comply with SBA Loan Program Requirements; (2) previously participated in a material way with any past or present SBA Lender or Intermediary that failed to maintain satisfactory SBA performance; (3) previously defaulted on any Federal loan or Federally assisted financing that resulted in the Federal Government or any of its agencies or departments sustaining a

loss in any of its programs; or (4) ever failed to pay when due any debt or obligation, including any amounts in dispute, to the Federal Government or guaranteed by the Federal Government (including but not limited to taxes or business or student loans). These provisions are consistent with SBA's current policies in evaluating an SBA Supervised Lender applicant.

5. Section 120.468 Change of ownership or control requirements for SBA Supervised Lenders.

SBA proposes to move the regulation applicable to a change of ownership or control of an SBLC (§120.475) to a new §120.468 with certain modifications. The purpose of this change is to incorporate into the regulations the current policy requirement that all SBA Supervised Lenders, including NFRLs, must obtain SBA approval prior to any change of ownership or control. This proposed rule provides clarification as to what would be considered a change of ownership or control, including any series of transfers that, in the aggregate over an 18 month period, transfers 10 percent or more of an SBA Supervised Lender's stock or ownership interests. This rule also seeks to add a new paragraph (a)(5) to clarify that the definition of a change of ownership or control includes any transaction or event that results in any change in the possession (direct or indirect) of the right to control, or the power to direct or cause the direction of, the management or policies of an SBA Supervised Lender. The rule also clarifies that SBA Supervised Lenders must receive SBA prior written approval before entering into any definitive agreement regarding a change of ownership or control.

This rule also proposes to incorporate into the regulations as §120.468(c) the current policy that a new application (as described above in new §120.466) must be

submitted to SBA in connection with a change of ownership or control of an SBA Supervised Lender.

In addition, this proposed rule would add a new paragraph (d) to provide an SBA Supervised Lender with the opportunity to voluntarily surrender its SBA lending authority (i.e., its SBLC License or its NFRL lending authority) and withdraw from the 7(a) Loan Program with SBA's prior written approval. This would provide SBA Supervised Lenders with a path to exit the 7(a) Loan Program in an efficient and organized manner. As proposed, a voluntary surrender would require an SBA Supervised Lender to (i) transfer its entire loan portfolio to one or more Lenders acceptable to SBA, and (ii) enter into a withdrawal agreement. The purpose of the withdrawal agreement is to resolve any outstanding issues between the SBA Supervised Lender and SBA, including any outstanding monetary liabilities.

6. Section 120.471 What are the minimum capital requirements for SBLCs?

SBA proposes to amend §120.471(a) to increase the minimum capital requirement for SBLCs, which has not been updated since 1996. SBA has determined that the current minimum capital requirement that an SBLC must maintain (i.e., the greater of \$1 million or 10 percent of the aggregate of its share of all outstanding loans) is insufficient to assure an SBLC's continued financial viability or provide for any necessary growth. In 1996, the maximum 7(a) loan amount was \$1,000,000. The maximum 7(a) loan amount has increased several times since then, the last time occurring in September of 2010. Section 1111 of the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240, 124 Stat. 2504, which was enacted on September 27, 2010, permanently increased the maximum guaranteed portion and the maximum loan amount for 7(a) loans. Under the SBJA, the

maximum 7(a) loan amount was increased from \$2 million to \$5 million and the maximum 7(a) loan guaranteed portion was increased to the current amount of \$3,750,000.⁶ No corresponding changes were made by SBA to increase the minimum capital requirements for SBA Supervised Lenders either at that time or in connection with any of the prior increases in the maximum 7(a) loan amount that have occurred since 1996.

This proposed rule would adopt a new minimum capital requirement for SBLCs equal to unencumbered paid-in capital and paid-in surplus of at least \$5 million, or ten percent of the aggregate of its share of all outstanding loans, whichever is greater. Most of the existing SBLCs have capital in amounts well in excess of the minimum amount required by current §120.471(a). The proposed change would again ensure that no SBLC has minimum capital in an amount less than the size of a single 7(a) loan permitted in the program. *See* 15 U.S.C. 636(a)(3)(A). An existing SBLC that has capital in an amount less than the proposed minimum would have three years after the effective date of a final rulemaking to reach the new minimum capital amount, after which it would be permitted to remain in the program but would not be permitted to make or acquire 7(a) loans until such time as the minimum capital requirement was satisfied. The new minimum capital requirement would apply immediately, however, in the event of a change of ownership or control of an SBLC.

SBA is proposing to amend §120.471(b) to expand the definition of capital to include “unrestricted net assets” for non-profit corporations. In recent years, SBA has

⁶ For International Trade and Export Working Capital loans the maximum 7(a) loan amount is \$5 million, and the maximum 7(a) loan guaranteed portion is \$4.5 million. *See* 15 U.S.C. 636(a)(2)(D) and (E); 15 U.S.C. 636(a)(3)(B); and 15 U.S.C. 636(a)(14)(B)(i).

seen an increase in the interest of non-profit corporations seeking to become an SBLC; however, the definition of capital has not been updated to reflect that an SBLC may be organized as either a for-profit or non-profit corporation. This proposed change would address that issue.

Finally, SBA is considering whether it should make any additional changes to the definition of capital under §120.471(b). Capital currently consists only of the following: common stock, preferred stock (non-cumulative and with no maturity date), additional paid-in capital (representing amounts paid for stock in excess of par value), retained earnings, and capital contributions to limited liability companies and limited partnerships that are not subject to repayment or withdrawal and have no cumulative priority return. In recent years, SBA has become concerned that retained earnings can include amounts, such as the estimated value of loan servicing rights, that may not be as reliable as paid-in capital. Specifically, SBA is concerned that the valuation of servicing rights assets is based on assumptions such as prepayment speeds and loan default rates that are subject to change. SBA is seeking to determine whether, and in what amount, servicing rights should contribute to an SBA Supervised Lender's required minimum capital, and to ensure that there is a consistent understanding of the appropriate treatment of servicing rights by SBA Supervised Lenders. SBA is soliciting comments from the public on the current definition of capital (as defined in §120.471(b)) and whether it should be modified to limit any contribution that servicing rights may have towards an SBA Supervised Lender's minimum capital requirement. Alternative options could include, for purposes of the minimum capital calculation: (1) limiting the percentage of retained

earnings that are permitted to be comprised of the value of servicing rights, or (2) limiting the percentage of servicing rights that are permitted to be included in retained earnings.

B. Technical Changes

1. Section 120.410 Requirements for all participating Lenders.

SBA proposes a conforming technical change to §120.410(a)(1) to reflect the new minimum capital requirements for SBA Supervised Lenders.

2. Section 120.470 What are SBA’s additional requirements for SBLCs?

SBA proposes a conforming technical change to remove §120.470(g) “Management” and redesignate paragraph (h) as paragraph (g). A new regulatory definition of qualified full-time professional management for SBA Supervised Lenders will be incorporated into proposed new §120.460(c) as described above in Section III.A.1.

3. Section 120.475 Change of ownership or control.

SBA proposes a conforming technical change to remove and reserve §120.475. The current text of §120.475 will be incorporated with modifications into proposed new §120.468 as described above in Section III.A.5.

Compliance with Executive Orders 12866, 13563, 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).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a “significant” regulatory action for the purposes of Executive Order 12866,

and therefore, SBA has not prepared a Regulatory Impact Analysis. This is not a major rule under the Congressional Review Act, 5 U.S.C. 801 et seq.

Executive Order 13563

This executive order supplements and reaffirms the principles and requirements in Executive Order 12866, including the requirement to provide the public with an opportunity to participate in the regulatory process. SBA Supervised Lenders have been involved in the 7(a) Loan Program for over 35 years. Over the years, the Agency has received feedback from many SBA Supervised Lender applicants and program participants including valuable insight and suggestions for improvements to the application and review process.

Executive Order 13771

This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

Executive Order 12988

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

Executive Order 13132

SBA has determined that this proposed rule 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. Therefore, for the purposes of Executive Order 13132, SBA has determined

that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

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

SBA has determined that this proposed rule would impose a new reporting and/or recordkeeping requirement under the Paperwork Reduction Act (PRA). Specifically, the proposed rule would require SBA Supervised Lenders to submit a written Lender Assessment Plan (LAP) in order for SBA to conduct an initial review of the applicant. In addition, this rule also proposes to codify a requirement for applicants to submit a complete application in order for SBA to determine whether the applicant has the qualifications necessary to participate in the 7(a) Loan Program as an SBA Supervised Lender. As discussed above, this requirement is currently described in SBA's official policies and procedures.

The applicant will also use some of the same forms as other Lenders that apply to participate in the 7(a) Loan Program, including the SBA Form 1081, Statement of Personal History. SBA Form 1081 is an OMB-approved form under OMB Control number 3245-0080.

The title, summary of the new information collection, description of respondents, and an estimate of the reporting burden related to this collection are discussed below.

Title of Collection: SBA Supervised Lender Application and Review

OMB Control Number: New Collection

(a) Description: Lender Assessment Plan.

The proposed rule would require organizations seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control) to

submit a LAP to SBA. The LAP includes the legal name and contact information of the applicant, a written business plan, current and projected financial statements and other important information about the applicant and its management team (including key employees).

Need and Purpose: A LAP is necessary for SBA to conduct an initial review of an applicant seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control). The LAP provides SBA with key elements of an application so that SBA can reach a preliminary assessment about the qualifications of an applicant more efficiently. This initial review phase will assist SBA in identifying incomplete applications and unqualified applicants much earlier in the application review process.

Description and Estimated Number of Respondents: Pursuant to proposed §120.466(a), the information in the LAP will be collected from each organization seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control). SBA estimates that it will likely receive no more than four LAPs each year.

Total Estimated Response Time: It is estimated that each applicant would need approximately 35 hours to prepare and submit the proposed LAP for an estimated total of 140 hours annually.

(b) Description: SBA Supervised Lender Application.

If an applicant seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control) is authorized by SBA to proceed to the final review phase, the applicant will be required to submit a complete application in

order for SBA to determine whether the applicant has the qualifications necessary to participate in the 7(a) Loan Program.

Need and Purpose: The information submitted with the collection is necessary for SBA to reach a final decision regarding an applicant seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control). The complete application requires an SBA Supervised Lender applicant to provide more detail about the information previously disclosed to SBA in the LAP and will include additional information about the applicant's proposed operation and lending activities as a participant in the 7(a) Loan Program. As stated above, the application requirements are not new since they are currently set out in SBA's official policies and procedures. Under those policies and procedures, an organization applying to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control) is required to, among other things, submit documentation in support of its organizational structure, internal control policies, operational plan, proposed credit policies, loan risk rating system, proposed secondary market activities, capital adequacy plan, audited financial statements and other information (e.g., certifications and legal opinions) necessary for SBA to evaluate the qualifications of the applicant. See SOP 50 10. Although the requirements currently apply to about four organizations each year, now that SBA is proposing to codify the application requirements in its regulations, under the PRA it is deemed to impact ten or more respondents; therefore, SBA must now obtain OMB approval in compliance with the PRA procedures.

Description and Estimated Number of Respondents: The information in the complete application will be collected from organizations that are seeking to become an

SBA Supervised Lender and have successfully reached the final review phase. Based on current experience, SBA estimates that it will likely receive no more than four complete applications each year.

Total Estimated Response Time: It is estimated that each applicant would need approximately 50 hours to prepare and submit a complete application, for an estimated total of 200 hours annually.

SBA invites comments on: (1) Whether this collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the time for preparing and completing the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

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

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have an impact on a substantial number of small entities that participate as SBA Supervised Lenders in the 7(a) Loan Program. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) examining the impact of the proposed rule in accordance with section 603, Title 5, of the United States Code. The IRFA addresses (1) the reasons, objectives and legal basis for this proposed rule; (2) a description of the kind and number of small entities that may be affected; (3) the projected reporting, recordkeeping and other compliance requirements; (4) whether there are any Federal

rules that may duplicate, overlap, or conflict with this proposed rule; and (5) whether there are any significant alternatives to this proposed rule.

1. What are the reasons, objectives and legal basis for the rule?

The proposed rule is designed to improve efficiencies and enhance the application and review process for organizations seeking to participate in the 7(a) Loan Program as SBA Supervised Lenders by conducting an initial review (LAP) and, if warranted, a final review (complete application). The objective is to provide a process for a more efficient and effective evaluation of the qualifications of applicants seeking to become SBA Supervised Lenders. The new application and review process would provide greater clarity and transparency to applicants and would expedite SBA's review, which will potentially reduce costs on applicants and on SBA's limited administrative resources.

The proposed rule also seeks to raise the minimum capital requirement that SBA Supervised Lenders must maintain in order to assure their continued financial viability and to provide for any necessary growth. The minimum capital requirement for SBA Supervised Lenders has not been updated by SBA for more than twenty-three years. The Agency has determined that the regulations addressing minimum capital must be amended to correspond with the 500% increase in the maximum 7(a) loan amount (\$1 million to \$5 million) that Congress has authorized by statute over the last twenty-three years.

The proposed rule also limits the 7(a) lending area for NFRLs to the state in which their primary regulator is located, except that an NFRL may request SBA's prior written approval to make 7(a) loans in a local trade area that is contiguous to such state (e.g., a city or metropolitan statistical area that is bisected by a state line). Most NFRLs

participating in the 7(a) Loan Program already limit their lending activities to the state in which their primary state regulator is located. In recent years, some state regulators have permitted NFRLs to make loans outside of their state or even nationwide. The expansion of an NFRL's 7(a) lending area increases risk to SBA and the Agency is concerned that some state regulators do not have the resources and the capacity to adequately supervise, regulate and examine non-depository lenders that operate outside of their state. In addition, state laws that apply to state-regulated lenders do not address the different conditions associated with lending in other states or nationwide. This part of the proposed rule is also consistent with the general understanding that state-regulated lenders (such as BIDCOs) are licensed under specific state laws to focus primarily on economic development in their respective state and local communities.

SBA is authorized to supervise the safety and soundness of SBA Supervised Lenders and may regulate their 7(a) lending activities pursuant to section 23(a) of the Small Business Act. 15 U.S.C. 650(a), see also 15 U.S.C. 634(b)(7). SBA has the authority to promulgate rules, regulations and requirements for the 7(a) Loan Program. 15 U.S.C. 634(b)(6).

2. What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA Supervised Lenders comprise a unique class of 35 non-depository lenders that may only participate in the 7(a) Loan Program and make 7(a) loans if authorized by SBA. If the proposed rule is adopted in its current form, the rule would be applicable to all SBA Supervised Lenders (other than lenders participating as CA Lenders in the CA Pilot Program). SBA estimates that approximately 88 percent of SBA Supervised

Lenders are considered small entities based on NAICS sector code 52 (finance and insurance) and industry code 52298 (All Other Non-depository Credit Intermediation) and have annual receipts of less than \$38.5 million. This estimate of 31 small SBA Supervised Lenders is based on information contained in the quarterly condition reports and the annual reports that are required to be submitted to SBA by such lenders.

3. What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

The proposed rule would impose a new reporting and/or recordkeeping requirement for organizations seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control). The proposed rule seeks to codify an existing requirement that applicants submit a complete application in order for SBA to determine whether an organization has the qualifications necessary to participate in the 7(a) Loan Program as an SBA Supervised Lender.

The LAP includes key information about an organization that would allow SBA to reach a preliminary assessment about the qualifications of an applicant more efficiently. SBA estimates it would receive approximately four LAPs each year. SBA estimates that it would take approximately 35 hours for an organization to prepare a LAP at a cost of \$2,870 per LAP. Based on SBA's experience with similar data collections, we expect an organization that submits a LAP would need to employ the services of a financial manager and an administrative assistant when preparing a LAP for submission

to SBA.⁷ SBA specifically requests comments on whether the number of hours estimated to prepare a LAP is appropriate.

If an organization is authorized by SBA to proceed to the final review phase, a complete application must be submitted to SBA. As mentioned above, the application requirements for SBA Supervised Lenders are not new and are currently set forth in SBA's official policies and procedures. See SOP 50 10 5(K), Subpart A, Chapter 1, Paragraph II.C.2 for NFRLs and Subpart A, Chapter 2, Paragraph II for SBLCs. SBA estimates that it will receive approximately four complete applications each year. SBA estimates that it would take approximately 50 hours for an organization to prepare a complete application at a cost of \$3,813 per application. Based on SBA's experience with similar data collections, an organization applying to become an SBA Supervised Lender would typically employ the services of a financial manager, an accountant, an attorney and an administrative assistant when preparing a complete application for submission to SBA.⁸ SBA specifically requests comments on whether the number of hours estimated to prepare a complete application is appropriate.

SBA anticipates that there would be some costs related to the new minimum capital requirement under the proposed rule for SBA Supervised Lenders. This proposed rule establishes a new minimum capital requirement for SBLCs and NFRLs of at least \$5

⁷ The cost estimate for the LAP is based on hourly job position wages published by the U.S. Department of Labor's Bureau of Labor Statistics for 2018 and increased by 30% to account for benefits. The cost breakdown is as follows: Financial Manager (30 hours times an hourly rate of \$91.77) plus Administrative Assistant (5 hours times an hourly rate of \$23.43) equals \$2,870.

⁸ The cost estimate for a complete application is based on hourly job position wages published by the U.S. Department of Labor's Bureau of Labor Statistics for 2018 and increased by 30% to account for benefits. The cost breakdown is as follows: Financial Manager (30 hours times an hourly rate of \$91.77) plus Accountant (10 hours times an hourly rate of \$49.26) plus Attorney (5 hours times an hourly rate of \$90.14) plus Administrative Assistant (5 hours times an hourly rate of \$23.43) equals \$3,813.

million and \$2.5 million, respectively. Based on information provided to SBA by SBA Supervised Lenders in quarterly condition reports, 11 of the 14 SBLCs (i.e., 79%) have at least \$4.75 million in capital (and of those 11 SBLCs, nine have more than \$5 million in capital). In addition, 18 of the 21 NFRLs (i.e., 86%) have more than \$2.5 million in capital.

SBA has determined that there are eight small entities that would be impacted by the new capital requirements in the proposed rule. In other words, eight of the 35 SBA Supervised Lenders that are considered small entities would need to increase their capital to reach the new minimum capital requirement of either \$2.5 million or \$5 million (as applicable). The estimated amount of capital that would need to be raised by these small entities ranges between \$240,000 and \$3,580,000. SBA estimates that this proposed rule may have a significant economic impact on six of the 35 SBA Supervised Lenders (i.e., 17%), each of which is considered a small entity. As noted above, all existing SBA Supervised Lenders would have three years from the effective date of a final rulemaking to comply with this part of the proposed rule (other than for transactions involving a change of ownership or control of an SBA Supervised Lender).

SBA estimates that the cost of raising capital for SBA Supervised Lenders is approximately 9.8% of the amount of equity capital raised based on the Capital Asset Pricing Model (CAPM). The CAPM is one of the most widely used pricing models by financial professionals and considered the preferred method to estimate the cost of equity capital. See Duff & Phelps 2019 Valuation Handbook – U.S. Industry Cost of Capital (data through June 30, 2019).⁹ SBA estimates that the total cost of raising new equity

⁹ The 2019 Valuation Handbook – U.S. Industry Cost of Capital published by Duff & Phelps provides cost of capital estimates for approximately 170 industries identified by Standard Industrial Classification codes

capital for the eight SBA Supervised Lenders based on the requirements of the proposed rule would range in amount from approximately \$23,000 to \$350,000.¹⁰ However, the cost is mitigated by the fact that under the proposed rule SBA Supervised Lenders would have three years to increase their capital. Thus, the maximum amount that it would cost an existing SBA Supervised Lender to reach the new minimum capital requirement would be approximately \$117,000 per year for three consecutive years.¹¹

SBA determined that a three year time frame was a sufficient amount of time for SBA Supervised Lenders to increase their capital. The three year time period is also consistent with SBA's existing requirements that SBA Supervised Lender applicants must have a detailed business and operations plan that includes three years of projected loan activity, secondary market activity and financial statements. See SOP 50 10. SBA specifically requests comments on whether SBA Supervised Lenders should have three years to comply with the new minimum capital requirements under this proposed rule or should be required to comply sooner.

The proposed rule also seeks to limit the 7(a) lending area for NFRLs to the state in which their primary state regulator is located, except that it may include a local trade area that is contiguous to such state (such as a city or metropolitan statistical area

(SIC). For purposes of estimating the cost of raising equity capital for SBA Supervised Lenders, SBA used SIC code 61 – non-depository credit institutions, which includes 21 companies that are engaged primarily in extending credit in the form of loans (but are not engaged in deposit banking). SBA compared the estimated cost of raising capital cited above with other sources and found the data to be similar.

¹⁰ The estimated cost to raise \$240,000 or \$3.58 million in equity capital would be as follows: \$240,000 times 9.8% equals \$23,000; \$3.58 million times 9.8% equals \$350,000.

¹¹ It should be noted that some existing SBA Supervised Lenders may decide to increase their capital by retaining earnings instead of raising new equity capital, which would reduce the cost of this proposed rule.

bisected by a state line). There are currently 21 NFRLs participating in the 7(a) Loan Program. During the last three fiscal years, two NFRLs (each of which is considered a small entity) requested loan authorizations to make the majority of their 7(a) loans outside of the state in which their primary state regulator is located. With the exception of these two NFRLs, approximately 90% of the lending within the 7(a) Loan Program during the last three fiscal years was done in the state where the NFRL's primary state regulator is located. Approximately 79% of all 7(a) loan approvals obtained by NFRLs during the last three fiscal years were for loans to be made to small businesses located within their own state. This part of the proposed rule would not impact a substantial number of small entities. It is important to note that this proposed rule will not impose any restrictions regarding an NFRL's non-7(a) lending activities. Therefore, the proposed rule would not have any impact on an NFRL's ability to generate business by making other types of loans (e.g., conventional loans) outside of their own state.

In summary, SBA estimates that the total cost to a particular SBA Supervised Lender associated with this proposed rule (including the costs related to data collection) will range from zero to \$356,683, substantially all of which relates to the cost of raising capital and may be spread over a three year time period.

4. What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

We are not aware of any Federal rules that duplicate, overlap or conflict with this rule. SBA's SOP 50 10 will have to be amended to conform to portions of this rule, which will be done separately.

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

The Agency originally considered imposing the new minimum capital requirements for SBA Supervised Lenders immediately due to the risk associated with their lending operations. SBA recognized, however, that providing a three year period of time for SBA Supervised Lenders to increase their capital would be less burdensome on lenders and their operational plans. SBA took into consideration that some lenders may need time to plan their capital raising efforts and negotiate favorable terms and conditions for increasing their capital. The proposed three year time period will provide SBA Supervised Lenders with a sufficient amount of time to raise new equity capital and an opportunity to increase capital by retaining earnings (which will reduce the estimated overall cost of raising such capital).

SBA believes many of the proposed changes in this rule would benefit small entities interested in becoming an SBA Supervised Lender by clarifying areas in the application process where there was confusion and to make the process more transparent. This rule would also allow SBA to evaluate the qualifications of new applicants more efficiently and make well-informed decisions on SBA Supervised Lender applications. SBA believes this proposed rule encompasses best practice guidance that aligns with the Agency's mission to increase access to capital for small businesses and facilitate American job preservation and creation.

List of Subjects in 13 CFR Part 120

Community development, Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 120 as follows:

PART 120 - BUSINESS LOANS

1. The authority for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3) and (7), and 697(a) and (e); Pub. L. 111-5, 123 Stat. 115, Pub. L. 111-240, 124 Stat. 2504.

§120.410 [Amended]

2. Amend §120.410(a)(1) by removing the phrase “for SBLCs, meeting its SBA minimum capital requirement; and for NFRLs, meeting its state minimum capital requirement); and” and adding in its place the phrase “and for SBLCs and NFRLs, meeting their respective minimum capital requirement); and”.

3. Amend §120.460 by adding paragraphs (c) and (d) to read as follows:

§120.460 What are SBA’s additional requirements for SBA Supervised Lenders?

* * * * *

(c) An SBA Supervised Lender must have qualified full-time professional management including, but not limited to, a chief executive officer or the equivalent to manage daily operations, and a chief credit/risk officer. An SBA Supervised Lender must also have at least one other full-time professional employee qualified by training and experience to carry out its business plan. An SBA Supervised Lender is expected to sustain a sufficient level of lending activity in its lending area. This paragraph only applies to SBA Supervised Lenders that make or acquire a 7(a) loan after [EFFECTIVE DATE OF THE FINAL RULE], or to any SBA Supervised Lender approved after such date, including in the event of a change of ownership or control.

(d) An NFRL may only make or acquire 7(a) loans in the state in which its primary state regulator is located, except that an NFRL’s lending area may include a local trade area that is contiguous to such state (e.g., a city or metropolitan statistical area that is bisected by a state line) if the NFRL receives SBA’s prior written approval. This paragraph (d) only applies to NFRLs that make or acquire a 7(a) loan after [EFFECTIVE DATE OF THE FINAL RULE], or to any NFRL approved after such date, including in the event of a change of ownership or control.

4. Amend §120.462 by:

a. Removing the phrase “by state regulators” wherever it appears and adding in its place the phrase “in §120.462(a)(1)”;

b. Redesignating paragraphs (a) through (e) as paragraphs (b) through (f); and

c. Adding a new paragraph (a).

The addition to read as follows:

§120.462 What are SBA’s additional requirements on capital maintenance for SBA Supervised Lenders?

(a) Minimum capital requirements--(1) For NFRLs. (i) Beginning on or after [DATE THREE YEARS FROM THE EFFECTIVE DATE OF THE FINAL RULE], each NFRL that makes or acquires a 7(a) loan must maintain the minimum capital required by its state regulator, or \$2,500,000, whichever is greater.

(ii) Any NFRL approved on or after [EFFECTIVE DATE OF THE FINAL RULE], including in the event of a change of ownership or control, must maintain the minimum capital requirement set forth in paragraph (a)(1)(i) of this section.

(iii) Unless subject to paragraph (a)(1)(i) or (ii) of this section, an NFRL must comply with the minimum capital requirements for NFRLs that were in effect on [DATE ONE DAY PRIOR TO THE EFFECTIVE DATE OF THE FINAL RULE].

(2) For SBLCs. For information on minimum capital requirements for SBLCs, see §120.471.

* * * * *

5. Add §120.466 to read as follows:

§120.466 SBA Supervised Lender application.

An entity seeking to participate as an SBA Supervised Lender must apply to SBA. SBA evaluates SBA Supervised Lender applicants through an initial review and final review, as follows:

(a) Initial review. SBA Supervised Lender applicants must submit a written plan containing information about the organization and its current and proposed lending activities (“Lender Assessment Plan”). After SBA’s review of the Lender Assessment Plan, the Office of Capital Access may require an interview with the applicant and its management team. SBA will determine, in its sole discretion, whether an applicant may proceed to the final review. If SBA determines that an applicant may not proceed to the final review, the applicant must wait at least nine months before it may submit a new Lender Assessment Plan. Each applicant must demonstrate to SBA’s satisfaction that it meets the ethical requirements and the participation criteria set forth in 13 CFR 120.140 and 120.410. The Lender Assessment Plan must include the following items:

(1) The legal name, address, telephone number and email address of the applicant;

(2) Business plan, detailing the applicant's proposed lending area and the volume of loan activity projected over the next three years (supported by current and projected balance sheets, income statements and statements of cash flows);

(3) Capitalization (current and proposed), including the form of organization and the identification of all debt and classes of equity capital and proposed funding amounts, including any rights or preferences accorded to such interests (e.g., voting rights, redemption rights and rights of convertibility) and any conditions for the transfer, sale or assignment of such interests;

(4) A list of all members of the applicant's management team, including the applicant's officers, directors, managers and key employees, as well as the applicant's owners, Associates (as defined in §120.10) and Affiliates (as defined in §121.103 of this chapter);

(5) A written summary of the professional experience (including any prior experience with any SBA program) of the applicant's management team (including key employees);

(6) In connection with any application to become an SBLC, the applicant must include a letter agreement signed by an authorized official of an existing SBLC certifying that the SBLC is seeking to transfer its SBA lending authority to the applicant; and

(7) If approval of any state or Federal chartering, licensing or other regulatory authority is required, copies of any licenses issued by or documents filed with such authority.

(b) Final review. Each applicant that receives notice from SBA in writing that it may proceed to the final review must submit a complete application to SBA within 90

calendar days. The application requirements for SBA Supervised Lenders are set forth in official SBA policy and procedures. An incomplete application submitted to SBA will not be processed and will be returned to the applicant. SBA may, in its sole discretion, approve or deny any SBA Supervised Lender application. The decision to approve or deny an SBA Supervised Lender application is a final agency decision. If an SBA Supervised Lender application is denied by SBA or if a complete application is not timely submitted, the applicant may not submit a new Lender Assessment Plan and restart the application process until 18 months from the date of denial or the date a complete application was due to SBA, as applicable.

(c) NFRL operating and lending experience requirement. For an entity seeking to become an NFRL, evidence of at least one year of current operating and relevant commercial lending experience must be provided.

6. Add §120.467 to read as follows:

§120.467 Evaluation of SBA Supervised Lender applicants.

(a) SBA will evaluate an SBA Supervised Lender applicant based on information from, among other sources, the Lender Assessment Plan, an interview with the applicant's management team (if required), the application and any other documentation submitted by the applicant, the results of background investigations, public record searches and due diligence conducted by SBA or other Federal or state agencies. SBA's evaluation will consider factors such as the following:

(1) Professional qualifications of its management team (including key employees), including demonstrated commercial lending experience, business reputation, adherence to legal and ethical standards, track record in making and monitoring business

loans, and prior history, if any, working as an officer, manager, director or key employee of a lender involved in any SBA program or any other Federal or state lending program.

(2) Historical performance measures of loans originated by the applicant or attributable to its management team (including key employees), including loan default rates, purchase rates and loss rates, measured in both percentage terms and in comparison to appropriate industry benchmarks, review/examination assessments and other performance measures.

(3) The applicant's capitalization, organizational structure, business plan (including any risk factors), projected financial performance, financial strength, liquidity, the soundness of its financial projections and underlying assumptions, loan underwriting process, operations plan and the history of compliance of the applicant and its management team (including key employees) with SBA Loan Program Requirements.

(4) Whether the NFRL's state regulator and the state statute or regulations governing the NFRL's operations, including but not limited to those pertaining to audit, examination, supervision, enforcement and information sharing, are satisfactory to SBA in its sole discretion.

(5) For changes of ownership or control, in addition to the factors listed in paragraphs (a)(1) through (4) of this section, SBA will consider whether the applicant's plan for the resolution of any outstanding monetary liabilities to SBA, including repairs and denials and civil monetary penalties, is acceptable to SBA in its sole discretion.

(b) SBA may prohibit any individual or entity from participating as an officer, director, manager, owner or key employee of the applicant if such individual or entity:

(1) Has a previous record of failing to comply with SBA Loan Program

Requirements;

(2) Previously participated in a material way with any past or present SBA Lender or Intermediary that failed to maintain satisfactory SBA performance;

(3) Previously defaulted on any Federal loan or Federally assisted financing that resulted in the Federal Government or any of its agencies or departments sustaining a loss in any of its programs; or

(4) Ever failed to pay when due any debt or obligation, including any amounts in dispute, to the Federal Government or guaranteed by the Federal Government (including but not limited to taxes or business or student loans).

7. Add §120.468 to read as follows:

§120.468 Change of ownership or control requirements for SBA Supervised Lenders.

(a) SBA prior approval required. Any change of ownership or control of an SBA Supervised Lender without SBA's prior written approval is prohibited. Prior to entering into any definitive agreement for a change of ownership or control, SBA Supervised Lenders must receive SBA's prior written approval from the appropriate SBA official in accordance with Delegations of Authority. An SBA Supervised Lender may not register proposed new owners on its books and records or permit them to participate in any manner in the conduct of the SBA Supervised Lender's affairs unless approved in writing by SBA. Any type of agreement or letter of intent regarding a prospective change of ownership or control must be reported to SBA within 30 calendar days as required by §120.464(a)(5). A change of ownership or control includes the following:

(1) Any transfer(s) (direct or indirect) of 10 percent or more of any class of the SBA Supervised Lender's stock or ownership interests (or series of transfers which, in the aggregate over an 18 month period, equals 10 percent or more), or any agreement providing for such transfer;

(2) Any transfer(s) (direct or indirect) that could result in the beneficial ownership by any person or group of persons acting in concert of 10 percent or more of any class of the SBA Supervised Lender's stock or ownership interests, or any agreement providing for such transfer(s);

(3) Any merger, consolidation, or reorganization;

(4) Any other transaction or agreement that transfers control of an SBA Supervised Lender; or

(5) Any other transaction or event that results in any change in the possession (direct or indirect) of the right to control, or the power to direct or cause the direction of, the management or policies of an SBA Supervised Lender, whether through the ownership of voting securities, by contract or otherwise.

(b) Approval required by other regulatory authorities. If a change of ownership or control of an SBA Supervised Lender is subject to the approval of any state or Federal chartering, licensing or other regulatory authority, copies of any documents filed with such authority must, at the same time, be transmitted to the appropriate SBA official in accordance with Delegations of Authority. The approval of any state or Federal authority will be required in addition to SBA's prior written approval.

(c) Application requirements for changes of ownership or control. An applicant must submit a Lender Assessment Plan and a new application in accordance with

§120.466 for any change of ownership or control. If a proposed change of ownership is for less than 50% of the ownership interests in an SBA Supervised Lender, SBA may, in its sole discretion, limit the requirements of the Lender Assessment Plan or the complete application as set forth in official SBA policy and procedures.

(d) Voluntary surrender of SBA lending authority. An SBA Supervised Lender may voluntarily surrender its SBA lending authority (including its SBLC license, as applicable) and withdraw as a participating Lender with SBA's prior written approval. The SBA Supervised Lender must agree to transfer its entire 7(a) loan portfolio to one or more Lenders acceptable to SBA in accordance with §120.432(a), and enter into a withdrawal agreement to resolve any outstanding issues, including any outstanding monetary liabilities, to SBA's satisfaction.

§120.470 [Amended]

8. Amend §120.470 by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

9. Amend §120.471 by:

a. Revising paragraph (a);

b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6) respectively; and

c. Adding new paragraph (b)(3).

The revision and addition to read as follows:

§120.471 What are the minimum capital requirements for SBLCs?

(a) Minimum capital requirements. (1) Beginning on or after [DATE THREE YEARS FROM THE EFFECTIVE DATE OF THE FINAL RULE], each SBLC

that makes or acquires a 7(a) loan must maintain, at a minimum, unencumbered paid-in capital and paid-in surplus of at least \$5,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever is greater.

(2) Any SBLC approved on or after [EFFECTIVE DATE OF THE FINAL RULE], including in the event of a change of ownership or control, must maintain the minimum capital requirement set forth in paragraph (a)(1) of this section.

(3) Unless subject to paragraph (a)(1) or (2) of this section, an SBLC must comply with the minimum capital requirements that were in effect on [DATE ONE DAY PRIOR TO THE EFFECTIVE DATE OF THE FINAL RULE].

(b) * * *

(3) Unrestricted net assets (for non-profit corporations);

* * * * *

§120.475 [Removed and Reserved]

10. Remove and reserve §120.475.

Dated: December 31, 2019.

Christopher Pilkerton,
Acting Administrator.

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