



SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AI14

Small Business Investment Company (SBIC) Regulatory Amendments

AGENCY: U. S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (“SBA” or “Agency”) is proposing to modify or remove from the Code of Federal Regulations (“CFR”) regulations that are obsolete, inefficient, or otherwise unnecessarily impede the licensing of small business investment companies (“SBICs”). Many of the regulations SBA is proposing to remove apply to the repealed Section 301(d) of the Small Business Investment Act of 1958, as amended, and certain other types of SBICs that SBA no longer licenses, such as Participating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 applicable to subsequent fund applicants in order to streamline the licensing process for such applicants. SBA also seeks to remove certain barriers to investments in critical mineral extraction and processing and designated critical technologies. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found <https://www.regulations.gov>.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by RIN: 3245-AI14, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments for Docket Number SBA-2025-0003.

- Mail or Hand Delivery/Courier: Frank Salomone, Associate Administrator for the 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 Paul vanEyl, Director of Financial Policy, Office of Investment and Innovation, Small Business Administration, 409 Third Street, SW, Washington, DC 20416, or send an email to oii.policy@sba.gov with “RIN 3245- AI14 Proposed Rule” in the subject heading. 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:

Policy: Frank Salomone, Associate Administrator of the Office of Investment and Innovation, U.S. Small Business Administration, oii.policy@sba.gov, 771-233-1782.

This phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

Regulatory Comments/Federal Register Docket: Paul vanEyl, Director of Financial Policy, Office of Investment and Innovation, U.S. Small Business Administration, oii.policy@sba.gov, 202-257-5955. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

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"), 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 an amount not exceeding \$175 million for individual SBICs and \$350 million for SBICs under Common Control (as defined in 13 CFR 107.50).

From the inception of the SBIC program to December 31, 2024, SBICs have invested approximately \$139.2 billion in approximately 198,199 financings to small businesses. In fiscal year 2024, SBICs invested \$7.26 billion in 1,014 small businesses. As of September 30, 2024, there were a total of 318 licensed and operating SBICs with total Regulatory Capital of approximately \$25.7 billion. In addition, as of September 30, 2024, SBA had guaranteed outstanding Debentures or had outstanding commitments to guarantee Debentures to SBICs in the approximate aggregate amount of \$21.1 billion.

B. Part 107, Small Business Investment Companies

SBA is proposing to remove from the CFR seventeen regulations and two definitions 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 the “Subsidized Leverage,” which was formerly issued by Specialized Small Business Investment Companies (“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 Pub. L. 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 (i.e., “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 known as “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 five 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 three regulations and one definition 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 in over 20 years. As a result, since October 1, 2004, SBA has not issued new commitments for Participating Securities. There are no Participating Securities SBICs operating in the program, and accordingly the changes proposed in this rule will not impact any Participating Securities SBICs.

SBA is proposing to remove one regulation relating to a category of SBICs created in 2012 by regulation that 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 regulations related to the licensing of Early Stage SBICs, since SBA is no longer licensing these funds. The removal of these regulations will not impact Early Stage SBICs remaining in the program.

SBA is proposing to remove or revise thirty regulations and four definitions that are duplicative, redundant, or otherwise inefficient or unnecessary. In connection with this rulemaking, SBA proposes certain non-substantive amendments to thirteen regulations and two definitions to remove internal references to the removed regulations, streamline certain regulations addressing the same concept to improve efficiencies, or make certain other clarifying changes.

SBA is further proposing to remove three eligibility requirements for subsequent fund applicants operating an active SBIC license and further clarify through revision two eligibility requirements pertaining to SBIC applicants under Common Control with one or more SBICs that wish to be considered under an “Expedited Subsequent Fund Evaluation Process.”

C. Comments Received in Response to Request for Information

On August 15, 2017, 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. (82 FR 38617). On October 13, 2017, SBA extended the comment period. (82 FR 47645). 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.

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 other regulations that SBA believes will have broad support among program participants.

On September 30, 2020, SBA issued a proposed rulemaking to remove from the CFR those regulations which reflect statutory provisions that have been repealed, do not have any current or future applicability, or are otherwise inefficient or unnecessary. SBA received no comments from the public by the due date of November 30, 2020. The proposed rulemaking complied with Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, both of which were revoked on January 20, 2021, through Executive Order 13992, Revocation of Certain Executive Orders Concerning Federal Regulation. SBA did not issue a final rulemaking to formally remove the proposed regulations from the CFR. SBA has identified many of those regulations proposed for elimination under this rulemaking.

D. Executive Order 14219

On February 19, 2025, President Trump signed Executive Order 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, which, among other objectives, is intended to rescind unlawful regulations, ensure regulations that impose significant costs upon private parties are outweighed by public benefits, and eliminate regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship. SBA believes the removal of the regulations identified herein along with clarifying provisions would comply with Executive Order 14219. Further, such revisions would make part 107 less confusing and less burdensome for the reader. SBA quantifies the amount of cost savings that may result from this rulemaking in the Executive Order 14219 discussion in Section III below.

E. Executive Order 14241 and Executive Order 14272

President Trump signed Executive Order 14241 and Executive Order 14272 on March 20, 2025, and April 15, 2025, respectively. These Executive Orders express the

vital importance of critical minerals, rare earth elements, and their derivative products to the U.S. economy and national security and state that it is imperative “that the United States take immediate action to facilitate domestic mineral production to the maximum possible extent.” This rulemaking is intended to facilitate the domestic exploration, extraction, and processing of critical minerals and rare earth elements by creating an exception to the project finance restrictions within Part 107 for companies involved in certain critical mineral projects.

II. Section by Section Analysis

A. Section 107.50 – Definition of terms.

SBA is proposing to revise the definition of “Associate” in 13 CFR 107.50 to remove paragraph (11) of that definition. This paragraph states that if any SBIC has an ownership interest in another SBIC, then those two SBICs will be deemed Associates of each other. SBA notes that with the exception of a Reinvestor SBIC (as defined in 13 CFR 107.720(a)(2)) investing in a Non-Leveraged SBIC (as defined in 13 CFR 107.50), SBICs are generally prohibited from investing in another SBIC. Further, SBA notes that an “Associate” relationship between a Reinvestor SBIC and a Non-Leveraged SBIC may be appropriately determined by paragraphs (1) through (10) of the Associate definition. Accordingly, SBA proposes to remove paragraph (11) from this definition.

SBA is proposing to amend 13 CFR 107.50 to include the defined term “Critical Minerals,” to include the critical minerals, rare earth elements, and related substances identified as industrial priorities in Executive Order 14241 and Executive Order 14272, which are discussed above.

SBA is proposing to add the definition of “Critical Technology” to identify a type of investment that will be permitted under an additional exception to the project finance restriction if such investment is made by an SBICCT.

SBA is proposing to revise the definition of “Debt Rate” to reflect that the interest rate for Debentures issued by SBICs will be published on the SBIC Website (as defined in 13 CFR 107.50). SBA notes that this change is consistent with SBA’s historical practice and will provide greater transparency to the program.

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 further 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. In addition, SBA is 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.

SBA is proposing to delete the definition of “Preferred Securities,” as “Preferred Securities” were issued solely by 301(d) Licensees issued prior to 1996. The 301(d) program was discontinued by Pub. L. 104–208, effective September 30, 1996. Although a small number of 301(d) licenses remain in effect, there are no outstanding “Preferred Securities,” and there is no authorization by statute for the issuance of additional “Preferred Securities.”

SBA is proposing to amend 13 CFR 107.50 to include the defined term “Prior Fund” applicable to those fund applicants applying for the “Expedited Subsequent Fund” evaluation process.

SBA proposes to include the term “SBICCT” to identify those SBICs licensed and designated as Critical Technology Small Business Investment Companies, pursuant to the March 2, 2023, Memorandum of Agreement between the Department of Defense Office of Strategic Capital and SBA’s Office of Investment and Innovation or any subsequent or successor memorandum, agreement, or regulation.

SBA is proposing to amend 13 CFR 107.50 to remove the definition of “Venture Capital Financing.” This definition is utilized primarily in reference to 13 CFR 107.1160. However, SBA is proposing to remove 13 CFR 107.1160 and accompanying references to 13 CFR 107.1160. Accordingly, this definition is no longer necessary.

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 issues SSBIC licenses, 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, the structure under this regulation provides 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 proposing to remove certain requirements applicable to an SBIC’s general partner pursuant to this regulation. Specifically, SBA is proposing to amend paragraph (b)(2) of 13 CFR 107.160 to remove the reference to 13 CFR 107.585 applying to an entity general partner of an SBIC and amend paragraph (d) of 13 CFR 107.160 solely to remove references to 13 CFR 107.460 and 107.680. SBA notes that SBA is proposing to remove 13 CFR 107.460 as part of this rulemaking and 107.680 does not include the term Licensee.

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 that 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 107.300 – License application form and fee.

This regulation currently sets forth the licensing process for an SBIC including the initial review of a SBIC applicant, final licensing phase, initial and final licensing fees, resubmission penalty fees and inflation adjustments. SBA proposes to modify paragraph (a) of 13 CFR 107.300 to clarify applicants meeting criteria described in 13 CFR 107.305(e) are entitled to an “Expedited Subsequent Fund Evaluation Process” and further that SBIC applicants that are currently managing an active SBIC (“Subsequent Fund applicants”) may be permitted to file a complete “Short-Form” Subsequent Fund MAQ application. While such Subsequent Fund applicants may be permitted to file a Short-Form MAQ to streamline their licensing application, in order to adequately evaluate a Subsequent Fund applicant’s management team and licensing application as required by the Act, SBA reserves the right to request that a Subsequent Fund applicant submit the full, standard MAQ form and/or provide other information if SBA is unable to adequately evaluate an SBIC applicant’s application in accordance with the provisions of the Act and its implementing regulations.

F. Section 107.305 – Evaluation of license applicants.

This regulation currently sets forth the evaluation factors for license applicants. SBA proposes to modify paragraph (e) of 13 CFR 107.305 to modify and streamline the criteria for license applicants to be eligible for an “Expedited Subsequent Fund Evaluation Process,” while ensuring that SBA has appropriate benchmarks in place to properly evaluate such SBIC applicants.

G. 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.

H. 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 applicable to SBICs. Specifically, sections 107.160, 107.400, and 107.410 require SBA prior approval for any individual or entity to exercise Control (as defined in 13 CFR 107.50), operate as a principal, officer, director or manager of, or otherwise 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.

I. Section 107.507 – Violations based on false filings and nonperformance of agreements with SBA.

SBA is proposing to amend this regulation to remove the reference to the term "Preferred Security" in 107.507(a). 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 is not proposing any substantive changes to 13 CFR 107.507.

J. Section 107.720 – Small Businesses that may be ineligible for financing.

SBA is proposing to amend paragraph (d) of section 107.720 in order to clarify that this paragraph does not prohibit investments in small businesses engaged in long-term projects that either involve the extraction, conversion, or processing of Critical Minerals identified as strategically important under Executive Order 14241 (“Immediate Measures to Increase American Mineral Production,” March 20, 2025) and Executive Order 14272 (“Ensuring National Security and Economic Resilience Through Section 232 Actions on Processed Critical Minerals and Derivative Products,” April 15, 2025) or by SBICCTs in defined Critical Technologies.

K. Sections 107.830 – Minimum duration/term of financing, 107.835 – Exceptions to minimum duration/term of Financing, and 107.840 – Maximum term of Financing.

13 CFR 107.830 (Minimum duration/term of financing), 13 CFR 107.835 (Exceptions to minimum duration/term of Financing), and 13 CFR 107.840 (Maximum term of Financing) address the term of financing permissible in the SBIC program – the minimum term and maximum term, respectively, and exceptions thereto. SBA believes that having three regulations that address the same concept is inefficient. Accordingly, SBA is proposing to streamline these regulations by moving the substance of sections 107.835 and 107.840 into section 107.830 and proposes to remove sections 107.835 and 107.840. SBA proposes a minor clarification to the exceptions set forth in 107.835(d) but does not intend any substantive changes to the minimum or maximum term of financing or exceptions thereto permitted under the regulations.

L. Section 107.1130 Leverage Fees and Annual Charges.

This regulation identifies the fees and other charges associated with SBA-guaranteed Leverage. Paragraph (d) of 13 CFR 107.1130 identifies the Annual Charge (as defined in 13 CFR 107.50) applicable to SBICs with outstanding Debentures, and further includes a minimum Annual Charge, currently set at twenty (20) basis points for fiscal

year 2025 and increasing to a minimum of forty (40) basis points in fiscal year 2029. SBA is proposing to revise paragraph (d) of 13 CFR 107.1130 to provide SBA with flexibility to make a determination as to the Annual Charge necessary to reduce to zero the cost to SBA of purchasing and guaranteeing Debentures pursuant to the Act. SBA does not expect this change to have any substantive impact on SBICs, as the average annual charge over the last twenty years is fifty-seven (57) basis points and the Annual Charge minimum floor (applicable to fiscal year 2029) shall not exceed forty (40) basis points.

M. 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 107.1800 through 107.1820, as applicable.

N. 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.

O. 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.

P. 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.

Q. Section 107.1560 – Distributions by Licensee—required Distributions to private investors and SBA.

SBA is proposing to amend this regulation to remove references to the term “Preferred Securities.” 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 is not proposing any substantive changes to 13 CFR 107.1560.

R. Section 107.1585 – Exchange of Debentures for Participating Securities.

This regulation 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.

S. 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.

T. Section 107.1700 Transfer by SBA of its interest in Licensee's Leverage security.

SBA is proposing to amend this regulation to remove reference to the term “Preferred Security” in the first sentence. 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 is not proposing any substantive changes to 13 CFR 107.1700.

U. 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.

V. Section 107.1820 – Conditions affecting issuers of Preferred Securities and/or Participating Securities.

SBA is proposing to revise the caption of 13 CFR 107.1820 to remove the reference to Preferred Securities. SBA is further proposing to amend 13 CFR 107.1820(a) to remove all references to Preferred Securities. In addition, 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.

III. Compliance with Executive Orders 12866, 14219, 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 constitutes a “significant regulatory action” under Executive Order 12866. An analysis of the estimated cost savings of deregulation proposed in this rule is contained in the section below on Executive Order 14219. SBA considered alternatives to each regulation when complying with Executive Order 14219 to eliminate regulations that impede private enterprise and entrepreneurship. SBA has proposed only those regulations that are obsolete, inefficient, or otherwise unnecessarily impede the licensing of SBICs. The regulations identified along with clarifying provisions will make part 107 less confusing and less burdensome for the reader. When finalized, this proposed rule is expected to result in an annualized net savings total of approximately \$42,000 at a seven percent discount rate.

B. Executive Orders 14241 and 14272

SBA is also proposing regulatory changes to clarify and provide certainty for SBICs who may wish to make certain investments in Critical Minerals related to Executive Order 14241 and Executive Order 14272, discussed above. SBICs have historically participated in such financings, but many SBIC managers view SBA's regulations on project finance restrictions to include the exploration, extraction, and processing of critical minerals and rare earth elements as ineligible financings. SBA considered alternatives to complying with Executive Order 14241 and Executive Order 14272 by proposing regulations expressly permitting SBIC investments in critical minerals, rare earth elements, and their derivative products as vitally important to the U.S. economy and national security. However, doing so would've increased the number of new regulations, which would be inefficient and in opposition to Executive Order 14219, as SBICs are not expressly prohibited from such investing. SBA's approach in this proposed rule is to seek minor clarifications to existing regulations to remove perceived barriers and provide SBICs with more clarity and certainty in a regulated environment.

Over the past ten years SBICs have invested an estimated total of \$305.6 million in small businesses focused on Mining, Quarrying, and Oil and Gas Extraction, representing an overall 0.5 percent of the program. Removing investments related to oil and gas and the mining and quarrying of materials that are not Critical Minerals, SBA estimates the overall SBIC portfolio concentration in Critical Minerals to be less than 0.1 percent of the entire program. SBA does not anticipate an outsized increase to the current percentage of the overall program, and therefore the proposed changes would not pose significant risk to portfolio concentration. Current SBIC Licensees have management teams possessing particular industry knowledge and experience related to their proposed

business plans. SBA will mitigate any future risk posed by SBIC applicants wishing to focus on Critical Minerals during the licensing process.

C. Executive Order 14219

This proposed rule is expected to be an Executive Order 14219 deregulatory action with an annualized net savings total of approximately \$42,000 at a seven percent discount rate, discounted relative to 2024, over a perpetual time horizon. This rule would remove information that is redundant or concerns obsolete programs, which would reduce confusion around whether these programs still exist and simplify the reading of the regulations to improve efficiency.

There are currently 318 operating SBIC licensees, of which approximately 40 are newly licensed to the program over the last year. Newly licensed SBICs are expected to read the program regulations in their entirety during the first year of operation. Established SBICs and SBIC counsel familiar with the regulations are expected to revisit sections of regulations pertaining to specific occurrences during the life of the SBIC, and accordingly such instances are included in-part in these calculations to account for those certain situations. These calculations assume that 25 percent of all SBIC licensees (80) and other SBIC stakeholders, including counsel to SBICs, (20) will read the regulations in their entirety and that they will save an estimated 4 hours each from reading less burdensome and confusing regulations, because the regulations will no longer contain obsolete information. This time is valued at \$112.02 per hour- the mean hourly wage for Financial and Investment Analysts, and at \$175.20 per hour- the mean hourly wage for Lawyers based on 2024 Bureau of Labor Statistics (“BLS”) data, including 100 percent more for benefits and overhead adjustment. This produces an estimated total savings per year of approximately \$50,000.

In the first year this rule is published, it is expected that 25 percent of all SBIC licensees (80) and other SBIC stakeholders, including counsel, (20) will read this *Federal*

Register notice, which is estimated to take 2 hours to read. Assuming a weighted average of \$124.66 per hour, the estimated one-time cost in the first year will be approximately \$25,000. This estimated cost is not expected to continue into subsequent years.

The table below 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 in perpetuity, providing a total annualized net savings of approximately \$42,000 at a seven percent discount rate or approximately \$500 per SBIC.

Schedule of Costs/(Savings), Current Dollars

	Savings	Costs	Net Total \$
Year 1	(256 hours)	200 hours	
	(\$50,000)	\$25,000	(\$25,000)
Years 2+	(256 hours)	0 hours	
	(\$50,000)	\$0.00	(\$50,000)
Net Total Savings			(\$75,000)

D. 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.

E. 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.

F. 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.

G. 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 318 operating SBIC licensees, which represents the universe of small entities impacted by this proposed rule to 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, and the cost savings to time spent on regulations will provide more time investing in small businesses. The total annualized net savings to these SBIC licensees is estimated at \$74,793.60 in current dollars, as quantified in the Executive Order 14219 discussion above.

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 deleting paragraph (11) of the Associate definition, deleting the definition of “Preferred Securities” and “Venture Capital Financing,” revising the definitions of “Debenture Rate” and “Early Stage SBIC,” and adding the defined terms “Critical Minerals,” “Critical Technology,” “Prior Fund” and “SBICCT” to read as follows:

§ 107.50 Definition of terms.

* * * * *

Critical Minerals has the meaning set forth in 13 CFR 107.720(d).

* * * * *

Critical Technology has the meaning set forth at 10 U.S.C 4801(6) and includes technologies, components, and processes duly designed by the U.S. Department of Defense consistent with that provision for investment by SBICCTs.

* * * * *

Debenture Rate means the interest rate, as published from time to time on the SBIC Website, for ten-year debentures issued by Licensees and funded through public sales of certificates bearing SBA’s guarantee. User or guarantee fees, if any, paid by a Licensee are not considered in determining the Debenture Rate.

* * * * *

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.

* * * * *

Prior Fund has the meaning set forth in 13 CFR 107.305(e).

* * * * *

SBICCT means a Critical Technology Small Business Investment Company, licensed and so designated pursuant to the March 2, 2023, Memorandum of Agreement between the Department of Defense Office of Strategic Capital and SBA's Office of Investment and Innovation or any subsequent or successor memorandum, agreement, or regulation.

* * * * *

§ 107.120 [Removed and Reserved]

3. Remove and reserve § 107.120.

4. Amend § 107.160 by revising the second sentence of paragraphs (b) and (d) to read as follows:

§107.160 Special rules for Licensees formed as limited partnerships.

* * * * *

(b) * * *

(2) An Entity General Partner is subject to the same examination and reporting requirements as a Licensee under section 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by §§ 107.1800 through 107.1820, and 107.30, 107.410 through 107.450, 107.470, 107.475, 107.500, 107.510, 107.600, 107.680, 107.690 through 107.692, 107.865, and 107.1910 apply also to an Entity General Partner of a Licensee.

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

* * * * *

§§ 107.250 [Removed and Reserved]

5. Remove and reserve § 107.250.

6. Amend § 107.300 by revising the third sentence in paragraph (a) to read as follows:

§107.300 License application form and fee.

* * * * *

(a) **Initial review.** SBIC applicants must submit a Management Assessment Questionnaire (“MAQ”) and the Initial Licensing Fee, as defined in paragraph (c) of this section. Any applicants whose management team currently manages an active Licensee may submit a Subsequent Fund MAQ, provided that: (i) SBA retains discretion to require that such applicant submit the standard MAQ or request additional information if SBA is unable to properly evaluate an applicant under the factors required by the Act and described in 13 CFR § 107.305; and (ii) only those applicants meeting all of the criteria described in § 107.305(e) are entitled to an “Expedited Subsequent Fund Evaluation Process.”

* * * * *

7. Amend § 107.305 by revising paragraph (e) to read as follows:

§ 107.305 Evaluation of license applicants.

* * * * *

(e) ***Subsequent fund applicants.*** Applicants operating an active Licensee that meet the following eligibility criteria may apply under an “Expedited Subsequent Fund” evaluation process. Should an applicant fulfill and formally attest to meeting all of the following eligibility criteria, the applicant may apply for an “Expedited Subsequent Fund” evaluation process:

(1) ***Consistent Strategy and Fund Size.*** The applicant’s targeted Regulatory Capital is less than or equal to 133 percent of the Regulatory Capital (accounting for inflation adjustments) of the most recently licensed Licensee managed by the applicant’s management team (the “Prior Fund”). The applicant’s investment strategy and asset class will be substantially the same as the Prior Fund.

(2) ***Clean Regulatory History.*** There are no major findings, significant “other matters,” or unresolved “other matters” related to Licensees managed by the principals of the applicant in the prior three (3) years or three (3) SBIC examinations (whichever period is longer).

(3) ***Consistent Limited Partner-General Partner Dynamics.*** No limited partner will represent more than fifty percent (50%) of the Regulatory Capital of the SBIC applicant or otherwise exercise Control with respect to the applicant unless such limited partner was a Control Person of the Prior Fund.

(4) ***Investment Performance Stability.*** The Prior Fund’s net distributions to paid-in capital (DPI) and net total value to paid-in capital (TVPI) are at or above median vintage year and strategy performance benchmarks for the prior three quarters. The principals of the applicant are not managing a Licensee in default or with a Capital Impairment Percentage (CIP) equal to or exceeding 75 percent of the maximum permitted for that Licensee under 13 CFR 107.1830(c).

(5) ***Firm Stability.*** Subject to SBA’s confirmation, no material changes to the broader firm, including any resignations, terminations, or retirements by members of the general partner, investment committee, broader investment team, or key finance and operations personnel. SBA retains the discretion to allow changes that were part of a routine and customary firm succession plan previously communicated in writing to SBA.

(6) ***Federal Bureau of Investigation (FBI) Criminal and Internal Revenue Service (IRS) Background Check.*** Neither the applicant’s sponsoring entity nor any of the principals of the applicant have an FBI criminal record that was not previously reviewed and cleared by SBA during the Prior Fund’s licensing application, and none of the applicant’s principals nor sponsoring entity have

violated IRS or state tax regulations from the date of the Prior Fund's license issuance.

(7) ***No Outstanding or Unresolved Material Litigation Matters.*** No outstanding or unresolved litigation matters involving allegations of dishonesty, fraud, or breach of fiduciary duty or otherwise requiring a report under § 107.660(c) or (d) in connection with the Prior Fund, other Licensees managed by the applicant's principals, or any other person who was required by SBA to complete a personal history statement in connection with the license application.

(8) ***No Outstanding Tax Liens.*** There are no outstanding federal, state, or local tax liens on the applicant's principals, the Prior Fund, and/or the sponsoring entity of applicant.

§§ 107.310 and 107.460 [Removed and Reserved]

8. Remove and reserve §§ 107.310, and 107.460.

9. Amend § 107.507 by revising paragraph (a) to read as follows:

§ 107.507 Violations based on false filings and nonperformance of agreements with SBA.

* * * * *

(a) ***Nonperformance.*** Nonperformance of any of the requirements of any Debenture or Participating Security or of any written agreement with SBA.

* * * * *

10. Amend § 107.720 by revising paragraph (d) to read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

* * * * *

(d) ***Project Financing***—

(1) ***General Rule.*** You are not permitted to finance a business if:

- (i) The assets of the business are to be reduced or consumed, generally without replacement, as the life of the business progresses, and the nature of the business requires that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or
- (ii) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Small Business. Examples include motion pictures and electric generating plants.

(2) **Exception.** This paragraph (d) does not prohibit a Financing of a business conducting or engaged in one or more projects reasonably anticipated to have a duration exceeding 48 months and involving (i) the production, mining, extraction, or beneficiation of Critical Minerals, (ii) the conversion of Critical Mineral ores into oxides, oxide concentrates, metals, metal powders, or alloys, (iii) any other processing of Critical Minerals necessary for incorporation into semi-finished goods or final products, or (iv) in the case of a Financing by an SBICCT, a designated Critical Technology. For the purposes of this section, the term “Critical Minerals” means those minerals included in the “Critical Minerals List” published by the United States Geological Survey (USGS) pursuant to section 7002(c) of the Energy Act of 2020, 30 U.S.C. § 1606, at 87 FR 10381, or any subsequent such list, as well as uranium, copper, potash, gold, the 17 elements identified as rare earth elements by the Department of Energy (DOE) in the April 2020 publication titled “Critical Materials Rare Earths Supply Chain,” and any additional elements that either the USGS or DOE determines in any subsequent official report or publication should be considered rare earth elements.

* * * * *

11. Amend § 107.830 by revising the section heading, revising paragraph (a), inserting new paragraph (b), redesignating paragraph (b) as paragraph (c), and redesignating paragraph (c) as paragraph (d) 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.

(b) **Exceptions.** You may make a Short-term Financing for a term less than one year if the Financing is:

(1) An interim Financing in contemplation of long-term Financing. The contemplated long-term Financing must be in an amount at least equal to the short-term Financing, and must be made by you alone or in participation with other investors; or

(2) For protection of your prior investment(s); or

(3) For the purpose of Financing a change of ownership under § 107.750.

The total amount of such Financings may not exceed 20 percent of your Loans and Investments (at cost) at the end of any fiscal year; or

(4) For the purposes of aiding a Disadvantaged Business certified to perform a contract awarded under a Federal, State, or local government set-aside program.

(c) * * *

(d) * * *

§ 107.835 [Removed and Reserved]

12. Remove and reserve § 107.835

* * * * *

§ 107.840 [Removed and Reserved]

13. Remove and reserve § 107.840.

* * * * *

§ 107.1130 Leverage fees and Annual Charges

14. Amend § 107.1130 by revising the second sentence of paragraph (d)(1) to read as follows:

* * * * *

(d) * * *

(1) * * * Unless otherwise determined by SBA and published in the *Federal Register*, for Leverage issued pursuant to Leverage commitments approved on or after October 1, 2023, the Annual Charge, established and published, shall not be less than 0.10 percent per annum, subject to the following provisions:

* * * * *

§ 107.1140 [Removed and Reserved]

15. Remove and reserve § 107.1140.

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

16. Remove and reserve § 107.1160, 107.1170, and 107.1400 through 107.1450.

§ 107.1560 – Distributions by Licensee—required Distributions to private investors and SBA.

17. Amend § 107.1560 by:

- a. Revising paragraph (d)(2);
- b. Deleting paragraph (g)(2);
- c. Revising paragraph (g)(3);
- d. Deleting paragraph (g)(4); and
- e. Revising paragraph (g)(5).

The revision to read as follows:

§ 107.1560 Distributions by Licensee—required Distributions to private investors and SBA.

* * * * *

(d) * * *

(2) Distributions to SBA, or its designated agent or Trustee, reduce Retained Earnings Available for Distribution if they are applied as payments of Profit Participation (see paragraph (g) of this section). * * *

* * * * *

(g) * * *

(2) Second, as a redemption of Participating Securities in order of issue;

(4) Third, as the repayment of principal of any outstanding Debentures, with such repayment to be made into escrow on terms and conditions SBA determines.

* * * * *

§§ 107.1585 and 107.1590 [Removed and Reserved]

18. Remove and reserve § 107.1585 and 107.1590.

§ 107.1700 [Amended]

19. Amend § 107.1700 by revising the first sentence of the introductory paragraph to read as follows:

§ 107.1700 Transfer by SBA of its interest in Licensee's Leverage security.

Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Debenture, Participating Security, or other security held by or on behalf of SBA in connection with Leverage. * * *

* * * * *

§ 107.1800 [Amended]

20. Amend § 107.1800 by revising the second sentence of the introductory paragraph to read as follows:

§ 107.1800 – Licensee's agreement to terms and conditions in §§ 107.1810 and 107.1820.

* * * * *

The terms, conditions and remedies in § 107.1810 apply to outstanding Debentures issued after April 25, 1994. The terms, conditions and remedies in § 107.1820 apply to outstanding Participating Securities issued after April 25, 1994, or if you have Earmarked Assets in your portfolio.

§ 107.1810 [Amended]

21. Amend § 107.1810 by removing paragraph (f)(9) and redesignating paragraphs (f)(10) through (f)(12) as (f)(9) through (f)(11).

22. Amend § 107.1820 by revising paragraph (a) and (e)(9) to read as follows:

§ 107.1820 – Conditions affecting issuers of Participating Securities.

(a) *Applicability of this section.* This section applies if you have Participating Securities or have Earmarked Assets in your portfolio. Your Articles must include the provisions of this § 107.1820 as a condition to SBA's guarantee of Participating Securities and for as long as you own Earmarked Assets.

* * * * *

(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.

Kelly Loeffler,
Administrator.

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