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## CHAPTER 1

### SBIC Program Overview and Delegations of Authority

#### 1. What is the Scope of this SOP?

a. Overview

This SOP provides comprehensive guidelines for the Small Business Investment Company (SBIC) Program. It contains the policies and procedures to be used by the financial analysts and supervisors responsible for overseeing SBICs within the Office of SBIC Operations. The pronoun “you” is used to indicate the financial analyst unless otherwise specified. Unless otherwise specified, the term “SBIC” or “licensee” includes Licensees under sections 301(c) and 301(d) of the Small Business Investment Act of 1958, as amended (“the SBI Act,” or “the Act”). This SOP also contains guidance for the managers and professional support staff of SBICs (such as accountants and legal counsel) regarding the operations of SBIC Licensees.

b. Post Licensing Activities

After an SBIC is licensed by SBA, the Agency is responsible for monitoring the licensee’s operations, including oversight and credit analysis. As part of this monitoring process, SBA receives and reviews periodic financial and financing reports from each SBIC. SBICs also typically seek Leverage from SBA, and make requests for regulatory approvals and clarifications.

c. Analysis and Evaluation

The Code of Federal Regulations (13 CFR Part 107) explains the activities that SBICs can undertake that require prior or post-approval from SBA. This SOP provides instructions and guidance for the review of requests for approval of such actions and for the review and analysis of the required financial statements, Leverage applications, and examination reports. Where there is a conflict between 13 CFR Part 107 and the SOP, 13 CFR Part 107 controls.

#### 2. What is the Investment Division’s Organizational Structure?

a. Statutory Authority

Section 201 of the Act established SBA’s Investment Division headed by an Associate Administrator for Investment (AA/I).

b. Organization of the Investment Division

The Investment Division (ID) is a centralized function operating in SBA Headquarters and with Office of SBIC Examinations field offices throughout the country. The Investment Division is headed by the AA/I who is responsible for administering the SBIC Program. The division currently has six functional offices: the Office of SBIC Operations, the Office of the Chief Administrative Officer, the Office of New Markets Venture Capital, the Office of Licensing and Program Standards, the Office of SBIC Examinations, and the Office of SBIC Liquidation. (See Appendix 1-1, Organizational Chart of Investment Division).

(1) Office of SBIC Operations (OSO). The Office of SBIC Operations, headed by a Director, Leverages and regulates SBICs.

(a) Areas

Financial analysts in OSO are divided into groups (“Areas”), each headed by an Area Chief. The Areas are each assigned a portfolio of SBICs, which may include participating securities, debenture, non-Leveraged or specialized SBICs. Every analyst within an Area is responsible for an assigned portfolio of SBICs. (See Appendix 1-1, Organizational Chart of Investment Division.)

(b) Credit Committee

The Credit Committee, chaired by the Director, OSO, is composed of each Area Chief within OSO, or their designees. The Credit Committee makes Leverage recommendations and reviews other significant credit and regulatory matters.

(2) Office of the Chief Administrative Officer (CAO)

The CAO develops and maintains systems and databases which provide program support for the collection of electronically filed financial and other reports submitted by the SBICs including SBA Form 468, “Financial Statements,” and SBA Form 1031, “Portfolio Financing Report.” The Office of the Chief Administrative Officer compiles these reports and prepares narrative and statistical information on the operations of the SBIC program. The CAO also directs and coordinates the periodic pooling and funding of both SBIC debentures and participating securities. The CAO also directs program development, which is the first point of contact for all prospective Licensees. Finally OCAO is the primary office within the ID for the formulation of the ID budget and all matters related

to operation within budget constraints and provides oversight of the SBIC file room.

- (3) Office of SBIC Examinations  
The Office of SBIC Examinations, headed by a Director, is responsible for the examination of all SBICs and SSBICs. The examination staff is located throughout various SBA designated regions. Regional Examination Managers oversee the day to day activities of the examiners within each region.
- (4) Office of SBIC Liquidation  
The Office of SBIC Liquidation, headed by a Director, is responsible for the orderly liquidation of SBICs designated as being in a “Liquidation” status. This Office also oversees the Receivership Office, which is comprised of receivership agents. Receivership agents are private contractors who are retained, compensated and terminated in accordance with a contract executed between the receivership agent and SBA as receiver. The contract is executed under authority granted by the appointing court.
- (5) Office of New Markets Venture Capital (ONMVC)  
The ONMVC is responsible for the New Markets Venture Capital Program, which is designed to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas. The ONMVC also currently oversees the Rural Business Investment Program.
- (6) Office of Licensing and Program Standards  
The Office of Licensing and Program Standards is responsible for evaluating applicants for an SBIC license in accordance with the Small Business Investment Act. In addition to licensing, the Office is responsible for the development of standards regarding SBIC program accounting and financial issues and participates in the development of program regulations in response to legislative changes and program management needs.

**3. What is the Delegation of Authority in the Investment Division?**

The Administrator has delegated to the AA/I the authority to make final decisions on major actions including granting Leverage, transfer of control and surrender of SBIC licenses. Final authority to license SBICs lies with the Administrator of the SBA and is based upon recommendations originating within the ID. The authority to take action on other matters may be delegated to the appropriate director, Area Chief or analyst, based upon the complexity and probable financial impact of each matter. A copy of the current delegation of authority, which is periodically updated, is contained in Appendix 1-2, Delegation of Authority.

**4. Referrals to the Office of General Counsel (OGC)**

Many SBIC actions involve complex legal issues. The General Counsel has primary responsibility at SBA for the proper interpretation of applicable laws and regulations, and the drafting and review of legal contracts and documents related to the oversight of SBICs. You should seek assistance from OGC on the interpretation of SBIC regulations when necessary. You should consult with your Area Chief to determine when it is appropriate to refer a question to, or request a legal review of a legal document or a contract, from OGC.

## CHAPTER 2

### SBIC Case Files

#### 1. What are the Different Types of Case Files?

SBIC case files include letters, reports, memos, exhibits and other documents related to the licensing and operations of participants in the SBIC Program. There are four types of case files: a. License Files; b. Loan Files; c. Operations Files; and d. Legal Files.

#### 2. How are SBIC Case Files Maintained?

SBIC case files are coded in accordance with the SBIC coding system, and are kept in a secured file room in the Investment Division. Analysts are responsible for clearly labeling any documentation to be filed. The appropriate file name should be clearly written on the top right hand corner of the document. The file room employee will file the document into the referenced file. If a document is not marked, it is returned to the responsible analyst for the file name. Every document reflects one of the following files for appropriate filing: Licensing, Loan, Operation, and Legal. SBA personnel needing case files must check-out (and subsequently check-in) such files from the file room by utilizing the bar coded check-out system.

#### 3. What Documents are Included in the License File and Legal File?

The License File includes:

- a. All forms, documents, materials and associated correspondence related to the licensing process. (See SOP 10 04, SBIC Licensing.)
- b. All amendments to the original licensing Action including, if applicable:
  - (1) “Amendments to License Application,” including correspondence relative to requests for changes in the licensee’s business plan, directors, stockholders, address, branch offices, capitalization, etc.
  - (2) All data and correspondence related to a transfer of control, cancellation of the license, reorganization, and/or merger.

The Legal File includes legal documents related to the original licensing action and any post-licensing amendments. (See SOP 10 04, SBIC Licensing.) Operations analysts are responsible for obtaining the original, fully executed legal documents required for the Legal File in connection with post-licensing actions. All original, fully executed legal document required for the Legal File during the licensing process are the responsibility of the Licensing analysts.

**4. What Documents are Included in the Loan File?**

The Loan File contains all documents relating to applications and approvals/denials for SBA Leverage. (See Chapter 4, Processing Requests for Leverage, for a list of these documents.)

**5. Where are Other Documents Related to the SBIC Maintained?\***

The Operations File of an SBIC contains all documents related to the ongoing operations of the SBIC, but not specifically relating to licensing or Leverage actions. These documents are maintained as follows:

- a. Correspondence File  
This file contains all correspondence between SBA and SBIC (and any correspondence from outside parties related to the SBIC) maintained here in chronological order.
- b. Financial Reports File  
This file contains financial reports submitted by or on behalf of an SBIC and are maintained in chronological order.
- c. Examination Reports File  
This file contains all examination reports submitted by the Office of SBIC Examinations and are maintained in chronological order.

**CHAPTER 3**

**Operational Requirements**

**1. What Operational SBIC Actions Require SBA Prior Approval?**

- a. The following actions or documents require SBA's prior approval only when a Licensee has outstanding Leverage or earmarked assets. (This list is not exhaustive.)
- (1) Investment advisor/manager contract. (UnLeveraged Licensees must notify you of the management expenses to be incurred under such contract, or of any subsequent material changes in such management expenses within 30 days of execution.)
  - (2) Management expenses and increases in these expenses subsequent to licensing.
  - (3) The sale of assets to an Associate.
  - (4) A voluntary decrease in Regulatory Capital by more than 2 percent in any fiscal year. (An unLeveraged Licensee must report the reduction to you within 30 days). (See also **WIND-UP ARRANGEMENTS FOR LIMITED LIFE SBICs ISSUING DEBENTURES** in TechNotes 5, Appendix 3-1).
  - (5) Under certain conditions, the Licensee's managers or employees obtaining stock options from a small business.
  - (6) Expenditures related to assets acquired in the liquidation of portfolio securities.
  - (7) Overline limitation exceptions.
  - (8) Obtaining secured third-party debt (See also **THIRD PARTY DEBT** in TechNotes 5).
- b. Leveraged and unLeveraged Licensees must obtain SBA's prior approval before taking any of the following actions:

- (1) A change in ownership of 10 percent or more without a Change in Control;
- (2) A Change in Control (through change in ownership or otherwise);
- (3) A merger, consolidation, or reorganization;
- (4) The transfer of the SBIC license;
- (5) A change in circumstances creating common control or ownership of two or more Licensees;
- (6) The establishment of valuation policies different from the model valuation policy;
- (7) Certain Financings with Associates;
- (8) The release of unfunded investor commitments will not be considered unless the obligation is assumed by another party;
- (9) The addition of a new SBIC manager or general partner to a partnership licensee regardless of whether a Change of Control occurs.

**2. For Actions Requiring SBA's Prior Approval When a Licensee has Outstanding Leverage or Earmarked Assets, What Information Must the Licensee Provide?**

Please be mindful that the information lists below are not exhaustive. You may request clarifying information to supplement the material outlined below as necessary.

- a. Investment Adviser Manager (see 13 CFR Part 107.510).  
The Licensee must file a written request for SBA's approval of the management contract including the following information.
  - (1) The name of the person or firm that will be the Investment Adviser/Manager and a summary of the person's or firm's general qualifications and relevant experience.
  - (2) A copy of the proposed contract between the Licensee and the Investment Adviser/Manager, which must include the following:



- (a) A description of the specific services the Investment Adviser/Manager will provide to the Licensee and its portfolio small businesses;
  - (b) The basis for computing management expenses, and the maximum amount payable annually under the contract;
  - (c) The duration of the contract;
  - (d) A prohibition against assignment of the contract by the Investment Adviser/Manager without prior SBA approval and a provision for automatic termination in the event of such assignment; and
  - (e) A requirement for full disclosure to the Licensee of services performed for portfolio small businesses, and the compensation received for the services.
- (3) A “Statement of Personal History and Qualifications of Management,” SBA Form 2182, Exhibit C-1, and Form FD-258, “F.B.I. Applicant Fingerprint Clearance Form,” from each officer, director, partner, or manager of the Investment Adviser/Manager firm who will operate on behalf of or be responsible for the management of the Licensee.
- (4) Both SBA and the Licensee must give prior approval to any material change in an approved management contract.
- b. Management Expenses. (See 13 CFR Part 107.520).  
SBA must approve the initial management expenses, and any increase to them for a Licensee with outstanding Leverage or earmarked assets. Compensation of officers, directors, and employees must be based on adequate performance of duties, measured in part by the Licensee’s financial condition.
- (1) For all subsequent compensation increase requests, the Licensee must provide the following:
    - (a) The name of each compensated individual, his/her position in the SBIC, and the percentage of the outstanding paid-in capital of the SBIC owned by him/her of record or beneficially;

- (b) The amount of salary and other compensation to be received by each individual;
  - (c) A financial statement, SBA Form 468, not more than 60 days old (a previously filed financial statement may be incorporated by reference if it meets the 60 day test).
- (2) You must not approve management expenses that are based on gross revenues and/or amounts of unrealized appreciation of portfolio assets. Salary plans must contain a ceiling on the aggregate dollar amount of compensation to be paid to all officers, directors, and employees.
  - (3) Copies of all employment agreements must be furnished to SBA.
  - (4) Stock options issued by a Licensee to its managers or other employees, insiders, or consultants are not considered compensation and are not subject to SBA approval.
  - (5) Management expenses include:
    - (a) Salaries;
    - (b) Office expenses;
    - (c) Travel;
    - (d) Business development;
    - (e) Office and equipment rental;
    - (f) Bookkeeping; and
    - (g) Expenses related to developing, investigating, and monitoring investments.
  - (6) Management expenses do not include services provided by specialized outside consultants, outside lawyers, and independent public accountants if they perform services not generally performed by a venture capital company.
  - (7) Refer to TechNotes Number 7 and 7a in Appendix 3-2 for the current policy on allowable management expenses.
- c. Sale of Assets to Associates. (See 13 CFR Part 107.885). SBA's prior written approval is required for any sales of assets of the Licensee to an Associate. You must carefully review a request for an exemption to dispose of

assets to an Associate to determine that the Licensee is obtaining the fair value for the assets (that which could be obtained in an arms-length transaction with an unaffiliated purchaser). In certain circumstances, SBA may require a sale of assets at cost rather than fair market value. The request for prior approval of such a sale must be in writing, and must include the following:

- (1) The name and address of the small business and its principal line of business;
- (2) The name, address, and relationship to the Licensee of the Associate to which the assets are to be sold;
- (3) A complete description of the portfolio securities and assets to be disposed, including cost to the Licensee, book value, estimated fair value, proposed sales price, and other significant sales terms;
- (4) a comparison of sales return with the most favorable terms obtainable elsewhere.

d. Voluntary Decrease in Regulatory Capital. (See 13 CFR Part 107.585 and **WIND-UP ARRANGEMENTS FOR LIMITED LIFE SBICs ISSUING DEBENTURES** in TechNotes 5).

- (1) Leveraged Licensees, other than a participating securities Licensee, must not reduce their Regulatory Capital by more than 2 percent in any fiscal year without SBA approval. Participating Securities Licensees must not reduce Regulatory Capital except as permitted under 13 CFR Part 107.1560 and 107.1570. Licensees who have repurchased their 3 percent preferred stock from SBA, and have no other outstanding Leverage, are subject to the two percent limitation until the expiration of SBA's liquidating interest. All Licensees must retain sufficient Regulatory Capital to meet the minimum capital requirements of the Act and 13 CFR Part 107.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of §303 of the SBIC Act and 13 CFR Part 107.1150 through 107.1170. The Licensee's request for approval must be in writing and must include:
  - (a) The method by which the reduction in capital will be made and the amount of the reduction;

- (b) For cases involving the distribution of assets other than cash, a detailed description of the asset, its original cost, and present fair market value;
  - (c) Financial statements on SBA Form 468, Short Form, containing information no older than 60 days;
  - (d) Proforma Statement of Financial Position on SBA Form 468, Short Form, reflecting the consummation of the reduction in capital; and
  - (e) A full explanation of the reasons for the reduction, together with the expected effect on the financial position of the Licensee.
- (2) As the Analyst reviewing a request for a decrease in capital, you must consider the following as well as other relevant information:
- (a) Voluntary reduction of capital will not be permitted if the reduction will increase the ratio of SBA Leverage to Leverageable Capital above the level permitted under 13 CFR Part 107.1150 through 1170.
  - (b) If the voluntary reduction of capital would create overline investment situations, the Licensee must submit a satisfactory written plan for the reduction of the overline situation within time limits acceptable to SBA. Generally, you should not approve voluntary capital reductions if before or after the reduction the Licensee would have more than two overline situations. See appendices 4-13.
  - (c) If the voluntary reduction in capital will be the result of a reorganization involving the transfer of a substantial portion of the Licensee's portfolio to another entity, you must not approve the reduction unless the Licensee will have eligible portfolio assets and an adequate amount of cash or cash equivalents to continue to function as a Licensee. A substantial portion is generally defined as being more than 25 percent of the portfolio whether measured in terms of cost or value.

- (d) In general, you should not approve a reduction in capital involving the transfer of assets with substantial unrealized appreciation and the retention of investments with little or no appreciation.
  - (e) You must not approve a voluntary capital reduction that will reduce the Licensee's Regulatory Capital below the minimum Regulatory Capital required by SBA regulations.
- e. Options Obtained from a Small Business by the SBIC's Managers or Employees.  
(See 13 CFR Part 107.815(b)).

If a Licensee has outstanding Leverage or plans to obtain Leverage, its employees, officers, directors, or general partners, or the general partners of the management company that is providing services to the Licensee or to its general partner, may obtain options in a Financed Small Business only if:

- (1) They participate in the Financing on a pari passu basis with the Licensee;  
or
  - (2) The Director, OSO gives his/her prior written approval after review of the Licensee's supporting evidence demonstrating to SBA's satisfaction that the proposed action is fair to SBA, the Licensee and the small business and is consistent with program policy and regulations; or
  - (3) The options are received as compensation for services as a member of the board of directors of the small business, and such compensation does not exceed that paid to any other outside director. If there are no other outside directors, the compensation must be reasonable when compared with amounts paid to outside directors of similar companies.
- f. Expenditures Related to Assets Acquired in Liquidation of Portfolio Securities  
(See 13 CFR Part 107.880).

A Licensee may acquire assets in full or partial liquidation of a small business debt owed to it. In such case, the Licensee must dispose of assets acquired in liquidation of a portfolio security within a reasonable time period. The Licensee can incur reasonable expenses necessary to maintain, preserve, or improve the acquired assets, and can make payments for mortgage principal and interest,

taxes, and insurance. If the Licensee is Leveraged, SBA's prior written approval is required for:

- (1) Any expenditures by the Licensee under 13 CFR Part 107.880(b)(1) and (2), that, when added to the Licensee's total financings to the small business, would exceed the Licensee's overline limit under 13 CFR Part 107.740; and
- (2) Any expenditures by the Licensee under 13 CFR Part 107.880(b) that, when added to the Licensee's total Financings to the small concern, would exceed 35 percent of its Regulatory Capital.
- (3) When seeking SBA approval under this section, the Licensee must specify all expenses estimated to be necessary pending disposal of the assets;

g. Overline Limitation Exceptions. (See 13 CFR Part 107.740).

Without SBA's prior written approval, a Licensee's aggregate outstanding Financings and Commitments to a small business (including any Affiliates) must not exceed 20 percent of Regulatory Capital for a Section 301(c) Licensee; or 30 percent of Regulatory Capital for a Section 301(d) Licensee. Outstanding Financings and Regulatory Capital are computed as discussed in 13 CFR Part 107.740. If a Leveraged Licensee seeks prior approval to exceed the limits, the following items must be submitted for your consideration:

- (1) Financial statements on SBA Form 468 as of a date no more than 60 days prior to the date of the request (a previously filed report meeting this requirement may be incorporated by reference);
- (2) A schedule of all portfolio securities and assets acquired in liquidation that are overline (the schedule should include the name of the small business, the original principal amount of the investment, the amounts and dates of subsequent disbursements, and the amount outstanding at the date of the request for approval);
- (3) A statement of any direct or indirect affiliation between the Licensee and the small business;
- (4) Fiscal year-end, audited financial statements and interim statements not more than 60 days old on the small business;

- (5) A complete description of all investments in the small business either current or proposed including amounts and major terms of the financing, in particular any conversion rights and the amortization schedules;
- (6) The names of any other Licensees or non-Licensees which are participating in the financing, and the amount of the participation by each; and
- (7) A complete explanation for the need for the overline investment, including evidence of the small business's requirements for the funds and evidence that such funds are not available from other Licensees or other financing sources.

As a general rule, you must not approve overline investments which exceed 30 percent or 35 percent of Regulatory Capital for section 301(c) or 301(d) Licensees, respectively. The main justifications for approving overline requests are the protection of the Licensee's existing investment and the well being of the small business. See Appendix 3-3 SBIC TechNotes 9.

- h. Obtaining Secured Third-Party Debt. (See 13 CFR Part 107.550).  
Leveraged Licensees must get SBA's written approval before incurring any secured third-party debt (as defined in 13 CFR Part 107.550) or refinancing any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. Further, if a Leveraged Licensee has a secured line of credit that was created on or before April 8, 1994, the Licensee must receive SBA's written approval of the line before increasing the amounts outstanding under it. See Appendix 3-1 SBIC TechNotes 5 regarding third-party debt.
  - (1) As a condition of granting SBA approval under 13 CFR Part 107.550, you may impose appropriate restrictions or limitations on the Licensee, taking into account the following:
    - (a) Historical performance;
    - (b) Current financial position;

- (c) Proposed terms of the secured debt; and
  - (d) Amount of aggregate debt the Licensee will have outstanding (including SBA Leverage) as a percentage of Leverageable Capital.
- (2) You must not approve any requests for third party financing which include a blanket lien on all the Licensee's assets, or a security interest in the Licensee's investor commitments in excess of 125 percent of the proposed borrowing.
- (3) You must notify the Licensee of your decision within 30 days after you receive the Licensee's request, or notify the Licensee within 30 days that the request remains under consideration and identify what is pending, otherwise, the Licensee may consider its request automatically approved if:
- (a) The Licensee is in regulatory compliance
  - (b) The security interest in the Licensee's assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;
  - (c) The Licensee's Leverage does not exceed 150 percent of its Leverageable Capital; and
  - (d) The Licensee's request is for approval of a secured line of credit that would not cause the Licensee's total outstanding non-SBA borrowing to exceed 50 percent of Leverageable Capital.



**3. For Actions Requiring SBA's Prior Approval for Both Leveraged and UnLeveraged Licensees, What Information Must the Licensee Provide?**

a. Change in Ownership of a Licensee. (See 13 CFR Part 107.400).

In connection with a proposed transfer or issuance of ownership interests that are 10 percent or greater but less than 33 percent and do not involve a Change of Control, the Licensee must file a written request for prior SBA approval, but the investors are not required to file SBA Form 2182, Exhibit C-1 (for individuals) or C-2 (for entities) or fingerprint cards. A Nexis/Lexis or similar search should be conducted and \$200 should be collected. Any ownership interest to be held by an entity requires that a statement disclosing the proposed owner's 10% and greater owners be included. If a transfer of interests is approved, SBA prior approval is required for release of the transferor's unfunded commitment.

In connection with a proposed transfer or issuance of 33 percent or more ownership of any class of stock or other ownership interests, the Licensee must file a written request for prior SBA approval, including, but not necessarily limited to the following:

- (1) The name and address of each present owner making the transfer and of each proposed new owner.
- (2) A draft purchase and sale agreement reflecting the number of shares to be purchased, price per share, and basis for determining price. If the new owner is a corporation, partnership, or other legal entity, the Licensee must provide information identifying the State of incorporation or registration, the principals, and any other individuals exercising direct or indirect control over the entity, the nature of its major business activities, and its current financial statements.
- (3) A detailed explanation of any affiliations between the proposed new owner(s) and the Licensee, any other Licensee, and any portfolio concern of any Licensee.
- (4) SBA Form 2181, Exhibit C-1 (for individuals) or C-2 (for entities), Form FD-258, and a \$200 processing fee for each proposed new owner and whose ownership of the Licensee would, amount to 33 percent or more. For entities owning 33 percent or more, Exhibit C-1 and Form FD-258 are required for the entity's three ranking officials unless the entity is exempt

per SBA Form 2182, Exhibit B, in which case only Exhibit C-1 is required for the three ranking officials.

- (5) A statement identifying the source of funds required for the transaction for each proposed new owner.
- (6) A statement disclosing the proposed owner's 10% and greater owners. The Licensee must file a complete amendment to the Management and Control item of its license application upon approval of new owners. Please note that changes of ownership may require review and approval by the SBIC Investment Committee. You should consult your Area Chief.

b. Change in Control of a Licensee. (See 13 CFR Part 107.410).

- (1) The Licensee must submit the following items to support a request for a Change in Control (as defined in 13 CFR Part 107.50):
  - (a) A complete "License Application," SBA Form 2181 and accompanying exhibits with a \$10,000 processing fee;
  - (b) If applicable, an executed "Transferor's Liability Contract," SBA Form 2182, Exhibit J;
  - (c) If the proposed new owner is a corporation, partnership, or other legal entity, the most recent audited financial statements together with a statement describing the principal business activity. If audited financial statements are not available or are more than 90 days old, you should request updated interim financial statements.
- (2) Your recommendation for approval for a proposed transfer of control must be contingent upon full disclosure of:
  - (a) The real parties in interest;
  - (b) The source of funds for the new owner's interest; and
  - (c) Other pertinent data you request.

- (3) A proposed transfer of control may only be approved if the applicant meets the minimum capital requirements set forth in 13 CFR Part 107.210.
- (4) In addition, as a condition of approving a proposed transfer of control, you may:
  - (a) Require the new owners or the transferee's Control Person(s) to execute an SBA form Transferor's Liability Contract (TLC) as a condition of SBA approval for a Change of Control. By this action, the Control Persons will assume, in writing, personal liability for the Licensee's Leverage, effective only in the event of their direct or indirect participation in any transfer of control not approved by SBA (see instructions attached to the TLC for further clarification of who is required to execute the TLC as well as 13 CFR Part 107.440); and

You must have the new management team members submit a Management Assessment Questionnaire (MAQ). You may seek assistance with MAQ review from the Program Development staff at the discretion of the CAO within whose office Program Development resides. In addition, appropriate due diligence will be performed within the Office of SBIC Operations or elsewhere at the discretion of the Associate Administrator. After reviewing the MAQ you will recommend or not recommend that the management team be invited in for a presentation to the Investment Committee. If the Investment Committee recommends that they be invited in for a presentation, a presentation will be scheduled. If after the presentation the Investment Committee determines that the management team should be invited to file a licensing application, the application will be processed either by you or the Licensing Unit. After processing, the application will be submitted to the Divisional Licensing Committee and if approved it will be submitted to the Agency Licensing Committee. The transfer of control can be declined at any step in the process.

If the Change of Control is not considered tantamount to a new license application (for example, if there is a change in ownership, but no change in management or investment strategy), the Investment Committee can waive the requirement for a MAQ and the licensing committees can waive their review of the application.

- (5) A Change of Control must not be approved if the resulting Licensees under common control have aggregate outstanding Leverage in excess of the amounts permitted under 13 CFR Part 107.1150 through 1170.
- c. Mergers. (See 13 CFR Part 107.470 and 107.440).  
A merger is defined as the absorption of one or more existing SBICs by another existing SBIC. In a merger, the assets and liabilities of all participants become the property and obligations of one of the participating entities (the survivor).
- (1) To receive conditional approval of a merger, the Licensee(s) must file a request for SBA approval of the proposed plan and agreement of merger which must contain the following:
    - (a) A draft Plan and Agreement of Merger;
    - (b) A Financial Statement, SBA Form 468, Short Form, for each participant to the merger as of a date no more than 60 days before the date of the request for approval;
    - (c) A consolidating worksheet, as of the date of the Financial Statements referred to above, showing the actual balance sheet of each participant to the merger, with an adjustment column reflecting the adjustments resulting from the merger, and a proforma balance sheet of the surviving Licensee reflecting the merger of the companies involved; and
    - (d) Certified copies of the resolutions of the Directors, General Partners, or Managers, as appropriate, of each Licensee approving the plan and agreement of merger and authorizing the merger in accordance therewith.
  - (2) To receive final approval of a merger, the Licensee(s) must consummate the merger, and file the following:
    - (a) A certified copy of the Certificate of Dissolution or other evidence issued by the appropriate State authority indicating that the non-surviving Licensee has liquidated and dissolved, and terminated its existence;

- (b) The license certificate for the non-surviving Licensee;
  - (c) An opinion of independent counsel that the surviving Licensee has assumed all of the non-surviving Licensee's obligations (including obligations to SBA and to portfolio concerns);
  - (d) Appropriate amendments to the surviving Licensee's license application reflecting the consummation of the merger (to be reviewed by SBA's OGC); and
  - (e) An actual Statement of Financial Position (from SBA Form 468) for the surviving Licensee, reflecting the consummation of the merger.
- (3) A merger must not be approved if the resulting aggregate outstanding Leverage exceeds the amounts permitted under 13 CFR Part 107.1150 through 1170 based on the surviving Licensee's Leverageable Capital.
  - (4) Any Regulatory Capital impairment must be eliminated by the transaction, either by the investment of additional private capital or by the combination of an impaired Licensee with an unimpaired Licensee.
  - (5) The surviving SBIC must comply with all requirements under the Act and SBA regulations (13 CFR Part 107).

Please note that a proposed merger action must be presented to the SBIC Investment Committee.

- d. Consolidations. (See 13 CFR Part 107.470 and 107.440).  
A consolidation is defined as the combination of one or more SBICs into a newly-formed entity which must comply with SBA licensing requirements and become licensed as an SBIC. In a consolidation, the assets and liabilities of both or all participating entities become the property of the newly created entity.
- (1) To receive conditional approval of a consolidation, the Licensee(s) must file a request for SBA approval of the proposed plan and agreement of reorganization (consolidation) which must contain the following:

- (a) A draft plan and agreement of reorganization (consolidation);
  - (b) A financial statement, SBA Form 468, Short Form, for each Licensee participant as of a date not more than 60 days prior to the date of the request for approval;
  - (c) A consolidating worksheet, as of the date of the financial statements referred to above, showing the actual balance sheet of each participant to the consolidation, with an adjustment column reflecting the adjustments resulting from the consolidation, and a proforma balance sheet of the newly formed entity reflecting the consolidation of the companies involved;
  - (d) Certified copies of the resolutions of the Directors, General Partners or Managers, as appropriate, of each Licensee approving the plan and agreement of reorganization (Consolidation) and authorizing the consolidation; and
  - (e) A complete "License Application," SBA Form 2181, filed on behalf of the newly formed company (certain items called for in the license application, such as legal opinions, may be provided in draft form in connection with this initial filing). *Refer to the Licensing SOP for information on the licensing process.*
- (2) To receive final approval of a consolidation, the Licensees must consummate the consolidation, and the newly formed entity must file the following:
- (a) Certified copies of the Certificates of Dissolution or other evidence issued by the appropriate State authority that the non-surviving Licensees have liquidated and dissolved and terminated their existence (unless otherwise allowed by SBA to remain in existence);
  - (b) The license certificates of the non-surviving Licensees;
  - (c) An opinion of independent counsel that the newly formed entity has assumed all obligations of non-surviving Licensees (including obligations to SBA and to portfolio concerns);

- (d) Appropriate amendments to the newly formed entity's license application reflecting the consummation of the consolidation (to be reviewed also by SBA OGC);
  - (e) An actual Statement of Financial Position on SBA Form 468, Certified by Management for the newly formed Licensee, reflecting the consummation of the consolidation.
- (3) SBA will not recognize for Leverage or regulatory purposes increases in capital resulting from the upward valuation of portfolio securities and other assets in connection with the reorganization. The surviving Licensee must show the increase in capital resulting from the transaction as a separate item in the capital accounts.
  - (4) A consolidation must not be approved if the resulting aggregate outstanding Leverage exceeds the amounts permitted under 13 CFR Part 107.1150 through 1170 based on the new entity's Leverageable Capital.
  - (5) Any Capital Impairment must be eliminated by the transaction either by the investment of additional private capital or by the combination of an impaired Licensee with an unimpaired Licensee.
  - (6) The new SBIC must comply with all requirements under the Act and SBA regulations (see 13 CFR Part 107).

Please note that a proposed consolidation action must be presented to the SBIC Investment Committee.

- e. Reorganizations. (See 13 CFR Part 107.470 and 107.440).  
A reorganization is defined as a significant change in the structure of an existing SBIC that does not involve the merger or consolidation of two or more entities, e.g., the conversion of a corporate SBIC to a limited partnership, or the creation of new classes of stock in an existing corporate SBIC.
- (1) Reorganizations come in many forms. In most cases, they involve the creation of a new legal entity which succeeds to the net assets and business operations of one or more Licensees. The nature and the mechanics of the reorganization dictate the specific information required

for SBA consideration of a request for approval. In general, however, the following are required:

- (a) In any case which involves the transfer of the net assets and business operations of an existing Licensee to a newly created legal entity that wants to operate as an SBIC, the new entity must comply with SBA licensing requirements and must be licensed by SBA as an SBIC;
- (b) The new entity must file a complete license application, SBA Form 2181; and
- (c) The new entity must file an Agreement and Plan of Reorganization containing evidence (such as corporate resolutions of the parties involved) of its approval by all parties, together with appropriate financial statements and proformas.

Please note that a proposed reorganization must be presented to the SBIC Investment Committee.

f. Conversion from a Corporation to a Partnership or from a Partnership to a Corporation

- (1) Such conversions are treated as reorganizations and require prior written approval under 13 CFR Part 107.470. This discussion is limited to the most commonly requested action, conversion from a corporation to a limited partnership. The conversion usually will involve some variation of the following:
  - (a) A limited partnership will be established in which the operating management of the corporate Licensee will become the individual general partners and/or become principals in an entity general partner (a corporation, limited liability company, or limited partnership); and
  - (b) The corporate Licensee will transfer all its assets, including its SBIC license, to the partnership in return for a limited partnership interest; the partnership will also assume liability for the corporation's obligations to SBA.



- (2) To receive SBA's conditional approval of a conversion, the Licensee(s) must submit the following documents:
  - (a) A draft contribution agreement between the corporate Licensee and the newly formed limited partnership;
  - (b) A complete License Application, SBA Form 2181, for the partnership, with items such as the legal opinion provided in draft form;
  - (c) A \$5,000 processing fee;
  - (d) A certified copy of the resolutions of the Board of Directors of the corporate licensee authorizing the reorganization and conversion of the corporation and approving the Contribution Agreement;
  - (e) A financial statement, SBA Form 468, Short Form, as of a date not more than 60 days prior to the date of the request for SBA approval;
  - (f) A proforma Statement of Financial Position from SBA Form 468 (as of the same date as (e) above) as if the corporation had been converted into the partnership; and
  - (g) An adjustments worksheet which reflects the corporate statement (item (e)), appropriate adjusting entries, and the partnership statement (item (f)).
  
- (3) To receive SBA's final approval of a conversion, the Licensee must complete the conversion and must provide the following documents to SBA:
  - (a) The new partnership's opening Statement of Financial Position on SBA Form 468, with a Schedule of Loans and Investments;
  - (b) An opinion of independent counsel that the corporate conversion was accomplished in accordance with applicable State and Federal

- law and that all obligations (including those to SBA and the portfolio concerns) have been assumed by the partnership;
- (c) Return of the corporate license certificate for exchange for a new license certificate, and evidence that the corporation has been dissolved or that its Charter has been amended to delete all references to its status as an SBIC;
  - (d) Appropriate amendments to the partnership license application reflecting the completion of the conversion (executed legal opinions, etc.); and
  - (e) An opinion of independent counsel that the Licensee qualifies as a partnership for tax purposes.
- (4) SBA will not recognize for Leverage or regulatory purposes Paid-In Capital and Paid-In Surplus resulting from the upward valuation of portfolio securities and other assets in connection with the conversion. The SBIC will be required to segregate the increase in capital resulting from the revaluation in the capital accounts.
- (5) The conversion of corporate Licensees into limited partnerships must result only in a change to the organizational structure of the Licensees. The stockholders of the corporate Licensee may not take advantage of the conversion to transfer control over the Licensee, to distribute corporate assets to themselves or to others, or to capitalize the partnership with unrealized appreciation in corporate assets. SBA will require that the expenses associated with the conversion be borne by the stockholders of the corporate Licensee individually rather than by the corporation or by the successor partnership.

Please note that a proposed conversion must be presented to the SBIC Investment Committee.

g. Quasi-Reorganizations

A quasi-reorganization is frequently described as a means by which a “fresh start” may be obtained in terms of recorded accounting values for an SBIC. It involves the realignment of the capital balances in such a way that an accumulated deficit may be eliminated without a formal legal reorganization of the company; thereby

avoiding the expense of creating a new corporate entity. Quasi-reorganizations reflect recognition by corporate management that part of the company's capital has been irretrievably lost.

Generally, a Licensee may request approval for a quasi-reorganization if it has an accumulated deficit, yet ample Leverageable Capital, and the deficit is preventing the payment of dividends even as operations become profitable. Recommending approval of a quasi-reorganization is within your discretion and that of your Area Chief. All quasi-reorganizations must be presented to the Credit Committee for final approval. Final approval may be given subject to conditions deemed appropriate on a case by case basis. In any case, Licensees who have issued Participating Securities are not eligible to perform a quasi-reorganization.

- (1) The accounting entries to effect a quasi-reorganization are:
  - (a) A debit to Capital and a credit to Paid-in Surplus (if applicable);  
and
  - (b) A debit to Paid-in Surplus (if applicable) and a credit to Retained Earnings, thereby eliminating the deficit.
- (2) In all financial statements of the Licensee filed subsequent to the quasi-reorganization, the Retained Earnings should be dated, that is, the statements should show that the Retained Earnings have been accumulated since a stated date as of which the reorganization took place and the operating deficit was eliminated from this account. This dating should continue until the company has demonstrated that it is operating profitably, but no less than 3 full years.

There must be full disclosure of all details of the quasi-reorganization in the notes to the financial statements.

- (3) Subsequent to any quasi-reorganization, all Licensees must retain:
  - (a) Sufficient Regulatory Capital to meet the minimum capital requirements of the Act and 13 CFR Part 107.210 and 107.220;

- (b) Sufficient Leverageable Capital to avoid having excess Leverage in violation of Section 303 of the SBI Act and 13 CFR Part 107.1150 through 107.1170.

h. Voluntary Surrender of License (See 13 CFR Part 107.1900)

The Licensee must file a written plan of surrender for SBA approval which must include the following:

- (1) A provision for the immediate repayment in full of all Leverage, including prioritized payments, applicable prepayment penalties, and any other indebtedness to SBA or a satisfactory plan for the orderly liquidation of such Leverage and indebtedness;
- (2) An affirmation signed on behalf of the Board of Directors or by the General Partner that the charter of the corporation or the articles of limited partnership will be amended to delete any reference to the company's powers or privileges to operate as a SBIC;
- (3) An affirmation that the company will no longer operate as an SBIC or hold itself out to the public as an SBIC;
- (4) A statement that, in consideration of SBA's acceptance of the license surrender, the Licensee will take no action detrimental to the interests of the portfolio small businesses except as may be necessary in the proper exercise of the Licensee's rights under the related financing agreements;
- (5) An affirmation that the License Certificate will be surrendered to SBA for cancellation upon SBA's approval of the plan of surrender;
- (6) If applicable, a written agreement with SBA concerning the disposition and valuation of any Earmarked Assets.

You must notify the Licensee when the plan is approved, and direct the Licensee's management to take appropriate action regarding the repayment of Leverage to SBA and the surrender of the license to SBA for cancellation. Under no circumstances may the Licensee surrender the license for cancellation before the liquidation plan has been completed and all indebtedness to SBA has been paid, including outstanding examination fees.

- i. Transfer of License (See 13 CFR Part 107.475)  
A Licensee's request to transfer its license is the equivalent of a change of ownership or Change of Control. Therefore, you must process a transfer request using the Procedures outlined above for Change of Ownership and/or Change of Control.
- j. Common Control or Ownership of Two or More Licensees (13 CFR Part 107.460), Valuation Policies Which Differ from the Model Valuation Policy (13 CFR 107.503); and Certain Financings with Associates (13 CFR Part 107.730(d).  
To request prior approval for actions under these sections, the Licensee must submit supporting evidence which demonstrates to SBA's satisfaction that the proposed action is fair and equitable to the Licensee, the small business and/or SBA, as appropriate, and that the exemption will advance the best interests of the program in a manner consistent with the policy objectives of the Act and regulations.

Regarding Common Control or Ownership of Two or More Licensees, and Certain Financings with Associates, you should be alert for the harmful effects of potential conflicts of interest. The best guidance to use in evaluating requests concerning both the common control question and the Associate financing question is TechNote Number 8 (see attached). Further, you should consider the impact on Leverage availability to Licensees under common control and the effect on each individual Licensee's ability to execute its business plan.

Regarding Valuation Policies Which Differ from the Model Valuation Policy, approvals of alternative policies should be rare. It is impossible to anticipate and evaluate all the arguments a Licensee might raise in support of an alternative policy, but any policy that departs from the conservative flavor of the Model Policy should be denied. Questions about alternative policies should be discussed with the Office of SBIC Operations credit committee to ensure consistency.

**4. What Information Must the SBIC Provide to Receive SBA's Post Approval?  
(See 13 CFR Part 107.680)**

To the extent the following actions do not require SBA prior approval under SBA Regulations or this SOP, including Chapter 3 of this SOP, such actions require SBA post-approval:

- a. Changes in name, address, telephone number, or operational area;
- b. Changes in charter or by-laws;
- c. Changes In the Licensee's investment policy;
- d. Changes in the Licensee's personnel (which do not constitute a Change in Control);
- e. Increases in capital not resulting in a Change in Control; and

Note: The Licensee must report changes as outlined above to SBA within 30 days of their occurrence. Actions requiring SBA post approval are considered approved if SBA does not inform the Licensee otherwise within 90 days of SBA's receipt of notice from the Licensee regarding the change.

**5. What Information Must the SBIC Provide to Receive Post Approval? (See 13 CFR Part 107.680)**

- a. For post approval of changes in name, address, telephone number, operational area, charter or by-laws, financing plans, investment policy, and the Licensee's personnel (which do not constitute a Change in Control), the Licensee must submit the following:
  - (1) An SBA Form 2182, Exhibit C-1 for each new officer, director, or control person; a \$200 fee must accompany each SBA Exhibit C-1;
  - (2) Fingerprints of its new officers, directors, or control persons for background check purposes; however, SBA will only require fingerprints from individuals. Institutional entities with greater than 33% ownership are required to provide fingerprint cards and Exhibit C-1 on the top 3 officers and Exhibit C-2 on the institution.
  - (3) Any other information requested by the analyst.  
Appropriate due diligence will be performed within the Office of SBIC Operations or elsewhere at the discretion of the Associate Administrator.  
Note: Actions requiring SBA post approval are considered approved if SBA does not inform the Licensee otherwise within 90 days of SBA's receipt of notice from the Licensee regarding the change.

Licenseses with no outstanding Leverage or Earmarked Assets are not required to obtain post approval of new directors or new officers other than the Licensee's chief operating officer. Such Licensees must notify SBA of the new directors or officers within 30 days of their appointment.

- b. For post approval of increases in capital not resulting in a Change in Control, the SBIC must submit the following:
  - (1) A letter to SBA signed by a bank officer certifying that such funds were deposited to the Licensee's account and that there are no encumbrances on the funds if the increase is the result of cash received;
  - (2) Updated capital certificate reflecting any changes in Regulatory Capital and Leverageable capital;
  - (3) If the increase is the result of capitalization of retained earnings, a statement signed by the Licensee's chief financial officer and certified by the Licensee's selected independent public accountant indicating that:
    - (a) The retained earnings used in increasing capitalization were from undistributed net realized earnings; and
    - (b) The Licensee had retained earnings available for distribution (as defined in 13 CFR Part 107.50) equal to or greater than the amount capitalized measured as of a date no earlier than 30 days prior to the capitalization of retained earnings.

## CHAPTER 4

### Processing Requests for Leverage

#### 1. Overview

The OSO reviews and recommends approval or rejection of Leverage Commitment requests and subsequent Leverage draw requests submitted by Licensees. The Leverage process involves the coordinated efforts of OSO, the Office of Examinations, and the Office of the Chief Administrative Officer to ensure effective oversight and proper accounting so as to maintain the integrity of the program, provide timely delivery of Leverage to SBICs, and provide appropriate coordination among the various parties involved with the process.

#### 2. What are Your Responsibilities in Reviewing and Analyzing a Leverage Commitment Request?

- a. Initial Review of a Leverage Commitment Application  
Your initial responsibility is to review the Licensee's application package for accuracy and completeness. This is especially important since different types of Leverage requests require different documents.
- b. Initial Review of the Financial Statements  
Each SBIC applying for a Leverage Commitment must provide financial statements on SBA Form 468, covering the period from the first day of the licensee's current fiscal year to a date not earlier than the third month prior to the date the Leverage Commitment is to be issued. You must review these financial statements for completeness and proper certification (i.e., signatures from authorized individuals) prior to performing any other work on the request.
- c. Initial Review of the Other Documents Included in the Leverage Commitment Application  
Each of the other documents required in conjunction with the Memorandum of Instructions (Appendix 4-1.) must be reviewed for accuracy, completion, and proper execution.



**NOTE: IF YOU DECIDE THAT ANY OF THE REQUIRED INFORMATION IS INCOMPLETE OR INACCURATE, IMMEDIATELY NOTIFY THE LICENSEE AND YOUR AREA CHIEF.**

**3. What Are the Steps Required for the Issuance of SBA Leverage?**

See attached Appendices 4-1 through 4-11 for a description of the Leverage steps and the documentation used.

In order for a Licensee to draw Leverage, you must complete the electronically generated Leverage Draw document (attached). Among the considerations when determining a Licensee’s creditworthiness will be its coverage ratio (Total assets – other assets – all non-SBA liabilities/Leverage). Licensees with coverage ratios below 1.5 will be strongly considered for asset valuation by the Investment Division’s valuation contractor, or may be asked to have certain assets valued at their own expense.

All Leverage draws for the payment of management fees should be limited to one quarter’s expense. Excess cash after consideration of available cash and draws should generally not exceed \$1 million.

**4. What Types of Funding Does SBA Offer SBICs?**

SBICs can qualify for Debentures, *LMI Debentures* and Participating Securities. See appendices 4-12 describing LMI Debentures. However, new Leverage Commitments are no longer available for participating securities.

**5. What are the Leverage Maximums for Section 301(c) SBICs?**

The following table shows the maximum amount of Leverage an SBIC or group of SBICs under common control may have outstanding at any time, as of November 13, 2006:

If the Leverageable Capital is: Not Over \$21,200,000	The Maximum Leverage is: 300% of Leverageable Capital
Over \$21,200,000 but not \$42,400,000	\$63,600,000 +[(2 x Leverageable Capital-\$21,200,000)]

Over \$42,400,000 but not over \$63,600,000	\$106,000,000 + (Leverageable Capital-\$42,400,000)
Over \$63,600,000	\$127,200,000

In October of each year, the amounts above will be adjusted to reflect increases through September in the Consumer Price Index published by the Bureau of Labor Statistics. The indexed maximum Leverage amounts will be published each year in a notice in the Federal Register.

**6. What are the Maximums for Subsidized Leverage for Existing Section 301(d) SBICs?**

The legislative authority to license section 301(d) SBICs was repealed by Congress on September 30, 1996, (P.L. 104-208). The following maximums are applicable to Section 301(d) SBICs licensed prior to that date. However, no new subsidized Leverage is currently available.

- a. The maximum amount of subsidized Leverage (subsidized debentures plus Preferred Securities) that a section 301(d) Licensee can have outstanding at any time is the lesser of 400 percent of its Leverageable capital or \$35,000,000. This also applies to any group of section 301(d) Licensees under Common Control.
- b. The maximum amount of preferred securities that a section 301(d) Licensee can have outstanding cannot exceed 200 percent of its Leverageable capital.

**7. What About the Maximum Amount of Total Leverage for Section 301(d) SBICs?**

Use the table in Paragraph 4 above to determine the maximum levels for total outstanding Leverage for a section 301(d) Licensee as if the company were a section 301(c) Licensee. If that total exceeds the Licensee's maximum subsidized Leverage, the higher number is the maximum Leverage available. There are certain eligibility requirements for any preferred security Leverage in excess of 100 percent of Leverageable capital and any Leverage greater than 300 percent of Leverageable capital (see 13 CFR Part 107.1160).

## 8. How Does Non-Compliance with Regulatory Requirements Affect an SBIC's Leverage Commitment Eligibility?

### a. Regulatory Non-Compliance—Financial Statements

No Leverage Commitment request can be approved until all deficiencies or delinquencies regarding the most recently required or filed SBA Form 468 have been resolved, or the Area Chief and Director, OSO, agree in writing to accept the information as provided.

### b. Regulatory Non-Compliance—Examination Findings

Generally, SBA will not approve Leverage Commitments if:

- (1) There is an unresolved Category 1 (“big eight”) regulatory finding or an unresolved regulatory violation that may result in an automatic transfer to the Office of SBIC Liquidation;
- (2) There is an alleged Category 1 regulatory violation, or an alleged regulatory violation that may result in an automatic transfer to the Office of SBIC Liquidation, that is discovered by the analyst or brought to the attention of the analyst by an SBA examiner or other Investment Division employee in advance of release of the most recent Examination Report or apart from its release; or
- (3) Additional facts are necessary for the Office of SBIC Operations to make a determination that a violation of any sort has actually occurred and that it is serious enough to warrant a recommendation to deny a Leverage Commitment.

However, an outstanding regulatory violation does not automatically disqualify an SBIC from eligibility for a Leverage Commitment. If there are unresolved regulatory issues, the SBIC should confer with you and your Area Chief before submitting a Leverage Commitment application. The Area Chief has the authority to accept the application for processing if the circumstances make it appropriate.

**9. Are There any Other Circumstances that Make an SBIC Ineligible for Leverage Commitments and Leverage Draws?**

- a. Mergers, Reorganization, Changes of Control  
If there is a pending reorganization, merger, or Change of Control, SBA generally will not approve Leverage Commitments or Leverage draws until SBA has approved the transaction and it has been consummated.
- b. Investigations  
An SBIC may not eligible for a Leverage Commitment or for funding under such Leverage Commitment if it is under investigation by the SBA's Inspector General or if an investigation report has been issued by the Inspector General and its findings have not been resolved. Without the approval of the Office of Inspector General, you will not disclose the existence of an investigation to the SBIC.

**10. Can SBA Issue Leverage to Refund Maturing Debentures?**

- a. If adequate budget authority is available, SBA can at its discretion provide Leverage draws to an SBIC to refund maturing debentures. Applications for refunding Leverage must meet SBA's standard Leverage requirements regarding eligibility; regulatory compliance; need for funds and activity; credit and financial condition; and performance.
- b. Generally no Leverage draws will be approved by SBA to prepay outstanding Leverage well in advance of maturity dates. If an SBIC wishes to refund maturing Leverage, the SBIC should draw the funds on or slightly before the maturity date, and indicate refunding of maturing Leverage in the statement of need which accompanies the draw request.

**11. Can an SBIC Ask for New Funds and Rollover Funds at the Same Time?**

Yes, an SBIC may submit draw requests for both new funds and refunding of maturing SBA Leverage. *You should consider the stage of life of a limited life SBIC before recommending new Leverage or refunding maturing Leverage.*

**12. Must SBA Examine an SBIC Before It Provides Leverage?**

Examination of an SBIC prior to the initial funding is not mandatory. However, the aggregate Leverage draws should be limited to no more than 50 percent of Regulatory Capital for new Licensees or “first funds” until SBA has examined the SBIC for regulatory compliance.

**13. What Should be Included in SBIC Program Leverage Action Regarding the SBIC’s History of Regulatory Compliance?**

The Core Analytical Document (CAD) (Appendix 4-13) and the Leverage Action Cover Memo set forth the information that needs to be presented concerning the history of regulatory compliance. Most of the information will download directly to the CAD. You should add descriptive information about the nature of the Other Matters and Findings as necessary.

**14. What Financial Analysis is Required for a Leverage Commitment Request?****a. Source Data for Financial Analysis**

An SBIC must submit quarterly financial statements certified by management as long as existing Leverage Commitments or Leverage is outstanding. Please note that Participating Securities issuers that have paid all outstanding Leverage but have an unpaid prioritized payment balance should continue filing quarterly statements. For an increase in Leverage Commitments, these quarterly financial statements form the basis of financial analysis of each Leverage application. For an initial Leverage Commitment, interim financial statements through the most recent fiscal quarter end will be analyzed. You should analyze these financial statements as described in Chapter 6, Financial Analysis of SBICs.

**b. Financial Analysis—Historical and Current**

Your analysis should be based on the most recent financial data available from the Licensee submitted on SBA Form 468, together with any additional information supplied by the Licensee and historical SBA Form 468 information previously submitted by the Licensee.

You should provide at least 2 or 3 years of audited financial information as part of the Leverage Action. If a Licensee has not been in operation for at least two years, provide all available financial data.

**15. What Other Information Do I Need to Provide in My Written Narrative?**

The Core Analytical Document (CAD) (attached) is the working document used to provide a financial and regulatory profile of the Licensee for every purpose, whether considering Leverage, preparing a financial review, considering a second fund or the like. Since most of the factual information is downloaded from the Investment Division system, you are responsible for commenting on the trends and facts shown to give the reader an idea of what the data say about the fund.

**16. What are the Leverage Decision Steps?**

- a. SBIC Program Leverage Action (Leverage Commitment Request)  
This document provides the information analyzed by SBA in making its final decision regarding the Leverage Commitment request, as well as the comments and recommendations for final action of the parties to the decision. The original action is filed in the SBIC Program Leverage Docket. (The analyst is responsible for submitting to the Office of General Counsel for review and approval any Opinion of Legal Counsel that differs in any respect from the general form approved by the Office of General Counsel for the particular SBIC and its counsel.)
- b. SBIC Program Leverage Docket  
After you complete your analysis and recommendation, you must prepare the Leverage Docket. The Docket when completed must be organized as follows:

LEFT SIDE FACING	RIGHT SIDE FACING
Corp./Partnership Resolution	Leverage Action Document
Opinion of Legal Counsel	Minutes of Credit Committee Mtg.
Debenture (444C)/Instrument	
of Admission of Ltd. Partner	Application of Guaranty
(SBA)	
Bank Identification	
Debit Authorization	
Direction to Disburse Proceeds	SBA Short Form 468

Documentation Checklist	SBA Form 652 SBA Form 1065 Transferor's Liability, if appropriate Investment Plan Liquidity Computation OFO-Denver Confirmation of Indebtedness (Q-screen)
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After this Docket has been reviewed by your Area Chief, the Leverage Action and selected financial data should be photocopied and distributed to all members of the Credit Committee for review prior to the Committee meeting.

**17. What Should I Do If I Decide That the Leverage Commitment Request Should be Denied?**

If you decide that the Leverage application should be denied, you must recommend this action in writing to the Area Chief. Your analysis and recommendation memorandum should be attached as an addendum to any analysis prepared while processing the Leverage Commitment request, including but not limited to:

- a. Financial statements;
- b. Operating plans;
- c. Examination Reports; and
- d. Any other information you believe is necessary to support your recommendation

Your supervisor may decide that additional information from the Licensee is needed, and you may be asked to request such information from the Licensee under very tight time-critical deadlines.

**18. Who Must Approve the Granting of a Leverage Commitment for SBA Leverage?**

The following steps are required before a Leverage Commitment for SBA Leverage can be granted (At the discretion of the AA/I, a new licensee may receive a leverage commitment up to one tier if requested within 45 days of licensing).

- a. Recommendations must be obtained from:
  - (1) Staff Financial Analyst
  - (2) Area Chief; and
  - (3) Credit Committee.
- b. Final decision is made by the AA/I (under a delegation of authority from the SBA Administrator).
- c. The Director, OSO, signs on behalf of the Credit Committee. Any recommending officials who disagree with the recommendation of a lower level recommending official (a “split decision”) must document the reason(s) for the disagreement and forward the Action document to the next level. Alternatively, the meeting minutes should reflect the reasoning behind conclusions reached by the various recommending officials.

**19. What Role Does the Credit Committee Have in the Leverage Commitment Process?**

- a. Analyst Recommendation and Presentation  
All Leverage Commitment requests must be reviewed and voted on by the OSO Credit Committee. You must present to the Credit Committee your recommendations regarding Leverage requests for all SBICs in your portfolio. You must also prepare minutes from the meeting and the follow up of any additional information requests that may result from the presentation of an SBIC’s Leverage request.
- b. Credit Committee Recommendation  
The Credit Committee must make a recommendation on every request for a Leverage Commitment. The Credit Committee Chair (the Director, OSO) must present all Committee recommendations to the AA/I for final action. The minutes of the Credit Committee meeting, prepared by the analyst, should record each Committee member’s vote.



**20. What is the General Credit Committee Policy?**

The Credit Committee verifies that OSO's Leverage policies reflect adherence to the Act and regulations governing the program. Credit Committee decisions regarding Leverage are made on a case-by-case basis, taking into consideration the following:

- a. Regulatory compliance of the SBIC;
- b. Overall financial condition of the SBIC;
- c. Tiers of Leverage outstanding to an SBIC;
- d. Liquidity level of an SBIC;
- e. Appropriateness of investment strategy for Leverage requested; and
- f. Any other issues relevant to the fund in question.

**21. What Other Issues are Voted on by the Credit Committee?**

The following operational decisions are also normally voted on by the Credit Committee and referred to the AA/I for final approval:

- a. Assumptions of one Licensee's Outstanding Leverage by another Licensee;
- b. Secured third party debt requests from Licensees;
- c. Reductions in Regulatory Capital beyond what is allowed without prior approval in the Regulations; and
- d. Any other credit or regulatory matters deemed appropriate by an Area Chief or the Director, OSO.

**22. Notice to the SBIC of Final Action on a Leverage Commitment Request.**

After the AA/I takes final action on a Leverage request, you must notify the SBIC in writing of the decision.

**23. What are the Leverage-Related Duties of the Chief Administrative Officer (CAO)?**

- a. Maintain funding application instructions, forms & documents.
- b. Leverage Commitment Applications.

- (1) Produce memo announcing schedule for semi-annual Leverage Commitment application cycle.
- (2) Log Leverage Commitment applications in network information system.
- (3) Obligate program level in SBA loan accounting system after Leverage action approval through automated programming.
- (4) Log SBA Leverage Commitment fee collection in network information system. Email Leverage Commitment fee wiring instructions to each approved SBIC. Track fee payments.

c. Draw Applications.

- (1) Log semi-monthly draw applications in network information system – including all Approval Notices issued.
- (2) Produce draw Approval Notices at the conclusion of each draw application cycle. Each Approval Notice is signed by an SBA authorized official and expires if un-drawn in 45 days. Provide Approval Notices to respective SBIC, interim funding provider and appropriate outside agents. Each Approval Notice is provided a unique identification number called the ID Control Number.
- (3) Provide collateral instruments underlying each Approval Notice. Produce Interim Partial Assignments (the interim debt collateral for participating securities) and email to Selling Agent. Complete appropriate items on Debentures and express mail to Custodial Agent. Collateral instruments are not executed unless corresponding Approval Notices are drawn. If drawn, appropriate terms are inserted by Custodial Agent on each debt collateral instrument and that instrument is couriered to an agent of the funding provider. For participating securities, the equity collateral, called the Instruments of Admission, are not forwarded. Those Instruments are maintained at SBA until pooling.

- d. Disbursements. After notice provided by Custodial Agent of Approval Notice execution and funds disbursement:
- (1) Establish memorandum guarantee disbursement account (loan record) in SBA loan accounting system through automated programming. This process disburses guaranteed program level from an appropriate SBA Leverage Commitment account already established.
  - (2) Log disbursement in network information system. Leverage Commitment balances are tracked. Interim funding balances of disbursements scheduled to be pooled and LMI debenture disbursements are also tracked.
  - (3) For participating security disbursements, ensure that appropriate information is inserted on Instrument of Admission, and the Instrument is signed by an authorized official of SBA.
  - (4) Email copy of debenture executed through its interim term to each respective SBIC.
  - (5) Request wire to SBA from agent of all 2% Leverage fees deducted from the proceeds of draws occurring in the prior month. Provide electronic posting information to SBA's Collection's Office.
- e. Pooling.
- (1) Reconcile final pool size amount with agents. Provide final pool size information to underwriters and update SBIC program statistics in each pool's prospectus. Participate in pricing conference call and review proposed spread over Treasury rate.
  - (2) Authorize guarantee wire from SBA of advanced prioritized payments due for the interim period for participating securities by executing an SBA Form 431 prior to each participating security pooling. Provide SBA's Collections Office with automated file with posting information.
  - (3) Provide each debenture SBIC in a pool with an email or fax billing statement for amounts due prior to pooling. Assure that SBA provides a guarantee payment of any interim interest shortage of funds when amounts

due have not been promptly wired.

- (4) Participate in closing to assure that the correct amount of proceeds from the underwriters are wired to the funding provider and that the necessary amounts are available to close the interim funding provider's position.
- (5) Run automated program in SBA loan accounting system to change the interest rate on disbursements in a pool to its long term rate after pricing.
- (6) Update network information system with all necessary information relative to each pool.
- (7) Add long term information to all Instruments of Admission that underlie a pool and distribute appropriately. One original for each disbursement is sent to the respective SBIC and the other original is sent the Investment Division's collateral officer.
- (8) Produce amortization schedules for debentures post debenture pooling and provide to each respective SBIC and to the Trustee. Schedules include SBA annual charge amortization.
- (9) Produce letter authorizing wire to SBA from agent of all debenture annual charge payments collected by the Trustee and Custodian. Annual charge payments are collected at the time interest is collected by agent. Wire to SBA of each collection occurs within a month of collection.

f. Servicer.

- (1) Maintain current pool size and factor information on SBIC pooled participating securities and debentures on the Investment Division web page ([www.sba.gov/inv](http://www.sba.gov/inv)).
- (2) Authorize guarantee wire from SBA of advanced prioritized payments due each quarter for outstanding pooled participating securities by executing an SBA Form 431 prior to date of distribution to the holders. Provide SBA's Collections Office with automated file with posting information and update network transactional data.

- (3) Maintain payment and distribution transactional data for participating securities as part network information system. Produce reports on network information system providing up to date information of distributions made by SBICs and advances made by SBA. Maintain debenture prepayment and transfer information on the Investment Division network system.
- (4) Produce required documents, including SBA Form 431, for SBA's purchase of pooled debentures and participating securities after respective Acceleration and Forced Redemption Events. Manage and administer this purchasing process to assure SBA guarantee payments are made on a timely basis. Receive formal confirmation of pooled debenture repayments and provide to SBA Office of Financial Operations, so that Agency accounting records can be updated.
- (5) Monitor the accuracy of both SBA loan accounts for operating SBICs and funding information provided on the Investment Division network system.
- (6) Maintain Funding information on the Investment Division network system.

## CHAPTER 5

### Examination Review and Resolution Process

#### 1. What are the Responsibilities of the Office of SBIC Examinations?

The Office of Examinations (OE) independently gathers information and reports the overall operations of an SBIC and its compliance with the Small Business Investment Act and its applicable regulations. Examinations involve scheduled on-site visits to the SBIC and to the small businesses concerns that obtained financing from the SBIC since the last examination. The OE through its respective regional manager provides an Examination Report (Report) to OSO for distribution and processing to the appropriate analyst. A more thorough review of the examination function can be found in SOP 10 08 and SOP 10 09.

#### 2. How are Examinations Scheduled for SBICs?

A more detailed review is outlined in SOPs 10 08 and 10 09. With respect to the OSO, the Director of OE, on an annual basis, will consult with the Director, OSO, to help schedule examinations for the next fiscal year. This allows you and your Area Chief to have an SBIC's examination scheduled on a priority basis based on factors such as:

- a. Financial risk exposure (the amount of Leverage outstanding or financial condition);
- b. Prior regulatory history; or
- c. Other special circumstances such as a significant Leverage request from a Licensee that has not been examined within the past fiscal year.

#### 3. What Must I do Prior to the Examination?

OE will e-mail a notice to you and your Area Chief about an upcoming examination approximately 14-30 days prior to starting the on-site job. When you receive this notice, you should provide a response to the examiner via e-mail, detailing whether you have any specific concerns or issues that you would like the examiners to address during the examination, or to identify specific financings, or to make sure that you have all the pertinent correspondence involving the

licensee. If you do, please provide OE sufficient detail to enable them to adequately investigate the concern.

In addition, you must provide the examiner any documents that he/she specifically requests.

**4. How are the Results of Examinations Reported?**

After the examination is completed, OE provides OSO with a Report summarizing any actions taken by the SBIC that may be contrary to the Act or SBIC regulations. If the examiner does not report any findings, OE will issue a “no findings” exam report.

**5. Are Some Findings More Significant Than Others?**

Regulatory findings are categorized as Category 1 (or more serious findings), or Category 2 (all other less serious findings which may appear under “Other Matters” in the Report).

Category 1 findings include:

- a. Activities in violation of the Act;
- b. Conflicts of interest;
- c. Prohibited Control of Small Business
- d. Short-term financings;
- e. Overline Investments;
- f. Relending, foreign, passive or other prohibited investments including investments in large businesses or prohibited real estate financings;
- g. Excessive cost of money;
- h. Inappropriate distributions, including improper dividends, and excessive expenditures;
- i. Financial impairment, including valuation issues; and
- j. Other Matters from prior examinations that remain unresolved.

**6. What are the Steps Involved to Resolve Examination Findings?**

- a. 13 CFR Part 107.660(d) gives SBA the authority to direct SBIC management to provide SBA with any information necessary to ensure compliance with the Act and SBIC regulations.
  
- b. Recommended Resolutions  
You must recommend appropriate resolutions and establish time frames for compliance based on the seriousness and the frequency of the violations. Examples of appropriate action to resolve various violations include:
  - (1) Revisions or amendments to financing agreements to bring portfolio financings into compliance with SBA regulations;
  - (2) Reimbursement of excessive fees or interest charged to a small business;
  - (3) Requests to increase capital to cure an impairment; and/or
  - (4) Requests to divest an investment or a portion thereof.

These resolutions are for illustrative purposes and are not all inclusive.

**7. How Do I Process an Examination Report Once It Has Been Issued?**

- a. Upon receipt of an Examination Report, you must review the Report and gain a thorough understanding of the reported findings. It is at this time that you make the determination whether or not you concur with the examination findings as reported or if you feel that additional information is needed. If you have any questions, you should call and discuss your questions or concerns with the examiner. Once you have an understanding of all of the facts, you may proceed with the processing of the examination report or, as discussed later, initiate the findings disagreement resolution process (see Paragraph 5-9, “What Do I Do if I Disagree with the Examiner’s Findings?”).

You can process the Examination Report in one of two ways. Under both procedures you must review the report in a timely manner. If there are no



findings, there is no Report to forward to the SBIC. You prepare a short letter acknowledging the completion of the examination and that there are no instances of non-compliance with the rules and regulations governing the SBIC Program.

- b. If you concur with the findings as reported, you should recommend to the SBIC appropriate resolution to the cited issues within specified time frames that have been negotiated with the SBIC.
  - (1) At this time you should prepare for review and concurrence from your Area Chief and the Director, OSO, an examination findings letter in which you reference the cited findings. You should address both the facts and circumstances of the reported findings and the pertinent SBIC regulations. You must recommend an appropriate resolution for each violation.
  - (2) You must complete your review and issue a letter within 45 days after you receive the report, subject to prioritization by the area chief or office director. This time frame is tracked by the tracking system maintained by OSO to follow correspondence.

#### SBIC Action

As an alternate procedure, you can require the SBIC to propose appropriate resolutions as follows.

- (1) You may send a copy of the report with a cover letter to the SBIC and request the SBIC comments and proposal for a resolution of each cited finding. You must advise the SBIC to respond typically within 15-20 days of your letter.
- (2) When you receive the SBIC's response, you must determine whether the additional information, proposed resolutions, or any actions subsequent to the examination that it has taken are satisfactory to resolve the issues. If you find them to be satisfactory, you must notify the SBIC by letter. If you do not find that the proposed or completed actions resolve the issues, you may request additional information or action, as appropriate. It is also possible that the additional information or clarification of facts may result in your disagreement with the examiner's findings,

thereby resulting in a Findings Dispute Memo (see Paragraph 9-5, “What Do I Do If I Disagree With the Examiner’s Findings?”).

**8. How Much Time Should be Provided to an SBIC to Resolve a Violation?**

- a. SBA has not established specific time limits to resolve violations because prudent business judgment is required to make the determination based upon a variety of circumstances. Therefore, the time frame in which you request an SBIC to resolve violations must reflect the following.
  - (1) The ability of the SBIC to take the requested action. (For example, the SBIC can amend a loan document in much less time than it would take for it to divest itself of an investment in a privately held small business.)
  - (2) Whether corrective action was previously requested.

The most serious violations such as conflicts of interest and capital impairment must either be resolved as soon as possible, or a plan for timely resolution must be submitted to SBA as soon as possible. In the examination letter, you must establish a specific date by which corrective action must be completed and reported to SBA. Ideally, all regulatory violations should be resolved within 180 days of the submission of the Report.

Examples of appropriate time frames in which to resolve violations are:

<b>Action Requested</b>	<b>No. of Days</b>
Amendment to a document/contract	30-45
Conflicts of Interest	90
Divestiture of small business	120-180
Capital Impairment Resolution Plan	15

- b. You must follow up on your request for action by the SBIC. To track pending actions most effectively, you should maintain a “suspense” file as a reminder of the mandated deadlines. If the SBIC fails to resolve Findings within specified time frames, the SBIC may be subject to additional actions by SBA. These action should recognize the severity of the Finding, what steps may have already been initiated to resolve the Finding and may include suspension of leverage draws, transfer of the fund to Liquidation or revocation of the license.
- c. The Tracking System maintained by OSO tracks the resolution of outstanding examination findings. You must report interim actions (i.e., a letter of comment date, and interim and final resolution dates) to the Office of Data Management on the Exam Findings Resolution Sheet with the concurrence of your Area Chief. (See Appendix 5-1, Exam Findings Resolution Sheet). If SBA has allowed the SBIC a period of time to resolve a violation, you must record this date under “Resolution in Progress” on the Exam Findings Resolution Sheet.

**9. What if I Disagree with the Examiner’s Findings?**

- a. Sometimes, you may disagree with facts or conclusions presented in the Report. In such cases, you, with the concurrence of the Area Chief and Director, OSO, must prepare a Findings Dispute Memorandum to be submitted to the Director, Office of SBIC Examinations, for concurrence. If the OE Director concurs with your position the dispute is settled. If he/she does not, the memo must be submitted to the Deputy AA/I for final resolution.
- b. After resolving any disputes with OE, you must prepare an examination letter which includes a brief summary of the facts and your recommendations for resolving any violations. You must submit this letter to your Area Chief for signature, and to the Director, OSO, for clearance. (see Appendix 1-2, Delegation of Authority.) All disputes must be resolved before an examination findings letter is issued.

**10. Who makes Referrals to the Inspector General?**

- a. Certain regulatory findings may require a referral to the Office of the Inspector General for further review and potential investigation.
- b. Generally you make a referral to the IG through your Area Chief, and the Director, OSO, to the AA/I. The Office of SBIC Examinations may also refer an SBIC to the IG. However, it is the responsibility of each SBA employee to ensure that the integrity of the program is maintained, and he/she may, at any time, make a direct referral to the Inspector General which may be made on a confidential basis.

**CHAPTER 6****Financial Analysis of SBICs****1. How and When do SBICs Provide SBA with Financial Information?**

All SBICs are required to submit an audited Annual Report on SBA Form 468 (see Appendix 10-1, Audited Annual Report on SBA Form 468), including footnotes and an Independent Public Accountants Opinion, within 3 months after their fiscal year end. The SBICs must file the reports electronically, either by email or on diskette, and must also send two hard copies. SBICs with outstanding Leverage Commitments and/or Leverage, SBICs that are subject to the intensive level of oversight as outlined in Tech Note 10 (see Appendix 7-1), and Participating Securities issuers that have repaid all outstanding Leverage but have unpaid prioritized payments and/or Earmarked Assets, must provide to SBA quarterly financial statements on SBA Short Form 468. (See Appendix 10-2, Short Form SBA Form 468.) The reports must include footnotes and must be certified by the management of the SBIC. An SBIC must also provide a quarterly SBA Short Form 468 within 30 days of the close of each quarter to continue drawing Leverage. (See 13 CFR Part 107.1220.)

These financial reports provide SBA with the information necessary to evaluate the SBIC's financial condition and operating results in order to assess:

- a. SBA's investment risk;
- b. the SBIC's eligibility for Leverage; and
- c. the SBIC's compliance with SBIC regulations.

**2. What Must I be Able to do With the Financial Information Provided by the SBICs?**

You are the primary reviewing official for all financial and regulatory reports. You are provided with the SBIC's financial statements, annual valuation reports, periodic Examination Reports, and other information that you request. These reports provide the tools necessary to fully understand an SBIC's operations.

You must review and analyze the financial information provided to you by:

- a. Using the financial database information available within the Investment Division;
- b. Using existing or developing customized spreadsheet applications, as needed; and
- c. Applying sound judgment and knowledge of complex financial concepts and regulations.

Your ultimate objective is to assess the overall business performance of the SBIC reflected by the financial, credit, and regulatory risks you have evaluated. You must prepare written or financial summaries on the existing and projected operations of an SBIC and its credit worthiness, and make recommendations regarding SBA Leverage based upon your analysis. This analysis must include an analysis of the likelihood of potential repayment by the SBIC of all Leverage while recognizing the unique nature of venture capital investing.

### **3. What Forms are Used to Document the Review of SBA Form 468 Filings?**

Annual financial statement and Leverage Commitment reviews are documented through the completion of the Core Analytical Document. Quarterly reviews are more informal and do not have to be formally documented except as may be required by the risk rating analysis and the Capital Impairment Report. However, you should review the quarterly Forms 468 using the standards described above and notify your Area Chief in writing of any findings requiring special attention. Additionally, a revised Risk Assessment rating should be prepared upon receipt of every quarterly Form 468. Additionally, comments should be entered as appropriate in the Capital Impairment Report.

### **4. How do I Prioritize the Review of Annual Reports on SBA Form 468?**

- a. You should prioritize the review of SBICs as follows:
  - (1) Those SBICs subject to an intensive level of monitoring as provided in Tech Note 10;
  - (2) Highly Leveraged SBICs (either by dollar amount or Leverage ratio);
  - (3) All other Leveraged SBICs; and

- (4) UnLeveraged SBICs.
- b. You may perform only a limited review on unLeveraged SBICs, including a review of their regulatory compliance and 3 year spreads.

## 5. What Factors Should I Consider in the Financial Analysis of SBICs?

- a. Variety of Licensees  
The variety in SBIC types requires that the analytical techniques be flexible so that each SBIC is analyzed appropriately. SBICs differ as to the quality and characteristics of their assets, the relative competence of their management, and the economic environment in which they operate. Examples of such variety include:
  - (1) Business form - corporation, partnership or LLC;
  - (2) Age - new or seasoned with operating history;
  - (3) Capital structure - debt to equity;
  - (4) Size of capital base;
  - (5) Types and quality of investments;
  - (6) Management's level of qualifications; and
  - (7) Ownership - institutional, individuals, domestic, foreign, passive, or active
- b. Management Ability  
You are responsible for overseeing the SBICs in your portfolio, and must intelligently question information provided to you in various reports and financial statements. You must scrutinize the financial statements you receive to ensure that they are a fair and reasonable presentation of results. Annual audited financial statements, of course, have been reviewed by an independent third party. Within the limitations of the accounting and valuation guidelines specified by SBA, and accepted accounting practice, there is opportunity for the SBIC to present the financial information in the most favorable light. Therefore, you should not necessarily accept the financial statements as presented. Your challenge is to study the financial information and make appropriate adjustments if necessary to reflect the financial condition and/or results on a realistic basis.

c. Analysis Tools

To understand an SBIC's operations and financial health, you must evaluate the financial statements using trend analysis, ratio analysis and the risk rating system, and other data that appear in the Core Analytical Document. Ratio analysis alone is not conclusive. You must understand the components within the ratios and must be able to appropriately interpret what the ratios signal. Your financial analysis should reveal the interrelationships between the income statement, the balance sheet, the cash flow statement, and the supporting schedules. These relationships will assist you in assessing the SBIC's business as a whole.

d. Risk Factors

The risk to SBA in granting Leverage is often greater than is customary in commercial finance, banking or capital formation in the private sector. You must determine the likelihood that the SBIC will generate sufficient income and capital gains to pay:

- (1) The semi-annual interest and principal of debentures at maturity; and,
- (2) Prioritized payments, profit participation, and redemption of participating securities.

This analysis must be performed at least annually; however, significant changes in the licensee's financial position may generate more frequent determinations.

**6. What do I Consider When doing Financial Analysis?**

The Core Analytical Document (attached) is very comprehensive and self-explanatory. The type of analysis performed will depend in large measure on the data with which you are presented upon opening this electronically-generated form. You are charged with explaining and interpreting the data. The narrative should thoroughly discuss what's shown and tell the reader what it means. There is no set formula for doing that; you must interact with what is before you.



## 7. When is a Full Valuation Report required?

The Licensee's responsibilities for preparing valuation reports are set forth in 13 CFR Part 107.503, "Licensee's Adoption of an Approved Valuation Policy." In addition to these requirements, you must also be familiar with the Valuation Guidelines for SBICs. (See Appendix 6-5, Valuation Guidelines for SBICs.) Each Licensee is required to prepare and retain in its permanent files a "valuation report" as of each valuation date. You must require Licensees to provide copies of these valuations if:

- a. They are highly Leveraged SBICs (meaning a tier or more of Leverage);  
or
- b. The stated values on Schedule 1 of the SBA Form 468 raise doubts or concerns.

Otherwise, these valuations should be provided at your discretion in consultation with the Area Chief.

If a Licensee's valuations appear to be materially misstated, 13 CFR Part 107.503 (c) authorizes SBA to require the Licensee to engage, at its expense, an independent third party acceptable to SBA to substantiate the valuations. Before requiring an independent appraisal consult with your area chief.

To assist with valuation questions and issues, the Investment Divisions may from time to time enlist the aid of a valuation contractor.

## 8. What Analytical Measures Should Be Applied?

- a. Trend Analysis  
Standing alone, the financial statements of an SBIC for a single year or stub period have minimal meaning and value. To gain insight into the operations of the SBIC and the capability of management, you must look at the SBIC's performance over time. The Balance Sheet and Income Statements for several periods (at least 3 years where the SBIC has been in business that long) should be arrayed and the change over time evaluated. Your goal is to determine the improvement or deterioration over time of asset values, liability accounts, and net worth on the Balance Sheet; and

sources of income and changes in major expense accounts on the Income Statement.

Resources from Data Management will provide the basic financial data for review from the ID Information Database. However, you must be able to use the available computer spreadsheet applications to make adjustments to the financial information provided and recast this data when necessary.

b. Other Tools

Chapter 6, section 5(c) applies here as well.

**9. What Tools are Available to Perform Financial Calculations?**

Again, most of the necessary calculations are performed by the computer program governing the Core Analytical Document.

**10. How do I Calculate Capital Impairment for Section 301(c) SBICs?**

Capital impairment is the degree to which the Regulatory Capital of an SBIC has deteriorated because of accumulated losses. If an SBIC has positive Undistributed Net Realized Earnings and Net Unrealized Appreciation, it is considered to have no impairment, and you may consider SBA's Leverage position to be protected. The absence of positive Undistributed Net Realized Earnings is not always bad if there is evidence of consistent capitalization of Retained Earnings. If the SBIC has an Undistributed Net Realized Loss and/or Net Unrealized Depreciation, you must pay special attention to the degree of capital impairment.

There are currently two capital impairment calculations in effect. One applies to Leverage issued before April 25, 1994; the other applies to Leverage issued after that date. SBICs with outstanding Leverage issued both before and after April 25, 1994, are subject to both impairment calculations. With respect to capital impairment for debenture licensees, an analysis was performed in FY 2006 that determined the existing levels were still appropriate. A new analysis will be performed no later than FY 2011.

- a. For SBICs with Leverage issued prior to April 25, 1994, only.

-- If the SBIC shows a Net Unrealized Gain:  
Undistributed Net Realized Loss, divided by Total Paid-in Capital and Surplus

-- If the SBIC shows a Net Unrealized Loss:  
Undistributed Net Realized Earnings (Loss) + Net Unrealized Loss,  
divided by Total Paid-In Capital and Surplus  
For SBICs with debentures issued prior to April 25, 1994, only, if this ratio is greater than 35 percent, any new Leverage or rollover request may be denied. If the ratio is between 25 and 35 percent, if you want to recommend approval of Leverage, you must discuss the potential for improvement.

WHEN THIS RATIO EXCEEDS 35 PERCENT, YOU MUST RECOMMEND THAT THE LICENSEE BE PLACED IN THE Intensive Level of Oversight. (See Paragraph 9-2 (b), "Events Leading to Removal from the Program.")

- b. For SBICs with Leverage issued after April 25, 1994, only:  
The spreadsheet in Appendix 6-7, "Capital Impairment for SBICs With Leverage Issued After April 25, 1994," sets forth the calculation you must use to determine an SBIC's capital impairment. Note that in this case, Regulatory Capital = Paid in capital and surplus + unfunded binding commitments from Institutional Investors.
- c. For SBICs with Leverage issued before and after April 25, 1994:  
You must perform the calculations set forth in paragraphs a. and b. above to determine the SBIC's impairment under both calculations.

Section 301(c) SBICs whose Leverage was received prior to April 25, 1994, must also comply with the provision of 13 CFR Part 107.1830(e) and (f). The following table presents the Maximum Permitted Capital Impairment Percentages for Section 301(c) Licensees from 13 CFR 107.1830 of the regulations:

<u>If the percentage of equity capital investments (at cost) in your portfolio is:</u>	<u>And your ratio of outstanding Leverage to Leverageable capital is:</u>	<u>Then your maximum permitted impairment percentage is:</u>
at least 67%	100% or less	70%
	over 100% but not over 200%	60
	over 200%	50
at least 40% but less than 67%	100% or less	55
	over 100% but not over 200%	50
	over 200%	40
under 40%	100% or less	45
	over 100% but not over 200%	40
	over 200%	35

13 CFR Part 107.1850 applies to Section 301 (c) Licensees if at least two-thirds of their outstanding Leverage consists of Participating Securities, and at least two-thirds of their Loans and Investments (at cost) consists of Equity Capital Investments. Under this section forbearance of 48 to 60 months allows capital impairment of 85% and thereafter it is subject to the table above.

**11. How Does Capital Impairment Differ for Section 301(d) SBICs?**

- a. For section 301(d) SBICs, the maximum allowable capital impairment percentage is 75 percent. However, the capital impairment calculation will vary depending on whether the SBIC has successfully completed the repurchase of its 3 percent Preferred Stock issued to SBA. If the SBIC has completed the buyback, the Restricted Contributed Capital Surplus account is included in the capital base when calculating capital impairment.
- b. Capital Impairment Calculation without 3 Percent Repurchase  
You must calculate the capital impairment as described above for 301(c) Licensees, using paragraph a., b. or c. depending upon the issue dates of the SBIC’s outstanding Leverage.

- c. Capital Impairment Calculation with 3 Percent Repurchase  
For Section 301(d) SBICs that have completed the 3 percent repurchase, calculate the capital impairment calculation as follows:
- (1) For SBICs with Leverage prior to April 25, 1994 only:
    - If the SBIC shows a Net Unrealized Gain: Undistributed Net Realized Earnings (Loss), divided by Total Paid-in Capital and Surplus + Restricted Contributed Capital Surplus
  
    - If the SBIC shows a Net Unrealized Loss:  
Undistributed Net Realized Earnings (Loss) + Net Unrealized Loss, divided by Total Paid-In Capital and Surplus + Restricted Contributed Capital Surplus
  
  - (2) For SBICs with Leverage issued after April 25, 1994 only:  
The spreadsheet in Appendix 6-7, "Capital Impairment for SBICs with Leverage Issued After April 25, 1994," sets forth the calculation you must use to determine an SBIC's capital impairment. Note that in this case, Regulatory Capital = Paid-in capital and surplus + unfunded binding commitments from Institutional Investors + Restricted Contributed Capital Surplus.
  
  - (3) For SBICs with Leverage issued before and after April 25, 1994:  
You must perform the calculation set forth in paragraphs (1) and (2) above to determine the SBIC's impairment under both calculations.

Section 301(d) SBICs whose Leverage was received prior to April 25, 1994, must also comply with the provisions of 13 CFR Part 107 Sections 1830(e) and (f).

## CHAPTER 7

## Annual Ratings of SBICS

**1. What is a “Rating” of an SBIC?**

- a. Each SBIC with outstanding Leverage or Leverage Commitment is to be assigned a risk rating. The methodology for calculating this rating is described in detail in TechNote 10 (Appendix 7-1). The level of oversight (as more fully set forth in TechNote 10) required for an SBIC will be principally dependent upon the assigned rating. The rating will be calculated and the level of oversight assigned whenever a quarterly or annual Form 468 report is received. The rating and all relevant analysis must be documented and placed into the appropriate file for the SBIC.
- b. Confidentiality  
Individual ratings must be kept in strict confidence. The individual ratings will not be disclosed to the public although you may disclose and discuss an individual SBIC’s rating with management of that particular SBIC. The individual ratings may change based on the current circumstances of an SBIC and therefore have no binding effect on the handling of particular future regulatory or financial situations. However, the individual ratings may be used by the Investment Division in developing priorities for examinations by the Office of SBIC Examinations.

**2. What is the Difference Between Financial Analysis and the Assignment of Ratings?**

The financial and regulatory ratings assigned to an SBIC represent a “snapshot” of a particular SBIC’s performance at a particular time. Financial analysis relates to the financial performance of an SBIC and its underlying investments, and helps in assessing the SBIC’s financial viability, its credit worthiness, the probability of its ultimate repayment to SBA and to its investors, and the potential for Agency loss. This is a dynamic flow of information that represents your primary decision making tool.

**3. What Information is Available for Me to Perform the Financial Analysis and Regulatory Review Necessary to Complete the Ratings?**

- a. The following list contains all of the materials available to you that can be used as basic working tools for preparing your annual and/or quarterly assessment of the SBIC.
- (1) Current and historical audited annual financial statements (SBA Form 468) provided by the SBIC and your analysis of these statements performed as part of your annual review on the Core Analytical Document.
  - (2) Current and historical Examination Reports and examination comment letters prepared by the Office of SBIC Examinations and the OSO, respectively.
  - (3) Current and historical work flow provided by the SBIC's management in the form of prior and post approvals regarding financings and other operational activities of the SBIC during each annual cycle.
  - (4) Current and historical Leverage requests submitted during the annual cycle.
  - (5) Current and historical Financing data provided on SBA Form 1031, "Portfolio Financing Report," for each investment made by the SBIC.
  - (6) The SBIC's original or updated business plan. While some companies are far more active than others, during the course of an annual cycle, you should have some contact and review of each company assigned to you by your Area Chief.

## CHAPTER 8

### Placement of Participating Securities Licensees into Restricted Operations

#### 1. What triggers Restricted Operations?

Upon the occurrence of any of the conditions specified in 13 CFR Part 107.1820(e) ("Restricted Operations Conditions"), a participating securities SBIC can be placed into Restricted Operations. Although 13 CFR Part 107.1820(e) lists a number of Restricted Operations Conditions, the most common Restricted Operations Condition is a condition of Capital Impairment that has not been cured within the specified time frame. The maximum permitted capital impairment percentages are set forth in 13 CFR Part 107.1830 and are discussed in Chapter 6 of this SOP.

#### 2. What are SBA's remedies under Restricted Operations?

SBA's remedies are contained in 13 CFR Part 107.1830(f) and are summarized below:

- a. SBA may prevent the SBIC from making any additional investment except for investments under legally binding commitments entered into prior to notice of Restricted Operations;
- b. SBA may prohibit distributions to any party other than SBA;
- c. SBA may require all commitments from investors to be funded at the earliest time permitted under the terms of the licensee's partnership agreement; and
- d. SBA may review and re-determine the licensee's approved management fees.

#### 3. What is the process for placing a SBIC into Restricted Operations?

##### a. Capital Impairment

If a licensee exceeds the maximum allowable capital impairment level, you should issue the standard cure letter (Appendix 8-1) which provides that the licensee will be placed in Restricted Operations if it does not cure the capital impairment within the time period specified in the cure letter. The standard cure letter specifies SBA's remedies if the licensee is placed in Restricted Operations. If the licensee is placed in Restricted Operations, the management fee will be reduced in accordance with the procedures outlined in the standard cure letter.



b. Other Restricted Operations Conditions

Upon the occurrence of any other Restricted Operations Condition, the licensee should be placed in Restricted Operations. You should prepare a letter for review by your Area Chief and the Office of General Counsel notifying the licensee that it is in Restricted Operations. The letter should specify the remedies that SBA will impose, including the specific reduction in the management fee, and inform the licensee what is needed to cure the Restricted Operations Condition and the timeframe for such cure. (See #5 below)

**4. What are the analyst's responsibilities regarding a SBIC placed into Restricted Operations as a result of Capital Impairment?**

On a quarterly basis, the Director of Operations will prepare Impairment Overview Reports on all those Licensees in Restricted Operations as a result of Capital Impairment. The Director of Operations will request you to update the status of a licensee that is in Restricted Operations as a result of Capital Impairment. You should use the information contained in the quarterly report prepared by Data Management, as well as other information you have collected through portfolio reviews, etc. concerning the licensee's financial condition, for the purpose of updating the status of a licensee. The Director will use this updated information to prepare the Impairment Overview Reports which can be viewed by senior management and other interested internal parties on the Investment Division Information System. As soon as possible, you should schedule a portfolio review meeting with the SBIC's management team in Washington, DC using the format established in TechNotes 10, Appendix 10-6.

**5. When will SBA transfer a Licensee in Restricted Operations to Liquidation?**

If the licensee does not cure a Restricted Operations Condition within the time specified in the cure letter, you and your Area Chief should discuss whether to transfer the licensee to the Office of SBIC Liquidation. In general, a licensee may not remain in Restricted Operations with an uncured Restricted Operations Condition for more than three quarters. The licensee should be transferred to the Office of SBIC Liquidation unless the licensee is in the process of curing the Restricted Operations Condition pursuant to a plan approved by SBA.

**CHAPTER 9****Transfers of Licensees to Liquidation****1. What Does it Mean for a Licensee to be "In Liquidation"?**

A licensee is considered "In Liquidation" when oversight responsibility for the licensee is transferred from the Office of SBIC Operations to the Office of SBIC Liquidation, where action will be taken to recover funds advanced by, or owing to, SBA.

**2. When Should I Recommend Transfer of a Licensee to the Office of SBIC Liquidation?**

In general, when you become aware that a licensee has violated the Act or the regulations, you must notify your Area Chief and determine an appropriate course of action. Section 107.1810 of SBA regulations lists events of default for Licensees issuing debentures and the remedies available to SBA. Section 107.1820 of SBA regulations lists the conditions that affect a licensee issuing participating securities and the remedies available to SBA. When a licensee cannot or does not cure a violation, the OSO must recommend to the AA/I that the licensee be transferred to the Office of SBIC Liquidation. Certain violations, however, may result in automatic transfer to the Office of SBIC Liquidation. For example, the occurrence of one of more events under 13 CFR Part 107.1810(b) can lead to an immediate transfer to the Office of SBIC Liquidation. Other violations may lead to a transfer to Restricted Operations if the licensee is a participating securities issuer. (For a more complete discussion of Restricted Operations, please refer to Chapter 8 of this SOP.) You should also consult the Transfer Timing Guidance. (See Appendix 9-1 Transfer Timing Guidance)

**3. What Steps do I Take Once I Determine that a Licensee Should be "In Liquidation"?**

When you determine that a licensee is a candidate for transfer to the Office of SBIC Liquidation, with the concurrence of your Area Chief, you must

- (1) Notify the Director of OSO of your intention to make a referral;
- (2) Prepare SBA Form 327 for circulation to representatives from the Office of General Counsel, the Office of SBIC Liquidation, OSO, and the AA/I for concurrence or non-concurrence and signature; and

- (3) Attach the Core Analytical document, if applicable, the cure letter and any other information you consider pertinent to the decision.

**4. When is the Licensee Notified of a Transfer to the Office of SBIC Liquidation?**

In most cases, you should notify the licensee of the possible transfer to the Office of SBIC Liquidation. In certain situations, however, it may not be appropriate to notify the licensee in advance. For example, if you suspect that fraud or criminal activity is involved, it is probably not appropriate for you to contact the licensee. You should consult with your Area Chief before contacting the licensee. Once a licensee has been transferred, the Office of SBIC Liquidation will send a letter notifying the licensee of the transfer. Usually, OSO will also call the licensee to inform the licensee of the action.

**5. What Steps are Taken Upon Acceleration of Debentures or Redemption of Participating Securities?**

Upon transfer to the Office of SBIC Liquidation, payment of a licensee's debentures is accelerated and a licensee's participating securities are redeemed. The CAO will arrange to repurchase the licensee's debentures and/or participating securities from the pool by notifying the trustee of the acceleration of the debentures and/or redemption of the participating securities. The Office of SBIC Liquidation will prepare a package for the CAO in the SBA Investment Division-Data Management Branch to transmit to the Office of Financial Operations in the Office of the Chief Financial Officer authorizing payment to the trustee. The package will include

- (1) SBA Form 431, Request for Expenditure, for the repurchase of the debentures and/or participating securities;
- (2) An undated letter for signature by \_\_\_\_\_ authorizing payment to the trustee for the total amount of the repurchase;
- (3) A copy of the signed SBA Form 327 that authorized the transfer of the licensee to the Office of SBIC Liquidation; and
- (4) A copy of the notice given to the trustee.

**6. Can a Licensee "In Liquidation" Return to the Office of SBIC Operations?**

If certain conditions are met, the Office of SBIC Liquidation can recommend that a licensee be transferred back to OSO. At a minimum, a licensee must demonstrate viability and meet the licensing standards in effect at the time of the proposed transfer back to OSO. The Director of OSO may impose other conditions deemed necessary at the time of the transfer. To return a licensee to OSO, the Office of SBIC Liquidation must:

- (1) Prepare a Licensee Profile Memorandum (LPM) and any other documentation deemed necessary when recommending return to OSO;
- (2) Distribute copies of the LPM to the Director of OSO, the AA/I, the Director of the Office of SBIC Liquidation and the Office of General Counsel;
- (3) Request that the AA/I convene a meeting of these representatives for a review of the case; and
- (4) If after receiving the advice of the parties listed in this Section 6, the AA/I determines that the licensee should be transferred back to OSO, the Office of SBIC Liquidation must prepare an SBA Form 327, "Modification or Administrative Action" (see Appendix 8-2), which briefly documents the reasons for the transfer back to OSO.

**CHAPTER 10****SBIC Reporting Requirements****1. What Reports Must a Licensee Submit to the Investment Division on a Regular Basis?**

A Licensee must submit the following as part of its regular reporting requirements.

- a. SBA Form 468, “Financial Report” – A Licensee must submit its audited annual report on SBA Form 468 (see Appendix 10-1, “Audited Annual Report on SBA Form 468”), together with supporting schedules and auditor’s report on or before the last day of the third calendar month after the SBIC’s fiscal year end in accordance with 13 CFR Part 107.630. All SBA Form 468 filings must be prepared in accordance with SBA’s Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies. (See Appendix 10-4, “Guide to Accounting Standards and Financial Reporting Requirements and Chart of Accounts for SBICs.”) Licensees required to file SBA Short Form 468 (Appendix 10-2) have been previously identified. The Short Form 468 must be certified by the SBIC’s management.
- b. SBA Form 1031, “Portfolio Financing Report” – A Licensee must submit this report within 30 days of a new financing to a small business, in accordance with 13 CFR Part 107.640. (See Appendix 10-3, “SBA Form 1031, Portfolio Financing Report.”)
- c. Valuation Report – A Licensee must submit a valuation report in accordance with 13 CFR Part 107.650 within 90 days of its fiscal year end for year-end valuations and within 30 days of the close of other reporting periods.
- d. Recertifications of the collectibility of unfunded commitments from Institutional Investors are required each year from all Licensees with outstanding Leverage, outstanding Leverage Commitments, or both except that Licensees that were licensed in the current fiscal year do not have to recertify until the following fiscal year in the appropriate month relative to the amount of their unfunded commitments. Based on the level of Regulatory and Leverageable Capital on the

last Capital Certificate submitted to SBA, the recertifications should adhere to the following schedule:

Schedule	Unfunded Commitments	
	Low	High
June	\$ 20,000,000	\$ higher than \$20 MM
July	\$ 12,500,000	\$ 19,999,999
August	\$ 7,500,000	\$ 12,499,999
Sep	\$ 5,000,000	\$ 7,499,999
Oct	\$ 2,500,000	\$ 4,999,999
Nov	\$ 1	\$ 2,499,999

**2. How Does an SBIC File These Reports?**

- a. A Licensee must file its SBA Forms 468 and 1031 electronically. For SBA Form 468, the Licensee receives the form on CD-ROM and submits it via electronic mail to sbic@sba.gov and sends two hard copies of the completed form to the Data Management Branch. For SBA Form 1031, a Licensee receives and submits the form via electronic mail to sbic@sba.gov. Because a Licensee does not submit a paper copy of this form, the SBIC must also complete, and submit separately an SBA Form 1031A, “Portfolio Financing Report Certification” (a paper copy of the certification portion of the Form 1031) (see Appendix 10-3, “SBA Form 1031, Portfolio Financing Report”).
- b. A Licensee may submit its valuation report in one of several ways, depending on whether the submission is an annual, semiannual, or quarterly report. For an annual report, a Licensee may meet the reporting requirements with its filing of SBA Form 468 with adequate documentation in the form of footnotes (for securities whose values have changed by 10 percent or more since the last report). For a semiannual report, a Licensee may meet the reporting requirements with its submission of a schedule of securities whose values have changed by 10 percent or more, plus a schedule A of SBA Form 468 (Summary of Loans and Investments). Licensees with no valuation changes at or over the 10 percent threshold must submit a written statement to that effect. For a quarterly report required of Licensees with portfolio securities whose values have experienced a “material” change during the period, a Licensee may meet the reporting requirements by submitting a schedule of those

securities changing in value by 20 percent or more.

- c. Licensees with unfunded investor commitments are required to recertify the status of their investors by submitting to the financial analyst either a new Capital Certificate which reflects any revisions in its Institutional Investors and/or Regulatory Capital, or a letter certifying that a review of unfunded commitments and Institutional Investors has occurred and that no changes are required in the Capital Certificate most recently filed with SBA.

### **3. How Does the Investment Division Process Electronically Submitted Reports?**

After receiving a completed SBA Form 468 package through the mail, the Data Management Branch date stamps the form, enters the pertinent data into the ID tracking system, downloads the data into a computer database and distributes paper copies to the account executive/Area Chief and Office of SBIC Examinations. The 468 database is accessible to Investment Division personnel for future reporting and analysis purposes.

As SBA Forms 1031 are received, the Data Management Branch downloads SBA Form 1031 data into a computer database which is also made available for ID personnel for future reporting and analysis purposes.

### **4. What Additional Filing Requirements are imposed on a Participating Securities Issuer Which Desires to Make Distributions?**

- a. Distributions made by an issuer of Participating Securities are subject to SBA regulations (see 13 CFR Part 107.1540-1580). Prioritized Payments, tax distributions, profit distributions, and returns of capital are all rigidly controlled by specific facts and the hierarchy of payments required by the regulations. SBA has developed software for the purpose of determining and verifying these distributions, which SBICs can download from [www.sba.gov/inv/extra](http://www.sba.gov/inv/extra). (See Appendix 11-5, "Participating Securities Distribution Worksheet.")
- b. When notified by a Participating Securities issuer that they wish to make a distribution, coordinate review of the Licensee's completed distribution worksheet and supporting documentation with the Office of Licensing and Program Standards, which will be the primary reviewer. The financial analyst should assist by providing accurate, up-to-date figures for the Licensee's

Regulatory and Leverageable Capital and capital impairment percentage, as well as any other necessary background information on the Licensee.

- c. Notify your Area Chief and the Office of the Chief Administrative Officer of the final set of numbers to be used for the distribution.
- d. For distributions taking place on a date other than a quarterly Payment Date (see 13 CFR Part 107.1575), prepare an approved letter for the Area Chief's signature.