



Billing Code: 8025-01

## SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies – Administrative Fees

RIN 3245-AG65

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is revising its regulations to increase the Small Business Investment Company (SBIC) licensing and examination fees. The Small Business Investment Act of 1958, as amended, allows SBA to collect licensing and examination fees to offset SBA's costs associated with the administration of these two activities. SBA last increased fees for SBICs in 1996. Current fees offset less than 40% of SBA's administrative expenses related to these activities. This final rule increases SBIC licensing and examination fees in annual steps through October 2020, at which time SBA estimates that the annual fees will recoup approximately 80% of SBA's annual expenses directly related to these activities. Beginning in October 2021, this rule increases licensing and examination fees annually based on inflation.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background Information

The Small Business Investment Act of 1958, as amended (“Act”), authorizes SBA to collect fees to cover the costs associated with the licensing and examination of SBICs. 15 U.S.C. 681(e)(2)(B) and 687b(b). Although SBA has regulations setting the amount of these fees, SBA has not increased licensing and examination fees for SBICs since 1996. As part of the final rule published January 31, 1996 (61 FR 3177), SBA set licensing fees “to reflect the Agency’s costs of processing applications” and similarly set examination fees to “produce total revenue sufficient to cover the current direct costs to SBA of conducting examinations.” In a subsequent rule published on April 30, 1997 (62 FR 23337), SBA capped examination fees at \$14,000, which lowered the fee for SBICs with over \$60 million in assets. As part of the rationale for this change, the rule stated, “many of the largest SBICs are bank-owned and do not use federal leverage, so that fees computed on the basis of total assets do not appropriately reflect the level of effort and risk associated with the examination process.” Neither rule included an adjustment for inflation.

Although fees set in 1996, as adjusted in 1997, were intended to fully reimburse SBA’s costs, by fiscal year (FY) 1999 (the earliest fiscal year for which SBA expenses are readily available), licensing and examination fees only covered approximately 85% of SBA’s direct costs. SBA’s direct costs are the expenses related to licensing and examination (e.g., personnel compensation and benefits associated with licensing and examinations, technology, subscription services, travel and other costs associated with licensing and examinations), and excludes SBA’s overhead costs (e.g., office space, utilities, and other supporting offices within SBA). In FY 2016, licensing and examination fees reimbursed approximately 35% of SBA’s direct licensing and examination expenses, and less than a quarter of SBA’s licensing and examination expenses when including overhead.

On December 16, 2016, SBA published a proposed rule (81 FR 91049) to gradually increase the SBIC licensing and examination fees each year through October 1, 2020, and thereafter annually based on inflation, beginning on October 1, 2021. The proposed rule detailed the reasons for the widening gap between fees received and SBA related expenses. Key reasons include inflation, changes in the SBIC portfolio, increased capital at risk (SBA-guaranteed leverage and commitments), SBA's efforts to improve SBIC program performance, and technology implementation.

As noted above, the Act authorizes SBA to collect fees to cover the costs associated with the licensing and examination of SBICs. The Act requires SBA to deposit the fees in the account for salaries and expenses of the Administration and authorizes SBA to use licensing fees to cover licensing costs and examination fees to cover the costs of examinations and other program oversight activities. 15 U.S.C. 681(e)(2) and 687b(b). To the extent that SBA does not cover its licensing and examination costs by charging SBICs for these fees, the balance is paid out of Agency funds. In other words, when SBICs do not pay fees sufficient to cover SBA's licensing and examination costs, taxpayers bear the burden of covering those costs. It is an appropriate use of SBA's statutory authority in this final rule to increase SBIC licensing and examination fees to cover a greater percentage of licensing and examination costs.

The effect of the statutory language authorizing SBA to use licensing fees to cover licensing costs and examination fees to cover the costs of examinations and "other program oversight activities" is that SBA may use examination fees to cover a broader category of expenses than those for which it may charge (i.e., examination costs alone). Although the current and estimated future costs of compensation and benefits of SBA personnel involved in licensing and examinations, not including any additional related expenses, fully support the fee increases in this final rule, in the proposed rule, SBA identified a number of costs it expected to

pay for with the funds made available by this rule, such as technology, training, information services and contractor support for examinations. While the expenses other than licensing and examinations personnel compensation and benefits discussed in the proposed rule and this final rule are not necessary to support the fee increases in this final rule, these expenses are priorities of SBA. Accordingly, SBA intends to use the additional funds made available by this rule – whether those funds are fee revenue or Agency funds currently used to pay compensation and benefits of personnel involved in licensing and examinations that are replaced by fee revenue from this rule – to pay for such expenses.

SBA received three sets of comments. These comments are addressed in the Section-by-Section Analysis.

## II. Section-by-Section Analysis

### A. General Comments on the Proposed Rule

SBA received several comments that were generally directed to the proposed rule (81 FR 91049) rather than a specific section. Each of these is addressed below.

One comment stated that the proposed rule does not comply with the Presidential Executive Order 13771 issued on January 30, 2017, entitled “Reducing Regulation and Controlling Regulatory Costs.” OMB issued guidance on April 5, 2017, entitled, “Guidance Implementing Executive Order 13771,” which states that Executive Order 13771 applies only to significant rules, as defined by section 3(f) of Executive Order 12866. Since OMB has determined that this rule is not significant, Executive Order 13771 does not apply to this rule.

SBA received a number of comments that centered on the theme that SBA is using dollars that should be directed to the SBIC program for other programs. For example, one comment stated that SBA’s Office of Investment and Innovation (OII), which oversees the SBIC program, has been redirecting its human capital and funding from the SBIC program to other

programs, such as the Small Business Innovation Research (SBIR) program. Another comment stated that SBICs have no certainty that if higher fees are charged that the additional resources generated would not be used to offset increased spending for non-SBIC matters, and “there is no limitation on monies that are currently spent on licensing and examinations from being diverted to other uses by the SBA.” Another comment stated similar concerns and asked what assurances SBA could provide that the fee increase would benefit the SBIC program. A final comment stated that “OII should use all its resources to support the SBIC program.”

The comments misunderstand or fail to take into account SBA’s statutory obligations, extensive transparency with respect to spending, and commitments identified in the proposed rule. First, by statute, SBA must use SBIC licensing fees for licensing expenses and SBIC examination fees for examination and other program oversight expenses. 15 U.S.C 681(e)(2)(A), 687b(b). This statutory obligation governing the use of fees should provide SBICs with certainty that SBA is using the fees generated by this final rule only for SBIC matters. Second, SBA provides comprehensive budget transparency, which should provide additional assurance to SBICs that SBA is using the fee increase in the final rule only for SBIC matters. SBA’s Congressional Budget Justification separately tracks and reports the costs for each of its programs, including the costs of the SBIC and SBIR programs. This information is made publicly available every year by SBA, and is available at [www.sba.gov/about-sba/sba-performance/performance-budget-finances/congressional-budget-justification-annual-performance-report](http://www.sba.gov/about-sba/sba-performance/performance-budget-finances/congressional-budget-justification-annual-performance-report). Current SBIC licensing and examination fees are applied to SBA’s account for salaries and expenses, as required by the Act, and are used to pay the salaries of personnel associated with SBIC licensing and examination activities. In FY 2016, SBA spent an estimated \$4.8 million on personnel compensation and benefits associated with these activities alone, and \$5.4 million including travel, technology, subscription services and other costs associated with

these activities. Licensing and examination fees provided only \$1.9 million to offset these costs. By FY 2021, SBA estimates that direct costs associated with licensing and examinations will increase to \$9.4 million and that this final rule will generate an additional \$5 to \$6 million in fees annually. Accordingly, even after the fee increases in this rule are fully phased in, a shortfall of \$1.5 million to \$2.5 million will still exist between aggregate licensing and examination direct expenses. When factoring in overhead, SBA's estimated licensing and examination costs will even further exceed anticipated fees. Third, SBA recognizes the need for additional resources in the SBIC program. Indeed, that is one of the purposes of the rulemaking and should provide assurance that the additional funds made available by this final rule will be used to benefit the SBIC program. As more fully discussed below, SBA intends to allocate the additional funds made available by this rule to pay for needed resources, including technology, subscription services, contractors, and training. Finally, and more broadly, the SBIC program is one of many programs operated by SBA. OII manages several programs, including, but not limited to, the SBIC program and the SBIR program. As is the case with the SBIC program, SBA has statutory obligations with respect to operating the SBIR program. SBA assesses resource needs for each program to efficiently and effectively execute its statutory responsibilities. Consistent with the statute, no SBIC fee revenue has been or will be used for this program.

One comment stated that SBIC program costs have not substantially increased in recent years and questioned the need for increased fees. The comment is correct that SBIC program costs have not substantially increased over the past few years. Nonetheless, excluding SBA overhead, the SBIC program direct operating budget has increased from \$7.4 million in FY 1999 (the earliest period for which SBIC budgets are readily available) to approximately \$12.9 million in FY 2016. Over half of the increase is due to inflation (\$7.4 million in January 1999 would equate to \$10.7 million in January 1999 based on the U.S. Bureau of Labor Consumer Price

Index calculator located at [data.bls.gov/cgi-bin/cpicalc.pl](http://data.bls.gov/cgi-bin/cpicalc.pl)) with the remainder due to the addition of subscription services, such as Preqin and Lexis/Nexis, technology improvements, and the costs associated with more experienced analysts necessary to oversee SBA's increased capital at risk (SBA leverage and commitments). As discussed in the proposed rule, SBICs ultimately benefit financially from improvements in the quality of the SBIC program portfolio through lower annual charges on SBA-guaranteed debenture leverage. The SBIC debenture leverage annual charge has decreased from 1% in FY 1999 to an annual charge of 0.347% in FY 2017, reflecting improvements to the SBIC debenture portfolio (a cost savings of \$979,500 in just one year for a hypothetical SBIC issuing \$150 million of debentures at the lower annual charge). In FY 1999, SBA had less than \$3.9 billion in capital at risk; this figure grew to \$14.5 billion by the end of FY 2016. Analyzing SBICs and SBIC applicants has become more time intensive due to the increased complexity of SBIC organizational structures, legal documents, management fees, and financings. As an example, on October 21, 2014, SBA published a final rule (79 FR 62819) requested by the SBIC industry, which allowed the use of up to two levels of passive businesses under 13 CFR 107.720(b)(2) in order to provide more flexibility to its SBICs in structuring investments. To appropriately monitor these financings, SBA must examine each passive business used in the financing in addition to the operating business. While SBA understands such financings provide SBICs additional flexibility in structuring investments, these financings cause additional work for SBA to review and monitor.

One comment asked SBA to identify its priorities for the increased fee revenue associated with this rule. SBA intends to use the additional funds made available by this rule to: (1) support its continued efforts to migrate from desktop database tools to a secure cloud-based system comparable to the systems used by a typical private equity fund of funds (an investment fund that holds a portfolio of private equity funds); (2) pay for additional contractor services to

support examinations and facilitate SBA's transition to a paperless environment; (3) increase travel related to licensing, examination, and other program oversight; (4) train employees; (5) increase access to subscription services typically used by a typical private equity fund of funds, such as industry reports; and (6) to further offset the compensation and benefits of personnel associated with these activities.

One comment stated that the proposed fee increase was excessive and it was unclear why an additional \$3 to \$4 million in fees is needed to administer the program, noting that the costs cited in the proposed rule only totaled \$1.7 million. As support, the comment cited the \$100,000 in information subscription services, \$500,000 in increased licensing and examination costs for technology improvements, \$100,000 to incur additional training costs, and \$1 million in contracting resources identified in the proposed rule.

Setting aside the \$1.7 million in specific additional expenses needed for licensing and examination expenses identified in the proposed rule, the commenter appears to disregard the licensing and examination expenses that current fees are not covering. The intent of this final rule is to cover more of SBA's existing expenses for these activities and provide sufficient income to pay for the additional and necessary expenses identified in the proposed rule. As discussed above, in FY 2016, SBA expended approximately \$5.4 million, excluding overhead, on SBIC licensing and examination activities, but received only \$1.9 million in licensing and examination fees, resulting in a \$3.5 million shortfall which was paid out of SBA's taxpayer-funded budget. Through this rule, SBA expects to reduce this shortfall.

One comment suggested that SBA should conduct an in-depth accounting of the needs and requirements of OII to provide "first-class service" to SBICs to determine the minimum resources necessary to fulfill its mission, identify where costs can be cut, better allocate existing resources, improve efficiencies through private sector solutions, and then present the final

accounting of these amounts to the public. Regarding the in-depth accounting requested by the comment, the proposed rule set forth in detail current licensing and examination expenses and the additional expenses related to these functions that SBA believes are critical to fulfilling the statutory mission of the SBIC program. This final rule discusses those costs and future estimates in further detail. In reviewing existing resources, SBA identified five key areas for improvements, which it intends to pay for using the additional funds made available as a result of this final rule, as follows:

(1) Technology: SBA's Office of the Chief Information Officer (OCIO) is working closely with OII to improve its systems to provide functionality similar to a typical private sector private equity fund of funds and serve as a virtual data room. In addition to this software, SBA needs to migrate from Microsoft Access and acquire data visualization and analytical tools commensurate with private equity funds and other government loan programs. SBA also expects to periodically update its hardware.

(2) Outsourced Contractor Services: SBA intends to utilize contractors to provide certain services for which SBA does not currently have sufficient resources to perform and to assist in certain risk control functions of OII. This includes hiring contractors for scanning, file management, record management, and cyber security to help migrate the entire office to a paperless environment. This also includes valuation services to help support SBIC program oversight and SBIC examinations where SBA determines that an independent valuation is appropriate or necessary. In reviewing the examination function, SBA has established a goal of increasing the frequency with which individual SBICs are examined to further reduce risk of loss to the SBIC program. Due to staffing limitation issues, SBA intends to outsource certain examination functions in order to ensure that it is able to meet statutory examination requirements.

(3) Travel: SBA intends to increase staff travel in furtherance of program objectives for licensing, examinations, and other program oversight activities.

(4) Training: As noted in the proposed rule, the Office of Inspector General (OIG) noted that “without proper training and technology examiners may not effectively identify all regulatory violations as intended by the Act.” OIG Audit Report 13-22 at 11. OII intends to devote a larger portion of its budget for employee training.

(5) Subscription Services: SBA is evaluating information sources used by a typical private sector private equity fund of funds to identify which sources may most effectively help its analysts better evaluate and assess SBICs and applicants.

SBA regularly assesses needs and resources for all programs to ensure that SBA is able to meet its statutory obligations in an efficient and effective manner. In assessing the expenses of the SBIC program more broadly than licensing and examination expenses alone, total program costs for the SBIC program are already low compared to cost of the SBIC program from prior eras based on capital at risk and comparable current private sector entities based on assets under management. SBIC program resources have not kept pace with increased capital at risk since FY 1999 (the earliest period for which the SBIC program operating budget is readily available). In FY 1999, SBA spent \$7.4 million, excluding overhead, to manage a portfolio of less than \$3.9 billion in capital at risk (leverage and commitments); in FY 2016, SBA spent \$12.9 million to manage a portfolio of \$14.5 billion. SBA’s capital at risk continues to increase, reaching \$15.3 billion as of May 22, 2017. While SBA’s capital at risk has more than tripled in size, SBA’s costs to manage its much larger portfolio have not even doubled. As a result, the SBIC program’s FY 1999 operating budget, excluding overhead, represented 0.19% of its capital at risk and its FY 2016 operating budget represents 0.09%. If SBA returned to the FY 1999 rate of 0.19%, the SBIC program’s direct budget would need to increase to \$29 million today, which

would still fall significantly below comparable private sector costs. As a comparison, a typical private sector fund of funds commonly charges 1% of assets under management (AUM) annually to manage the fund; notably, SBICs typically charge 2% in annual management fees.

SBA estimates that by FY 2021 the Agency will need approximately \$19.9 million, excluding overhead, to manage the SBIC program (“SBIC Program Direct Cost Estimates”), as shown in Table 1, SBIC Program Direct Cost Estimates (In Millions of Dollars), below. The cost estimate includes increases for inflation through FY 2021 and funding for the five key areas that are targeted for improvement.

TABLE 1 – SBIC PROGRAM DIRECT COST ESTIMATES (IN MILLIONS OF DOLLARS)

Category	FY 2016	FY 2021
Personnel (Compensation & Benefits)	\$11.65	\$13.53
Technology	\$0.79	\$3.16
Outsourced Contractor Services	-	\$2.29
Travel	\$0.22	\$0.47
Subscription Services	\$0.19	\$0.21
Training and Other Expenses	\$0.09	\$0.27
<b>Total SBIC Program Direct Cost Estimates</b>	<b>\$12.94</b>	<b>\$19.93</b>

Direct licensing costs are expected to increase from approximately \$2 million in FY 2016 to almost \$3 million by FY 2021, and examination costs are expected to increase from \$3.4 million in FY 2016 to almost \$6.4 million by FY 2021. Table 2, SBIC Program Direct Cost Estimates for Licensing and Examination Activities (In Millions of Dollars), below provides a breakdown for SBIC licensing and examination costs.

TABLE 2 – SBIC PROGRAM DIRECT COST ESTIMATES FOR LICENSING AND EXAMINATION  
ACTIVITIES (IN MILLIONS OF DOLLARS)

Category	Licensing Costs		Examination Costs	
	FY 2016	FY 2021	FY 2016	FY 2021
Personnel (Compensation & Benefits)	\$1.80	\$2.31	\$2.96	\$4.12
Technology	\$0.09	\$0.31	\$0.20	\$0.79
Outsourced Contractor Services	\$0.00	\$0.11	\$0.00	\$1.11
Travel	\$0.00	\$0.06	\$0.22	\$0.26
Subscription Services	\$0.12	\$0.13	\$0.00	\$0.00
Training and Other Expenses	\$0.01	\$0.03	\$0.02	\$0.07
<b>Total SBIC Direct Cost Estimates</b>	<b>\$2.02</b>	<b>\$2.95</b>	<b>\$3.40</b>	<b>\$6.35</b>

SBA realized that the cost estimates on which the proposed rule was developed (“proposed rule cost estimate”) significantly underestimated SBA costs for technology, outsourcing, and overhead. The proposed rule identified only \$1 million for technology, half of which was allocated to licensing and examinations. After further review of commercially available systems used by private sector funds of funds and tools used by other government financial programs, SBA believes technology costs are likely to be significantly higher than originally estimated in the proposed rule. The proposed rule cost estimate also understated costs for outsourced services, particularly with respect to examinations and cyber security. Most significantly, the proposed rule used an agency overhead rate of less than half a percent (0.48%) of all direct SBIC costs. After publishing the proposed rule, OII became aware that the actual agency overhead rate amounts to approximately thirty percent (30%) of the program’s total cost. (For example, if the total program cost were \$10 million, \$7 million would be the program office’s direct costs while the other \$3 million would represent agency overhead.) As a result, the fee increase in this final rule is likely to cover less of SBA’s license and examination expenses than SBA expected when proposing the rule. After the full increase is phased in by FY 2021, the fees will cover approximately 80% of SBA’s direct licensing and examination

expenses, and less than 60% of such expenses when including overhead. SBA is concerned that the phased in fee increase in this final rule may not provide SBA with fees necessary to pay for critical resources as quickly as necessary. SBA is also concerned that, after the phase-in is complete, fees collected will not cover all expenses authorized by statute. Accordingly, SBA is considering proposing a new rule after this final rule becomes effective to more fully cover its licensing and examination costs in a more expedited timeframe.

One comment questioned OII's priorities, stating that OII recently created and hired a position which the commenter believes duplicates a currently existing role in OII rather than filling core competencies. How SBA chooses to allocate its non-fee related budget is not the subject of this rule. In addition, as noted above, SBA regularly reviews resource allocations within SBA to maximize efficiency and prioritize resources. Based on this review, SBA is currently seeking to provide additional resources to licensing and examinations.

One comment stated that although more staffing resources should be allocated to SBIC examinations, those resources should come from other areas within OII or sought from congressional appropriations. SBA assesses the needs for all of its programs and cannot reallocate money from one program to another without repercussions to the program that would lose resources. In addition, any reallocations of personnel to examination functions would not lower examination costs. Such resources, therefore, would not reduce the need for the fees set forth in this final rule. SBA could request additional funds from Congress; however, Congress gave SBA the authority to recoup its SBIC licensing and examination expenses by charging SBIC licensing and examination fees. By this final rule, SBA is complying with the statutory intent to cover more of its licensing and examination costs through the use of fees, which will provide SBA with the ability to pay for necessary additional resources required to administer the SBIC program.

Two comments noted that technology improvements, such as a virtual data room, could significantly reduce costs. Neither commenter provided data to support cost reductions. As part of the budget estimate presented in Table 1, SBA considered the use of private sector technology, such as adopting software commonly used by a typical private equity fund of funds, virtual data rooms, and analytical tools to improve the efficiency of its processes. In general, SBA has found that while technology improves the accessibility of information, it does not necessarily decrease the time or manpower required to license or examine a fund. For example, while a virtual data room would help in accessing a business plan, it takes the same amount of time to read and understand the business plan in an electronic version as a paper version. Similarly, while a virtual data room helps SBA access SBIC financing documents, most of SBA's time is spent reviewing the documents, and assessing whether the financing complies with SBIC regulations. SBA also notes that such technology is used by SBIC managers and other professionals (such as accounting and law firms) that charge expenses to SBICs and that their costs have not declined.

One comment stated that the increased fees would significantly deter existing and prospective SBIC fund managers from continuing in the program. The fees identified in this final rule represent a small percentage of a fund's capital or expenses. Regarding the licensing fees, in FY 2016, SBA licensed 21 SBICs with average initial private capital exceeding \$55 million. Those intending to issue SBA guaranteed debentures ("leveraged SBICs") had average initial private capital of \$53 million, and those not intending to issue SBA guaranteed debentures ("non-leveraged SBICs") had average initial capital of \$74 million. The FY 2021 licensing fee of \$45,000 represents 0.06% of the average non-leveraged SBIC's capital and 0.03% of the leveraged SBIC's total capital (assuming the leveraged SBIC will draw leverage equal to two times private capital). Even after full phase-in by FY 2021, the licensing fee is expected to

account for a modest percentage of an SBIC's total organizational costs (e.g., legal fees and other professional and consulting services, fundraising expenses, etc.), which frequently reach or exceed \$500,000. Regarding the examination fee, under this final rule, in approximately three years (by October 2020), the examination fee for a leveraged SBIC with \$150 million in assets at cost would be \$44,000 (0.03% of assets) and for a non-leveraged SBIC \$30,000 (0.02% of assets). SBA's goal is to examine leveraged SBICs every twelve months and non-leveraged SBICs every eighteen months. In FY 2016, an SBIC with \$150 million in assets typically incurred annual management fees of \$3 million and annual audit fees between \$50,000 and \$60,000. SBA believes that while the increased fees may deter a few funds with limited ability to raise capital from applying to the program, most applicants will not be deterred. To the extent that such deterrence occurs, it may help SBA focus its resources on stronger SBIC applicants.

## B. Indexing Fees

### Section 107.50 Definition of terms.

Current SBIC regulations do not adjust SBA's administrative fees for inflation. As a result, fees have not increased since 1996 and do not cover SBA's costs. To enable fees to remain current with inflation, SBA is adding the term "Inflation Adjustment", which is defined as the methodology used to increase SBIC administrative fees using the consumer price index for all urban consumers (CPI-U), as calculated by the U.S. Bureau of Labor and Statistics (BLS), based on the U.S. city average for all items, not seasonally adjusted, with the base period 1982-84=100. Beginning on October 1, 2021, and prior to each federal government fiscal year (October 1) thereafter, SBA would recalculate the examination and licensing fees to reflect increases in the CPI-U based on the change in the index from the June CPI-U in the previous year to the most recent June CPI-U. For example, the CPI-U is 238.638 in June 2015 and 241.038 in June 2016; a 1.0057% increase would be applied and then rounded to the nearest

\$100. If the CPI-U decreases, no change would be made to the fees. SBA would publish the resulting fees in a notice in the Federal Register each year prior to October 1.

SBA received one comment that opposed the inflation adjustment, stating that instituting an inflation adjustment removes SBA's accountability for reducing costs and streamlining processes. SBA does not agree. More than half of SBA's SBIC expense increase between 1999 and 2016 was due to inflation. These increased expenses were funded by taxpayers rather than SBICs. Implementing an inflation adjustment to ensure that SBA's licensing and examination fees keep pace with inflation helps to ensure that, consistent with the statutory authority Congress provided to SBA in Sections 301 and 310 of the Act, SBICs, not taxpayers, are paying the costs related to these activities. SBA estimates that if SBA had instituted an inflation adjustment in 1996, over the 5-year period between FYs 2012 and 2016 alone, SBA could have saved taxpayers over \$6 million. Further, SBA's budget process ensures accountability by providing disclosure of SBA's costs to the public each year. SBA further notes that using inflation adjustments is in line with other federal financial regulators such as bank examiner fees (For example, pursuant to 12 CFR 8.2, the Office of the Comptroller of the Currency applies an inflation adjustment to the fees it charges for examining and supervising national banks.) Finally, SBA remains committed to ensuring that the SBIC program is operated efficiently and effectively. This final rule adopts the proposed §107.50 language without change.

## C. Licensing Fees

### Section 107.300 –License application form and fee.

Current regulations require SBIC applicants to pay a licensing fee when submitting a complete application. Under those regulations, the licensing fee consisted of a base fee of \$10,000 plus additions as follows: \$5,000 if the applicant intended to operate as a limited partnership; \$5,000 if the applicant intended to issue Participating Securities leverage (a type of leverage no longer available); and \$10,000 if the applicant intended to be licensed as an Early Stage SBIC (a type of license no longer issued after September 30, 2016).

SBA proposed to remove the additions and to adopt a uniform licensing fee of \$25,000 in FY 2017, which would increase by \$5,000 each October through October 1, 2020, resulting in a licensing fee of \$45,000 by October 1, 2020. Beginning on October 1, 2021, the rule proposed to increase the amount based on inflation. The proposed rule did not propose changing when the licensing fee was payable. Consistent with SBA's existing practice, the preamble to the proposed rule discussed SBA's licensing phases and what forms and fees are required at each phase as follows:

The first phase in the licensing process ("Initial Review") begins when a first time applicant submits its Management Assessment Questionnaire ("MAQ"), which consists of SBA Forms 2181 and Exhibits A through F of SBA Form 2182, or when the management of an existing SBIC submits a request to SBA to be considered for a subsequent SBIC license. (SBIC application forms are available on SBA's website at [www.sba.gov/sbic](http://www.sba.gov/sbic).) SBA reviews the MAQ or subsequent SBIC applicant materials, performs due diligence, analyzes the management team's performance, interviews those management teams invited for an in-person interview, and ultimately determines whether to issue a formal invitation ("Green Light Letter") to the applicant to proceed to the final licensing phase of the process. Once an applicant receives a Green Light

Letter, the applicant typically has up to 18 months to raise the requisite private capital. During this timeframe, SBA keeps in touch with the applicant, conducts SBIC training classes, and provides guidance as needed. The applicant pays the licensing fee only at the final licensing phase (“Final Licensing”). Final Licensing occurs at the time SBA accepts an applicant’s complete license application (consisting of an updated SBA Form 2181 and complete SBA Forms 2182 and 2183), which application is submitted after raising sufficient private capital. A number of applicants fail to raise the requisite capital or for other reasons do not submit a license application. As a result, SBA estimates that less than half of SBIC applicants pay the licensing fee, even though SBA expends resources on all applicants.

As part of the proposed rule, SBA asked for comments as to whether an applicant should pay a licensing fee prior to submitting its complete license application, since SBA expends significant resources prior to that time. SBA received one comment that supported a fee of up to \$10,000 at the first phase, Initial Review, with a commensurate decrease in the licensing fee at the second phase, Final Licensing. The commenter also suggested that SBA clarify its licensing standards, since half of all applicants that apply to the program do not receive a Green Light Letter. SBA recommends that applicants use the pre-screening process described on its website at [www.sba.gov/sbic/applying-be-sbic/pre-screening-process](http://www.sba.gov/sbic/applying-be-sbic/pre-screening-process), which will remain free of charge after this final rule is published. This process helps applicants identify whether they are likely to qualify for a license before beginning the licensing process.

SBA agrees that a fee at Initial Review is appropriate; this final rule includes a \$10,000 fee at Initial Review (“Initial Licensing Fee”) beginning on the effective date of this rule. The amount of the licensing fee due at Final Licensing (“Final Licensing Fee”) in this final rule has been reduced from the amount for such fee in the proposed rule by a commensurate decrease of \$10,000. Accordingly, by October 1, 2020, the combined licensing fees for a single applicant

will total \$45,000, which is the total amount of licensing fees proposed by SBA in the proposed rule. The amount of the Final Licensing Fee is the amount due in effect on the date when SBA accepts an applicant’s license application. Due to the timing of this final rule, SBA removed the proposed FY 2017 licensing fee. Table 3, SBIC Initial and Final Licensing Fees, below, identifies the Initial Licensing Fee and Final Licensing Fees in this final rule for each fiscal year.

TABLE 3 – SBIC INITIAL AND FINAL LICENSING FEES

<b>Time</b>	<b>Initial Licensing Fee</b>	<b>Final Licensing Fee</b>
[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]– September 30, 2018	\$10,000	\$20,000
October 1, 2018 – September 30, 2019	\$10,000	\$25,000
October 1, 2019 – September 30, 2020	\$10,000	\$30,000
October 1, 2020 – September 30, 2021	\$10,000	\$35,000

Beginning on October 1, 2021, SBA will increase the Initial Licensing Fee and Final Licensing Fee using the Inflation Adjustment and, prior to the date of the increase, will publish the amount in a Notice in the Federal Register.

Section 107.410 – Changes in Control of Licensee.

SBA treats a change in control of a Licensee as a licensing action since SBA must perform similar functions and processes to those in SBA’s licensing processes. Current regulations require SBICs seeking a change in control to pay a \$10,000 fee, similar to the licensing fee. Since the procedures and costs are similar to those in the licensing process, the proposed regulations changed the current fee to be equal to the licensing fee identified in §107.300. SBA received no comments on this section. As noted above, this final rule does not change the total amount of the licensing fee in the proposed rule, but requires two payments rather than one: the Initial Licensing Fee and the Final Licensing Fee. The final §107.410

modifies the language in proposed §107.410 to reflect the combined Licensing Fee (Initial Licensing Fee plus the Final Licensing Fee) as defined in the final §107.300.

#### D. Examination Fees

##### Section 107.692 (b) Base fee.

Current §107.692(b) identifies a base examination fee calculated as a percentage of an SBIC's total assets at cost. As set forth in current §107.692(b), the percentage decreases as the assets increase, with the maximum base examination fee set at \$14,000 for SBICs with total assets greater than \$60 million.

SBA proposed to modify §107.692(b), to replace the base fee calculation with the following formula: Base Fee = Minimum Base Fee + 0.024% of assets at cost, but not to exceed the Maximum Base Fee. The Minimum Base Fee would increase to \$5,000 in FY 2017 and increase each October by \$1,000 through October 1, 2020. As proposed, the Maximum Base Fee for Non-leveraged SBICs would increase to \$20,000 in FY 2017 and increase by \$2,500 each October through October 1, 2020. The Maximum Base Fee for Leveraged SBICs would increase to \$20,000 in FY 2017 and then by \$6,000 each October through October 1, 2020. Beginning on October 1, 2021, the Minimum and Maximum Base Fee (for both Leveraged and Non-leveraged SBICs) would increase using the Inflation Adjustment.

For the purposes of calculating the examination fee, the proposed rule defined Non-leveraged SBICs as SBICs that have no outstanding SBA-guaranteed leverage or leverage commitments and, in the case of SBICs that have issued leverage in the form of Participating Securities, hold no Earmarked Assets. An SBIC that satisfies these requirements must also certify to SBA that it will not seek new SBA leverage in the future.

SBA received one comment supporting SBA's proposal to tie the examination fee to assets, noting that a fee not tied to assets would have been burdensome for smaller funds.

SBA received one comment that the increase is excessive, noting that while there is an increase in the number of SBICs to be examined, there was no evidence provided that the cost of examining an individual SBIC has doubled. As discussed previously, over half of the increase in examination expenses since 1999 is due to inflation, with most of the remainder due to the addition of subscription services, technology improvements, and costs associated with more experienced analysts necessary to oversee SBA's increased capital at risk (SBA leverage and commitments), particularly in larger leveraged SBICs with over \$60 million in assets. In December 1996, only 6 of the 28 SBICs with over \$60 million in assets used leverage and only 1 of the 12 SBICs with over \$120 million in assets used leverage. As of December 31, 2016, 122 of the 129 SBICs with over \$60 million in assets used leverage and 72 of the 74 SBICs with over \$120 million in assets used leverage. SBA applies a higher level of scrutiny in examining leveraged SBICs than non-leveraged SBICs in exams, since SBA bears credit risk with respect to leveraged SBICs. In addition, larger leveraged SBICs often use complex transaction structures which are more time-consuming to examine. For example, the percentage of SBIC financings made through passive businesses (a type of financing that is generally prohibited, but with permitted exceptions for passive businesses that pass through proceeds to eligible active small businesses) increased from 3% in 1996 to over 14% over the past few years. This is partially due to the expansion of SBIC passive business rules on December 23, 2014 (78 FR 77377), which revised 13 CFR 107.720(b)(2) to allow SBICs to invest in up to two levels of passive businesses under certain circumstances. Although SBA understands that these types of accommodations are necessary to enable SBICs to finance certain small businesses, these transactions require SBA to use more resources to monitor and examine them.

SBA believes the examination base fee is reasonable and consistent with the cost of other auditing services and is finalizing §107.692(b) as proposed with the exception of one timing-

related change. Due to the timing of this final rule, SBA is removing the FY 2017 fee increase identified in the proposed rule and will begin with the FY 2018 fee, after the effective date of this rule. The final §107.692(b) replaces the base fee calculation with the following formula:

Base Fee = Minimum Base Fee + 0.024% of assets at cost, but not to exceed the Maximum Base Fee. Both the Minimum Base Fee and the Maximum Base Fee change each year as shown on Table 4, Minimum and Maximum Base Fees, and are adjusted for inflation each year beginning October 1, 2021:

TABLE 4: MINIMUM AND MAXIMUM BASE FEES

<b>Time Period (Based on the examination start date)</b>	<b>Minimum Base Fee</b>	<b>Maximum Base Fee for Non-leveraged SBICs</b>	<b>Maximum Base Fee for Leveraged SBICs</b>
[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] to September 30, 2018	\$6,000	\$22,500	\$26,000
October 1, 2018 to September 30, 2019	\$7,000	\$25,000	\$32,000
October 1, 2019 to September 30, 2020	\$8,000	\$27,500	\$38,000
October 1, 2020 to September 30, 2021	\$9,000	\$30,000	\$44,000

Section 107.692(c) Adjustments to base fee and (d) Fee discounts and additions table.

Current §107.692(c) provides for the following adjustments to the base examination fee calculated under §107.692(b): 15% discount for no prior violations; 10% discount for responsiveness; 5% addition if SBIC is structured as a partnership or limited liability company; 10% addition if the SBIC was licensed with the intent of issuing Participating Securities; 10% addition if SBIC records are maintained at multiple locations; and 10% addition if the SBIC is licensed as an Early Stage SBIC. These adjustments were summarized in tabular form in §107.692(d).

SBA proposed to revise §107.692(c) as follows:

- Retain No Violation Discount: SBA proposed to retain the no violation discount, which gives a 15% discount on the Base Fee to SBICs that have no outstanding regulatory violations at the time of the examination start date and had no violations as a result of the most recent prior examination.
- Add Low and Moderate Income (LMI) Investing Discount: SBICs would receive a discount of 1% of the Base Fee for every \$10 million in LMI Investments (in dollars at cost) financed since the Licensee's last examination up to a maximum 10% of the Base Fee. LMI Investments are defined in §107.50.
- Remove Fully-responsive Discount; Add Non-responsiveness Addition: During development of the proposed rule, SBA found that most SBICs regularly received the 10% discount available under §107.692(c) for being “fully responsive to the letter of notification of examination.” SBA therefore took into account the cost efficiencies resulting from responsiveness when formulating the revised Base Fees in proposed §107.692(b). To compensate SBA for the additional time required to examine the minority of SBICs that are not responsive, proposed §107.692(c)(3) included an addition of 15% of the Base Fee for any SBIC that is “not fully responsive to the letter of notification of examination.”
- Retain Records/Files at Multiple Location Addition: Proposed §107.692(c)(4) also retained the 10% addition charged to SBICs that maintain records located in multiple locations.
- Add Unresolved Finding Addition: To encourage SBICs to resolve findings in a timely manner, §107.692(c)(5) SBA proposed an additional fee equal to 5% of the Base Fee for every 30 calendar days or portion thereof that any examination finding that remains unresolved after a 90 calendar day cure period (beginning on the date that SBA notifies the SBIC that corrective action must be taken), unless SBA ultimately resolves the finding in the SBIC's favor.

- Remove Additions for Partnership and LLC: Since almost all SBICs are organized as partnerships and LLCs, the proposed rule removed these additional fees from §107.692(c) and incorporated the cost into the Base Fee.
- Remove Additions for Participating Securities Licensees and Early Stage SBICs: SBA proposed to remove the fee additions for Participating Securities Licensees and Early Stage SBICs, both of which SBA no longer licenses.

SBA received one comment that supported the removal of additions for early stage, participating securities, and partnership/LLC; this final rule adopts these proposed changes to §107.692(c).

SBA received one comment that opposed the LMI discount, stating that discounts should not be used for political or social goals. SBA proposed this discount partly in response to a comment submitted by the same commenter on a different rule proposed by SBA, the Impact SBIC Rule (81 FR 5666), which comment stated, “facilitating investment dollars in LMI areas is consistent with the core statute and the Congressional mandate for the SBIC program” and suggested that the LMI discount might be helpful. SBA agrees that LMI investments are consistent with the SBIC program mission. Nonetheless, since the public opposed this discount in the context of this rule, and LMI investments do not have a meaningful impact on the amount of time and resources required by SBA in connection with an examination, this final rule §107.692(c) does not include this discount in §107.692(c).

SBA received several comments on the proposed adjustments to the examination base fee in the proposed rule. One comment stated that SBA should not make adjustments to the examination fee based on arbitrary decisions by examiners, including the no violation discount, non-responsive addition, records/files at multiple locations addition, and the unresolved finding addition. Examination fee adjustments are not determined arbitrarily, but rather, through a

process requiring exam manager review. An examination may only apply an adjustment to the fee if an SBA exam manager agrees with the decision by the examiner that an adjustment is warranted. SBA exam managers review examination fees prepared by each examiner to ensure they are fairly and accurately assessed. Furthermore, SBICs have the right to dispute any examination fee invoice. SBA receives questions from SBICs concerning less than approximately 3% of its examination invoices. Each of the adjustments SBA received comments on is addressed in further detail below:

- No Violation Discount: SBA received one comment that supported a uniform examination fee, with no discounts and no additional fees, except in egregious cases. SBA agrees, in part, with this comment, and believes that a more uniform examination fee is desirable. Accordingly, this final rule seeks to avoid any single discount or addition being applied to a majority of SBICs. Although the proposed rule proposed to retain the no violation discount in current SBA regulations, since over 70% of SBICs examined in FY 2016 received the no violation discount, SBA believes it is appropriate not to retain this discount. Further, and consistent with the desire for a more uniform examination fee, the examination base fee identified in this final rule reflects SBA's average cost to examine an SBIC, and examinations resulting in violations require SBA to spend time and resources to identify and address those violations. If SBA were to retain the no violation discount, the examination fee would not fully cover SBA's cost of examining the SBIC. Therefore, and in light of the comment received supporting a more uniform examination fee, SBA removed the no violation discount in this final rule.
- Non-Responsive Addition: The comment objecting to this addition was particularly concerned that such an addition would be applied arbitrarily and without warning. SBA agrees with the comment that a written warning would be appropriate prior to assessing

this addition. As with all additions, this addition may only be applied with exam manager approval. Over 97% of SBICs examined in FY 2016 received the discount for being responsive, and SBA expects that if SBIC responsiveness remains similar to FY 2016, it will only be necessary to apply the non-responsive addition in less than 3% of cases. For the reasons discussed above regarding SBA's desire for a more uniform examination fee consisting of an examination base fee that reflects SBA's average cost to examine an SBIC with adjustments which increase that cost, the final rule includes the non-responsive addition. Since uncooperative SBICs increase SBA's costs, this final rule adopts the non-responsive addition of 15% as proposed, but with the clarification that SBA will provide a written warning prior to assessment.

- Records/Files at Multiple Location Addition: SBA received one comment objecting to this addition, which is currently in SBA regulations and which SBA proposed to retain. SBA notes that there is no risk of arbitrary application of this addition, since SBIC records are maintained either in a single or multiple locations. Further, in FY 2016, less than 2% of SBICs received this addition. This final rule maintains this addition in §107.692(c) since traveling to multiple locations increases SBA's time and costs.
- Unresolved Finding Addition: One comment objected to this addition on the grounds that some resolutions, such as the sale of a portfolio company, may take more than 90 days to resolve. SBA agrees with the comment that certain resolutions may take longer than 90 days to resolve. Accordingly, the final §107.692(c) adopts this addition, since SBA spends a significant amount of time trying to resolve unresolved findings, but clarifies the language to account for resolutions requiring longer than 90 days to resolve.

A summary of the resulting final §107.692(c) examination fee additions (also presented in tabular form in final §107.692(d)) is summarized in Table 5, Proposed Examination Fee Additions, below.

TABLE 5: PROPOSED EXAMINATION FEE ADDITIONS

<b>Examination Fee additions</b>	<b>Amount of addition - % of Base Fee</b>
(1) Non-responsive	15%
(2) Records/Files at multiple locations	10%
(3) Unresolved Findings	5% of Base Fee for every 30 days or portion thereof beyond the 90 day cure period or such later date as SBA sets forth in the notice for each unresolved finding

Just as with current §107.692, the final examination fee is calculated by taking the Base Fee determined under §107.692(b) and adding the adjustments identified in §107.692(c). The following example demonstrates this calculation. Assume that in March 2019, a leveraged SBIC has \$125 million in assets at cost. The Base Fee calculation ( $\$7,000 + .024\% \times \$125 \text{ million}$ ) computes to \$37,000. Since the Base Fee may not exceed the Maximum Base Fee for the relevant time period, the Base Fee would be equal to \$32,000. If the SBIC is non-responsive to the examiner’s requests and has records in multiple locations, the examination fee would be calculated as follows:

TABLE 6: EXAMPLE MARCH 2019 EXAMINATION FEE CALCULATION

<b>Amount</b>	<b>Explanation</b>
\$32,000	Base Fee determined per final §107.692(b)
+ \$ 4,800	15% addition for non-responsiveness per final §107.692(c)(1)
+ \$ 3,200	10% addition for records in multiple locations per final §107.692(c)(2)
\$40,000	Examination Fee

Although the Base Fee has a minimum and maximum, the resulting examination fee does not have a minimum or maximum. Unresolved findings beyond the 90-day cure period could

result in increasingly higher examination fees. These additions are intended to incentivize SBICs to be responsive and resolve any findings as quickly as possible.

Section 107.692(e) Delay fee.

Current §107.692(e) states that SBA may assess an additional fee of \$500 per day if SBA determines the examination is delayed due to the SBIC's lack of cooperation or the condition of its records.

SBA proposed to amend §107.692(e) to increase the current \$500 per day delay fee to \$700 per day, to be adjusted annually using the Inflation Adjustment, beginning on October 1, 2021, to coincide with the date on which the other fee inflation adjustments are computed. SBA received one comment objecting to the fee, asserting that it could be assessed arbitrarily in an examiner's discretion. SBA does not assess this fee arbitrarily, and any assessment requires the process set forth in the SBIC Examinations Guidelines Standard Operating Procedure (10 09, October 28, 2013, Ch. 4, §2(e)), which provides that only the Associate Administrator for Investment and Innovation may assess this delay fee after consulting with the Director of SBIC Examinations. SBA did not assess this delay fee for any of the SBICs examined in FY 2016. Delays can significantly increase SBA examination costs, therefore, SBA maintained this delay fee in cases involving delays due to a lack of cooperation on the part of the SBIC or the poor condition of the SBIC's records. This final rule adopts proposed §107.692(e) without change.

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

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a "significant" regulatory action under Executive Order 12866. However, to provide additional transparency for the SBIC community, a Regulatory Impact Analysis is set forth below.

## 1. Necessity of Regulation

The Act authorizes SBA to collect administrative fees to cover licensing and examination costs. Currently, licensing fees cover less than a quarter of SBA's direct licensing costs and examination fees cover less than half of direct examination costs. It is critical that SBA increase fees in order to cover a larger portion of its licensing and examination expenses as contemplated by Congress. In addition, SBA will use the funds made available as a result of the rule to: (1) improve technology for both licensing and examinations; (2) improve examiner training; (3) pay for necessary information subscription services; and (4) provide contractor resources to support licensing and examination activities.

## 2. Alternative Approaches to the Regulation

### A. Licensing Fees

SBA considered several alternatives regarding licensing fees. SBA first considered indexing the licensing fees for inflation from 1996 (the year in which SBA most recently raised licensing fees) to 2017. This alternative did not produce sufficient fees to offset SBA licensing costs and produced lower licensing fees than those in this final rule. The increase in SBA's licensing costs has been driven not only by inflation since 1996, but also by the real increase in SBA's capital at risk (SBA guaranteed leverage and commitments) and the increased complexity of SBIC applicant organizational documents. Therefore, SBA rejected the option of adjusting the current fees only for inflation.

Given its technology and processing time concerns, SBA considered higher licensing fees than those proposed and finalized in this rule, in order to obtain the same technology and resources utilized by industry peers, and contractor support to reduce times in the licensing process. SBA did not attempt to fully cover its licensing costs in the proposed rule; at that time, SBA stated that it believed the proposed fee increases would be sufficient to meet essential needs

while remaining well within the ability of qualified applicants to pay. In re-evaluating its technology resources utilized in licensing in response to a comment SBA received on the proposed rule, SBA now believes it will require technology and other licensing resources similar to industry peers. Therefore, SBA's licensing costs, excluding overhead, are expected to increase from approximately \$2 million in FY 2016 to approximately \$3 million by FY 2021. SBA is concerned that this final rule will only offset half of SBA's licensing costs, excluding overhead, by FY 2021. SBA is considering proposing a new rule after this final rule to further offset its costs.

SBA also considered implementing a larger increase immediately in order to offset costs more quickly. For the time being, SBA is opting to pursue the gradual increase identified in the proposed rule to allow potential applicants time to adjust to these increases. However, in order to obtain technology similar to private sector peers more quickly, SBA may consider a future rule to accelerate this phased in schedule.

#### B. Examination Fees

SBA considered several alternatives to the examination fees in this final regulation. SBA considered indexing the fees in current §107.692(b) to reflect inflation from 1997 to 2017. This alternative did not produce sufficient fees to offset SBA's examinations costs. In assessing the reasons for this, SBA analyzed the SBIC portfolios from both periods and determined that the SBIC portfolio in 1997 was significantly different than today. In 1997, most of the SBICs with the highest total assets were bank-owned SBICs that did not issue SBA guaranteed debentures, and therefore required less time and resources for SBA to examine. Today, most of the highest-asset SBICs have significant amounts of SBA leverage. Therefore, merely indexing the existing fees would not appropriately reflect the costs associated with examinations.

SBA also considered smaller examination fee increases that were sufficient only to cover current costs and did not provide additional money needed to address technology upgrades, training, or contractor support. SBA rejected this alternative for three reasons. First, the OIG indicated the need for improved technology and training for examiners and suggested that SBA increase its fees to cover these costs. SBA agrees that such resources would improve the examination function. Second, SBA believes the examination fees in the proposed rule are less than fees charged for similar activities such as financial audits. SBA calculated the median private sector financial audit fee paid by SBICs examined in FY 2016 to be \$53,000; this rule would result in an average FY 2021 Examination Fee for those SBICs of less than half of that amount: approximately only \$24,000. Third, while SBA's outstanding leverage in its operating portfolio has more than quadrupled from \$2.2 billion at the end of September 30, 1999 to \$10.7 billion as of March 31, 2017, the number of personnel in SBIC Examinations has declined by almost a third. In order to continue to monitor the SBIC program at the same level as in previous years, SBA intends to hire contractors with specialized skills to support this function.

SBA also considered a flat examination fee applicable to all SBICs regardless of the cost of assets they hold. SBA believes its examination activities are similar to financial auditor or bank examiner activities, which typically charge fees, based on asset cost, and therefore rejected this alternative. SBA also received a comment to the proposed rule that expressed concerns about adverse impact on smaller funds if the examination fee were not based on assets.

SBA considered increasing the fees more quickly to cover most of its estimated costs, but believed that a gradual increase over a multi-year period would allow SBICs time to budget and adjust to the higher fees. As stated above, SBA is now concerned that the gradual approach will not allow SBA to obtain critical resources in a timely manner, and is considering proposing a new rule to accelerate and further increase the fee increase.

### 3. Potential Benefits and Costs

SBA anticipates this final rule may benefit taxpayers by covering a larger portion of SBIC program administrative costs through the collection of an additional estimated \$5 million to \$6 million per year by October 2020. As noted previously, these increased fees will (1) improve SBIC program technology for both licensing and examinations, (2) improve examiner training, (3) pay for necessary information subscription services, (4) provide contractor resources to support licensing and examination activities, and (5) cover a higher portion of existing costs of licensing and examination activities. Collections are expected to increase annually each year beginning in October 2021 based on the CPI-U Inflation Adjustment.

SBICs should also benefit from the improved technology SBA expects to acquire with the additional funds made available as a result of this final rule.

This final rule will increase licensing costs for applicants and examination costs for SBICs. Beginning on the effective date, the final rule will increase licensing costs by \$10,000 for an applicant applying for Initial Review and by \$5,000 for an applicant submitting a complete license application at Final Licensing. The Final Licensing fee will increase by \$5,000 each fiscal year, so by October 2020, the fee at Final Licensing will increase by an additional \$15,000 from the first increase after the effective date of this Final Rule. SBA estimates that by October 2020, the average non-leveraged examination fee will increase by \$7,000 and the average examination fee for leveraged SBICs will increase by \$18,000 based on FY 2014-2016 examinations data. Thereafter, SBICs' costs will increase further through the annual increases to reflect inflation adjustments.

#### Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action is included above in the Regulatory Impact Analysis under Executive Order 12866.

In developing this rule, SBA talked with fund of funds managers, auditors, and contractors to determine whether the fees in this final rule were reasonable and, based in part on those discussions, SBA believes the fees in this final rule are reasonable. In reviewing organizational costs for SBIC applicants, including legal and other professional costs, SBIC applicants often incur organizational costs amounting to \$500,000 or more. The increased licensing fee represents a small percentage of the total organizational costs typically incurred by SBIC applicants. SBA also compared Federal bank examiner fees and SBIC auditor fees (based on the SBIC annual Financial Reporting Form 468s submitted in 2015) with SBIC examination fees in this final rule. SBA believes the final licensing and examination fees are reasonable in comparison to the market.

The table below provides the capital and typical SBIC expenses for the average fund size of an SBIC licensed in FY 2016. As shown, SBIC licensing and examination fees represent a small percentage of the SBIC's total capital and its expenses.

TABLE 7: SBA LICENSING AND EXAMINATION FEES IN COMPARISON TO CAPITAL AND TYPICAL EXPENSES FOR SBIC OF AVERAGE FUND SIZE LICENSED IN FY 2016

<b>Description</b>	<b>Leveraged SBIC</b>	<b>Non-Leveraged SBIC</b>
<b>Total Capital</b>	\$ 157,500,000	\$ 73,750,000
Private Investor Capital	\$ 52,500,000	\$ 73,750,000
SBA-Guaranteed Leverage	\$ 105,000,000	\$ 0
<b>Typical Organizational Costs</b>		
Organizational Costs in FY 2016	\$ 500,000	\$ 500,000
SBA Licensing Fee in FY 2021	\$ 45,000	\$ 45,000
<b>Typical Annual SBIC Operating Expenses</b>		
Management Fee (2%)	\$ 3,150,000	\$ 1,475,000
Other Expenses (Excluding SBA Leverage Interest, Leverage Fees, & Examination Fees)	\$ 500,000	\$ 250,000
SBA Examination Fee in FY 2021 (Assumes asset cost equal to total capital. Non-leveraged SBICs are typically only	\$ 44,000	\$ 26,700

examined every 18 months.)		
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Executive Order 12988

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

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that this rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this final rule has no federalism implications warranting the preparation of a federalism assessment.

Executive Order 13771

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

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

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or recordkeeping requirements.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a final rule, the agency must prepare a Final Regulatory Flexibility Act (FRFA) analysis, which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However,

§605 of the RFA allows an agency to certify a rule, in lieu of preparing a regulatory flexibility analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This final rule will affect all applicants that submit applications (which averaged 50 per year for FYs 2014 to 2016), and all operating SBICs (316 as of May 22, 2017). SBA estimates that approximately 98% of these SBICs are small entities. Therefore, this rule will have an impact on a substantial number of small entities. However, SBA has determined that the rule will not have a significant economic impact on small entities affected by the rule.

As noted above, the final §107.300 will increase licensing costs by \$10,000 for all applicants that submit an application for Initial Review after the effective date of the rule, and by an additional \$20,000 by October 1, 2020, for all applicants that submit a license application for Final Review. The combined total increase of \$30,000 represents less than 0.05% of the average applicant's Regulatory Capital based on newly licensed SBICs between October 1, 2014, and September 30, 2016. Many applicants have organizational costs totaling around \$500,000, and some have far in excess of that amount. The combined FY 2021 initial and final licensing fee of \$45,000 would represent a small fraction of those costs.

SBA estimates that §107.692 in this final rule will eventually increase the average non-leveraged examination fee by \$7,000, representing less than 0.02% of the average non-leveraged SBIC's Regulatory Capital, and the average leveraged SBIC examination fee by \$18,000, representing 0.02% of the average total capital under management (Regulatory Capital and outstanding SBA guaranteed leverage). As a point of comparison, most SBIC managers charge management fees of approximately 2% of capital under management. (Management fees, like the examination fees, are paid by the SBIC.) For a leveraged SBIC with \$50 million in Regulatory Capital and using 2 tiers of leverage charging a 2% management fee, the management fee would equal \$3 million a year. If the leveraged SBIC had assets at cost of \$150

million, and did not incur any exam fee additions, the exam fee in FY 2021 would amount to \$44,000, representing less than 0.03% of the SBIC's total capital. The examination fee would be a very small percentage of the SBIC's expenses.

SBA believes that most applicants with sufficient private equity experience and capital raising ability will not be discouraged from applying to the program based on the administrative fee increases identified in this final rule. SBA asserts that the economic impact of the rule is minimal. Accordingly, the Administrator of the SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 13 CFR Part 107

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

For the reasons stated in the preamble, SBA amends 13 CFR part 107 as follows:

#### PART 107 - SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

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

2. Amend §107.50 by adding a definition of "Inflation Adjustment" in alphabetical order to read as follows:

#### § 107.50 Definition of terms.

\* \* \* \* \*

Inflation Adjustment is the methodology used to increase SBIC administrative fees using the Consumer Price Index for Urban Consumers (CPI-U), calculated by the U.S. Bureau of Labor and Statistics (BLS), using the U.S. city average for all items, not seasonally adjusted, with the base period of 1982-84=100. To calculate the Inflation Adjustment, each year, SBA

will divide the CPI-U from the most recent June by the CPI-U from June of the preceding year.

If the result is greater than 1, SBA will increase the relevant fees as follows:

(1) Multiply the result by the current fee; and

(2) Round to the nearest \$100.

\* \* \* \* \*

3. Revise §107.300 to read as follows:

§ 107.300 License application form and fee.

SBA evaluates license applicants in two review phases (initial review and final licensing), as follows:

(a) Initial review. Except as provided in this paragraph, SBIC applicants must submit a MAQ and the Initial Licensing Fee. MAQ means the Management Assessment Questionnaire in the form approved by SBA and available on SBA's website at [www.sba.gov/sbic](http://www.sba.gov/sbic). Initial Licensing Fee means a non-refundable fee of \$10,000. An applicant under Common Control with one or more Licensees must submit a written request to SBA, and the Initial Licensing Fee, to be considered for a license and is exempt from the requirement in this paragraph to submit a MAQ unless otherwise determined by SBA in SBA's discretion.

(b) Final licensing. (1) An applicant may proceed to the final licensing phase only if notified in writing by SBA that it may do so. Following receipt of such notice, in order to proceed to the final licensing phase, the applicant must submit a complete license application, in the form approved by SBA and available on SBA's website at [www.sba.gov/sbic](http://www.sba.gov/sbic), within the timeframe identified by SBA; and the Final Licensing Fee. The Final Licensing Fee means a non-refundable fee (determined as of the date SBA accepts the application) adjusted annually as follows:

Time Period	Final Licensing Fee
[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to September 30, 2018	\$20,000
October 1, 2018 to September 30, 2019	\$25,000
October 1, 2019 to September 30, 2020	\$30,000
October 1, 2020 to September 30, 2021	\$35,000

(2) Beginning on October 1, 2021, SBA will annually adjust both the Initial Licensing Fee and Final Licensing Fee using the Inflation Adjustment and will publish a Notice prior to such adjustment in the Federal Register identifying the amount of the fee.

4. In §107.410, revise paragraph (b) to read as follows:

§ 107.410 Changes in Control of Licensee (through change in ownership or otherwise).

\* \* \* \* \*

(b) Fee. A processing fee equal to the combined Licensing Fee (Initial Licensing Fee plus the Final Licensing Fee then in effect) defined in §107.300 must accompany any application for approval of one or more transactions or events that will result in a transfer of Control.

5. In §107.692, revise paragraphs (b) through (e) to read as follows:

§ 107.692 Examination fees.

\* \* \* \* \*

(b) Base Fee. (1) The Base Fee will be assessed based on your total assets (at cost) as of the date of your latest certified financial statement, including if requested by SBA in connection with the examination, a more recently submitted interim statement. For purposes of this section, Base Fee means the Minimum Base Fee plus 0.024% of assets at cost, rounded to the nearest

\$100, not to exceed the Maximum Base Fee. The Minimum and Maximum Base Fees are adjusted annually as follows:

Time Period (Based on the examination start date)	Minimum Base Fee	Maximum Base Fee for Non- leveraged SBICs	Maximum Base Fee for Leveraged SBICs
[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to September 30, 2018	\$6,000	\$22,500	\$26,000
October 1, 2018 to September 30, 2019	\$7,000	\$25,000	\$32,000
October 1, 2019 to September 30, 2020	\$8,000	\$27,500	\$38,000
October 1, 2020 to September 30, 2021	\$9,000	\$30,000	\$44,000

(2) In the table in paragraph (b)(1) of this section, a Non-leveraged SBIC means any SBIC that, as of the date of the examination, has no outstanding Leverage or Leverage commitment, has no Earmarked Assets, and certifies to SBA that it will not seek Leverage in the future. Beginning on October 1, 2021, SBA will annually adjust the Minimum Base Fee and Maximum Base Fees using the Inflation Adjustment and will publish a Notice prior to such adjustment in the Federal Register identifying the amount of the fees.

(c) Adjustments to Base Fee. In order to determine the amount of your examination fee, your Base Fee, as determined in paragraph (b) of this section, will be increased based on the following criteria:

(1) If you were not fully responsive to the letter of notification of examination (that is, you did not provide all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, or you did not prepare or did not have available all information requested by the examiner for on-site review) after a written warning by the SBA, you will pay an additional charge equal to 15% of your Base Fee;

(2) If you maintain your records/files in multiple locations (as permitted under §107.600(b)), you will pay an additional charge equal to 10% of your Base Fee; and

(3) For any regulatory violation that remains unresolved 90 days from the date SBA notified you that you must take corrective action (as established by the date of the notification letter) or such later date as SBA sets forth in the notice, you will pay an additional charge equal to 5% of the Base Fee for every 30 days or portion thereof that the violation remains unresolved after the cure period, unless SBA resolves the finding in your favor.

(d) Fee additions table. The following table summarizes the additions noted in paragraph (c) of this section:

<b>Examination Fee additions</b>	<b>Amount of addition - % of Base Fee</b>
Non-responsive	15%
Records/Files at multiple locations	10%
Unresolved Findings	5% of Base Fee for every 30 days or portion thereof beyond the 90 day cure period or such later date as SBA sets forth in the notice for each unresolved finding

(e) Delay fee. If, in the judgment of SBA, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, SBA may assess an additional fee of \$700 per day. Beginning on October 1, 2021, SBA will annually adjust this fee using the Inflation Adjustment and will publish a Notice prior to such adjustment in the Federal Register identifying the amount of the fee.

Dated: November 6, 2017.

Linda E. McMahon,  
Administrator.

[FR Doc. 2017-24535 Filed: 11/9/2017 8:45 am; Publication Date: 11/13/2017]