Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

Authority and Issuance

For the reasons set out in the preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 30—SAFETY AND SOUNDNESS STANDARDS

1. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1831p–1, 3102(b).

2. In § 30.2, the last sentence is revised to read as follows:

§ 30.2 Purpose.

* * * The Interagency Guidelines Establishing Standards for Safety and Soundness are set forth in appendix A to this part, the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness are set forth in appendix B to this part, and the Supplemental Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers are set forth in appendix C to this part.

3. In § 30.3, paragraph (a) is revised to read as follows:

§ 30.3 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The OCC may, based upon an examination, inspection, or any other information that becomes available to the OCC, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in appendix A to this part, the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness set forth in appendix B to this part, or the Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers are set forth in appendix C to this part.

* * * * *

4. A new appendix C is added to part 30 to read as follows:

Appendix C to Part 30—Supplemental Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Brokers or Dealers

Table of Contents

A. Introduction.
B. Preservation of existing authority.
C. Definitions.
D. Year 2000 Standards for safety and soundness.

A. Introduction

These Supplemental Guidelines are issued pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) and apply to transfer agent and broker or dealer systems that a national bank has not designated as mission-critical. These Supplemental Guidelines are in addition to, but do not supersede, the Year 2000 Guidelines previously adopted as Appendix B to 12 CFR Part 30. The Guidelines in Appendix B continue to apply to efforts of national banks to achieve Year 2000 readiness of their mission-critical systems.

B. Preservation of existing authority

Neither section 39 nor these Supplemental Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices of bank transfer agents and brokers or dealers. For example, failure to complete any of the standards set forth in the Supplemental Guidelines may constitute an unsafe or unsound practice under 12 U.S.C. 1818(b). Action under section 39 and the Supplemental Guidelines may be taken independently of, in conjunction with, or in addition to any other remedy, including enforcement action, available to the OCC.

C. Definitions

1. In general. For purposes of the Supplemental Guidelines the following definitions apply:

a. *Bank transfer agent* means a national bank that provides transfer agent services directly or through an operating subsidiary, or a Federal branch that is subject to the provisions of section 39 of the FDI Act (12 U.S.C. 1831p–1), if the national bank, operating subsidiary or Federal branch is a registered transfer agent whose appropriate regulatory agency, as that term is defined in 15 U.S.C. 78c(a)(34), is the Office of the Comptroller of the Currency. The term bank transfer agent does not include a transfer agent that qualifies as an issuer or small transfer agent, as these terms are defined in 17 CFR 240.17Ad–13(d) (1) and (2).

b. *Bank broker or dealer* means a national bank that effects securities brokerage or dealer transactions for customers, or a Federal branch that is subject to the provisions of section 39 of the FDI Act (12 U.S.C. 1831p–1). The term bank broker or dealer does not include operating subsidiaries of national banks. The term bank broker or dealer does not include a national bank effecting fewer than 500 securities brokerage transactions per year for customers during the prior three calendar year period.

c. *System* means an automated system and related applications necessary to ensure the prompt and accurate processing of securities transactions, including order entry, transfer execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, the delivery of funds and securities, or the production or retention of required records.

d. *Business resumption contingency plan* means a plan that describes how a bank transfer agent or bank broker or dealer will continue to perform transfer agent or broker or dealer functions, respectively, in the event transfer agent or broker or dealer systems fail to function because of Year 2000 readiness.

e. *Year 2000 ready or readiness with respect to a system* means the system accurately processes, calculates, compares, or sequences date or time data from, into, or between the 20th and 21st centuries; and the years 1999 and 2000; and with regard to leap year calculations.

D. Year 2000 standards for safety and soundness

1. No later than November 1, 1999, each bank transfer agent and bank broker or dealer shall identify all transfer agent and broker or dealer systems that are not Year 2000 ready.

2. For each system identified pursuant to section D.1., each bank transfer agent and bank broker or dealer shall develop and implement an effective written business resumption contingency plan by November 15, 1999, that, at a minimum:

a. Defines scenarios for transfer agent and broker or dealer systems failing to achieve Year 2000 readiness;

b. Evaluates options and selects a reasonable contingency strategy for those systems; and

c. Provides for independent testing of the business resumption contingency plan by an objective independent party (such as an auditor, consultant, or qualified individual from another area of the insured depository institution who is independent of the plan under review).

Dated: September 17, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–25442 Filed 9–29–99; 8:45 am]

BILLING CODE 4810–33–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In order to encourage small business investment companies (SBICs) to invest in inner cities and rural areas and in businesses that serve such areas, the Small Business Administration (SBA) is introducing a new SBIC investment category called low and moderate income investments (LMI

Investments). For each SBIC financing that qualifies as an LMI Investment, SBA is modifying its regulations on control of the small business, ''cost of money'' of the financing, and term of the financing. SBA also will make available a patient form of debenture leverage that may be issued only by SBICs that make LMI Investments.

DATES: *Effective Date:* This final rule is effective September 30, 1999.

Applicability Date: The regulatory and financial incentives described in this rule will apply only to investments made after September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Investment Division, at (202) 205–3646.

SUPPLEMENTARY INFORMATION: On February 9, 1999, SBA proposed a program of narrowly-tailored regulatory and financial incentives to encourage SBICs to expand their investment activity into inner cities and rural areas. See 64 FR 6256. The incentives were proposed to be available to any SBIC making qualified investments (LMI Investments) in qualified small businesses (LMI Enterprises) located in or providing employment for economically distressed inner cities and rural areas (LMI Zones). The incentives fell into two categories. First, SBA proposed to allow SBICs greater regulatory flexibility when structuring and making LMI Investments. Second, SBA proposed to make available a deferred-interest debenture exclusively for the financing of LMI Investments.

SBA received four comment letters on the proposed rule during the 30-day public comment period. Overall, the four letters were supportive of SBA's initiative, although all of the letters contained suggestions for improving the proposal. This final rule incorporates certain of the changes recommended in those comment letters.

Defining Low and Moderate Income Zones (LMI Zones)

SBA received two comments on the definition of the markets targeted by the proposed LMI initiative. The proposed rule defined those markets as small businesses that are located in certain distressed geographic areas or that have 35 percent of their full time employees residing in those areas.

One of the two comments suggested that the final rule target historically underserved *entrepreneurs,* regardless of their business location, instead of underserved *geographic areas.* The other comment suggested expanding the geographic areas identified in the proposed rule to include some or all of the markets targeted for economic development by the Federal Home Loan Banks. Those markets are set forth in the Community Investment Cash Advance regulation of the Federal Housing Finance Board. They include any project that provides jobs or services for individuals with income levels at or below certain levels, as well as projects located in geographic areas broader than the locations specified in SBA's proposed rule.

SBA considered the comments, but has decided to adopt the proposed definition of LMI Zone without change. SBA's proposal was designed to bring investment dollars into distressed urban and rural areas to help revitalize those communities and bring jobs to their residents. Given the finite resources available to the LMI initiative, any expansion of the proposal to include groups of individuals without regard to their business locations or their residences would dilute the impact of the benefits SBA hopes will inure to the targeted communities.

SBA also believes that, in order to be successful, the definition of the targeted markets must be easy for SBICs and SBA examiners to use. SBA therefore selected only those geographic areas that are not only distressed, but are also found on a government-operated electronic address-database. Through the use of these user-friendly databases, SBICs and SBA examiners should be able to quickly and easily determine whether a given address is located in an ''LMI Zone''.

If SBA learns that other severely distressed areas are also capable of identification through a Government electronic address-database, it might consider expanding the targeted markets of the LMI initiative at a later date.

As mentioned in the proposed rule, SBA is exploring the possibility of consolidating the various Government databases into a single electronic database at SBA. While that possibility still exists, any such consolidation is unlikely to be accomplished this calendar year. Until SBICs are notified otherwise, they should research addresses through the various databases referenced in this rule, and should document their files accordingly.

As was stated in the proposed rule, any address located in a HUBZone, an Empowerment Zone, an Enterprise Community, a Low or Moderate Income area, or a Persistent Poverty county will be considered to be located in an LMI Zone. The government databases for those five areas are:

1. HUBZones: *www.sba.gov/hubzone/hubqual.html*
2. Empowerment Zones: *www.hud.gov/ezec/locator/*
3. Enterprise Communities: same as for Empowerment Zones
4. Low and Moderate Income areas: *www.ffiec.gov/geocode*
5. Persistent Poverty counties: *www.econ.ag.gov/epubs/other/typolog*

Defining LMI Enterprise

SBA received one comment on the proposed definition of LMI Enterprise. Under the proposal, a small business's qualification as an LMI Enterprise would be determined as of the time the business applies for SBIC financing. This would be true whether the business were qualifying under the ''principal place of business'' test or the ''percentage of employees'' test.

The commenter pointed out that determining a small business's qualification under the principal place of business test ''as of the time of application for SBIC financing'' would exclude those small businesses that would use the proceeds of the SBIC financing to move into an LMI Zone. That is true. Similarly, determining a small business's qualification under the percentage of employees test ''as of the time of application for SBIC financing'' would exclude those small business that would use the proceeds of the SBIC financing to expand their business and hire new employees from LMI Zones. SBA had thought that determining a business's qualification based only on its intention to locate into or hire from eligible areas would introduce too much uncertainty into the program.

Upon reconsideration of the issue, however, SBA believes that the rule can be modified in a manner that will encourage businesses to use SBIC financing to locate in LMI Zones or to hire residents of LMI Zones, while minimizing the risk that the incentives in this LMI initiative will be misused. SBA believes this can be accomplished by allowing companies that intend either to locate in or to hire from an LMI Zone a fixed period of time after closing on their SBIC financing to do so. During that time, the business would be considered an LMI Enterprise. At the end of the period, though, the business would lose its LMI status if it had not located in an LMI Zone or qualified as an LMI Enterprise under the percentage of employees test.

SBA believes that a company should be able to establish its principal place of business in an LMI Zone or hire employees from an LMI Zone within 180 days from the date the SBIC financing closes. Six months should be ample time for a company to resolve any zoning or other issues that might delay the opening of the business in an LMI

Zone or the hiring of residents from an LMI Zone.

Accordingly, the final rule allows a company to temporarily qualify as an LMI Enterprise if, at the time of application for SBIC financing, the company certifies as to its intent to locate its principal place of business in an LMI Zone or its intent to hire the required number of residents of LMI Zones, in either case within 180 days after the SBIC financing closes. At the end of the 180-day period, if the company does not have its principal place of business in an LMI Zone or 35 percent of its employees residing in LMI Zones, it will no longer qualify as an LMI Enterprise. This means that the SBIC's financing of the company will no longer qualify as an LMI Investment.

SBA has considered whether the SBIC or the small business should bear the risk of the small business' loss of qualification as an LMI Enterprise and the financing's loss of qualification as an LMI Investment. If the loss of LMI qualification constitutes a default by the small business under the financing and the SBIC can demand repayment or redemption of the financing, the small business bears most of the risk. If loss of LMI qualification does not constitute a default, the SBIC must continue to hold its investment in the company and must revise the terms of the financing to conform to standard (non-LMI) SBA regulations (e.g., minimum term, control restrictions). In that event, the SBIC alone bears the risk since the small business gets the benefit of SBIC financing on standard (non-LMI) terms.

SBA has concluded that the parties themselves (the SBIC and the small business) should determine who is to bear the risk of the loss of LMI qualification. The terms of the financing agreement negotiated between the small business and the SBIC should specify whether the loss of qualification as an LMI Enterprise constitutes a default by the small business under the financing. If the loss of qualification as an LMI Enterprise does not constitute a default under the financing agreement, the SBIC must be sure that the terms of the financing, going forward, satisfy SBA requirements for non-LMI financings (e.g., minimum term; control restrictions). If the loss of qualification as an LMI Enterprise does constitute a default under the financing agreement, the SBIC will be entitled to whatever remedies are available to it for the default.

The proposed version of § 107.610(e) required each LMI Enterprise to certify to the investing SBIC as to the location of either its principal place of business or the primary residences of all of its full-time employees. The certification was to be dated no earlier than the date the small business applied for the SBIC financing and was to be kept in the SBIC's files, along with the SBIC's own certification that the small business qualifies as an LMI Enterprise and the basis for such qualification.

The final version of § 107.610(e) still requires certifications from both the small business and the SBIC, but allows a small business that is intending to locate into an LMI Zone or to hire residents of LMI Zones to so certify. Any small business that qualifies as an LMI Enterprise based on its intention to locate in an LMI Zone or to hire residents of LMI Zones must also provide the SBIC with a later certification, dated within the 180 day period discussed above, certifying that its principal place of business is located in an LMI Zone or that it has 35 percent of its employees residing in LMI Zones. The SBIC must make its own certification(s) contemporaneously with the certification(s) of the small business.

SBA has made one final modification to the definition of LMI Enterprise and to § 107.610(e). Since the term ''principal place of business'' is susceptible to more than one interpretation, SBA has decided to specify precisely what is intended by the term as it relates to LMI Enterprises. SBA believes that an LMI Enterprise's principal place of business should be determined by reference to the location of its employees or tangible assets, not its books and records or its corporate headquarters. This approach is similar to the one used in § 107.720(g)(1)(ii)—SBA's criteria for determining whether a business is a non-U.S. business for purposes of the prohibition on foreign investments in the SBIC Program.

Under the final rule, SBA will consider an LMI Enterprise to be located where at least 50 percent of its employees or tangible assets are located. SBA realizes, though, that the use of the term ''principal place of business'' may, itself, cause confusion since that term has already been defined differently in other SBA programs. Accordingly, the final rule replaces the term ''principal place of business'' with the ''50% of employees or tangible assets'' test in the definition of LMI Enterprise and in § 107.610(e).

Defining LMI Investment

As discussed in the proposed rule, SBA wants to ensure that the SBIC Program is used to promote true venture capital financing in LMI Zones, not just high-interest lending. SBA is also concerned that LMI Enterprises that receive SBIC financing not be precluded from using their assets to secure third-party debt. SBA therefore proposed that LMI Investments be defined to include only those SBIC financings that are in the form of equity securities (as defined in § 107.800) or debt securities (as defined in § 107.815) which are subordinated to all borrowings of the business from financial institutions. The proposed rule also required that LMI Investments in the form of debt securities be unsecured, although the SBIC would have been permitted to accept a guarantee of the debt security if the guarantee were itself unsecured.

SBA received two comments on the proposed definition of an LMI Investment. Both comments argued in favor of expanding the definition to include debt securities that are secured by the assets of the small business if the security interest is junior to any other secured debt of the business. The commenters argued that excluding secured financing of LMI Enterprises would discourage SBIC support of those businesses. One commenter further argued that an SBIC holding an unsecured position in a company might take more precipitous action to protect its interest than if the SBIC had collateral to protect its position.

SBA concurs with the suggested change to the definition. SBA expects that allowing SBICs to take a junior secured position in the assets of an LMI Enterprise will not prevent the LMI Enterprise from obtaining secured debt from other sources.

This change would place SBICs ahead of any unsecured debt of the LMI Enterprise. SBA believes, though, that unsecured debt is generally unavailable to most LMI Enterprises, except from the principals of the enterprise. Even under the proposed rule, LMI Investments were not required to subordinate in favor of borrowings from the principals of the enterprise. Accordingly, the final definition of LMI Investment includes debt securities that are secured by the assets of the small business *provided* the SBIC's security interest is junior to any other existing or future secured debt of the business.

Regulatory and Financial Incentives

Under the proposed rule, SBA proposed to modify the regulations governing three subject matters, as they would apply to LMI Investments—control of the small business, the treatment of royalties in the calculation of cost of money, and minimum term of investment. SBA also discussed its intention to create a new form of debenture for use by SBICs that make LMI Investments.

1. Temporary Control of the LMI Enterprise

SBA proposed to permit SBICs to take temporary control of each business in which they make an LMI Investment. No comments were received on this portion of the proposal. Accordingly, § 107.865(d) is finalized as proposed.

2. Royalties and Cost of Money

SBA proposed to exclude royalty payments on LMI Investments from the calculation of ''Cost of Money'' under § 107.855. Cost of Money is the term for the sum of the interest rate and other charges that an SBIC imposes on a small business. The Cost of Money to the small business must not exceed the SBIC's Cost of Money ceiling, as computed under § 107.855(c).

To qualify for the proposed exclusion, the royalty would have to be based on improvement in the performance of the LMI Enterprise after the date of the financing. The proposed rule explained that the royalty might be expressed, for example, as a percentage of any *increase* in an underlying unit of measurement (e.g., revenue or sales) after the date of the financing.

SBA received one comment on this provision. The comment asked for clarification as to whether a royalty could be based on an increase in more than one unit of measurement and still be excluded from the Cost of Money calculation. For example, could a royalty provide for payment to the SBIC if either the revenues or the profits of the small business increased?

SBA was not intending to restrict royalties to increases in a single underlying unit of measurement. To do so would force SBICs to determine in advance which performance measurement would be most likely to reflect the improved performance of the small business. A business might have higher profits but steady or even declining revenues, or it might have increased revenues but steady profits. Either circumstance could constitute improvement in the performance of the business.

If an SBIC and a small business agree to a royalty that is expressed as a percentage of increases in alternative performance measurements (e.g., profits or revenues), the royalty will be excluded from Cost of Money. SBA believes that the text of proposed § 107.855 is sufficiently broad to cover this possibility. Accordingly, proposed § 107.855 is finalized without change.

SBA would also like to clarify the application of the royalty provision to any LMI Investments that an SBIC makes through a holding company or an investment vehicle, as permitted under § 107.720(b). In determining whether a business's performance has improved, SBA will look through any holding company or investment vehicle to the performance of the operating business itself. It is the improvement in the operating business's performance, not the improvement in the performance of a holding company or investment vehicle, which would serve as the basis for the calculation of the royalty payment to the SBIC.

Since the publication of the proposed rule, the President signed the Small Business Investment Improvement Act of 1999. See Public Law 106–9, 113 Stat. 17, April 5, 1999. Section 2(a) of the new law excludes certain royalty payments from the calculation of Cost of Money for all investments made by SBICs. SBA will be publishing a proposed rule to implement this change in the near future.

3. Minimum Term of LMI Investment

SBA received no comments on its proposal to set a one-year minimum term for LMI Investments. The proposed changes to §§ 107.835 and 107.850(a) are, therefore, adopted without change.

4. Deferred Interest Debenture

SBA proposed to allow SBICs to finance LMI Investments with a more patient-type of debenture (called an LMI Debenture). No regulatory changes are necessary to create the new debenture, but SBA is continuing to work on its design and method of funding.

The LMI Debenture under development would be a non-amortizing debenture with a term of up to 10 years, issued at a discount so as to be, in effect, ''zero coupon'' for the first five years. It would require semi-annual interest payments on the face amount for the remainder of the term. SBA leverage fees would not be deferred; they would be paid as required under § 107.1130.

The proposed rule explained that an SBIC's eligibility for LMI Debentures would be based solely on the SBIC's outstanding LMI Investments (made after the effective date of the final rule). SBA has come to the conclusion that this approach might discourage SBICs from making LMI Investments since the LMI Debenture funds would only be available after the investment had already been made.

Instead, SBA has decided to determine an SBIC's eligibility for LMI Debentures based on the sum of its outstanding LMI Investments (made after the effective date of the final rule) plus any LMI Investments the SBIC intends to make with the proceeds of the LMI Debenture. If an SBIC with no outstanding LMI Investments applies for a draw down of debenture leverage and intends to use the leverage to make an LMI Investment, SBA can approve the issuance of an LMI Debenture.

As stated in the proposed rule, an SBIC's overall eligibility for an LMI Debenture will still be determined in two ways. First, the SBIC will have to be eligible to issue leverage in an amount equal to the face amount of the LMI Debenture. Eligibility for this purpose is determined under §§ 107.1120–107.1160.

Second, the face amount of the SBIC's requested LMI Debenture, plus the face amount of the SBIC's outstanding LMI Debenture(s), cannot exceed 1.5 times the sum of the SBIC's outstanding LMI Investments plus the proposed LMI Investment. In other words, under this second test an SBIC would be eligible for an LMI Debenture with a face amount equal to (a) 1.5 times the sum of the SBIC's existing and planned LMI Investments at the time of application, minus (b) the face amount of any outstanding LMI Debentures. The 1.5 multiple takes into consideration the zero-coupon feature of the LMI Debenture and allows for an approximate matching of net proceeds of LMI Debentures with funds invested in LMI Investments.

SBA will notify all SBICs when LMI Debentures are ready for use.

The regulatory and financial incentives described in this final rule will apply only to investments made after the effective date of this rule.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this final rule may constitute a significant regulatory action within the meaning of Executive Order 12866, since it raises a new policy issue reflecting the President's priorities.

One of the purposes of the SBIC Program is to encourage the flow of equity-type investments into small businesses. For the first 35 years of the SBIC Program, however, the only type of leverage available to SBICs (other than Specialized SBICs) was debt leverage with interest payable every six months.

Congress recognized this mismatch of source and use of funds and created Participating Securities leverage in 1992. Participating Securities leverage is a type of ''patient capital'' and helps to promote equity investing by SBICs. However, because required payments on Participating Securities are a function of an SBIC's profits, SBA makes such leverage available only to larger SBICs

that can reasonably project returns-on-investments greater than 20 percent.

While the Participating Securities program has been very successful at encouraging SBICs to do equity investing in general, SBA wishes to encourage more equity-type investments in underserved areas or ''New Markets''—urban and rural areas that have severe shortages of equity capital. Unfortunately, investments in these areas often are of a type that will not have the potential for yielding returns that are high enough to justify the use of Participating Securities.

The LMI Debenture is being created to fill this gap. It is another type of patient capital, with interest deferred for the first 5 years. An SBIC utilizing the LMI Debenture will not be expected to achieve the high returns expected of Participating Securities users. Thus, the availability of the LMI Debenture is expected to increase the flow of equity-type capital to New Markets.

Some of this increase will come from existing SBICs which find that the LMI Debentures, together with the regulatory incentives in this final rule, will encourage them to make investments that they may perceive as having greater risk than their typical investments. SBA expects these SBICs to make investments in businesses which lie in areas that they have previously overlooked.

While it is expected that existing SBICs will participate to some degree in the LMI program, SBA anticipates that most of the LMI program benefits will derive from new SBICs that are currently being formed and which will be created in the future. Already, SBA is seeing an increase in the number of venture capitalists who are working to form new SBICs with an LMI orientation.

SBA also believes that an increasing number of banks will actively seek to invest in SBICs since a bank's investment in an SBIC is now presumed to satisfy one of the tests under the Community Reinvestment Act (CRA) regulations. SBA expects that many banks will find LMI-oriented SBICs to be especially attractive. This should be true not only because the banks can receive CRA credit for their investment, but also because they will find that (1) such investments expand their urban and rural markets, and (2) with equity infusions of capital, small businesses can become less risky borrowers.

The LMI Debentures have the same subsidy rate as do regular debentures and will carry interest rates similar to those of regular debentures. They present no additional cost either to the government or to the SBICs. Regarding reporting requirements (further discussed below), an SBIC must ascertain that the company in which it is investing meets the LMI standards, and must report this to SBA on its usual financing report (form 1031). The cost to the SBIC to obtain this information is nominal.

SBA certifies that this final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule will change some requirements to encourage SBICs to make additional qualified investments in low and moderate income zones. In FY 1998, SBICs invested in 2700 small businesses. While the final rule may increase the number of small businesses receiving SBIC investments because SBICs may make investments in smaller increments, the number of small businesses eligible for SBIC investments would not change.

For purposes of the Paperwork Reduction Act, 44 U.S.C. CH. 35, SBA has requested approval to require participating SBICs to report the information they are required to maintain by the final rule. The final rule requires SBICs that make LMI Investments to keep track of their LMI Investments and report them to SBA in connection with applications for LMI Debentures. To determine whether an SBIC is making an LMI Investment, the SBIC will have to verify the location of the LMI Enterprise or its employees using the databases discussed in this rule. SBA estimates that the time necessary to verify the location of an LMI Enterprise or its employees will average less than one hour per LMI Investment. The reporting requirements are de minimis since current forms will only be changed to reflect LMI Investments. SBA further estimates that SBICs may make approximately 500 LMI Investments per year. SBA believes this information is necessary for the proper performance of the function of the agency.

For purposes of Executive Order 12612, SBA certifies that this rule will not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

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

For the reasons set forth above, SBA is amending 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 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. Amend § 107.50 to add definitions of LMI Enterprise, LMI Investment, and LMI Zone, to read as follows:

§ 107.50 Definitions of terms.

* * * * *

LMI Enterprise means:

(1) A Small Business that has at least 50% of its employees or tangible assets located in LMI Zone(s) or in which at least 35% of the full-time employees have primary residences in LMI Zone(s), in either case determined as of the time of application for SBIC financing; or

(2) A Small Business that does not meet the requirements of paragraph (1) of this definition as of the time of application for SBIC financing but that certifies at such time that it intends to meet the requirements within 180 days after the closing of the SBIC financing. A Small Business qualifying under this paragraph (2) will no longer be an LMI Enterprise as of the 180th day after the closing of the SBIC financing unless, on or before such date, at least 50% of its employees or tangible assets are located in LMI Zones or at least 35% of its full-time employees have primary residences in LMI Zones.

LMI Investment means a financing of an LMI Enterprise, made after September 30, 1999, in the form of equity securities or debt securities that are junior to all existing or future secured borrowings of the business. The debt securities may be guaranteed and may be secured by the assets of the LMI Enterprise, but the guarantee may not be collateralized or otherwise secured.

LMI Zone means any area located within a HUBZone (as defined in 13 CFR 126.103), an Urban Empowerment Zone or Urban Enterprise Community (as designated by the Secretary of the Department of Housing and Urban Development), a Rural Empowerment Zone or Rural Enterprise Community (as designated by the Secretary of the Department of Agriculture), an area of Low Income or Moderate Income (as recognized by the Federal Financial Institutions Examination Council), or a county with Persistent Poverty (as classified by the Economic Research Service of the Department of Agriculture).

* * * * *

3. In § 107.610, add paragraph (e) to read as follows:

§ 107.610 Required Certifications for Loans and Investments.

* * * * *

(e) For each LMI Investment:

(1) A certification by the concern, dated as of the date of application for SBIC financing, as to the basis for its qualification as an LMI Enterprise,

(2) If the concern qualifies as an LMI Enterprise as defined in paragraph (2) of the definition of LMI Enterprise in § 107.50, an additional certification dated no later than the date 180 days after the closing of the LMI Investment, as to the location of the concern's employees or tangible assets or the principal residences of its full-time employees as of the date of such certification, and

(3) Certification(s) by the SBIC, made contemporaneously with the certification(s) of the concern, that the concern qualifies as an LMI Enterprise as of the date(s) of the concern's certification(s) and the basis for such qualification.

4. In § 107.835, redesignate paragraph (d) as paragraph (e) and add paragraph (d) to read as follows:

§ 107.835 Exceptions to minimum duration/term of Financing.

* * * * *

(d) An LMI Investment with a term of at least one year; or

* * * * *

5. In § 107.850, revise the introductory text of paragraph (a) to read as follows:

§ 107.850 Restrictions on redemption of Equity Securities.

(a) A Portfolio Concern cannot be required to redeem Equity Securities earlier than five years (or one year in the case of an LMI Investment) from the date of the first closing unless:

* * * * *

6. In § 107.855, add paragraph (g)(12) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses (''Cost of Money'').

* * * * *

(g) *Charges excluded from the Cost of Money.* * * *

(12) Royalty payments received under any LMI Investment if the royalty is based on improvement in the performance of the Small Business after the date of the financing.

7. In § 107.865, remove the ''or'' at the end of paragraph (d)(3), replace the period at the end of paragraph (d)(4) with ''; or'', add paragraph (d)(5), and revise paragraph (e)(3) to read as follows:

§ 107.865 Restrictions on Control of a Small Business by a Licensee.

* * * * *

(d) *Temporary Control permitted.* * * *

(5) If your financing of the Small Business is an LMI Investment.

(e) *Control certification.* * * *

(3) Your agreement to relinquish Control within five years (although you may, under extraordinary circumstances, request SBA's approval of an extension beyond five years). In the case of an LMI Investment with a term of less than five years, you must agree to relinquish Control within the term of the financing.

* * * * *

Dated: May 27, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–25244 Filed 9–29–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. SW–006; Special Condition No. 29–006–SC]

Special Conditions: Garlick Helicopters, Inc. Model GH205A helicopters; 14 CFR Part 21.27(c), aircraft engines installed in surplus Armed Forces aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for Garlick Helicopters, Inc. Model GH205A helicopters. This model helicopter will have a novel or unusual design feature(s) associated with the aircraft engines installed in surplus Armed Forces aircraft. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of this special condition is September 22, 1999. Comments must be received on or before November 29, 1999.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of Regional Counsel, Attention: Rules Docket No. SW–006, 2601 Meacham Blvd., Fort Worth, Texas, 76137; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. SW–006. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas, 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected helicopter. In addition, the substance of this special condition has been subject to the public comment process in a prior instance. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Even though comments have been received on this engine special condition, interested persons are invited to submit such additional written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA. This special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. SW–006.'' The postcard will be date stamped and returned to the commenter.

Background

On December 9, 1993, Garlick Helicopters, Inc. applied for a transport category type certificate for their Model GH205A helicopters that contain military surplus T53-L–13 engines. The