

1999, are exempt from data collection in 2000. An institution's exemption from collecting data in 2000 does not affect its responsibility to report the data it was required to collect in 1999.

The Board is amending Comment 3(a)-2 of the staff commentary to implement the increase in the exemption threshold. Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B). Regulation C establishes the formula for determining adjustments to the exemption threshold, if any, and the amendment to the staff commentary merely applies the formula. This amendment is technical and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and would be contrary to the public interest. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Text of Revisions

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. In Supplement I to Part 203, under Section 203.3—Exempt Institutions, under 3(a) *Exemption based on location, asset size, or number of home-purchase loans*, paragraph 2 is revised to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2000, the asset-size exemption threshold is \$30 million. Depository institutions with

assets at or below \$30 million are exempt from collecting data for 2000.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 13, 1999.

Dated: December 13, 1999.

Dolores S. Smith,

Director, Division of Consumer and Community Affairs.

[FR Doc. 99-32827 Filed 12-17-99; 8:45 am]

BILLING CODE 6210-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Small Business Reauthorization Act of 1997, enacted on December 2, 1997, that affect the Small Business Investment Company (SBIC) program, including provisions affecting SBICs' minimum capital requirements, leverage eligibility, and the timing of tax distributions by SBICs that have issued Participating Securities. Other provisions of the final rule modify regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, takedowns of leverage, and in-kind distributions by Participating Securities issuers. A proposed regulation that would have prohibited political contributions by SBICs is not being finalized at this time.

DATES: This rule is effective on December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205-7583.

SUPPLEMENTARY INFORMATION: On April 14, 1999, SBA published a proposed rule (64 FR 18375) to implement the provisions of Subtitle B of Public Law 105-135 (December 2, 1997), the Small Business Reauthorization Act of 1997, which relate to SBICs. The proposed rule also included a provision prohibiting political contributions by SBICs and modifications of regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, procedures for drawing down leverage from SBA, and in-kind distributions by SBICs that have issued leverage in the form of Participating Securities.

SBA received two comments on the proposed rule during the 30-day comment period. This final rule

includes changes based on some of the comments received, as explained in this preamble.

Private Capital

Proposed § 107.230(b)(3) is adopted as final. The provision implements a change in the statutory definition of private capital to include certain funds invested in a Licensee by a Federally chartered or Government-sponsored corporation established prior to October 1, 1987.

Definition of "Associate"

The proposed technical correction in the definition of "Associate" in § 107.50 is adopted as final. The revised definition clarifies the applicability of paragraph (8)(i) of the definition to business concerns organized as partnerships or limited liability companies.

Leverageable Capital

The proposed change in the definition of Leverageable Capital in § 107.50 is adopted as final. The definition no longer excludes Qualified Non-private Funds (as defined in § 107.230(d)) whose source is Federal funds.

Internet Access and Electronic Mail

Proposed § 107.504 is adopted with one minor change. The proposed rule would have required all SBICs to have Internet access and Internet electronic mail no later than June 30, 1999. Because of the time elapsed since publication of the proposed rule, the final rule moves the effective date of this requirement to March 31, 2000.

Political Contributions

Proposed § 107.505, which would have prohibited contributions by SBICs to any political campaign, party, or candidate, or to any political action committee, is not being finalized at this time. SBA is continuing to study the issue of political contributions by SBICs.

Financing of Smaller Enterprises

Since April 1994, SBICs have been required to direct a certain percentage of their investment activity to businesses that fall significantly below the maximum size permitted for a Small Business. These businesses are referred to as "Smaller Enterprises." The proposed rule included minor corrections and clarifications related to the financing of Smaller Enterprises that are adopted as proposed, and one substantive change that has been modified in the final rule.

Section 215(b) of Public Law 105-135 increased the maximum amount of SBA

leverage for which an SBIC could be eligible (see the section of this preamble entitled "Maximum Amount of Leverage"). The statute further required that 100 percent of any "financings made in whole or in part with leverage in excess of \$90,000,000" (the previous limit) be invested in Smaller Enterprises. SBA's interpretation of this requirement in proposed § 107.710(d) was that an SBIC must have 100 percent of any outstanding leverage over \$90 million invested in Smaller Enterprises, while also satisfying the requirement in § 107.710(b) that 20 percent of its total investment activity be devoted to Smaller Enterprises.

One commenter pointed out that the proposed rule appeared to prevent any leverage over \$90,000,000 from being invested in businesses that are not Smaller Enterprises, even if an SBIC had already made Smaller Enterprise investments in an amount far exceeding the basic 20 percent requirement in § 107.710(b). The commenter suggested that SBA look instead at the composition of an SBIC's portfolio in the aggregate.

SBA agrees that an aggregate test is appropriate and has modified the final rule so that an SBIC's required dollar amount of Smaller Enterprise investments is determined on that basis. The final rule also modifies the basic 20 percent investment requirement and the additional 100 percent requirement for leverage over \$90,000,000 so that they do not overlap. In other words, it eliminates the possibility that an SBIC investing an additional dollar would be required to increase its Smaller Enterprise investments by \$1.20.

In the final rule, § 107.710(b)(1) is revised to exclude financings made in whole or in part with leverage over \$90,000,000 from the total dollar amount of financing activity that is subject to the 20 percent test. An SBIC that has issued leverage over \$90 million then must determine its total required dollar amount of Smaller Enterprise financings under § 107.710(d). This amount is determined by adding the minimum amount necessary to satisfy paragraph (b)(1) to the total dollar amount of financings made in whole or in part with leverage over \$90,000,000. The source of funding for individual investments in Smaller Enterprises does not matter; the SBIC is only required to provide sufficient financing to Smaller Enterprises in the aggregate.

In developing the final rule, SBA considered whether it would be excessively difficult for SBICs to identify financings made "in whole or in part" with leverage over \$90,000,000.

SBA believes that this would not be the case. Since SBA introduced a new interim leverage funding mechanism in May 1998, SBICs typically draw leverage as needed to fund specific investments. Thus, there should be a clear link between the takedown of leverage over \$90,000,000 and the closing of a financing. SBA realizes that SBICs sometimes request leverage to provide themselves with "working capital" for general operating purposes. If an SBIC requests leverage over \$90,000,000 for this purpose, but the effective use of the leverage is to free or replace other funds used to complete a financing, SBA will assume that the financing was made with the leverage proceeds.

Real Estate Refinancing

Proposed § 107.720(c)(2) is adopted as final. The provision allows an SBIC to provide financing to a Small Business that will use the proceeds to refinance debt obligations on property that it owns and occupies, provided the Small Business uses at least 67 percent of the usable square footage for an eligible business purpose.

Co-Investment With Associates

Proposed § 107.730(d)(3)(iv) is adopted as final. The provision concerns one set of circumstances under which an SBIC's co-investment with an Associate is presumed to be on terms that are equitable to the SBIC, so that no specific demonstration of fairness is required. As revised, the presumption applies only to an SBIC that intends to operate permanently as a non-leveraged company, rather than to any SBIC that is currently non-leveraged.

Portfolio Diversification Requirement ("Overline" Limit)

Proposed § 107.740(a) is adopted as final. Under the revised provision, an SBIC's overline limit will be computed based on the sum of: (1) its Regulatory Capital at the time an investment or commitment is made; and (2) any distributions permitted under § 107.1570(b) that were made within the preceding 5 years and reduced Regulatory Capital. A distribution made within the preceding 5 years under § 107.585 may also be added back to Regulatory Capital for the purpose of the overline computation if it reduced Regulatory Capital by no more than 2 percent. A larger distribution under § 107.585 may be added back with the approval of SBA.

The final rule also clarifies that the overline limit applies to SBICs that do not have outstanding leverage, but

which intend to issue leverage in the future.

Leverage Application Procedures and Eligibility

The proposed technical correction in § 107.1100(b) is adopted as final. The revision reflects recent changes in leverage funding procedures, under which a Licensee can issue leverage only by first obtaining a leverage commitment from SBA, and then drawing down funds against the commitment.

Proposed § 107.1120(d) contained a certification requirement for Licensees seeking leverage over \$90,000,000. In the final rule, this requirement has been modified to be consistent with the changes made in § 107.710. These changes are discussed in the section of this preamble entitled "Financing of Smaller Enterprises."

Maximum Amount of Leverage

Proposed §§ 107.1150(a) and (b)(1) are adopted as final, with one modification. The leverage eligibility table in § 107.1150(a)(1) has been updated to reflect changes in the Consumer Price Index (CPI) through September 1999. In accordance with § 107.1150(a)(2), SBA will determine the next adjustment of the current leverage ceiling (\$105,200,000) after the Bureau of Labor Statistics publishes the CPI for September 2000. SBA will publish the indexed maximum leverage amounts each year in a Notice in the **Federal Register**.

Draws Against SBA Leverage Commitments

Proposed §§ 107.1220 and 107.1230(d) are adopted as final. The procedural requirements in these sections have been updated to be consistent with the interim leverage funding mechanism, sometimes described as "just-in-time" funding, that SBA introduced in May 1998. The final rule makes four changes in these procedures that are discussed in greater detail in the preamble to the proposed rule. First, it eliminates the requirement that draw requests submitted within 30 days of the end of a Licensee's fiscal quarter be accompanied by updated quarterly financial statements. Second, it clarifies that every draw request must be accompanied by a statement certifying that there has been no material adverse change in the Licensee's financial condition since its last filing of SBA Form 468. Third, it requires a Licensee to provide preliminary unaudited year end financial statements when it submits a draw request more than 30 days

following the end of its fiscal year if the Licensee has not yet filed its audited annual financial statements. Fourth, it allows a Licensee to apply for a leverage draw based on operating liquidity needs, on specific financings it expects to close, or on a combination of the two.

Tax Distributions

Section 215(c) of Public Law 105-135 amended provisions of the Act governing the timing of "tax distributions" that SBICs with outstanding Participating Securities may make to their private investors and SBA. Previously, such distributions could be made once a year, based on the income allocated by a Licensee to its investors for Federal income tax purposes for the fiscal year immediately preceding the distribution. The statutory change now gives a Licensee the option of making a tax distribution at the end of any calendar quarter based on a quarterly estimate of tax liability. However, if the aggregate quarterly distributions made during any fiscal year exceed the amount that the Licensee would have been permitted to make based on a single computation performed for the entire year, future tax distributions must be reduced by the amount of the excess.

The statutory changes are implemented in §§ 107.1550 and 107.1575 and are finalized as proposed. The timing of tax distributions is addressed in §§ 107.1550(d) and 107.1575(a). The final rule permits interim tax distributions to be made on the last day of a calendar quarter or on any succeeding day through the first Payment Date following the end of the quarter (Payment Dates are February 1, May 1, August 1, and November 1 of each year). As before, Licensees may make annual tax distributions as late as the second Payment Date following the end of their fiscal year. If the distribution is not made on a Payment Date, SBA's prior approval is required.

Section 107.1550(e) implements the statutory provision concerning excess tax distributions. A detailed example of how the excess amount is computed appears in the preamble to the proposed rule.

Distributions on Other Than Payment Dates

Proposed § 107.1575 is adopted as final. The section incorporates a technical change to accommodate quarterly tax distributions by SBICs, as discussed in the section of this preamble entitled "Tax Distributions." It also clarifies that while distributions on dates other than Payment Dates must normally be computed as of the distribution date, this requirement does

not apply to "annual" distributions (*i.e.*, those computed as of the end of an SBIC's fiscal year end).

In-Kind Distributions

SBA proposed two substantive changes in § 107.1580, which governs in-kind distributions by SBICs that have issued Participating Securities. First, under proposed § 107.1580(a)(2), only "Distributable Securities" could be distributed in kind. This new term, which was defined in proposed § 107.50, would replace the term "Publicly Traded and Marketable" in § 107.1580. Although the two terms are technically different, SBA did not expect the change to have a major effect on Licensees' ability to distribute securities.

SBA received one comment on paragraph (3) of the definition, which requires that the quantity of securities distributed to SBA must be able to be sold "over a reasonable period of time without having an adverse impact upon the price of the security." The commenter felt that because of the subjective nature of this provision, SBICs might find it difficult to determine whether a particular security will meet the requirement. SBA acknowledges that the requirement involves the application of judgment, but is finalizing paragraph (3) of the definition as proposed. The identical language appeared in the definition of "Publicly Traded and Marketable," which has been in use with respect to in-kind distributions since the inception of the Participating Securities program. Based on its experience so far, SBA is satisfied that the requirement is workable and appropriate.

The second change involved proposed § 107.1580(a)(1), under which all in-kind distributions would have required SBA's prior approval. In SBA's view, this change represented a minor expansion of the current requirement in § 107.1570(a) that SBA approve all distributions made on dates other than one of the quarterly Payment Dates (February 1, May 1, August 1, and November 1). However, SBA received a comment, from a trade association representing a significant number of SBICs, expressing concern that "SBA would substitute its judgment for that of the private experts managing SBICs as to when [an in-kind] distribution should take place or whether it might take place at all."

SBA did not intend to create a fundamental change in the conditions under which in-kind distributions can be made. SBA proposed the rule change to ensure that it would have sufficient opportunity to ascertain whether a

proposed distribution satisfies the regulatory definition of "Distributable Securities." This type of review is an essential part of SBA's regulatory oversight responsibilities. Nevertheless, SBA does not wish to create a perception that it will readily overrule business decisions made by SBIC managers. Therefore, in the final rule, the requirement for prior approval of all in-kind distributions has been eliminated from § 107.1580. All distributions on dates other than Payment Dates, whether in cash or in kind, will continue to require prior approval under § 107.1575(b)(1).

To further clarify its role in reviewing in-kind distributions, SBA has also modified the introductory text of the definition of Distributable Securities. The final rule states that SBA determines whether securities qualify as Distributable Securities, but in so doing obtains the advice of a third party with expertise in the marketing of securities. This provision has a dual purpose. First, it emphasizes SBA's responsibility to ensure that a proposed distribution is consistent with regulatory requirements. Second, it formalizes SBA's current practice of seeking the advice of appropriate experts as it conducts its regulatory review. SBA is willing to commit itself to this procedure as a means of assuring the SBIC industry that it will not arbitrarily or capriciously reject proposed in-kind distributions.

The final rule also adopts a non-substantive change in § 107.1580(a)(4), which deals with SBA's use of agents to dispose of the securities it receives. This provision appeared in the proposed rule as § 107.1580(a)(5).

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

SBA has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866 since it will not have an annual effect on the economy of \$100 million or more, and that it will 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.* The purpose of the final rule is to implement provisions of Public Law 105-135 which relate to small business investment companies, and to make certain other changes, primarily technical corrections and clarifications, to the regulations governing SBICs. There are 352 SBICs, not all of which are small businesses. In addition, the changes will have little or no effect on

small businesses seeking funding from SBICs; rather they would only affect definitions for and activities of the SBICs.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule contains no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 107

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

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

2. In § 107.50, revise paragraph (8)(i) of the definition of Associate, revise the definition of Leverageable Capital, and add, in alphabetical order, a new definition of Distributable Securities to read as follows:

§ 107.50 Definitions of terms.

Associate of a Licensee means any of the following:

(8) * * *

(i) Any person described in paragraphs (1) through (6) of this definition is an officer, general partner, or managing member; or

Distributable Securities means equity securities that are determined by SBA (with the advice of a third party expert in the marketing of securities) to meet each of the following requirements:

(1) The securities (which may include securities that are salable pursuant to the provisions of Rule 144 (17 CFR 230.144) under the Securities Act of 1933, as amended) are salable immediately without restriction under Federal and state securities laws;

(2) The securities are of a class:

(i) Which is listed and registered on a national securities exchange, or

(ii) For which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation System and as to which transaction reports and last sale data are disseminated pursuant to Rule 11Aa3-1 (17 CFR 240.11Aa3-1) under the Securities Exchange Act of 1934, as amended; and

(3) The quantity of such securities to be distributed to SBA can be sold over a reasonable period of time without having an adverse impact upon the price of the security.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

3. In § 107.230, revise paragraph (b)(3) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

(b) *Exclusions from Private Capital.*

(3) Funds obtained directly or indirectly from any Federal, State, or local government agency or instrumentality, except for:

(i) Funds invested by a public pension fund;

(ii) Funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established before October 1, 1987, to the extent that such revenues are reflected in the retained earnings of the corporation; and

(iii) "Qualified Non-private Funds" as defined in paragraph (d) of this section.

4. Revise § 107.504 to read as follows:

§ 107.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA-provided software) and transmit them to SBA. In addition, by March 31, 2000, you must have access to the Internet and the capability to send and receive electronic mail via the Internet.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

5. Remove § 107.508.

§ 107.508 [Removed]

6. In § 107.710, revise paragraphs (b)(1), (c)(1)(i), and (c)(1)(ii), redesignate

paragraphs (d) and (e) as paragraphs (e) and (f), revise the last sentence of redesignated paragraph (f), and add a new paragraph (d) to read as follows:

§ 107.710 Requirement to Finance Smaller Enterprises.

(b) * * *

(1) *General rule.* At the close of each of your fiscal years, for all Financings you extended since April 25, 1994, excluding Financings made in whole or in part with Leverage in excess of \$90,000,000, at least 20 percent (in total dollars) must have been invested in Smaller Enterprises. If you were licensed after April 25, 1994, the 20 percent requirement applies to the Financings you extended since you were licensed, excluding Financings made in whole or in part with Leverage in excess of \$90,000,000, plus any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital. For purposes of this paragraph (b)(1), Leverage in excess of \$90,000,000 includes aggregate Leverage over \$90,000,000 issued by two or more Licensees under Common Control. See also paragraph (d) of this section.

(c) * * *

(1) * * *

(i) Less than \$10,000,000 if such Leverage included Participating Securities; or

(ii) Less than \$5,000,000 if such Leverage was Debentures only.

(d) *Special requirement for Leverage over \$90,000,000.* If you have issued Leverage over \$90,000,000 (including aggregate Leverage over \$90,000,000 issued by two or more Licensees under Common Control), at the end of each of your fiscal years the cumulative Financings you extended to Smaller Enterprises must equal at least:

(1) The dollar amount necessary to satisfy paragraph (b) of this section; plus

(2) 100 percent of the amount of all Financings made in whole or in part with Leverage over \$90,000,000.

(f) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (see § 107.1120(c) through (e)).

7. In § 107.720, revise paragraph (c)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for Financing.

(c) * * *

(2) You are not permitted to finance a business, regardless of SIC

classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

* * * * *

8. In § 107.730, revise paragraph (d)(3)(iv) to read as follows:

§ 107.730 Financing which constitute conflicts of interest.

* * * * *

(d) * * *

(3) * * *

(iv) You have no outstanding Leverage and do not intend to issue Leverage in the future, and your Associate either is not a Licensee or has no outstanding Leverage and does not intend to issue Leverage in the future.

* * * * *

9. In § 107.740, revise paragraph (a) to read as follows:

§ 107.740 Portfolio diversification ("overline" limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or intend to issue Leverage in the future.

Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed:

(1) For a Section 301(c) Licensee, 20 percent of the sum of:

(i) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(ii) Any Distribution(s) you made under § 107.1570(b), during the five years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital; plus

(iii) Any Distribution(s) you made under § 107.585, during the five years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital by no more than two percent or which SBA approves for inclusion in the sum determined in this paragraph (a)(1).

(2) For a Section 301(d) Licensee, 30 percent of a sum determined in the

manner set forth in paragraph (a)(1)(i) through (iii) of this section.

* * * * *

10. In § 107.1100, revise the section heading and paragraph (b) to read as follows:

§ 107.1100 Types of Leverage and application procedures.

* * * * *

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 107.1200 through 107.1240.

* * * * *

11. In § 107.1120, redesignate paragraphs (d) through (g) as paragraphs (e) through (h) and add a new paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) Certify, if applicable, that you will satisfy the requirement in § 107.710(d) to provide Financing to Smaller Enterprises.

* * * * *

12. In § 107.1150, revise paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

(a) *Maximum amount of Leverage.* (1) *Amounts before indexing.* If you are a Section 301(c) Licensee, the following table shows the maximum amount of Leverage you may have outstanding at any time, subject to the indexing adjustment set forth in paragraph (a)(2) of this section:

If your leverageable capital is:	Then your maximum leverage is:
(1) Not over \$17,500,000.	300 percent of Leverageable Capital
(2) Over \$17,500,000 but not over \$35,100,000.	\$52,500,000 + [2 x (Leverageable Capital - \$17,500,000)]
(3) Over \$35,100,000 but not over \$52,600,000.	\$87,700,000 + (Leverageable Capital - \$35,100,000)
(4) Over \$52,600,000	\$105,200,000

(2) *Indexing of maximum amount of Leverage.* SBA will adjust the amounts in paragraph (a) of this section annually to reflect increases through September in the Consumer Price Index published by the Bureau of Labor Statistics. SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

(b) *Exceptions to maximum Leverage provisions.* (1) *Licensees under Common Control.* Two or more Licensees under Common Control may have aggregate outstanding Leverage over \$105,200,000 (subject to indexing as set forth in paragraph (a)(2) of this section) only if SBA gives them permission to do so.

* * *

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13. Revise § 107.1220 to read as follows:

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

As long as any part of SBA's Leverage commitment is outstanding, you must give SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). You must file this form within 30 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this § 107.1220.

14. In § 107.1230, revise paragraph (d)(1), redesignate paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), add a new paragraph (d)(2), and revise the first sentence of redesignated paragraph (d)(4) to read as follows:

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

* * * * *

(d) * * *

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 107.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 107.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

* * * * *

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. * * *

* * * * *

15. In § 107.1550, revise the first sentence of the introductory text, paragraph (b)(1), and paragraph (d), and add a new paragraph (e) to read as follows:

§ 107.1550 Distributions by Licensee—permitted "tax Distributions" to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, and you

are a limited partnership, "S Corporation," or equivalent pass-through entity for tax purposes, you may make "tax Distributions" to your investors in accordance with this § 107.1550, whether or not they have an actual tax liability. * * *

* * * * *

(b) *How to compute the Maximum Tax Liability.* (1) You may compute your Maximum Tax Liability for a full fiscal year or for any calendar quarter. Use the following formula:

$M = (TOI \times HRO) + (TCG \times HRC)$

where:

M = Maximum Tax Liability

TOI = Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRO = The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

TCG = Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRC = The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

* * * * *

(d) *Paying a tax Distribution.* You may make an annual tax Distribution on the first or second Payment Date following the end of your fiscal year. You may make a quarterly tax Distribution on the first Payment Date following the end of the calendar quarter for which the Distribution is being made. See also § 107.1575(a).

(e) *Excess tax Distributions.* (1) As of the end of your fiscal year, you must determine whether you made any excess tax Distributions for the year in accordance with paragraph (e)(2) of this section. Any tax Distributions that you make for a subsequent period must be reduced by the excess amount distributed.

(2) Determine your excess tax Distributions by adding together all your quarterly tax Distributions for the year (ignoring any required reductions for excess tax Distributions made in prior years), and subtracting the maximum tax Distribution that you would have

been permitted to make based upon a single computation performed for the entire fiscal year. The result, if greater than zero, is your excess tax Distribution for the year.

16. In § 107.1575, revise paragraphs (a)(1) and (b)(2) and add a new paragraph (a)(4) to read as follows:

§ 107.1575 Distributions on other than Payment Dates.

(a) * * *

(1) Required annual Distributions under § 107.1540(a)(1), annual Distributions under § 107.1550, and any Distributions under § 107.1560 must be made no later than the second Payment Date following the end of your fiscal year.

* * * * *

(4) Quarterly Distributions under § 107.1550 must be made no earlier than the last day of the calendar quarter for which the Distribution is being made and no later than the first Payment Date following the end of such calendar quarter.

(b) * * *

* * * * *

(2) The ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570, must be:

(i) The distribution date, or

(ii) If your Distribution includes annual Distributions under §§ 107.1540(a)(1), 107.1550 and/or 107.1560, your most recent fiscal year end;

* * * * *

17. In § 107.1580, revise the heading for paragraph (a) introductory text, and revise paragraphs (a)(1), (a)(4), and (b)(2) to read as follows:

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions while Licensee has outstanding Participating Securities.* * * *

(1) You may distribute only Distributable Securities.

* * * * *

(4) You must deposit SBA's share of securities being distributed with a disposition agent designated by SBA. As an alternative, if you agree, SBA may direct you to dispose of its shares. In this case, you must promptly remit the proceeds to SBA.

(b) * * *

(2) You must obtain SBA's prior written approval of any In-Kind

Distribution of Earmarked Assets that are not Distributable Securities, specifically including approval of the valuation of the assets.

Dated: December 10, 1999.

Fred P. Hochberg,
Acting Administrator.

[FR Doc. 99-32689 Filed 12-17-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-189-AD; Amendment 39-11466; AD 99-26-07]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-100, -200, and -200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737-100, -200, and -200C series airplanes, that currently requires periodic inspections to detect missing nuts and/or damaged secondary support hardware adjacent to the aft engine mount, and replacement, if necessary. That AD also provides for optional terminating action for certain inspections and a torque check. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by the FAA's determination that the repetitive inspections required by the existing AD may not be providing the degree of safety assurance necessary for the transport airplane fleet. The actions specified by this AD are intended to prevent failure of the secondary support to sustain engine loads in the event of failure of the aft engine mount cone bolt, which could result in the separation of the engine from the wing.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2000.

The incorporation by reference of Boeing Service Bulletin 737-71-1289, dated August 19, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 18, 1994 (59 FR 18294, April 18, 1994).

ADDRESSES: The service information referenced in this AD may be obtained