

operating experience of the company, the contents and results of the last examination and the management expertise of the company, or (B) if it is a company whose operations have been suspended while the company is involved in litigation or is in receivership.

(d)<sup>102</sup> VALUATIONS.—

Valuations.

(I) FREQUENCY OF VALUATIONS.—

(A) IN GENERAL.—Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

(B) MATERIAL ADVERSE CHANGES.—Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) INDEPENDENT CERTIFICATION.—

Certification and  
audit of financial  
statements.

(i) IN GENERAL.—Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) AUDIT REQUIREMENTS.—Each audit conducted under clause (i) shall include—

(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

<sup>102</sup>Subsection 310(d) rewritten by § 208(f)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745). Text of former subsection 310(d) is reprinted below:

Each small business investment company shall adopt written guidelines for determination of the value of investments made by such company. The board of directors of corporations and the general partners of partnerships shall have the sole responsibility for making a good faith determination of the fair market value of the investments made by such company. Determinations shall be made and reported to the Administration not less than semiannually or at more frequent intervals as the Administration determines appropriate: Provided, That any company which does not have outstanding financial assistance under the provisions of this title shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise.

company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.<sup>98</sup> Every such company shall ~~make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements.~~

Fees for co-  
exami-  
collecte  
Reports.

(c)<sup>99</sup> Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not--

- this title;
- (1) it has engaged solely in lawful activities and those contemplated by
  - (2) it has engaged in prohibited conflicts of interest;
  - (3) it has acquired or exercised illegal control of an assisted small
- business;
- (4) it has made investments in small businesses for<sup>100</sup> not less than 1 year;
  - (5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable<sup>101</sup>;
  - (6) it has engaged in relending, foreign investments, or passive
- investments; or
- (7) it has charged an interest rate in excess of the maximum permitted by
- law:

Provided, That the Administration may waive the examination (A) for up to one additional year if, in its discretion, it determines such a delay would be appropriate, based upon the amount of debentures being issued by the company and its repayment record, the prior

<sup>98</sup> Second sentence in subsection 310(b) added by § 216 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2603).

<sup>99</sup> Section 104 of PL 100-590, approved Nov. 5, 1988 (102 Stat. 2993), added section 310(c) and deleted the following from section 310(b):

Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership.

<sup>100</sup> The phrase "not less than four years in the case of section 301(d) licensees and in all other cases," was deleted by § 208(h)(1)(C) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747). The time was changed from 5 years to 1 year by § 406 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

<sup>101</sup> Phrase "if such restriction is applicable" added by § 408(b) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1016).

the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) for applications to set aside or modify orders.

Sec. 310. EXAMINATIONS AND INVESTIGATIONS<sup>95</sup>

15 USC 68  
Investigatic

(a) The Administration may make such investigations as it deems necessary to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena [sic] witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena [sic] issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(b) Each small business investment company shall be subject to examinations made by direction of the Investment Division of<sup>96</sup> the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations,<sup>97</sup> and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such

Examinatio  
Private sect  
entity.

<sup>95</sup>Sec. 310 added by § 9 of PL 87-341, approved Oct. 3, 1961 (75 Stat. 755). Section heading amended by § 5 of PL 89-779, approved Nov. 6, 1966 (80 Stat. 1360).

<sup>96</sup>Phrase "Investment Division of" substituted for "examiners selected or approved by" by § 407(a) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 1016). Section 407(b) provides: Effective October 1, 1992, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds employed, held, used, arising from, available or to be made available, which are related to the examination function provided by section 310 of the Small Business Investment Act of 1958 shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration.

<sup>97</sup>The clause allowing examinations to be performed by a private sector entity was added by § 208(f)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-745).

§ 107.650

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**§ 107.650 Requirement to report portfolio valuations to SBA.**

You must determine the value of your Loans and Investments in accordance with § 107.503. You must report such valuations to SBA within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

**§ 107.660 Other items required to be filed by Licensee with SBA.**

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give SBA a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give SBA a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser or other Associate of yours for alleged breach of official duty.

(2) SBA may require you to submit copies of the pleadings and other documents SBA may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise SBA of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, or general partner of the Licensee, or any other person who was required by SBA to complete a personal history statement in connection with your license, is charged with or convicted of any criminal offense other than a misdemeanor involv-

ing a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts which pertain to the incident.

(e) *Other reports.* You must file any other reports that SBA may require by written directive.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5866, Feb. 5, 1998]

**§ 107.670 Application for exemption from civil penalty for late filing of reports.**

(a) If it is impracticable to submit any required report within the time allowed, you may apply for an extension. The request for an extension must:

(1) Be filed before the reporting deadline;

(2) Certify to an extraordinary occurrence, not within your control, that makes timely filing of the report impracticable; and

(3) Be accompanied by written evidence of such occurrence, where appropriate.

(b) Upon receipt of your request, SBA may exempt you from the civil penalty provision of section 315(a) of the Act, in such manner and under such conditions as SBA determines.

**§ 107.680 Reporting changes in Licensee not subject to prior SBA approval.**

(a) *Changes to be reported for post approval.* (1) This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require SBA's prior approval. You must report such changes to SBA within 30 days for post approval. A processing fee of \$200 must accompany each request for post approval of new officers, directors, or Control Persons.

(2) *Exception for non-leveraged Licensees.* If you do not have outstanding Leverage or Earmarked Assets, you are not required to obtain post approval of new directors or new officers other than your chief operating officer; however, you must notify SBA of the new directors or officers within 30 days.

(b) *Approval by SBA.* You may consider any change submitted under this section § 107.680 to be approved unless

**Small Business Administration**

**§ 107.692**

SBA notifies you to the contrary within 90 days after receiving it. SBA's approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions SBA may prescribe.

tion, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to SBA upon request.

**EXAMINATIONS OF LICENSEES BY SBA FOR REGULATORY COMPLIANCE**

**§ 107.692 Examination fees.**

**§ 107.690 Examinations.**

SBA will examine all Licensees for the purpose of evaluating regulatory compliance.

(a) *General.* SBA will assess fees for examinations in accordance with this §107.692. Unless SBA determines otherwise on a case by case basis, SBA will not assess fees for special examinations to obtain specific information.

**§ 107.691 Responsibilities of Licensee during examination.**

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under §107.620(c). In addition,

(b) *Base fee.* A base fee will be assessed based on your total assets (at cost) as of the date of your latest certified financial statement or a more recent interim statement requested by and submitted to SBA in connection with the examination. The base fee table is as follows:

Total assets of licensee	Base fee	Plus, percent of assets
\$0 to \$1,500,000	\$3,500	+0%
\$1,500,001 to \$5,000,000	3,700	+ 065% of the amount over \$1,500,000
\$5,000,001 to \$10,000,000	6,000	+02% of the amount over \$5,000,000
\$10,000,001 to \$15,000,000	7,000	+01% of the amount over \$10,000,000
\$15,000,001 to \$25,000,000	7,700	+015% of the amount over \$15,000,000
\$25,000,001 to \$50,000,000	9,200	+015% of the amount over \$25,000,000
\$50,000,001 to \$60,000,000	13,000	+01% of the amount over \$50,000,000
\$60,000,001 and above	14,000	+0%

(c) *Adjustments to base fee.* Your base fee, as determined by the table in paragraph (b) of this section, will be adjusted (increased or decreased) based on the following criteria:

the examiner for on-site review), you will receive a 10% discount on your base fee;

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination and SBA did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee;

(3) If you are organized as a partnership or limited liability company, you will pay an additional charge equal to 5% of your base fee;

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by

(4) If you are a Licensee authorized to issue Participating Securities, you will pay an additional charge equal to 10% of your base fee; and

(5) 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.

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

Examination fee discounts	Amount of discount—% of base examination fee	Examination fee additions	Amount of Addition—% of base examination fee
No prior violations	15	Partnership or limited liability company	5