

CORRESPONDING STATUTORY AND REGULATORY PROVISIONS

INFORMATION COLLECTION 3245-0118

SBA FORM 856: DISCLOSURE STATEMENT (LEVERAGED LICENSEES)
SBA FORM 856A: DISCLOSURE STATEMENT (NON-LEVERAGED LICENSEES)

- 310(c) of the Small Business Investment Act of 1958, as amended;
- 15 U.S.C. Section 687b(c); and,
- 13 CFR 107.680 to 107.692

310(c) of the Small Business Investment Act of 1958

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

(1) it has engaged solely in lawful activities and those contemplated by this title;

(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 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,

(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 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.

15 U.S.C. Section 687b(c)

(c) Examinations of small business investment companies

Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not—

(1) it has engaged solely in lawful activities and those contemplated by this subchapter;

- (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 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;
- (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 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.

13 CFR 107.680 to 107.692

§ 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 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.

Examinations of Licensees by SBA for Regulatory Compliance

Sec. 107.690 Examinations.

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

Sec. 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 Sec. 107.620(c). In addition, 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.

Sec. 107.692 Examination fees.

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

(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	+0.065% of the amount over \$1,500,000
\$5,000,001 to \$10,000,000	6,000	+0.02% of the amount over \$5,000,000
\$10,000,001 to \$15,000,000	7,000	+0.01% of the amount over \$10,000,000
\$15,000,001 to \$25,000,000	7,700	+0.015% of the amount over \$15,000,000
\$25,000,001 to \$50,000,000	9,200	+0.015% of the amount over \$25,000,000
\$50,000,001 to \$60,000,000	13,000	+0.01% 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:

(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;

(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 the examiner for on-site review), you will receive a 10% 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;

(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 Sec. 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

Responsiveness	10	Participating Security Licensee	10
		Records/files at multiple locations	

(e) Delay fee. If, in the judgment of SBA, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, SBA may assess an additional fee of up to \$500 per day.