other security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 3, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–18812 Filed 8–8–16; 8:45 am]

BILLING CODE 9111–28–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115 and 120

RIN 3245–AF85

Miscellaneous Amendments to Business Loan Programs and Surety Bond Guarantee Program

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) continues to review the regulations governing the delivery and oversight of its business lending programs. SBA is proposing changes to some of these regulations for clarity and to increase participation in: The Surety Bond Guarantee (SBG) Program, the 7(a) Loan Program, the Microloan Program, and the Development Company Loan Program (504 Loan Program). In addition, the proposed changes will streamline the regulations by removing or revising any outdated regulations.

DATES: SBA must receive comments to the proposed rule on or before October 11, 2016.

ADDRESSES: You may submit comments, identified by RIN 3245–AF85, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Mary Frias, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Mary Frias, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Office of Financial Assistance, Office of Capital Access, 409 Third Street SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter, Financial Analyst, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416; telephone: (202) 205–7654; *email: robert.carpenter@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (January 21, 2011), directs agencies to ensure that regulations are accessible, consistent, written in plain language, and easy to understand in order to foster economic growth and job creation. Executive Order 13563 provides that our regulatory system ''must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.'' Executive Order 13563 further provides that ''[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' SBA has reviewed its regulations with regard to the Business Loan Programs, as defined below, and is proposing a number of amendments and revisions to accomplish this goal.

The SBA programs affected by this proposed rule are the 7(a) Loan Program authorized pursuant to section 7(a) of the Small Business Act (the Act) (15 U.S.C. 636(a)), the Microloan Program authorized pursuant to section 7(m) of the Act (15 U.S.C. 636(m)), the Surety Bond Guarantee Program authorized pursuant to part B of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694b *et seq.*), and the Development Company Program (the 504 Loan Program) authorized pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*) (collectively referred to as the Business Loan Programs).

The Agency requests comments on all aspects of the regulatory revisions in this proposed rule and on any related issues affecting the Business Loan Programs.

II. Summary of Proposed Business Loan Program Changes

SBA's proposed changes are described in this section, with additional details on each located in the section-by-section analysis that follows:

A. Surety Bond Guarantee Program

1. *Threshold Change.* SBA proposes to change the threshold amounts set forth in §§ 115.19, 115.32, and 115.67 under which Sureties are required to notify SBA, or obtain SBA's prior written approval, of changes in the

contract or bond amounts for which an SBA bond guarantee has been issued. This change would remove the $100,000 threshold and rely solely on the 25% threshold.

2. *Quarterly Contract Completion Notification.* SBA proposes to add a requirement that all participating sureties must notify SBA of all contracts successfully completed on a quarterly basis through the submission of a quarterly contract completion report identifying all contracts successfully completed and any changes in the contract amount and related fees during the preceding fiscal quarter. This new requirement will be addressed in a new section at § 115.22, Quarterly Contract Completion Report.

3. *Quick Bond Guarantee Application and Agreement (SBA Form 990A) Increased Contract Limit.* SBA proposes to allow Sureties participating in the Prior Approval Program to use the Quick Bond Guarantee Application and Agreement (SBA Form 990A), authorized by 13 CFR 115.30(d)(2), for contracts that do not exceed $400,000. The current contract limit for use of this form is $250,000.

4. *Preferred Surety Bond Guarantee Program.* SBA was recently authorized to increase its guarantee percentage for bonds issued in the Preferred Surety Bond (PSB) Guarantee Program from ''not to exceed 70 per centum'' to ''not to exceed 90 per centum'' by section 874 of title VIII of Division A of the National Defense Authorization Act (NDAA), 2016, Public Law 114–92, 129 Stat. 726. This increase will become effective on November 25, 2016. Accordingly, SBA is proposing to amend its regulations to implement this change, including increasing the guarantee percentages in the PSB Program and requiring that, for a period of at least nine months following the admission of new Sureties into the PSB Program, Sureties obtain SBA's prior written approval before executing a bond greater than $2 million.

B. 7(a) and 504 Loan Programs and Microloan Program

1. *Consumer and Marketing Cooperatives.* SBA proposes to remove consumer and marketing cooperatives from the ineligible types of businesses identified in § 120.110.

2. *Change of Ownership Among Existing Owners in Eligible Passive Companies (EPC) and Operating Companies (OC).* SBA proposes to revise the regulation at § 120.111 to permit loans to finance a change of ownership when an existing owner of the Eligible Passive Company (EPC) is purchasing a departing co-owner's interest in the EPC for the benefit of an eligible OC. SBA also proposes to revise § 120.111(a)(3) to clarify that rent or lease payments cannot exceed the amount necessary to make the loan payment to the lender, and an additional amount to cover the EPC's direct expenses of holding the property, such as maintenance, insurance and property taxes.

3. *Personal Guarantee Conditions for Eligible Passive Companies (EPCs) and Operating Companies (OCs).* For consistency with § 120.160(a), SBA proposes to add language in § 120.111(a)(6) to state that SBA may require the personal guarantee of those owning less than 20 percent of the EPC or the OC. Additionally, SBA proposes to add language to provide that SBA may require the personal guarantee of those owning less than 5 percent ownership when circumstances warrant. Finally, SBA proposes to clarify that the personal guarantee requirements apply when an individual has an ownership interest in either the EPC or the OC.

4. *Restrictions on uses of proceeds.* SBA proposes to revise § 120.130 to add a new paragraph (e) and redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively. The new paragraph (e) will include the text currently found in § 120.160(d), *Taxes,* which prohibits the use of loan proceeds to pay past-due Federal or state payroll taxes. SBA also proposes to revise paragraph (g) to remove the reference to ''§ 120.203'' and replace it with ''§ 120.202''.

5. *Personal Guarantees (for loans other than to EPCs/OCs).* SBA proposes to modify the language in § 120.160(a) to clarify that SBA may require the personal guarantee of those owning less than 5 percent ownership when circumstances warrant.

6. *Use of Computer Forms.* SBA proposes to remove § 120.194 as it is outdated and no longer necessary.

7. *Variable Interest Rates on 7(a) Loans.* SBA proposes to revise the language in § 120.214 with respect to when the allowable base rate is determined and when adjustments in the variable interest rate will be permitted.

8. *Fees that Lender pays SBA.* SBA proposes to add a new § 120.220(a)(3) to incorporate the provision under Public Law 114–38, section 2 (Veterans Entrepreneurship Act of 2015), which waives the up-front guaranty fee for SBA Express loans provided to businesses owned and controlled by veterans or spouses of veterans under certain circumstances. In order to incorporate advances in technology, SBA also proposes to update the regulation at § 120.220(b) to provide for the electronic payment of the up-front guaranty fee on all loans and to modify the timing of that payment on certain loans. Finally, SBA proposes corresponding changes to § 120.220(c) governing when SBA will refund the guaranty fee on certain loans.

9. *Fees which a Lender May Collect from an Applicant.* SBA proposes to add clarifying language to this section in an introductory paragraph explaining that the fees listed in § 120.221 are the only fees a Lender is permitted to collect from an applicant in connection with the loan application. SBA also proposes to remove the current language in § 120.221(e), which prohibits a Lender from charging a Borrower a pre-payment fee, and replace that language with the current language found in § 120.222(e), which permits a Lender to charge an Applicant for certain legal fees.

10. *Fees which the Lender or Associate May Not Collect from the Borrower or Share with Third Parties.* SBA proposes to revise § 120.222 to remove all of the text except the prohibition on sharing premiums for secondary market sales. In conjunction with the proposed changes to § 120.221, SBA proposes to include the fees a Lender may charge an Applicant or Borrower in one regulation; unless otherwise permitted by SBA Loan Program Requirements, any fees not included in § 120.221 will be prohibited.

11. *Use of Proceeds in the Builders Loan Program.* In § 120.394, SBA proposes to increase the limit on loan proceeds being used to acquire land under a line of credit under the Builder's Loan Program.

12. *On-Site/Off-Site Reviews for 7(a) Lenders, CDCs and Microloan Intermediaries (Intermediaries).* Due to SBA's improved electronic methods, virtual reviews, such as Analytical and Targeted Reviews, may cover much of what was previously performed in the scope of ''on-site'' reviews, diminishing the distinction between ''off-site'' and ''on-site'' reviews. Accordingly, SBA proposes to remove all references to ''on-site'' reviews in §§ 120.410(a)(2), 120.424(b), 120.433(b), 120.434(c), 120.630(a)(5), 120.710(e)(1), 120.812(c), 120.816(c), 120.839, 120.841(c), 120.1050, 120.1051, 120.1070 and 120.1400(c)(4). SBA will, however, retain the term ''review/examination assessments'' in these regulations. SBA is also proposing to replace references to ''off-site'' reviews and monitoring with ''monitoring'' in §§ 120.1025 and 120.1051(a).

13. ''*Good Standing'' now referred to as being ''Satisfactory.*'' SBA proposes

to replace the term ''Good Standing'' as it relates to a Lender's status with its Federal Financial Institution Regulator (FFIR) with ''Satisfactory'' in §§ 120.410(e), 120.630(a)(4), and 120.1703(a)(4).

14. *The Certified Lenders Program.* SBA proposes to remove regulations pertaining to SBA's Certified Lenders Program (CLP). Section 120.440 will be replaced with a new regulation (see discussion immediately below), and § 120.441 will be reserved for future use.

15. *Delegated Authority Criteria.* SBA proposes to add a new title and text in place of § 120.440 to include in the regulations the criteria for delegated authority in the 7(a) Loan Program. With the addition of this regulation on delegated authority in general, the specific regulation at § 120.451, How does a Lender become a PLP Lender, is no longer necessary and will be removed and reserved for future use.

16. *When is SBA Released from Liability on its Guarantee?* SBA proposes to revise § 120.524(b) to allow SBA to utilize all legal means available when recovering any moneys paid on the guarantee plus interest, including administrative offset and judicial remedies.

17. *Suspension or Revocation from SBA's Secondary Market.* SBA proposes to revise § 120.660 to require that any action taken under this section be approved by both the Director, Office of Financial Assistance (D/FA) and the Director, Office of Credit Risk Management (D/OCRM). Authority is also proposed for suspension or revocation of a Lender participating in SBA's Secondary Market based upon specific regulatory action issued by a Lender's primary regulator or a going concern opinion issued by the Lender's auditor. Finally, SBA proposes to remove the reference to an obsolete form.

18. *Removal of Board Overlap Restriction.* SBA proposes to remove language from § 120.823(c)(5) that prohibits a CDC from having more than one of its Directors employed by, or serving on, the Board of Directors of any other non-CDC entity.

19. *Removal of Reference to Members for CDC Boards of Directors.* SBA proposes to replace the term ''members'' with the term ''individuals'' in § 120.823(d)(4)(ii), *Loan Committee.*

20. *Case-by-Case Application to Make a 504 Loan Outside of a CDC's Area of Operations.* SBA proposes to replace the term ''District Office'' in § 120.839 with the term ''504 loan processing center.'' SBA also proposes to streamline the text in the introductory paragraph of this section.

21. *Ineligible Costs for 504 Loans.* SBA proposes to replace the term ''meeting the IRS definition of capital equipment'' in § 120.884(e)(3) with ''having a remaining useful life of at least 10 years.''

22. *Confidentiality of Reports, Risk Ratings and related Confidential Information Disclosure Prohibitions.* SBA proposes a limited expansion of parties identified in § 120.1060 as ''permitted parties'' who should be afforded access to, a lender's Review/Exam Report information, Risk Rating, and Confidential Information. Access to these permitted parties is granted only for the purpose of assisting a lender in improving the SBA Lender's, Intermediary's or Non-lending Technical Assistance Provider's (NTAP's) SBA program operation in conjunction with SBA's Lender Oversight Program and SBA's portfolio management.

23. *Lender Oversight Fees.* Due to the SBA's improved electronic methods for oversight that allows for virtual Reviews and other oversight activities to be conducted without an ''on-site'' visit, SBA proposes to eliminate the distinction between ''on-site'' and ''off-site'' in the fee components set forth in § 120.1070. Consistent with eliminating this distinction, the proposed rule would also provide flexibility in how SBA allocates its costs for Reviews, Examinations, Monitoring, or Other Lender Oversight Activities (*e.g.,* allocating actual costs assessed to each Lender versus apportioning costs by portfolio size).

24. *Grounds for Enforcement Actions—SBA Lenders.* SBA proposes to revise language to provide for consent to the appointment of a Receiver and/or other relief by SBA Supervised Lenders (except Other Regulated SBLCs) and by CDCs in § 120.1400(a).

25. *Types of Enforcement Actions—SBA Lenders.* SBA proposes to revise the language permitting SBA to initiate a request for appointment of a Receiver of an SBA Supervised Lender in § 120.1500(c)(3) and add language permitting SBA to initiate a request for appointment of a Receiver of a CDC in § 120.1500(e)(3).

26. *General Procedures for Enforcement Actions Against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, Intermediaries, and NTAPs.* SBA proposes to add language regarding the procedures for appointment of a Receiver over a CDC or an SBA Supervised Lender in §§ 120.1600(a), 120.1600(a)(6), and 120.1600(b)(4).

27. *First Lien Position 504 Loan (''FMLP'') Program.* SBA proposes to add language to § 120.1707 to ensure that an allonge to the First Lien Position 504 Loan Pool Guarantee Agreement, in form acceptable to SBA, is executed with a transfer of a Seller's retained interest in an FMLP Pool Loan.

28. *Systemically Important Secondary Market Broker-Dealers (SISMBD) Loan Program.* SBA proposes to remove §§ 120.1800–1900, Subpart K, in its entirety to remove all references to the SISMBD Loan Program. The program was established under the American Recovery and Reinvestment Act (ARRA) in 2009 and the program authority expired on February 16, 2013.

III. Section by Section Analysis

1. *Section 115.19 Denial of liability.* Under the current regulation, the dollar threshold for determining when an increase in the Contract or bond amounts may result in denial of liability as the result of a material breach or a substantial regulatory violation is 25% or $100,000, whichever is less. Based on feedback from the surety industry and other stakeholders, SBA has determined that the existing threshold is outdated, and no longer reflects current industry practices and this change is being made to align SBA requirements with the prevailing industry practice, while managing the increased bond liability to the Government. Currently, under § 115.32(d), the surety is required to notify SBA if any contract or bond increases in the aggregate by 25% or $100,000, whichever is less. Further, if the bond increases as a result of a single change order by 25% or $100,000, whichever is less, the surety is required to obtain SBA's prior written approval of the increase. Prevailing industry practice allows increases to the contract and bond without prior notification to the surety. To better align SBA requirements with that of the industry, while managing the increased bond liability to the Government, this change would eliminate the dollar threshold of $100,000, while retaining the 25% threshold for purposes of denying liability under paragraphs (c)(1), (d), and (e)(2) of § 115.19.

2. *Section 115.22 Quarterly Contract Completion Report.* At present, SBA does not receive a final accounting of fees due and paid by the surety and principal on contracts that are successfully completed. Consequently, SBA is unable to ensure that fees due the Government as a result of an increase in the contract amount are paid in a timely manner on contracts that do not default. To better track fee payments and complement periodic on-site audits

at surety company locations, sureties participating in the SBA Surety Bond Guarantee Program would be required under this provision to submit a quarterly contract completion report within 45 days of the close of each quarter, identifying completed contracts, any changes in contract amount, and any related fees.

3. *Section 115.30 Submission of Surety's guarantee application.* Section 115.30(d)(2) provides a streamlined Quick Bond Guarantee Application and Agreement (SBA Form 990A) (Quick Bond) that is used in the Prior Approval Program for smaller contract amounts. It complements the surety industry practice of providing a shorter application for smaller contract amounts, and has helped to address sureties' perceptions about excessive paperwork in SBA's bond guarantee application process. The Quick Bond has been widely accepted by participating sureties.

The proposed rule would increase the Quick Bond eligible contract limit from $250,000 to $400,000. Implementation of the higher contract limit would increase the use of the Quick Bond and would provide access to bonding for more small contractors. It would more closely conform to the contract limits allowed in the abbreviated applications offered in the surety industry, and would respond to sureties' requests to raise the current limit.

Experience with the Quick Bond has been favorable at the $250,000 limit. Since its implementation in August of 2012, SBA has guaranteed more than 1,500 bonds and only 27 defaults have occurred. If the contract amount is increased, SBA would continue to closely monitor its experience with the Quick Bond.

4. *Section 115.32(d)(1) Notification and Approval.* Under the current regulation, a Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% of $100,000, whichever is less, as soon as the Surety acquires knowledge of the change, and also must obtain SBA's prior written approval of an increase in the original bond amount as a result of a single change order of at least 25% or $100,000, whichever is less. As discussed above under § 115.19, prevailing industry practice allows increases to the contract and bond without prior notification to the surety. To better align SBA requirements with that of the industry, while managing the increased bond liability to the Government, this change would eliminate the dollar threshold of $100,000 while retaining the 25% threshold.

5. *Section 115.60 Selection and admission of PSB Sureties.* SBA is proposing to amend this provision to provide that, for a period of nine months following admission into the PSB Program, the Surety must obtain SBA's prior written approval before executing a bond greater than $2 million. With the increase in the guarantee percentage to up to 90% (as discussed below), SBA wants the opportunity to evaluate the Surety's underwriting and claims and recovery processes to be assured that the PSB Surety has demonstrated a successful period of operations. At its discretion, SBA may extend this period to further evaluate the Surety.

6. *Section 115.67(a) Increases.* Under the current regulation, a Preferred Surety Bond Surety must pay the additional fees due from the Principal and the Surety on increases aggregating 25% of the contract or bond amount or $100,000, whichever is less. For consistency with the changes proposed to §§ 115.19 and 115.32, the proposed rule would eliminate the dollar threshold while retaining the 25% threshold.

7. *Section 115.68 Guarantee Percentage.* There are two SBA surety bond guarantee programs: The Prior Approval Program and the Preferred Surety Bond (PSB) Program. Under the Prior Approval Program, SBA approves each bond guarantee individually, and guarantees between 80% and 90% of a bond issued, depending on the status of the contractor or the amount of the Contract at the time the bond was executed. Under the PSB Program, sureties are authorized to issue, monitor and service bonds without prior SBA approval, but the SBA currently guarantees only up to 70% of the bond. Over the past several years, SBA has experienced a sharp decline in the PSB Program activity due to the lower guarantee rate. To increase participation in the PSB Program, and thereby assist more small businesses, Congress amended section 411(c)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(c)(1)), to authorize SBA to guarantee up to 90% in the PSB Program. The effective date of this increase was delayed until November 25, 2016, to allow time for the necessary rulemaking.

Accordingly, SBA is proposing to amend § 115.68 to adopt the same guarantee percentages for the PSB Program that are provided in the Prior Approval Program under § 115.31:

(1) SBA would reimburse a PSB Surety for 90% of the Loss incurred and paid if: (i) The total amount of the Contract at the time of Execution of the bond is $100,000 or less. Like the Prior Approval Program, when the Contract amount increases to more than $100,000 after bond Execution, the guarantee percentage would decrease by one percentage point for each $5,000 of increase or part thereof, but would not decrease below 80%. If the Contract decreases to $100,000, or less, after bond Execution, the guarantee percentage would increase to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested; or (ii) the bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals, on behalf of a qualified HUBZone small business concern, or on behalf of a small business owned and controlled by Veterans or a small business owned and controlled by Service-Disabled Veterans;

(2) SBA would reimburse a PSB Surety in an amount not to exceed 80% of the Loss incurred and paid on bond for Contracts in excess of $100,000 which are executed on behalf of non-disadvantaged concerns; and

(3) If the Contract or Order amount is increased above the Applicable Statutory Limit (as defined in § 115.10) after bond Execution, SBA's share of the Loss is limited to that percentage of the increased Contract or Order amount that the Applicable Statutory Limit represents multiplied by the guarantee percentage approved by SBA. For example, if a contract amount increases to $6,800,000, SBA's share of the loss under an 80% guarantee is limited to 76.5% (6,500,000/6,800,000 = 95.6% × 80% = 76.5%.)

8. *Section 120.110 What businesses are ineligible for SBA business loans?* SBA proposes to remove the existing § 120.110(l) that identifies consumer and marketing cooperatives as ineligible types of businesses for SBA financial assistance. Cooperatives are a form of organization and there is no reason why cooperatives should be excluded from eligibility. As such, all cooperatives may be eligible for SBA financing, provided they comply with all other Loan Program Requirements.

9. *Section 120.111 What conditions must an Eligible Passive Company satisfy?* SBA proposes to amend two paragraphs in § 120.111:

(1) *Introductory paragraph.* Presently, the Eligible Passive Company (EPC) may only use loan proceeds ''to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies for

conducting the Operating Company's business.'' SBA proposes to include language to permit SBA loan proceeds to be used to finance a change of ownership between existing owners of the Eligible Passive Company (EPC), provided the transaction meets all conditions described in § 120.111.

(2) *Paragraph (a)(3).* The lease between the EPC and the OC. SBA proposes to clarify that rent or lease payments made by the OC to the EPC cannot exceed the amount necessary to make the loan payment to the lender, and an additional amount to cover the EPC's direct expenses of holding the property, such as maintenance, insurance and property taxes.

(3) Paragraph (a)(6). *Who must guarantee the loan.* SBA proposes to clarify that owners of 20 percent or more of either the EPC or the OC are required to personally guarantee the loan. Also, for consistency with § 120.160(a), SBA proposes to add language to § 120.111(a)(6) to provide that SBA may, in its discretion and in consultation with the Lender, require the personal guarantee of owners with less than 20% ownership of the EPC or the OC. Additionally, SBA proposes to add language to provide that SBA may require the personal guarantee of those owning less than 5% ownership when circumstances warrant.

10. *Section 120.130 Restrictions on uses of proceeds.* SBA proposes to revise § 120.130 to add a new paragraph (e) and redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively. The new paragraph (e) will include the text currently found in § 120.160(d), *Taxes.* The current text in § 120.160(d) prohibit the use of proceeds for payment of past-due Federal or state withholding taxes, which is more applicable to § 120.130. SBA also proposes some minor modifications to the language to clarify the restriction. SBA also proposes to revise newly designated paragraph (g) to remove the reference ''§ 120.203'' and replace it with ''§ 120.202''. The regulation § 120.203 cited in this section was removed in 1996. The correction to remove the reference to § 120.203 and replace it with the reference to § 120.202 in § 120.130(f) was not made at the time and this oversight is being corrected here. The redesignation of paragraphs (e) and (f) to (f) and (g) in the section improves the flow with the inclusion of the new § 120.130(e).

11. *Section 120.160(a) Loan conditions.* SBA proposes to add the word ''generally'' to the last sentence of § 120.160(a) to clarify that SBA may require a personal guarantee of an owner who holds less than 5% when the circumstances warrant, such as Cooperatives where no one member may have an ownership interest of at least 5%.

12. *Section 120.194 Use of computer forms.* SBA proposes to remove the regulation at § 120.194 in its entirety as it is outdated. The regulation will be reserved for future use.

13. *Section 120.214 What conditions apply for variable interest rates*? The current regulation governing variable interest rates in § 120.214 provides that, when a Lender uses the prime or London Interbank Offered Rate (LIBOR) rate as the base rate in a variable interest rate loan, the base rate will be ''that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day.'' (§ 120.214(c)) Further, the current regulation also provides that the ''first change in the variable rate may occur on the first calendar day of the month following initial disbursement using the base rate (see paragraph (c) of this section) in effect on the first business day of the month.'' (§ 120.214(a)) SBA proposes to revise the language in §§ 120.214(a) and (c) to change when the base rate is determined and to permit adjustments in the variable interest rate other than just on the first business day of the month, provided the changes occur no more frequently than monthly.

14. *Section 120.220 Fees that Lender pays SBA.* SBA proposes to add a new paragraph § 120.220(a)(3) to incorporate into the regulations the statutory waiver of the up-front guaranty fee for SBA Express loans made to businesses owned and controlled by veterans and/or spouses of veterans in fiscal years when the subsidy rate for the 7(a) program is zero, as set forth in section 7(a)(31) of the Small Business Act (15 U.S.C. 636(a)(31)). The conditions a business must meet to qualify for this fee waiver will be explained in SBA Loan Program Requirements.

In § 120.220(b), in an effort to incorporate advances in technology, SBA proposes to update the regulation to advise Lenders to pay the guaranty fee electronically and to revise the timeframe within which a Lender must pay the guaranty fee to SBA for loans with a maturity of 12 months or less (''short-term loans''). SBA proposes to revise the timing of payment of the fee on a short-term loan from the time of application to within ten business days of SBA's approval of the loan. The current requirement was implemented when Lenders paid fees using checks. Currently, fees are paid electronically through Pay.gov. Requiring payment of the fee with the application for guaranty on short-term loans creates a bottleneck that delays the processing center's turn-around time for these loans.

Given the longer timeframe for the Lender to pay the fee, SBA also proposes to remove the first two sentences of § 120.220(c), which state when SBA will refund the guaranty fee paid on a short-term loan. With the additional time provided for payment of the fee, there will be no need for refunds.

15. *Section 120.221 Fees which the Lender may collect from a loan applicant.* SBA proposes to add clarifying language to this section in an introductory paragraph explaining that, unless otherwise permitted by SBA Loan Program Requirements (*e.g.,* the guaranty fee under § 120.220), the fees listed in § 120.221 are the only fees a lender is permitted to charge and collect from an Applicant or Borrower. SBA also proposes to remove the current language in § 120.221(e) because it incorrectly refers to a prohibited fee (''pre-payment fees''). SBA proposes to move the language that permits Lenders to collect fees for legal services presently found in § 120.222(e) to § 120.221(e). By making these changes, the guidance on permissible fees a Lender may charge and collect from an Applicant or Borrower will be contained in one regulation in an effort to reduce confusion.

16. *Section 120.222 Fees which the Lender or Associate may not collect from the Borrower or share with third parties.* SBA proposes to retitle § 120.222 to read ''Prohibition on sharing premiums for secondary market sales.'' SBA also proposes to remove paragraphs (a), (b), (c), and (e), and revise the text of paragraph (d). The removal of the fees currently included in § 120.222(a), (b), and (c) does not mean that Lenders will now be permitted to charge these fees. On the contrary, the proposal to remove the fees from § 120.222 in conjunction with the proposed changes to § 120.221 are intended to place the guidance on allowable fees in a single regulation. Unless otherwise permitted by SBA Loan Program Requirements, any fee not identified in § 120.221 is prohibited. SBA proposes to retain the prohibition on the sharing of secondary market fees in § 120.222 for consistency with 13 CFR 103.5(c), which prohibits a lender from sharing any secondary market premium with a lender service provider.

17. *Section 120.394 What are the eligible uses of proceeds*? SBA proposes to increase the regulatory limitation on how much of the proceeds of a line of credit under the Builder's Loan Program can be used for land acquisition from

20% to 33%. SBA recognizes that the current limitation is reflective of limits imposed in 1977, and has not allowed for increases due to the passage of time and increases in land and development costs.

18. *Section 120.410 Requirements for all participating Lenders.* SBA proposes to replace the term ''Good Standing,'' as it relates to a Lender's status with its Federal Financial Institution Regulator, with ''considered Satisfactory by its Federal Financial Institution Regulator'' (FFIR) in paragraph (e) to better align with terminology used by the FFIRs. Finally, given the diminished distinction between ''on-site'' and ''off-site'' reviews due to incorporation of virtual methods for oversight in SBA's Revised Risk-Based Review Protocol, SBA proposes to remove the references to ''on-site'' reviews/examinations in § 120.410(a)(2) (and in all other regulations) while retaining the term ''review/examination assessments.''

19. *Section 120.424 What are basic conditions a Lender must meet to securitize*? In paragraph (b), SBA proposes to remove the term ''on-site'' while retaining the term ''review/examination assessments'' in this section.

20. *Section 120.433 What are SBA's other requirements for sales and sales of participating interests*? In paragraph (b), SBA proposes to remove the term ''on-site'' while retaining the term ''review/examination assessments'' in this section.

21. *Section 120.434 What are SBA's requirements for loan pledges*? In paragraph (c), SBA proposes to remove the term ''on-site'' while retaining the term ''review/examination assessments'' in this section.

22. *Sections 120.440 and 120.441 The Certified Lenders Program (''CLP''); replaced with new Delegated Authority section.* SBA proposes to remove the title and all language in §§ 120.440 and 120.441, The Certified Lenders Program, as implementation of newer, more efficient methods of processing, closing, servicing, and liquidating have made this program unnecessary and obsolete. Beginning on the effective date of the final rule, the CLP would be terminated.

SBA also proposes to add a new heading before § 120.440 that reads ''Delegated Authority Criteria'' and to add new language in § 120.440 that sets forth the criteria for Lenders when applying for initial approval or renewal of delegated authority in the 7(a) Loan Program. These criteria are essentially identical to the criteria currently included in SBA's Standard Operating Procedure (SOP) 50 10 5(H), subpart A for the PLP, SBA Express and Export Express Programs. Under this new provision, SBA, in its discretion, would consider whether the Lender:

(a) Has the continuing ability to evaluate, process, close, disburse, service, liquidate and litigate SBA loans. This includes the ability to develop and analyze complete loan packages. SBA may consider the experience and capability of Lender's management and staff.

(b) Has satisfactory SBA performance (as defined in § 120.410(a)(2));

(c) Is in compliance with SBA Loan Program Requirements (*e.g.,* Form 1502 reporting, timely payment of all fees to SBA);

(d) Has completed to SBA's satisfaction all required corrective actions;

(e) Is subject to any enforcement action, order or agreement with other regulators or the presence of other regulatory concerns as determined by SBA; and

(f) Whether Lender exhibits other risk factors (*e.g.,* has rapid growth; low SBA activity; SBA loan volume; Lender, an officer or director is under investigation or indictment).

With respect to ''low SBA activity,'' SBA considers making 5 SBA-guaranteed loans or less in a 2 year period to be low activity. Additionally, with respect to SBA loan volume, SBA would look at the Lender's proportion of SBA lending relative to the Lender's total loan portfolio.

Section 120.441 will be reserved for future use.

23. *Section 120.451 How does a Lender become a PLP Lender*? As a result of replacing § 120.440 with a new regulation setting out the criteria for delegated authority, the existing regulation at § 120.451 would no longer be necessary and would be removed and reserved for future use.

24. *Section 120.524 When is SBA released from liability on its guarantee*? SBA proposes to clarify that its rights to collect monies paid on a guarantee from which SBA determines it has been released of liability include judicial remedies and the right to offset funds due the Lender for the guaranty purchase of another loan. SBA's right to seek these remedies arises under contract law as interpreted by the courts.

25. *Section 120.630 Qualifications to be a Pool Assembler.* In paragraph (a)(4) SBA proposes to replace the term ''good standing'' with ''satisfactory'' when it relates to other federal regulators and SBA proposes to update the reference to the National Association of Securities Dealers (NASD) and replace it with the Financial Industry Regulatory Authority (FINRA), as NASD no longer exists. SBA also proposes to remove the term ''on-site'' while retaining the term ''review/examination assessments'' in subparagraph (a)(5).

26. *Section 120.660 Suspension or revocation.* SBA proposes to revise § 120.660 to require that any action taken under this section be approved by both the D/FA and the D/OCRM. SBA proposes to add a 120-day limit to the proposed suspension period to give participants sufficient time to resolve any correctable issues. Additionally, SBA proposes to reduce the timeframe for a revocation under this section to no more than two (2) years. SBA also proposes to identify regulatory orders or supervisory actions brought by a Lender's primary regulator or by SBA or a going concern opinion by the Lender's auditor as additional reasons for which SBA may suspend or revoke a Lender's privilege to participate in SBA's Secondary Market. The issuance of any regulatory order or supervisory action by the Lender's primary regulator will require notice to SBA within 5 business days (or as soon as practicable thereafter) to the D/OCRM and D/FA. In addition, SBA proposes to add a new paragraph (d) to this regulation to provide for early termination of a suspension or revocation under this section, in the D/FA and the D/OCRM's discretion, if termination is warranted.

SBA also proposes to eliminate the reference to SBA Form 1085 within this section as SBA Form 1085 is obsolete.

27. *Section 120.710(e)(1) What Must an Intermediary Demonstrate to Get a Reduction in the Loan Loss Reserve Fund*? SBA proposes to remove the reference to ''on-site'' reviews or examinations, while retaining the term ''review/examination assessments.'' As SBA increases its use and application of electronic technology in lender oversight and reviews and examinations, the ''on-site'' review language is no longer generally applicable. The proposed language reflects a more current representation of reviews and examinations.

28. *Section 120.812 Probationary period for newly certified CDCs.* In paragraph (c), SBA proposes to remove the term ''on-site'' while retaining the term ''review/examination assessments.''

29. *Section 120.816 CDC non-profit status and good standing.* SBA proposes to remove the term ''on-site'' while retaining the term ''review/examination assessments'' in paragraph (c).

30. *Section 120.823 CDC Board of Directors.* SBA proposes to revise

§ 120.823(c)(5) to eliminate the language in this rule that currently prevents more than one Board member of a CDC from being employed by, or serving as a Director on the Board of, other entities, except for civic or charitable organizations not involved in financial services or economic development activities. This provision was intended to apply to associations not covered by 13 CFR 120.820, under which a CDC may be affiliated, including through common board members, with the entities described in that section. However, § 120.823(c)(5) has created confusion among the CDCs with respect to what other entities a CDC Director may be employed by or associated with as a Director. SBA has reconsidered this provision and determined that the affiliation restrictions set forth in § 120.820 sufficiently limit the ability of another entity to control the CDC. SBA will retain the sentence in this provision that references § 120.851(b) to reinforce the prohibition against a CDC Board member from serving on the Board of another CDC.

SBA also proposes to insert the word ''individuals'' in place of ''members'' to clarify in § 120.823(d)(4)(ii)(C) that individuals serving on the loan committee of a CDC do not have to be Members of the CDC or the CDC's Board. SBA no longer requires a CDC to have a membership and some CDC's were confused by the use of the term ''member'' in this section. Therefore, SBA intends to change the word ''member'' to ''individual''.

31. *Section 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.* SBA proposes to replace the term ''District Offices'' in this Section with ''504 loan processing center'' to reflect the SBA office that processes 504 loan applications. A revision to the regulation is needed in order to reflect the current protocol that the 504 loan processing center, not the District Office, submits its recommendation to the D/FA or designee, along with the application and supporting materials for the final decision if the applicant CDC meets the specific criteria to be authorized to make a loan outside of its stated Area of Operations. SBA also proposes to remove the term ''on-site'' while retaining ''review/examination assessments'' in this section.

32. *Section 120.841(c) CDC Reviews.* SBA proposes to remove the term ''on-site'' while retaining the term ''review/examination assessments'' in § 120.841(c).

33. *Section 120.884 Ineligible costs for 504 loans.* SBA proposes to define heavy duty construction equipment in § 120.884(e)(3) without reference to the IRS definition and to add the requirement that the equipment have a remaining useful life of at least 10 years. SBA currently requires that heavy duty construction equipment must be integral to the business' operations and meet the IRS definition of capital equipment. IRS no longer publishes a definition for ''capital equipment.''

34. *Section 120.1025 Off-site reviews and monitoring.* SBA proposes to remove specific reference to ''off-site'' regarding reviews and monitoring in § 120.1025, including in the title, and replace it with ''monitoring''.

35. *Section 120.1050 On-site reviews and examinations.* SBA proposes to remove specific reference to ''on-site'' regarding reviews and examinations in § 120.1050, including in the title.

36. *Section 120.1051 Frequency of on-site reviews and examinations.* SBA proposes to remove specific reference to ''on-site'' regarding reviews and examinations in § 120.1051, including in the title. SBA proposes to remove specific reference to ''off-site review/monitoring'' in paragraph (a) and replace it with ''results of monitoring''.

37. *Section 120.1060 Confidentiality of Reports, Risk Ratings and related Confidential Information.* SBA proposes a limited expansion of its definition in § 120.1060 of ''permitted parties'' who demonstrate a legitimate need to know a lender's Review/Exam Report information, Risk Rating, and Confidential Information for the purpose of assisting a lender in improving the SBA Lender's, Intermediary's or NTAP's SBA program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management. This limited expansion of permitted parties may include the lender's parent entity, directors, auditors and those lender consultants under written contract specifically to assist the Lender in addressing SBA Findings and Corrective Actions Required to SBA's satisfaction. Consultants do not include Lender Service Providers. The consultant contract must provide for both (1) the consultant's agreement to abide by the disclosure prohibition in § 120.1060(b); and (2) agreement not to use the Report, Risk Rating, and Confidential Information for any other purpose than to assist Lender in addressing SBA Findings and Corrective Actions. This expansion may improve an SBA Lender's, Intermediary's or NTAP's ability to address SBA Findings and Corrective Actions or make other necessary improvements within their SBA operations. The change codifies SBA practice of approving disclosure of a lender's Report, Risk Rating, and Confidential Information for this group, obviating the need for case-by-case approval for these parties going forward.

38. *Section 120.1070 Lender oversight fees.* With the advent of new technologies, generally less costly and less burdensome virtual reviews such as Analytical and Targeted Reviews may cover much of what was previously performed within the scope of on-site reviews, diminishing the distinction between ''off-site'' and ''on-site'' reviews. Therefore, SBA is proposing to refine § 120.1070 to delete the distinctions based on ''on-site'' and ''off-site,'' and to categorize the fee components only as Examinations, Reviews, Monitoring, and Other Lender Oversight Activities.

With respect to Reviews, under current regulations, SBA charges Lenders a fee for the following types of Reviews, including but not limited to, PARRiS Full Reviews, PARRiS Analytical Reviews, Targeted Reviews, and Delegated Authority Reviews. This fee is assessed based on the cost that SBA incurs under its contract for these Reviews. Under the proposed rule, SBA is specifying that SBA can charge a Lender the actual cost for Lender Loan Reviews (*e.g.,* Secondary Market Loan Reviews) and corrective action assessments, which is consistent with SBA's policy that Lenders that represent increased risk and warrant additional oversight should bear the expense of that oversight rather than that expense being apportioned to all Lenders.

The proposed section would also provide that SBA has discretion in how it allocates the costs to Lenders to allow contracting flexibility in how SBA pays for this cost. It would specify, consistent with SBA's current practice and current contracts, that in general, where the costs that SBA incurs for the oversight activity are specific to a Lender, SBA will charge that Lender for the actual costs and, where the costs that SBA incurs for the oversight activity are not sufficiently specific to a particular Lender but may be a flat fee paid to a vendor, SBA will charge a Lender based on that Lender's portion of SBA guarantees in the portfolio or segment of the portfolio the activity covers. For example, under its current review contract, SBA pays its contractor for each specific Lender's Full Review and SBA passes that cost along to the Lender for which the Review was conducted. Under the L/LMS contract, SBA pays its contractor a flat fee for providing L/LMS services that cover all Lenders and this amount is apportioned among all Lenders based on portfolio size.

39. *Section 120.1400(a) Grounds for enforcement actions—SBA Lenders.* SBA proposes to amend § 120.1400(a) to provide that by making SBA 7(a) guaranteed loans or SBA 504 loans after a certain date, SBA Supervised Lenders (except Other Regulated SBLCs) or CDCs, as applicable, consent to the appointment of a Receiver and such injunctive or other equitable relief as appropriate, and waive in advance any defenses to such relief as sought by SBA, in connection with an enforcement action. SBA is conditioning its guarantee of 7(a) loans made by SBA Supervised Lenders (except Other Regulated SBLCs) and 504 debentures after a certain date on consent to this relief in an enforcement action because the injury to SBA and its supervision and regulatory oversight of the SBA Supervised Lender or CDC due to the SBA Supervised Lender's or CDC's default under its agreement(s) with SBA would be irreparable and the amount of damage would be difficult to ascertain, making this relief necessary and required. A consent to receivership is not without precedent in other federal agency practice and has been upheld by the courts as valid and legally enforceable. *See, e.g., U.S.* v. *Mountain Village Company,* 424 F. Supp. 822 (D. Mass. 1976).

40. *Section 120.1500 Types of enforcement actions—SBA Lenders.* SBA proposes to revise § 120.1500(c)(3) and to add § 120.1500(e)(3) to clarify when SBA may initiate a request for appointment of a Receiver to administer and operate an SBA Supervised Lender and to permit SBA to initiate a request for appointment of a Receiver of a CDC.

41. *Section 120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated Small Business Lending Companies (SBLCs), Management Officials, Other Persons, Intermediaries, and Non-Lending Technical Assistance Providers (NTAPs).* SBA proposes to add language into §§ 120.1600(a), 120.1600(a)(6) and 120.1600(b)(4) providing that if SBA undertakes the appointment of a Receiver for a CDC or an SBA Supervised Lender, SBA will follow the applicable procedures under federal law to obtain such remedies and to enforce the CDC's or SBA Supervised Lender's consent and waiver in advance to those remedies.

42. *Section 120.1703 Qualifications to be a Pool Originator.* In paragraph (a)(4) SBA proposes to replace the term ''good standing'' with ''Satisfactory'' when it relates to other federal regulators.

43. *Section 120.1707 Seller's retained Loan Interest.* SBA is currently using an allonge to the First Lien Position 504 Loan Pool Guarantee Agreement, as opposed to requiring the execution of a new First Lien Position 504 Loan Pool Guarantee Agreement, to substantiate the transfer of a Seller's interest in an FMLP Pool Loan. The use of an allonge will require the purchaser of a Seller's retained interest to assume the original responsibilities of the Seller with regard to the FMLP Pool Loan. The allonge must be in form acceptable to SBA and the purchaser must acknowledge, assume and accept all of the original obligations and responsibilities of the Seller under the initial or subsequent First Lien Position 504 Loan Pool Guarantee Agreement. The proposed change will conform the rule to the current practice.

44. *Subpart K—Establishment of an SBA Direct Loan Program for Systemically Important Secondary Market Broker-Dealers (SISMBD Loan Program).* Since the SISMBD Loan Program expired on February 16, 2013, and was not extended by statute, SBA proposes to remove this subpart in its entirety.

Compliance With Executive Orders 13563, 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant'' regulatory action for the purposes of Executive Order 12866. In the interest of transparency, however, SBA has drafted a Regulatory Impact Analysis for the public's information in the next section. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The Agency believes it needs to streamline and reduce regulatory burdens to facilitate robust participation in the business loan and surety bond programs that assist small and underserved U.S. businesses.

2. What are the potential benefits and costs of this regulatory action?

As stated above, the potential benefits of this proposed rule are based on its elimination of unnecessary participation burdens. Participants will benefit from clear and simpler regulatory directions that enable them to provide small business loans and bonds in a more efficient and cost effective manner.

3. What alternatives have been considered?

One ''alternative'' would be to eliminate even more regulatory burdens. The Agency will consider public comment and suggestions on how that can be done responsibly without substantially increasing the risk of waste, fraud, or abuse of the programs.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

SBA's Business Loan Programs operate through the Agency's lending partners, which are Surety Bond Companies for the Surety Bond Guarantee Program, 7(a) Lenders for the 7(a) Loan Program, third party lenders, CDCs for the 504 Loan Program, and Microloan Intermediaries for the Microloan Program. The Agency has participated in public forums and meetings which have included outreach to hundreds of its lending partners to seek valuable insight, guidance, and suggestions for program reform.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

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

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

SBA has determined that this proposed rule imposes additional reporting requirements under the Paperwork Reduction Act (PRA). As described above, SBA proposes to require all participating sureties to notify SBA of all contracts that were successfully completed on a quarterly basis. The public is invited to comment on this proposed new report and to

submit any comments by the deadline stated in the **DATES** section of this document to: SBA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, 725 17th Street NW., Washington, DC 20503.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. SBA will submit the proposed form and other documents required under the Paperwork Reduction Act to OMB for review and approval.

A summary description of this information collection, the respondents, and the estimate of the annual hour burden resulting from this new process is provided below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering information needed, and completing and reviewing the responses.

Title: Quarterly Contract Completion Report.

Description: The Quarterly Contract Completion Report would be submitted by all participating surety companies to provide SBA with information about successfully completed contracts. The information reported would include the Surety Bond Guarantee number, the name of the Principal, the original Contract dollar amount, the revised Contract dollar amount (if applicable), the date of Contract completion, and a fee recap. Reports would be due to SBA within 45 days of each fiscal quarter.

OMB Control Number: New Collection.

Description of and Estimated Number of Respondents: The proposed new collection would be submitted by the surety companies that participate in the SBG Program. The burden estimate for this requirement is based on the 23 current participants.

Estimated Number of Responses: Each of the estimated 23 sureties would be required to submit the report to SBA 4 times per year, for a total of 92 responses.

Estimated Response Time: It is estimated that each surety would need approximately 1 hour to complete the proposed report.

Total Estimated Annual Hour Burden: 92 hours.

Estimated Annual Cost Burden: $4,604.

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

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment an initial regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. There are 23 sureties (none of them small entities) that participate in the SBG Program, and no part of this rule would impose any significant cost or burden on them. Although the rulemaking will impact all of the approximately 5,000 7(a) Lenders (some of which are small), all of the approximately 250 CDCs (all of which are small), and 145 Microloan Intermediaries (most of which are small) SBA does not believe the impact will be significant. The proposed rule will reduce the burden of the Agency's lending partners because they choose their own level of program participation (*i.e.,* 7(a) Lenders and CDCs are not required to process more loan applications simply because there is a reduced burden for small businesses to apply for a business loan). Therefore the proposed modernization of certain program participation requirements would not have a substantial economic impact or cost on the small business borrower, lender, or CDC, and in fact, may reduce costs to lender participants.

SBA believes that this proposed rule encompasses best practice guidance that aligns with the Agency's mission to increase access to capital for small businesses and facilitate American job preservation and creation with the removal of unnecessary regulatory requirements. A review of the summary and preamble above will provide more detailed explanations discussing the specific improvements that will reduce regulatory burdens and encourage increased program participation. For these reasons, SBA has determined that there is no negative impact on a substantial number of small entities. SBA invites comment from members of the public who believe there will be a significant impact on sureties, microloan intermediaries, participant lenders, CDCs, or small businesses.

List of Subjects

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

13 CFR Part 120

Community development, Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 115 and 120 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

§ 115.19 [Amended]

■ 2. Amend § 115.19 by removing the phrase ''or $100,000, whichever is less'' in paragraph (c)(1), the second sentence of paragraph (d), and paragraph (e)(2).

■ 3. Add § 115.22 to subpart A to read as follows:

§ 115.22 Quarterly Contract Completion Report.

The Surety must submit a Quarterly Contract Completion Report within 45 days after the close of each fiscal year quarter ending December 31, March 31, June 30, and September 30, that identifies each contract successfully completed during the quarter.

The report shall include:

(a) The SBA Surety Bond Guarantee Number,

(b) Name of the Principal,

(c) The original Contract Dollar Amount,

(d) The revised Contract Dollar Amount (if applicable),

(e) The date of Contract completion, and

(f) A summary specifying the fee amounts paid to SBA by the Surety and Principal, the fee amounts due to SBA as a result of any increases in the Contract amount, and the fee amounts to be refunded to the Principal or rebated to the Surety as a result of any decreases in the Contract amount.

§ 115.30 [Amended]

■ 4. Amend § 115.30 by removing ''$250,000'' from the second sentence of paragraph (d)(2)(i) and adding in its place ''$400,000''.

§ 115.32 [Amended]

■ 5. Amend § 115.32 by removing ''or $100,000, whichever is less'' from the first and second sentences of paragraph (d)(1).

■ 6. Amend § 115.60 by adding third and fourth sentences at the end of paragraph (b) to read as follows:

§ 115.60 Selection and admission of PSB Sureties.

* * * * *

(b) * * * For a period of nine months following admission to the PSB program, the Surety must obtain SBA's prior written approval before executing a bond greater than $2 million so that SBA may evaluate the Surety's performance in its underwriting and claims and recovery functions. At the end of this nine month period, SBA may in its discretion extend this period to allow SBA to further evaluate the Surety's performance.

§ 115.67 [Amended]

■ 7. Amend § 115.67 by removing the phrase ''or $100,000, whichever is less'' from the second sentence of paragraph (a).

■ 8. Revise § 115.68 to read as follows:

§ 115.68 Guarantee percentage.

SBA reimburses a PSB Surety in the same percentages and under the same terms as set forth in § 115.31.

PART 120—BUSINESS LOANS

■ 9. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h) and note, 636(a), (h) and (m), 650, 687(f), 696(3) and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115; Pub. L. 111–240, 124 Stat. 2504; Pub. L. 114–38, 129 Stat. 437.

§ 120.110 [Amended]

■ 10. Remove and reserve § 120.110(l).

■ 11. Amend § 120.111 by revising the introductory text and paragraphs (a)(3) and (6) to read as follows:

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to either acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies for conducting the Operating Company's business (references to Operating Company in paragraphs (a) and (b) of this section mean each Operating Company) or to finance a change of ownership between the existing owners of the Eligible Passive Company. Any ownership structure or legal form may qualify as an Eligible Passive Company.

(a) * * *

(3) The lease between the Eligible Passive Company and the Operating Company must be in writing and must be subordinated to SBA's mortgage, trust deed lien, or security interest on the property. Also, the Eligible Passive Company (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease. The rent or lease payments cannot exceed the amount necessary to make the loan payment to the lender, and an additional amount to cover the EPC's direct expenses of holding the property, such as maintenance, insurance and property taxes;

* * * * *

(6) Each holder of an ownership interest constituting at least 20 percent of either the Eligible Passive Company or the Operating Company must guarantee the loan (the trustee shall execute the guaranty on behalf of any trust). SBA, in its discretion, consulting with the Participating Lender, may require other appropriate individuals to guarantee the loan as well, except SBA generally will not require personal guarantees from those owning less than 5 percent ownership.

* * * * *

■ 12. Amend § 120.130 by redesignating paragraphs (e) and (f) as paragraphs (f) and (g) respectively, adding new paragraph (e), and revising newly redesignated paragraph (g).

The addition and revisions read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(e) The applicant may not use any of the proceeds to pay past-due Federal or state payroll taxes;

* * * * *

(g) Any use restricted by §§ 120.201, 120.202, and 120.884 (specific to 7(a) loans and 504 loans respectively).

■ 13. Amend § 120.160 by revising the second sentence of paragraph (a) and by removing paragraph (d).

The revision reads as follows:

§ 120.160 Loan conditions.

* * * * *

(a) * * * SBA, in its discretion, consulting with the Participating Lender, may require other appropriate individuals to guarantee the loan as well, except SBA generally will not require personal guarantees from those owning less than 5 percent ownership.

* * * * *

§ 120.194 [Removed and reserved]

■ 14. Remove and reserve § 120.194.

■ 15. Amend § 120.214 by revising the second sentence in paragraph (a) and revising paragraph (c) to read as follows:

§ 120.214 What conditions apply for variable interest rates?

* * * * *

(a) * * * Subsequent changes may occur 2 business days (or more) after a change in the identified base rate; *however,* such changes may not occur more often than monthly.

* * * * *

(c) *Base rate.* (1) The base rate will be one of the following:

(i) The prime rate;

(ii) The thirty-day (1-month) London Interbank Offered Rate (LIBOR) plus 3 percentage points; or

(iii) The Optional Peg Rate.

(2) The prime or LIBOR rate will be that which is in effect on the date SBA receives a complete loan application. The initial prime or LIBOR base rate and subsequent changes to the prime or LIBOR base rate must follow the rates as printed in a national financial newspaper or Web site published each business day.

* * * * *

■ 16. Amend § 120.220 by adding paragraph (a)(3), revising the first and third sentences of paragraph (b), and removing the first two sentences of paragraph (c).

The additions and revisions read as follows:

§ 120.220 Fees that Lender pays SBA.

* * * * *

(a) * * *

(3) For loans approved under section 7(a)(31) of the Small Business Act to veterans and/or the spouse of a veteran. In fiscal years when the 7(a) program is at zero subsidy, SBA will not collect a guarantee fee in connection with a loan made under section 7(a)(31) of the Small Business Act to a business owned and controlled by a veteran or the spouse of a veteran.

(b) * * * For a loan with a maturity of twelve (12) months or less, the Lender must pay the guaranty fee to SBA electronically within 10 business days after SBA gives its loan approval. * * * For a loan with a maturity in excess of twelve (12) months, the Lender must pay the guaranty fee to SBA electronically within 90 days after SBA gives its loan approval. * * *

* * * * *

■ 17. Amend § 120.221 by revising the section heading, adding introductory text, and revising paragraph (e) to read as follows:

§ 120.221 Fees and expenses which the Lender may collect from a loan applicant or Borrower.

Unless otherwise allowed by SBA Loan Program Requirements, the Lender may charge and collect from the applicant or Borrower only the following fees and expenses:

* * * * *

(e) *Legal services.* Lender may charge the Borrower for legal services, but only for hourly charges for requested services actually rendered.

■ 18. Revise § 120.222 to read as follows:

§ 120.222 Prohibition on sharing premiums for secondary market sales.

The Lender or its Associates may not share in any premium received from the sale of an SBA guaranteed loan in the secondary market with a Service Provider, packager, or other loan-referral source.

§ 120.394 [Amended]

■ 19. Amend § 120.394 in the third sentence by removing the term ''20'' and adding in its place the term ''33''.

■ 20. Amend § 120.410 in paragraph (a)(2) by removing the term ''on-site'' from the third sentence and by revising paragraph (e) to read as follows:

§ 120.410 Requirements for all participating Lenders.

* * * * *

(e) Be in good standing with SBA, as defined in § 120.420(f) (and determined by SBA in its discretion), and, as applicable, with its state regulator and be considered satisfactory by its Federal Financial Institution Regulator (as determined by SBA and based on, for example, information in published orders/agreements and call reports); and

* * * * *

§ 120.424 [Amended]

■ 21. Amend § 120.424(b) by removing the term ''on-site'' from the third sentence.

§ 120.433 [Amended]

■ 22. Amend § 120.433(b) by removing the term ''on-site'' from the third sentence.

§ 120.434 [Amended]

■ 23. Amend § 120.434(c) by removing the term ''on-site'' from the third sentence.

■ 24. Revise the undesignated center heading following § 120.435 to read ''Delegated Authority Criteria''.

■ 25. Revise § 120.440 to read as follows:

§ 120.440 How does a Lender obtain delegated authority?

(a) In making its decision to grant or renew a delegated authority, SBA considers whether the Lender, as determined by SBA in its discretion:

(1) Has the continuing ability to evaluate, process, close, disburse, service, liquidate and litigate SBA loans. This includes the ability to develop and analyze complete loan packages. SBA may consider the experience and capability of Lender's management and staff.

(2) Has satisfactory SBA performance (as defined in § 120.410(a)(2));

(3) Is in compliance with SBA Loan Program Requirements (*e.g.,* Form 1502 reporting, timely payment of all fees to SBA);

(4) Has completed to SBA's satisfaction all required corrective actions;

(5) Is subject to any enforcement action, order or agreement with a regulator or the presence of other regulatory concerns as determined by SBA; and

(6) Whether Lender exhibits other risk factors (*e.g.,* has rapid growth; low SBA activity; SBA loan volume; Lender, an officer or director is under investigation or indictment).

(b) Delegated authority decisions are made by the appropriate SBA official in accordance with Delegations of Authority, and are final.

(c) If delegated authority is approved or renewed, Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed two years. SBA may grant shortened renewals based on risk or any of the other delegated authority criteria. Lenders with less than 3 years of SBA lending experience will be limited to a term of 1 year or less.

§ 120.441 [Removed and reserved]

■ 26. Remove and reserve § 120.441.

§ 120.451 [Removed and reserved]

■ 27. Remove and reserve § 120.451.

■ 28. Amend § 120.524 by revising paragraph (b) to read as follows:

§ 120.524 When is SBA released from liability on its guarantee?

* * * * *

(b) If SBA determines, at any time, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any moneys paid on the guarantee plus interest from the Lender. In the exercise of its rights, SBA may utilize all legal means available, including offset and judicial remedies.

* * * * *

■ 29. Amend § 120.630 by revising paragraph (a)(4) to read as follows and paragraph (a)(5) by removing the term ''on-site'' from the third sentence:

§ 120.630 Qualifications to be a Pool Assembler.

(a) * * *

(4) Is in good standing with SBA (as the D/FA determines in his or her discretion), and is Satisfactory with the Office of the Comptroller of the Currency (''OCC'') if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, or the Financial Industry Regulatory Authority (''FINRA'') if it is a member as determined by SBA.

* * * * *

■ 30. Amend § 120.660 by:

■ a. Revising paragraph (a) introductory text and paragraphs (a)(1)(ii) and (a)(2);

■ b. Adding paragraph (a)(3);

■ c. Revising paragraph (c); and

■ d. Adding paragraph (d) to read as follows:

§ 120.660 Suspension or revocation.

(a) *Temporary suspension or revocation of Lender, broker, dealer, or Registered Holder for violation of Secondary Market rules and regulations.* The D/FA together with the Director, Office of Credit Risk Management (D/OCRM) may suspend for a period of no more than 120 calendar days or revoke for a period of no more than two (2) years, the privilege of a Lender, broker, dealer, or Registered Holder to sell, purchase, broker, or deal in loans or Certificates for:

(1) * * *

(ii) Any provisions in the contracts entered into by the parties, including SBA Forms 1086, 1088 and 1454;

(2) Knowingly submitting false or fraudulent information to the SBA or FTA; or

(3) A Lender's receipt, from its primary regulator, of a cease and desist order, a consent agreement affecting capital or commercial lending issues, a supervisory action citing unsafe or unsound banking practices or other items of concern to SBA and its potential risk to SBA through loan sales; or a going concern opinion issued by the Lender's auditor. A Lender subject to such action or opinion must notify the D/FA and the D/OCRM within five business days (or as soon as practicable thereafter) of the issuance of any such action or opinion, including providing copies of the relevant documents for review.

* * * * *

(c) *Notice to suspend or revoke.* The D/FA and the D/OCRM shall notify the affected party in writing, providing the

reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. The affected party may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action taken by the D/FA and the D/OCRM will remain in effect pending resolution of the appeal.

(d) *Early termination of suspension or revocation.* SBA may, by written notice, terminate a secondary market suspension or revocation under this section, if the D/FA and the D/OCRM, in their sole discretion, determine that such termination is warranted for good cause.

§ 120.710 [Amended]

■ 31. Amend § 120.710 by removing the term ''on-site'' from the third sentence of paragraph (e)(1).

■ 32. Amend § 120.812 by revising the last sentence of paragraph (c) to read as follows:

§ 120.812 Probationary period for newly certified CDCs.

* * * * *

(c) * * * Other factors may include, but are not limited to review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

* * * * *

■ 33. Amend § 120.816 by revising the last sentence of paragraph (c) to read as follows:

§ 120.816 CDC non-profit status and good standing.

* * * * *

(c) * * * Other factors may include, but are not limited to, review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

* * * * *

■ 34. Amend § 120.823 by revising paragraphs (c)(5) and (d)(4)(ii)(C) to read as follows:

§ 120.823 CDC Board of Directors.

* * * * *

(c) * * *

(5) No CDC Board member may serve on the Board of another CDC in accordance with § 120.851(b).

(d) * * *

(4) * * *

(ii) * * *

(C) Have at least two individuals with commercial lending experience satisfactory to SBA; and

* * * * *

■ 35. Amend § 120.839 by revising the introductory text to read as follows:

§ 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.

A CDC may apply to make a 504 loan for a Project outside its Area of Operations by submitting a request to the 504 loan processing center. The applicant CDC must demonstrate that it can adequately fulfill its 504 program responsibilities for the 504 loan, including proper servicing. In addition, the CDC must have satisfactory SBA performance, as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission). The 504 loan processing center may approve the application if:

* * * * *

■ 36. Amend § 120.841 by revising the last sentence of paragraph (c) to read as follows:

§ 120.841 Qualifications for the ALP.

* * * * *

(c) * * * Other factors may include, but are not limited to review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

* * * * *

■ 37. Amend § 120.884 by revising paragraph (e)(3) to read as follows:

§ 120.884 Ineligible costs for 504 loans.

* * * * *

(e) * * *

(3) Construction equipment (except for heavy duty construction equipment integral to the business' operations with a remaining useful life of a minimum of 10 years).

■ 38. Amend § 120.1025 by revising the section heading and removing ''off-site reviews and monitoring'' and adding in its place ''monitoring''.

The revision reads as follows:

§ 120.1025 Monitoring.

* * * * *

■ 39. Amend § 120.1050 by revising the section heading and removing the phrase ''on-site'' wherever it occurs.

The revision reads as follows:

§ 120.1050 Reviews and examinations.

* * * * *

■ 40. Amend § 120.1051 by revising the section heading and paragraph (a) and removing the phrase ''on-site'' wherever it occurs.

The revisions read as follows:

§ 120.1051 Frequency of reviews and examinations.

* * * * *

(a) Results of monitoring, including an SBA Lender's, Intermediary's or NTAP's Risk Rating;

* * * * *

■ 41. Revise § 120.1060(b) to read as follows:

§ 120.1060 Confidentiality of Reports, Risk Ratings and related Confidential Information.

* * * * *

(b) *Disclosure prohibition.* Each SBA Lender, Intermediary, and NTAP is prohibited from disclosing its Report, Risk Rating, and Confidential Information, in full or in part, in any manner, without SBA's prior written permission. An SBA Lender, Intermediary, and NTAP may use the Report, Risk Rating, and Confidential Information for confidential use within its own immediate corporate organization. SBA Lenders, Intermediaries, and NTAPs must restrict access to their Report, Risk Rating and Confidential Information to their respective parent entities, officers, directors, employees, auditors and consultants, in each case who demonstrate a legitimate need to know such information for the purpose of assisting in improving the SBA Lender's, Intermediary's, or NTAP's SBA program operations in conjunction with SBA's Program and SBA's portfolio management (for purposes of this regulation, each referred to as a ''permitted party''), and to those for whom SBA has approved access by prior written consent, and those for whom access is required by applicable law or legal process. If such law or process requires SBA Lender, Intermediary, or NTAP to disclose the Report, Risk Rating, or Confidential Information to any person other than a permitted party, SBA Lender, Intermediary, or NTAP will promptly notify SBA and SBA's Information Provider in writing and in advance of such disclosure so that SBA and the Information Provider have, within their discretion, the opportunity to seek

appropriate relief such as an injunction or protective order prior to disclosure. For purposes of this regulation, ''consultants'' means only those consultants that are under written contract with an SBA Lender, Intermediary or NTAP specifically to assist with addressing its Report Findings and Corrective Actions to SBA's satisfaction. The consultant contract must provide for both the consultant's agreement to abide by the disclosure prohibition in this paragraph and the consultant's agreement not to use the Report, Risk Rating, and Confidential Information for any purpose other than to assist with addressing the Report Findings and Corrective Actions. ''Information Provider'' means any contractor that provides SBA with the Risk Rating. Each SBA Lender, Intermediary, and NTAP must ensure that each permitted party is aware of and agrees to these regulatory requirements and must ensure that each such permitted party abides by them. Any disclosure of the Report, Risk Rating, or Confidential Information other than as permitted by this regulation may result in appropriate action as authorized by law. An SBA Lender, Intermediary, and NTAP will indemnify and hold harmless SBA from and against any and all claims, demands, suits, actions, and liabilities to any degree based upon or resulting from any unauthorized use or disclosure of the Report, Risk Rating, or Confidential Information. Information Provider contact information is available from the Office of Capital Access.

■ 42. Amend § 120.1070 by:

■ a. Revising paragraphs (a)(1) through (4);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

■ c. Adding a new paragraph (b);

■ d. Revising the first and second sentences of newly redesignated paragraph (c); and

■ e. Revising the final sentence of newly redesignated paragraph (d).

The additions and revisions read as follows:

§ 120.1070 Lender oversight fees.

* * * * *

(a) * * *

(1) *Examinations.* The costs of conducting a safety and soundness examination and related activities of an SBA-Supervised Lender, including any expenses that are incurred in relation to the examination and such activities.

(2) *Reviews.* The costs of conducting a review of a Lender or a Lender's loans, and related review activities (*e.g.,* corrective action assessments, delegated loan reviews), including any expenses that are incurred in relation to the review and such activities.

(3) *Monitoring.* The costs of conducting monitoring reviews of a Lender, including any expenses that are incurred in relation to the monitoring review activities.

(4) *Other lender oversight activities.* The costs of additional expenses that SBA incurs in carrying out other lender oversight activities (for example, the salaries and travel expenses of SBA employees and equipment expenses that are directly related to carrying out lender oversight activities, technical assistance and analytics to support the monitoring and review program, and supervision and enforcement activity costs).

(b) *Allocation.* SBA will assess to Lender(s) the costs associated with the review, examination, monitoring, or other lender oversight activity, as determined by SBA in its discretion.

(1) In general:

(i) Where the costs that SBA incurs for a review, exam, or other lender oversight activity are specific to a particular Lender, SBA will charge that Lender a fee for the actual costs of conducting the review, exam, or other lender oversight activity; and

(ii) Where the costs that SBA incurs for the lender oversight activity are not sufficiently specific to a particular Lender, SBA will assess a fee based on each Lender's portion of the total dollar amount of SBA guarantees in SBA's total portfolio or in the relevant portfolio segment being reviewed or examined, to cover the costs of such activity.

(2) SBA may waive the assessment of this fee for all Lenders owing less than a threshold amount below which SBA determines that it is not cost effective to collect the fee.

(c) * * * For the examinations or reviews conducted under paragraphs (a)(1) and (2) of this section, SBA will bill each Lender for the amount owed following completion of the examination, review or related activity. For monitoring conducted under paragraph (a)(3) of this section and the other lender oversight activity expenses incurred under paragraph (a)(4) of this section, SBA will bill each Lender for the amount owed on an annual basis.

* * *

(d) * * * In addition, a Lender's failure to pay any of the fee components described in this section, or to pay interest, charges and penalties that have been charged, may result in a decision to suspend or revoke a participant's eligibility, limit a participant's delegated authority, or other remedy available under law.

■ 43. Amend § 120.1400 by revising paragraph (a) to read as follows:

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

(a) *Agreements.* By making SBA 7(a) guaranteed loans or 504 loans, SBA Lenders automatically agree to the terms, conditions, and remedies in Loan Program Requirements, as promulgated or issued from time to time and as if fully set forth in the SBA Form 750 (Loan Guaranty Agreement), Development Company 504 Debenture, CDC Certification, Servicing Agent Agreement, or other applicable participation, guaranty, or supplemental agreement. SBA Lenders further agree that a violation of Loan Program Requirements constitutes default under their respective agreements with SBA.

(1) *Additional agreements by CDCs.* By obtaining approval for 504 loans after [date 60 days from publication of final rule in the **Federal Register**], a CDC consents to the remedies in § 120.1500(e)(3) and waives in advance any defenses to such relief as sought by SBA. The CDC agrees that its consent to SBA's application to a federal court of competent jurisdiction for appointment of a receiver of SBA's choosing, an injunction or other equitable relief, and the CDC's consent in advance to the court's granting of SBA's application, includes a waiver of objection to a receiver or other such relief and may be enforced upon any basis in law or equity recognized by the court.

(2) *Additional agreements by SBA Supervised Lenders (except Other Regulated SBLCs).* By making SBA 7(a) guaranteed loans after [date 60 days from publication of final rule in the **Federal Register**], an SBA Supervised Lender (except an Other Regulated SBLC) consents to the remedies in § 120.1500(c)(3) and waives in advance any defenses to such relief as sought by SBA. The SBA Supervised Lender agrees that its consent to SBA's application to a federal court of competent jurisdiction for appointment of a receiver of SBA's choosing, an injunction or other equitable relief, and the SBA Supervised Lender's consent in advance to the court's granting of SBA's application, includes a waiver of objection to a receiver or other such relief and may be enforced upon any basis in law or equity recognized by the court.

* * * * *

■ 44. Amend § 120.1500 by revising paragraph (c)(3) and adding paragraph (e)(3) to read as follows:

§ 120.1500 Types of enforcement actions—SBA Lenders.

* * * * *

(c) * * *

(3) *Initiate request for appointment of receiver and/or other relief.* The SBA may make application to any federal court of competent jurisdiction for the court to take exclusive jurisdiction, without notice, of an SBA Supervised Lender, and SBA shall be entitled to the appointment of a receiver of SBA's choosing to hold, administer, operate, and/or liquidate the SBA Supervised Lender; and to such injunctive or other equitable relief as may be appropriate. Without limiting the foregoing and with SBA's written consent, the receiver may take possession of the portfolio of 7(a) loans and sell such loans to a third party, and/or take possession of servicing activities of 7(a) loans and sell such servicing rights to a third party.

* * * * *

(e) * * *

(3) Apply to any federal court of competent jurisdiction for the court to take exclusive jurisdiction, without notice, of the CDC, and SBA shall be entitled to the appointment of a receiver of SBA's choosing to hold, administer, operate and/or liquidate the CDC; and to such injunctive or other equitable relief as may be appropriate. Without limiting the foregoing and with SBA's consent, the receiver may take possession of the portfolio of 504 loans and/or pending 504 loan applications, including for the purpose of carrying out an enforcement order under paragraph (e)(1) of this section.

■ 45. Amend § 120.1600 by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding paragraph (a)(6); and

■ c. Revising paragraph (b)(4).

The revisions and additions read as follows:

§ 120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated Small Business Lending Companies (SBLCs), Management Officials, Other Persons, Intermediaries, and Non-Lending Technical Assistance Providers (NTAPs).

(a) *In general.* Except as otherwise set forth for the enforcement actions listed in paragraphs (a)(6), (b) and (c) of this section, SBA will follow the procedures listed below.* * *

* * * * *

(6) *Receiverships of Certified Development Companies and/or other relief.* If SBA undertakes the appointment of a receiver for a Certified Development Company and/or injunctive or other equitable relief, paragraphs (a)(1) through (5) of this section will not apply and SBA will follow the applicable procedures under federal law to obtain such remedies and to enforce the Certified Development Company's consent and waiver in advance to those remedies.

(b) * * *

(4) *Receiverships, transfer of assets and servicing activities.* If SBA undertakes the appointment of a receiver for, or the transfer of assets or servicing rights of an SBA Supervised Lender and/or injunctive or other equitable relief, SBA will follow the applicable procedures under federal law to obtain such remedies and to enforce the SBA Supervised Lender's consent and waiver in advance to those remedies.

* * * * *

■ 46. Amend § 120.1703 by revising paragraph (a)(4) to read as follows:

§ 120.1703 Qualifications to be a Pool Originator.

(a) * * *

(4) Is in good standing with SBA (as the SBA determines), and is Satisfactory with the Office of the Comptroller of the Currency (OCC) if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, the Financial Institutions Regulatory Authority, if it is a member, the National Credit Union Administration if it is a credit union, as determined by SBA; and

* * * * *

■ 47. Revise § 120.1707 by revising the fifth sentence and adding a sixth sentence to read as follows:

§ 120.1707 Seller's retained Loan Interest.

* * * In addition, in order to complete such sale, Seller must have the purchaser of its rights to the Pool Loan execute an allonge to the Seller's First Lien Position 504 Loan Pool Guarantee Agreement in form acceptable to SBA, acknowledging and accepting all terms of the Seller's First Lien Position 504 Loan Pool Guarantee Agreement, and deliver the executed original allonge and a copy of the corresponding First Lien Position 504 Loan Pool Guarantee Agreement to the CSA. All Pool Loan payments related to a Seller Receipt and Servicing Retention Amount proposed for sale will be withheld by the CSA pending SBA acknowledgement of receipt of all executed documents required to complete the transfer.

Subpart K—[Removed and Reserved]

■ 48. Remove and reserve subpart K, consisting of §§ 120.1800 through 120.1900.

Dated: July 21, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–18044 Filed 8–8–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2008–0362 and FMCSA–2015–0419]

Medical Review Board (MRB) Meeting: Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking; announcement of a public MRB advisory committee meeting.

SUMMARY: FMCSA announces a meeting of its Medical Review Board (MRB) on Monday and Tuesday, August 22–23, 2016. The MRB will make recommendations to the Agency on the disposition of comments from medical professionals and associations, as well as safety advocacy, labor, and industry groups, to the Agency's and the Federal Railroad Administration's (FRA) Advance Notice of Proposed Rulemaking (ANPRM) of March 10, 2016, on safety-sensitive rail and commercial motor vehicle (CMV) drivers with moderate to severe Obstructive Sleep Apnea (OSA). Additionally, the MRB will review its previously issued report on OSA from 2012 to determine whether the report should be updated based on any changes to medical standards and practice or the comments received at the listening sessions and to the docket. Meetings are open to the public for their entirety, and the public will be allowed to comment during the proceedings.

TIMES AND DATES: The meeting will be held on Monday and Tuesday, August 22–23, 2016, from 9 a.m. to 4:30 p.m., Eastern Daylight Time (E.T.), at the FMCSA National Training Center, 1310 N. Courthouse Road, Arlington, VA, 6th floor. Copies of the task statement and an agenda for the entire meeting will be made available in advance of the meeting at *www.fmcsa.dot.gov/mrb.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey