

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

RIN 3245-AE91

New Markets Venture Capital Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration ("SBA") proposes to make several amendments to the regulations for the New Markets Venture Capital ("NMVC") program. The majority of the proposed amendments make technical changes to the regulations, to correct typographical errors or to clarify language. SBA also proposes to make five substantive amendments to the regulations, which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted geographic areas. Generally, the five changes would:

Allow a New Markets Venture Capital company ("NMVC company") to include in its regulatory capital SBA-approved organizational and management expenses paid on behalf of the NMVC company before the company is finally approved;

Allow SBA, in selecting recipients for NMVC program assistance, to compare applications from specialized small business investment companies ("SSBICs") with NMVC company applications from the same or proximate low-income geographic areas ("LI areas");

Create rules governing fees an NMVC company or its associates may charge for management services provided to small businesses in which the NMVC company invests;

Revise the application process for SSBICs so as to make it more parallel with the application process for NMVC companies; and

Add a requirement that NMVC companies must use at least 80 percent of their grant funds (both funds from SBA and grant matching resources) to provide operational assistance to

smaller enterprises located in an LI area at the time the operational assistance commenced.

DATES: Comments must be received on or before June 19, 2002.

ADDRESSES: Address all comments concerning this proposed rule to Austin Belton, Director of New Markets Venture Capital, U.S. Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Peter C. Gibbs, Deputy Director of New Markets Venture Capital, (202) 205-7574.

SUPPLEMENTARY INFORMATION:

I. Background

The New Markets Venture Capital Program Act of 2000 ("the Act") was created by the Consolidated Appropriations Act of 2001, Public Law 106-554, enacted December 21, 2000. SBA published in the **Federal Register** a final rule implementing the Act on May 23, 2001 (66 FR 28602) and a technical correction on June 19, 2001 (66 FR 32894).

SBA has conducted a first application round for the NMVC program, and selected seven companies as conditionally approved NMVC companies. The amendments proposed in this rule would apply to those seven companies as well as to applicants for the NMVC program in future application round(s) and to entities SBA selects for participation in the NMVC program as a result of any future application round(s).

II. Section-by-Section Analysis

SBA proposes to amend three of the definitions in § 108.50. The definitions of "New Markets Venture Capital Company" and "Participation Agreement" would be amended to correct typographical errors.

The definition of "Regulatory Capital" would be amended to simplify it by consolidating into § 108.230, which addresses private capital, all the current restrictions on what may be included in regulatory capital. The proposed definition would state that regulatory capital is private capital, excluding any portion of private capital that the NMVC company designates as grant matching resources.

SBA proposes to amend paragraphs (b), (c), and (d) of § 108.230. In paragraph (b), SBA proposes to make a

technical change. The word "contributed" would be revised to read "paid-in," to indicate more clearly that only capital contributions actually made are considered "contributed capital" for purposes of § 108.230.

SBA proposes to amend paragraph (c) by adding a new subparagraph (5) to move to this section language concerning questionable commitments that currently is in the definition of regulatory capital in § 108.50. This is a non-substantive change.

SBA proposes to revise paragraph (d) to allow NMVC companies to include in private capital SBA-approved organizational and management expenses paid on behalf of an NMVC company prior to SBA's final approval of the NMVC company. SBA intends to provide guidance on the limitations by percentage and/or dollar amounts on such expenses that SBA will approve for inclusion in private capital. Other non-cash assets, such as "pre-licensing investments," would continue to not be allowed for inclusion in private capital. SBA previously determined that such non-cash assets would not be acceptable for inclusion in regulatory capital (see discussion on this subject in the preamble to the proposed rule implementing the Act, 66 FR 20536, April 23, 2001, and the preamble to the final rule implementing the Act, 66 FR 28603, May 23, 2001).

SBA proposes to make technical changes to § 108.310 to more clearly articulate what an NMVC company applicant must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The proposed amendment would require an applicant to state specific amounts of regulatory capital and grant matching resources, both of which must comply with the statutory minimums established by the Act. SBA also proposes to make a minor technical change to § 108.320.

SBA proposes to amend § 108.360(k) to allow SBA, when making selections as to which applicants will receive conditional approval, to compare the applications submitted by NMVC company applicants to the applications submitted by SSBICs that intend to invest in the same or proximate LI areas. This change would allow SBA to more effectively utilize limited NMVC program appropriations. This change

also would increase the potential for achieving the nationwide distribution of the NMVC program's benefits that the Act directs.

SBA proposes to make three technical changes to § 108.380. Proposed changes to subsections (a)(1)(i)(A) and (a)(1)(i)(B), would more clearly state that the amounts of regulatory capital and grant match applicants must raise before they can be finally approved are the exact same amounts that they said they would raise in their applications. SBA proposes to amend subsection (b)(3) to correct a typographical error.

SBA proposes to add new § 108.900, based in part on § 107.900 for the small business investment company (SBIC) program, governing fees for management services and similar services (for example, negotiating bank debt, sale of the company, or a lease, or structuring an employee stock ownership plan) charged by an NMVC company or its associates to small businesses that the NMVC company finances. The proposed regulation would require SBA's prior written approval of all such fees charged. The proposed regulation states that it does not apply to operational assistance that an NMVC company or its associate provides to a business that the NMVC company has financed or in which it expects to make a financing, and that the NMVC company may not charge the business a fee for such operational assistance. SBA expects an NMVC company to use its grant funds (both SBA funds and grant matching resources) to cover the costs of providing such operational assistance.

This proposed regulation also would require that at least 50 percent of all such fees paid to an associate (as defined in 13 CFR 108.50) of an NMVC company by a small business must be allocated back to the NMVC company for its benefit. SBA understands that an NMVC company or its associate (for example, its management company) may want to provide management and other services to the NMVC company's portfolio companies and charge a fee for such services. It may be in the best interests of the small business that the NMVC company or its associate provide such services rather than an outside third party. However, SBA believes that the NMVC company's manager should share equally with the NMVC company the financial benefit (i.e., fees) of providing those services, since that relationship (of the manager to the NMVC company) is what brought about the opportunity for the manager to obtain that financial benefit. In addition, SBA believes that neither the NMVC company itself nor the NMVC program in general is well served if the focus of

the NMVC company's manager is on fee generation rather than managing the NMVC company. SBA believes that a 50–50 allocation of such fees between the NMVC company manager and the NMVC company itself strikes an appropriate balance between these objectives and reflects what knowledgeable private investors often require in commercial equity venture capital funds.

SBA proposes to remove § 108.2000 and replace it with several smaller, more easily readable sections, §§ 108.2000–108.2007. Proposed § 108.2000 (currently § 108.2000(a)) would provide a more comprehensive list of the regulations applicable to operational assistance grants to NMVC companies and to SSBICs. Proposed § 108.2001 (currently § 108.2000(b)(1) and (b)(3)(i)) is unchanged in content.

Proposed § 108.2002 (currently § 108.2000(b)(2)) includes several technical corrections. First, the term “Developmental Venture Capital Investments” would be replaced with “Low-Income Investments” in new subsections (a) and (c). The term “Low-Income Investments” already is defined in § 108.50, and more accurately reflects the statutory requirement that an SSBIC must use all of its new capital raised for the NMVC program, to make equity capital investments in smaller enterprises located in LI areas. Second, the phrase “after December 21, 2000” would be added to the end of new subsection (c), to incorporate the NMVC program statutory effective date and make more clear that an SSBIC may use operational assistance grant funds only in connection with investments it makes after such date.

Proposed § 108.2003 (currently § 108.2000(b)(3)(ii)) is unchanged in content. Proposed § 108.2004 (currently § 108.2000(b)(4)(i) and (ii)) would make technical changes to more clearly articulate what an SSBIC must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The proposed regulation would require that an SSBIC state specific amounts of regulatory capital and grant matching resources, and that the amount of grant matching resources comply with the statutory minimum established by the Act.

Proposed § 108.2005 (currently § 108.2000(b)(4)(ii)(A) through (G)) would replace the term “Developmental Venture Capital Investments” with “Low-Income Investments” in new subsections (a), (c), (d) and (f), for the reasons described above. Subsections (a) and (d) would add new requirements that an SSBIC identify specific LI areas

in which it intends to make investments and provide operational assistance, and specify how much of its investments it will make in each of the specified LI areas. These requirements parallel the information required from NMVC company applicants, and will allow SBA to better determine the potential impact on specific LI areas, when making selections as to recipients of NMVC program benefits.

Proposed § 108.2006 (currently § 108.2000(b)(5)) would replace the term “Developmental Venture Capital Investments” with “Low-Income Investments” in new subsection (d), for the reasons described above. The proposed regulation also would allow SBA to add an interview component to its selection process, paralleling SBA's current authority to require an interview with NMVC company applicants (see 13 CFR 108.340). SBA is considering interviewing applicants in future application rounds. In new subsection (h), SBA proposes a change to allow SBA, when making selections as to which SSBICs conditionally will receive an operational assistance grant, to compare the applications submitted by SSBICs to the applications submitted by NMVC company applicants that intend to invest in the same or proximate LI areas. This change would allow SBA to more effectively utilize limited NMVC program appropriations. This change also would increase the potential for achieving the nationwide distribution of the NMVC program's benefits contemplated by the Act.

Proposed § 108.2007 (currently § 108.2000(b)(6)) is unchanged in content.

Proposed § 108.2010 would add a new paragraph (b) (and redesignate paragraph (b) as paragraph (c)) requiring that an NMVC company must use at least 80 percent of its grant funds (both funds from SBA and grant matching resources) to provide operational assistance to smaller enterprises whose principal office is located in an LI area at the time the operational assistance commences.

The Act explicitly requires that all operational assistance funded by the NMVC program go only to smaller enterprises. The proposed regulation would impose an additional requirement that a specific percentage, 80 percent, of such operational assistance provided by NMVC companies go to businesses located in LI areas. This requirement serves to maximize the impact of the operational assistance funded by SBA on the LI areas targeted for assistance through the NMVC program. This proposed 80 percent requirement also parallels the

existing regulatory requirement (see 13 CFR 108.710(a)) that NMVC companies must use at least 80 percent of its capital (both funds from SBA and private capital) to make equity capital investments in smaller enterprises located in an LI area at the time the investment is made.

SBA proposes to revise redesignated paragraph (c) to correct the title of the part of the Federal Acquisition Regulations containing the definition of G&A expense.

Technical amendments are proposed to §§ 108.2020(b), 108.2030(c)(2)(iii), 108.2030(c)(2)(iv), 108.2030(d)(2), and 108.2040(a) to correct cross-references to other sections in this part and to clarify requirements. The proposed changes to § 108.2030(c) would allow grant matching resources to be payable over a multiyear period not to exceed the term of the grant from SBA, and in no event more than 10 years. This change would provide support for SBA to allow an applicant to request a specific grant term, within a range acceptable to SBA and as long as it did not exceed the 10 year limit set forth in the Act, rather than having SBA establish one allowable grant term for all applicants. This would give each NMVC company and selected SSBIC greater flexibility to determine how best to use operational assistance funds from SBA to accomplish its mission. This proposed change is made possible by a change in the law governing SBA's appropriation for the NMVC program. On July 24, 2001, Congress passed a supplemental appropriations bill (Pub. L. 107-20) that extended the availability of the funds appropriated to SBA for the NMVC program.

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

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a “significant regulatory action” under Executive Order 12866. A regulatory assessment of the potential costs and benefits of the regulatory action follows. Because this is a new program and no NMVC Companies are operational yet, SBA does not have relevant data to estimate actual dollar values for these proposed amendments. However, SBA welcomes comments from the public regarding the potential costs and benefits of the proposed amendments.

The NMVC program is an equity venture capital program designed to promote the economic development of, and address the unmet equity capital needs of smaller enterprises located in, LI areas. The program has a one-time no-year appropriation of \$52 million to fund newly formed NMVC companies. To date, seven applicants have been selected as conditionally approved NMVC companies. SBA anticipates a second application round, and the proposed amendments concerning the application process would affect applicants in the second round. The proposed amendments that concern participation in the program would apply to all NMVC companies selected through both application rounds and SSBICs applying under the second application round.

This rule proposes to make several amendments to the existing regulations implementing the program. Most of the amendments are technical changes that would have no impact on the costs associated with the program to the Government or to the program beneficiaries. After SBA's first year of experience in creating and administering this new program, SBA also proposes a few substantive changes which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted LI areas and businesses. SBA believes that these changes will result in reduced operational costs for the program to both the government, the NMVC companies, and to the beneficiary small businesses financed by the NMVC companies with SBA leverage.

The most significant change SBA proposes is to add a requirement that NMVC companies must use at least 80% of the SBA grant funds (and the required match funding from non-SBA sources) to assist smaller enterprises whose principal office is in an LI area. This is consistent with the existing requirement on the use of an NMVC company's capital. This change would ensure that the primary impact of the grant would be on the LI areas targeted by the NMVC program. It also would have the effect of assisting smaller enterprises in LI areas to qualify for equity investment, or otherwise enabling such enterprises to grow at no cost to such businesses.

SBA's experience over the past year indicates that some NMVC companies may charge management services fees to smaller enterprises in connection with investments made by the NMVC company, but SBA's existing regulations are silent in this area. SBA believes that adding a regulation governing such fees will give SBA the necessary tools to ensure that smaller enterprises are not

being charged too much for such services and that an NMVC company's management is not motivated solely by fee generation. SBA proposes to add section 108.900 which would place limits on such fees, require SBA's advance approval, and require that at least 50% of any fees charged by the fund manager be for the benefit of the NMVC company.

SBA also proposes several changes to clarify the application requirements for SSBICs to participate in the NMVC program and to do so on a parallel basis as NMVC companies. For example, one change would require SSBICs to identify specific LI areas they are targeting, thereby allowing comparison with any NMVC applicant for the same LI area and avoiding duplicative coverage of a LI area. The overall results of these changes are to ensure even-handed treatment of SSBICs and NMVC companies, maximize the nationwide impact of the NMVC program, and achieve greater administrative efficiency in program administration.

SBA also proposes to clarify that SBA will permit SBA-approved organizational and management expenses incurred prior to SBA's final approval of the NMVC company to be credited in whole or part against the regulatory capital the NMVC company is required to raise. This credit would be in lieu of an NMVC company being required to pay out cash at its outset for the same pre-approved costs. This change will improve the efficiency of an NMVC company's operations and prevent unnecessary paperwork on the part of the NMVC company, which will streamline the program. This change also would bring the NMVC program in line with the SBIC program and with best practices of the private venture fund industry in this area.

In sum, the proposed changes will result in more NMVC program funds going to smaller enterprises in LI areas, in line with the legislative intent, and greater cost-effectiveness and efficiency in SBA's administration of the NMVC program to execute the congressional mandate.

Compliance With Executive Order 12988

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

Compliance With Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this

proposed rule has no federalism implications because the legislation authorizing it addresses private, for-profit concerns (NMVC companies) working directly with entrepreneurs. The regulation 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, under Executive Order 13132, SBA determines that this proposed rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

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

SBA has determined that this proposed rule imposes new information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The proposed rule includes two new collections of information: (1) A request for prior SBA approval of management services fees and other fees and (2) concerning the application process for SSBICs, an additional component to the plan for use of the operational assistance grant, and an interview component. These information collections are described in more detail below.

Simultaneously with the publication of this rule in the **Federal Register**, SBA will make the collection available to the public by posting it on SBA's Web site at <http://www.sba.gov/inv>. You also may request a copy by calling Peter Gibbs at (202) 205–7574 or writing to him at Office of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

SBA seeks comment on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information SBA proposed to collect; and (4) ways to minimize the burden on respondents of the proposed collection of information, including through the use of automated collection techniques or other forms of information technology.

Please send comments, by the closing date for comment on this proposed rule, to David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th

Street, NW., Washington, DC 20503, and to Austin Belton, Director of New Markets Venture Capital, Investment Division, U.S. Business Administration, 409 Third Street, SW., Washington, DC 20416.

1. SBA proposes the following new information collection, applicable only to NMVC companies finally approved by SBA for participation in the NMVC program:

Title: Request for SBA Approval of Management Services Fees and Other Fees (SBA Form Number not yet assigned; see proposed § 108.900 for reference).

Need and purpose: Through the use of this new form, SBA will collect information from an NMVC company that seeks SBA's prior approval for the NMVC company or its associates to charge certain fees to small businesses that the NMVC company finances (i.e., fees for management services, services on a business's board, or services related to certain kinds of transactions). SBA will collect this information at the time the NMVC company requests SBA prior approval of such fees. SBA will use the information collected to evaluate the NMVC company's request.

Burden: An NMVC company will complete this information collection only when it desires to charge certain fees to small businesses. Some NMVC companies may not desire to charge such fees to the small businesses it finances; others may desire to charge such fees to every such small business. SBA estimates that each NMVC company (SBA estimates that there will be 15 NMVC companies participating in the program) may complete this collection one time per year, for a total of 15 respondents per year. SBA estimates that the time needed to complete this collection will average four hours, and that the cost to complete this collection will be approximately \$75.00 per hour, for a total estimated aggregated burden of 60 hours per year costing an aggregated \$4,500.00 per year.

2. SBA proposes the following two new information collections, applicable only to SSBICs applying for an operational assistance grant under the NMVC program:

a. SBA proposes to add one item to the list of topics an SSBIC applicant must address in its plan for use of the operational assistance grant.

Title: Identification of LI Areas (no SBA Form Number will be assigned; see proposed § 108.2005(c) for reference).

Need and purpose: SBA will collect information from an SSBIC applicant concerning the specific geographic areas in which the SSBIC intends to make

investments and provide operational assistance under the NMVC program. SBA will collect this information at the time the SSBIC applies for an operational assistance grant. SSBIC applicants will be directed to use a geographic mapping/searching function, available on SBA's Web site, to create maps and related information in order to respond to this information collection. SBA will use the information collected to evaluate the potential impact of the SSBIC's proposed activities on low-income geographic areas identified by the SSBIC, when SBA makes selections of which applicants will receive NMVC program benefits.

Burden: An SSBIC applicant will complete this information collection only once, when it applies for a grant under the NMVC program. SBA estimates that three SSBIC applicants likely will submit applications in response to any subsequent application rounds that SBA holds, for a total of three respondents per year (during a year in which SBA holds an application round). SBA estimates that the time needed to complete this collection will average 15 minutes, and that the cost to complete this collection will be approximately \$75.00 per hour, for a total estimated aggregated burden of 45 minutes per year costing an aggregated \$56.00 per year.

b. SBA proposes to add an interview component to the application process for SSBIC applicants.

Title: Interview Questions for NMVC Company and SSBIC Applicants (SBA Form Number not yet assigned; see proposed § 108.2006 for reference).

Need and purpose: SBA will collect information from an SSBIC applicant through an interview, during which SBA will ask a set of standardized questions of all SSBIC applicants (SBA will ask a slightly different set of standardized questions of all NMVC company applicants). The questions will concern the applicant's proposed use of operational assistance grant resources to develop small businesses located in low-income geographic areas. SBA will collect this information during a 90-minute interview with an SSBIC applicant's self-selected representatives, shortly after the SSBIC applies for an operational assistance grant. SBA will use the information collected to evaluate the potential impact of the SSBIC's proposed activities on low-income geographic areas identified by the SSBIC, when SBA makes selections of which applicants will receive NMVC program benefits.

Burden: An SSBIC applicant will complete this information collection

only once, when it applies for a grant under the NMVC program. SBA estimates that three SSBIC applicants likely will submit applications in response to any subsequent application rounds that SBA holds, for a total of three respondents per year (during a year in which SBA holds an application round). SBA estimates that the time needed to complete this collection will average 90 minutes, and that the cost to complete this collection will be approximately \$75.00 per hour, for a total estimated aggregated burden of 4.5 hours per year costing an aggregated \$338.00 per year.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–602

Under the Regulatory Flexibility Act (RFA), SBA has determined that this rule does not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA, for the following reasons.

The NMVC program is expected to result in the creation of fewer than 20 NMVC companies. The program's impact will be felt to a greater extent on the small businesses that the NMVC companies invest in and assist through this program. The Act authorizes \$150 million to guarantee debentures to NMVC companies, which will result in a discounted amount of approximately \$100 million with which NMVC companies can make investments, and \$30 million for operational assistance grants to NMVC companies and SSBICs. In addition, NMVC companies must raise capital totaling \$100 million, and NMVC companies and SSBICs must raise grant matching resources totaling \$30 million. Thus, the total net funding for the NMVC program, including matching funds raised by NMVC companies and SSBICs, is \$260 million. Based upon industry practices, it is likely that the funds will be disbursed over a five to seven year period. A NMVC company's minimum life is 10 years and NMVC companies' investments are typically made during their first five to seven years of existence. Generally, a NMVC company will fund three or at most four businesses in one year out of the 20 to 30 businesses it will fund over its life. Therefore, NMVC program funds will flow out to businesses at a rate of approximately \$50 million per year.

The average size of an investment by a community development company is approximately \$300,000. Based upon total funding of \$260 million and an average investment in a small business of \$300,000, approximately 867 small businesses will be affected by this

program during the lives of the NMVC companies authorized by the Act. Based upon 1997 Economic Census data, SBA estimates that there are approximately 25 million small businesses in the United States and 867 constitutes less than 1% of those businesses.

Further, NMVC companies must invest in "smaller enterprises" which are defined as businesses with a net worth not greater than \$6 million and average net income of not greater than \$2 million. Based upon an average investment of \$300,000, an investment in a business with a net worth of \$6 million would equate to 5% of the business's net worth. Additionally, industry practices indicate that while the average investment in a particular business is \$300,000, this amount may not be disbursed all at once. The average investment per round in the industry is approximately \$185,000, which is only 3% of the business's net worth.

List of Subjects in 13 CFR Part 108

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 108 as follows.

PART 108—NEW MARKETS VENTURE CAPITAL ("NMVC") PROGRAM

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 689—689q.

2. Amend § 108.50 by:

a. Revising the citation in paragraph (1) of the definition of *New Markets Venture Capital Company* or *NMVC Company* from "§ 108.390" to "§ 108.380";

b. Revising the citation in the introductory text of the definition of *Participation Agreement* from "§ 108.390" to "§ 108.380"; and

c. Revising the definition of *Regulatory Capital*.

The revision reads as follows:

§ 108.50 Definition of terms.

Regulatory Capital means Private Capital, excluding any portion of Private Capital that is designated as matching resources in accordance with § 108.2030(b)(3).

3. Amend § 108.230 by:

a. Revising paragraph (b);
b. Adding paragraph (c)(5); and
c. Revising paragraph (d).

The addition and revisions read as follows:

§ 108.230 Private Capital for NMVC Companies.

* * * * *

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate NMVC Company, the members' paid-in capital of a LLC NMVC Company, or the partners' paid-in capital of a Partnership NMVC Company, in each case subject to the limitations in paragraph (c) of this section.

(c) * * *

(5) A commitment from an investor if SBA determines that the collectability of the commitment is questionable.

(d) *Limitations on including non-cash capital contributions in Private Capital.* Private Capital does not include capital contributions in a form other than cash, except as provided in this paragraph (d). Subject to SBA's prior approval, Private Capital may include payments made on behalf of an Applicant or Conditionally Approved NMVC Company before the Applicant or Conditionally Approved NMVC Company becomes a NMVC Company for organizational expenses and Management Expenses incurred by the Applicant or the Conditionally Approved NMVC Company prior to its becoming a NMVC Company.

* * * * *

4. Revise § 108.310(a) to read as follows:

§ 108.310 Contents of application.

* * * * *

(a) *Amounts.* The Applicant must indicate—

(1) The specific amount of Regulatory Capital it proposes to raise (which amount must be at least \$5,000,000); and

(2) The specific amount of binding commitments for contributions in cash or in-kind it proposes to raise, and/or an annuity it proposes to purchase, in accordance with the requirements of § 108.2030, as its matching resources for its Operational Assistance grant award (the aggregate of which must be not less than \$1,500,000 or 30 percent of the Regulatory Capital it proposes to raise under paragraph (a)(1) of this section, whichever is greater).

* * * * *

5. Revise the second sentence of § 108.320(g) to read as follows:

§ 108.320 Contents of comprehensive business plan.

* * * * *

(g) * * * If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions

exceed 50 percent of the total contributions). * * *

* * * * *

6. Revise § 108.360(k) to read as follows:

§ 108.360 Evaluation criteria.

* * * * *

(k) The strength of the Applicant's application compared to applications submitted by other Applicants and by SSBICs intending to invest in the same or proximate LI Areas.

7. Revise § 108.380(a)(1)(i)(A), (a)(1)(i)(B), and the last sentence in (b)(3) to read as follows:

§ 108.380 Final approval as a NMVC Company.

(a) * * *

(1) * * *

(i) * * *

(A) The amount of Regulatory Capital set forth in its application, pursuant to § 108.310(a)(1); and

(B) The amount of matching resources for its Operational Assistance grant award set forth in its application, pursuant to § 108.310(a)(2); and

* * * * *

(b) * * *

(3) * * * Under no circumstances will SBA designate a Conditionally Approved NMVC Company as a NMVC Company if such Conditionally Approved NMVC Company does not raise the required amount of Regulatory Capital within the time period SBA gave it to do so.

8. Add a new undesignated centerheading and § 108.900 to subpart I to read as follows:

Management Services and Fees

§ 108.900 Fees for management services provided to a Small Business by a NMVC Company or its Associate.

(a) *General.* This § 108.900 applies to management services that you or your Associate provide to a Small Business during the term of a Financing or prior to a Financing. It does not apply to management services that your Associate provides to a Small Business that you do not finance. It also does not apply to Operational Assistance that you or your Associate provide to a Smaller Enterprise that you have Financed or in which you expect to make a Financing, for which neither you nor your Associate may charge the Smaller Enterprise.

(b) *SBA approval.* You must obtain SBA's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management services fees.* You or your Associate may provide

management services to a Small Business financed by you if:

(1) You or your Associate have entered into a written contract with the Small Business;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to SBA, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Small Business; and

(5) At least 50 percent of any management services fees paid to your Associate by a Small Business for management services provided by the Associate is allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may charge a Small Business Financed by you for services provided as members of the Small Business' board of directors. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. Fees may be in the form of cash, warrants, or other payments. At least 50 percent of any such fees paid to your Associate by a Small Business for service by the Associate as a board member must be allocated back to you for your benefit.

(e) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed such as preparing a Small Business for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Fees may be in the form of cash, notes, stock, and/or options. At least 50 percent of any such fees paid to your Associate by a Small Business for transactions work done by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Small Business on that portion of a Financing that you do not provide.

(f) *Recordkeeping requirements.* You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

9. Revise § 108.2000 and add new §§ 108.2001 through 108.2007 to read as follows:

§ 108.2000 Operational Assistance Grants to NMVC Companies and SSBICs.

(a) *NMVC Companies.* Regulations governing Operational Assistance grants to NMVC Companies may be found in

subparts D and E of this part, and in §§ 108.2010 through 108.2040.

(b) *SSBICs.* Regulations governing Operational Assistance grants to SSBICs may be found in §§ 108.2001 through 108.2040.

§ 108.2001 When and how SSBICs may apply for Operational Assistance grants.

(a) *Notice of Funds Availability ("NOFA").* SBA will publish a NOFA in the **Federal Register**, advising SSBICs of the availability of funds for Operational Assistance grants to SSBICs. This NOFA will be the same NOFA described in § 108.300(a), or will be published simultaneously with that NOFA. An SSBIC may submit an application for an Operational Assistance grant only during the time period specified for such purpose in the NOFA.

(b) *Application form.* An SSBIC must apply for an Operational Assistance grant using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

§ 108.2002 Eligibility of SSBICs to apply for Operational Assistance grants.

An SSBIC is eligible to apply for an Operational Assistance grant if:

(a) It intends to increase its Regulatory Capital, as in effect on December 21, 2000, and to make Low-Income Investments in the amount of such increase;

(b) It intends to raise binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, in an amount not less than 30 percent of the intended increase in its Regulatory Capital described in paragraph (a) of this section; and

(c) It has a plan describing how it intends to use the requested grant funds to provide Operational Assistance to Smaller Enterprises in which it has made or expects to make Low-Income Investments after December 21, 2000.

§ 108.2003 Grant issuance fee for SSBICs.

An SSBIC must pay to SBA a grant issuance fee of \$5,000. An SSBIC must submit this fee in advance, at the time of application submission. If SBA does not award a grant to the SSBIC, SBA will refund this fee to the SSBIC.

§ 108.2004 Contents of application submitted by SSBICs.

Each application submitted by an SSBIC for an Operational Assistance grant must contain the information specified in the application packet provided by SBA, including the following information:

(a) *Amounts.* An SSBIC must specify the amount of Regulatory Capital it intends to raise after December 21, 2000, and the amount of Operational Assistance grant funds it seeks from SBA, which must be at least 30 percent of its intended increase in its Regulatory Capital since December 21, 2000.

(b) *Plan.* An SSBIC must submit a plan addressing the specific items described in § 108.2005.

§ 108.2005 Contents of plan submitted by SSBICs.

(a) *Plan for providing Operational Assistance.* The SSBIC must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Low-Income Investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(b) *Matching resources for Operational Assistance grant.* The SSBIC must include a detailed description of how it plans to obtain binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, to match the funds requested from SBA for the SSBIC's Operational Assistance grant. If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). The SSBIC must discuss its potential sources of matching resources, the estimated timing on raising such match, and the extent of the expressions of interest to commit such match to the SSBIC.

(c) *Identification of LI Areas.* The SSBIC must identify the specific LI Areas in which it intends to make Low-Income Investments and provide Operational Assistance under the NMVC program.

(d) *Projected amount of investment in LI Areas.* The SSBIC must describe the amount of Low-Income Investments it intends to make in each of the identified LI Areas.

(e) *Track record of management team in obtaining public policy results through investments.* The SSBIC must provide information concerning the past track record of the SSBIC in making investments that have had a demonstrable impact on the socially or economically disadvantaged businesses targeted by the SSBIC program (for example, new businesses created, jobs created, or wealth created). Such

information might include case studies or examples of the SSBIC's successful financings.

(f) *Market analysis.* The SSBIC must provide an analysis of the LI Areas in which it intends to make its Low-Income Investments and provide its Operational Assistance to Smaller Enterprises, demonstrating that the SSBIC understands the market and the unmet capital needs in such areas and how its activities will meet these unmet capital needs through Low-Income Investments and have a positive economic impact on those areas. The analysis must include a description of the extent of the economic distress in the identified LI Areas. The SSBIC also must analyze the extent of the demand in such areas for Low-Income Investments and any factors or trends that may affect the SSBIC's ability to make effective Low-Income Investments.

(g) *Regulatory Capital.* The SSBIC must include a detailed description of how it plans to raise its Regulatory Capital. The SSBIC must discuss its potential sources of Regulatory Capital, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the SSBIC.

(h) *Projected impact.* The SSBIC must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the NMVC program. It must include:

(1) An estimate of the social, economic, and community development benefits to be created within identified LI Areas over the next five years or more as a result of its activities;

(2) A description of the criteria to be used to measure the benefits created as a result of its activities; and

(3) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the NMVC program.

§ 108.2006 Evaluation and selection of SSBICs.

SBA will evaluate and select an SSBIC for an Operational Assistance grant award under the NMVC program solely at SBA's discretion, based on SBA's review of the SSBIC's application materials, interviews or site visits with the SSBIC (if any), and information in SBA's records relating to the SSBIC's regulatory compliance status and track record as an SSBIC. SBA's evaluation and selection process is intended to ensure that SSBIC requests are evaluated on a competitive basis and in a fair and consistent manner. SBA will

evaluate and select SSBICs for an Operational Assistance grant award by considering the following criteria:

(a) The strength of the SSBIC's application, including the strength of its proposal to provide Operational Assistance to Smaller Enterprises in which it intends to invest;

(b) The SSBIC's regulatory compliance status and past track record in being able to accomplish program goals through its investment activity;

(c) The likelihood that and the time frame within which the SSBIC will be able to raise the Regulatory Capital it intends to raise and obtain the matching resources described in § 108.2005(b) and (g);

(d) The need for Low-Income Investments in the LI Areas in which the SSBIC intends to invest;

(e) The SSBIC's demonstrated understanding of the markets in the LI Areas in which it intends to invest;

(f) The extent to which the activities proposed by the SSBIC will promote economic development and the creation of wealth and job opportunities in the LI Areas in which it intends to invest and among individuals living in LI Areas;

(g) The likelihood that the SSBIC will fulfill the goals described in its application and meet the objectives of the NMVC program; and

(h) The strength of the SSBIC's application compared to applications submitted by other SSBICs and by Applicants intending to invest in the same or proximate LI Areas.

§ 108.2007 Grant award to SSBICs.

An SSBIC selected for an Operational Assistance grant award will receive a grant award only if, by a date established by SBA, it increases its Regulatory Capital in the specific amount set forth in its application, pursuant to § 108.2004(a), and raises matching resources for the grant in the amount required by § 108.2030(d)(2).

10. Amend § 108.2010 by redesignating paragraph (b) as paragraph (c) and revising it and adding a new paragraph (b) to read as follows:

§ 108.2010 Restrictions on use of Operational Assistance grant funds.

* * * * *

(b) *Restrictions applicable only to NMVC Companies.* A NMVC Company must use at least 80 percent of both grant funds awarded by SBA and its matching resources to provide Operational Assistance to Smaller Enterprises whose Principal Office at the time the Operational Assistance commences is located in an LI Area.

(c) *Restrictions applicable to NMVC Companies and SSBICs.* A NMVC

Company or a SSBIC that receives an Operational Assistance grant must not use either grant funds awarded by SBA or its matching resources for "general and administrative expense," as defined in the Federal Acquisition Regulations, "Definitions of Words and Terms," 48 CFR 2.101.

§ 108.2020 [Amended]

11. Revise the citation in § 108.2020(b) from "§§ 108.2000 and 108.2030" to "§§ 108.2007 and 108.2030".

12. Revise § 108.2030(c)(2)(iii), (c)(2)(iv), and (d)(2) to read as follows:

§ 108.2030 Matching requirements.

* * * * *

(c) * * *

(2) * * *

(iii) Binding commitments for cash or in-kind contributions that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years); and/or

(iv) An annuity, purchased with funds other than Regulatory Capital, from an insurance company acceptable to SBA and that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years).

(d) * * *

(2) *SSBICs*. The amount of matching resources required of an SSBIC is equal to the amount of Operational Assistance grant funds requested by the SSBIC, as set forth in its application pursuant to § 108.2004(a).

13. Revise § 108.2040(a) to read as follows:

§ 108.2040 Reporting and recordkeeping requirements.

(a) *NMVC Companies*. Policies governing reporting, record retention, and recordkeeping requirements applicable to NMVC Companies may be found in subpart H of this part. NMVC Companies also must comply with all reporting, record retention, and recordkeeping requirements set forth in Circular A-110 of the Office of Management and Budget (For availability, see 5 CFR 1310.3.) and any grant award document executed between SBA and the NMVC Company.

* * * * *

Dated: May 9, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02-12198 Filed 5-17-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-CE-12-AD]

RIN 2120-AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Models DG-400 and DG-800A Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Glaser-Dirks Flugzeugbau GmbH (DG Flugzeugbau) Models DG-400 and DG-800A sailplanes. This proposed AD would require you to inspect the rear plate of the propeller mount for marks and/or cracks and replace if necessary. This proposed AD would also require you to inspect the mounting blocks for cracks and replace if necessary. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to detect and correct cracks in the propeller mount plate and mounting blocks, which could result in reduced structural integrity of the propeller mounting structure. This could lead to a hazardous flight condition or loss of control of the sailplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before June 17, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-12-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2002-CE-12-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DG Flugzeugbau, Postbox 41 20, D-76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257-890; facsimile:

++49 7257-8922. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329-4144; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002-CE-12-AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified FAA that an unsafe condition may exist on all Model DG-400 and DG-800A sailplanes. The LBA reports that cracks have been found on the rear plate of the propeller mount on