

**§ 108.630**

**13 CFR Ch. I (1-1-03 Edition)**

information to enable you to perform the following required procedures:

- (i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;
- (ii) Determine the continued eligibility of the Portfolio Concern;
- (iii) Verify the use of Financing proceeds; and
- (iv) Evaluate the community economic development impact of the Financing.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the business involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (see §108.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by SBA's examiners for the purpose of verifying the certifications made by a Portfolio Concern under §108.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or SBA's examiners access to its books and records for such purpose.

**REPORTING REQUIREMENTS FOR NMVC COMPANIES**

**§108.630 Requirement for NMVC companies to file financial statements and supplementary information with SBA (SBA Form 468).**

(a) *Annual filing of Form 468.* For each fiscal year, you must submit to SBA financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day

of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* An independent public accountant acceptable to SBA must audit the annual Form 468.

(2) *Insurance requirement for public accountant.* Unless SBA approves otherwise, your independent public accountant must carry at least \$1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least \$1,000,000.

(b) *Interim filings of Form 468.* When requested by SBA, you must file interim reports on Form 468. SBA may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under an SBA Leverage commitment, you must also comply with any applicable filing requirements set forth in §108.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies, which you may obtain from SBA.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Office of New Markets Venture Capital in the Investment Division of SBA.

(e) *Reporting of social, economic, or community development impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the social, economic, or community development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in LI Areas.

(f) *Reporting of community development information.* For each Financing of a Low-Income Enterprise, your Form 468 must include an assessment of such Financing with respect to:

- (1) The social, economic or community development benefits achieved as a result of the Financing;

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(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement;

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the NMVC program; and

(4) Whether, and if so, how you achieved accountability to the residents of the LI Area in connection with that Financing.

### § 108.640 Requirement to file portfolio financing reports (SBA Form 1031).

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

### § 108.650 Requirement to report portfolio valuations to SBA.

You must determine the value of your Loans and Investments in accordance with §108.503. You must report such valuations to SBA within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

### § 108.660 Other items required to be filed by NMVC Company with SBA.

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

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

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

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity,

against an officer, director, Investment Adviser or other Associate of yours for alleged breach of official duty.

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

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

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

(d) *Notification of criminal charges.* If any officer, director, or general partner of the NMVC Company, or any other person who was required by SBA to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in Circular A-110 of the Office of Management and Budget and any grant award document executed between you and SBA.

(f) *Other reports.* You must file any other reports SBA may require in writing.

### § 108.680 Reporting changes in NMVC Company not subject to prior SBA approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require SBA's prior approval. You must report such changes to SBA within 30 days for post approval.

(b) *Approval by SBA.* You may consider any change submitted under this section to be approved unless SBA notifies you to the contrary within 90 days after receiving it. SBA's approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions SBA may prescribe.