



SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG67

Small Business Investment Companies: Passive Business Expansion and Technical Clarifications

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; delay of effective date and opportunity for public comment.

SUMMARY: On December 28, 2016, the Small Business Administration (SBA) published a final rule to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses for the Small Business Investment Company (SBIC) Program, with an effective date of January 27, 2017. In the meantime, a memorandum dated January 20, 2017 from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” calls for agencies to temporarily postpone the effective date of rules not yet effective and invite new public comment. In view of this development, SBA is delaying the effective date of this rule until March 21, 2017, and is inviting additional public comment on the final rule. Any timely public comments received will be considered and any changes to the final rule will be published in the Federal Register.

DATES: The effective date of the SBA final rule published December 28, 2016 (81 FR 95419) is delayed until March 21, 2017. Comments must be received on or before February 19, 2017.

ADDRESSES: You may submit comments, identified by RIN 3245-AG67, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail, Hand Delivery/Courier: Theresa Jamerson, Office for Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Theresa Jamerson, Office of Investment and Innovation, 409 Third Street SW, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Theresa Jamerson, Office of Investment and Innovation, (202) 205-7563 or sbic@sba.gov.

SUPPLEMENTARY INFORMATION: The U.S. Small Business Administration (SBA) is revising the regulations for the Small Business Investment Company (SBIC) program to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended (Act). SBIC program regulations provide for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first

exception provides conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The second exception, prior to this final rule, enabled a partnership SBIC, with SBA's prior approval, to provide financing to a small business through a passive, wholly-owned C corporation (commonly known as a blocker corporation), but only if a direct financing would cause the SBIC's investors to incur Unrelated Business Taxable Income (UBTI). This final rule clarifies several aspects of the first exception and in the second exception eliminates the prior approval requirement and expands the purposes for which a blocker corporation may be formed. The final rule also adds new reporting and other requirements for passive investments to help protect SBA's financial interests and ensure adequate oversight and makes minor technical amendments. Finally, this rule makes a conforming change to the regulations regarding the amount of leverage available to SBICs under common control. This change is necessary for consistency with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage to \$350 million.

Dated: January 23, 2017.

Michele Schimpp,
Deputy Associate Administrator, Office of Investment and Innovation.
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