

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## 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 request for 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. On January 26, 2017, SBA published a notification delaying the effective date until March 21, 2017 and re-opened the rule for additional public comment. On March 21, 2017, SBA published another notification to delay the effective date of this rule until May 20, 2017, to give the new administration time to further consider the rule. After reviewing the final rule, SBA is considering removing the provision that would allow SBICs to use a blocker corporation under its regulations if an investor of an SBIC has elected to be taxed as a regulated investment company (RIC) and a direct investment into the operating company would cause the investor to receive or be deemed to receive income that would jeopardize its RIC status. SBA is seeking additional comments regarding the removal of this provision. In order to give the public time to provide comments and for SBA to review those comments, the effective date of the final rule is delayed until August 18, 2017.

**DATES:** The effective date of the SBA final rule published December 28, 2016 (81 FR 95419), delayed until March 21, 2017 at 82 FR 8499 and then further

delayed until May 20, 2017 at 82 FR 14428, is further delayed until August 18, 2017. Comments on this document must be submitted no later than June 1, 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 of 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.

**FOR FURTHER INFORMATION CONTACT:**

Theresa Jamerson, Office of Investment and Innovation, (202) 205–7563 or [sbic@sba.gov](mailto:sbic@sba.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Small Business Administration (SBA) Final Rule entitled Small Business Investment Companies: Passive Business Expansion and Technical Clarifications, 81 FR 95419 (December 28, 2016), had an effective date of January 27, 2017. The Final Rule would expand permitted investments in passive businesses, provide further clarification with regard to investments in such businesses, and add certain requirements to improve SBA's ability to monitor such investments. The Final Rule would also make a conforming change to the regulations regarding the amount of leverage available to SBICs under common control to be consistent with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage from \$225 million to \$350 million.

The January effective date was delayed to March 21, 2017, and the comment period was reopened until February 19, 2017. 82 FR 8499 (January 26, 2017). The March effective date was

further delayed to May 20, 2017, for additional review. 82 FR 14428 (March 21, 2017).

After completing its review, SBA is considering removing the provision that would allow SBICs to use a blocker entity under 13 CFR 107.720(b)(3) if an investor in an SBIC, typically a business development company (BDC), has elected to be taxed as a regulated investment company (RIC) and a direct investment into the operating company would cause the investor to receive or be deemed to receive income that would jeopardize its RIC status. This provision was not included in the proposed rule published on October 5, 2016 (78 FR 77377), but was added to the final rule published on December 28, 2016 (81 FR 95419) based on comments SBA received. After further consideration, SBA is concerned that, in light of the increased complexities involved in monitoring and examining investments structured through blocker entities using this provision may increase risk to the SBIC program unless SBA were to increase examination resources to monitor these complex transactions. SBA notes that the final rule provides, among other things, two other exceptions to the passive business regulation—the blocker corporation exception for SBICs with tax exempt investors to avoid unrelated business taxable income (UBTI) and a similar exception for SBICs with foreign investors to avoid effectively connected income (ECI). SBA continues to believe the number of SBICs that would structure investments through passive entities utilizing these two exceptions is relatively low. Currently, SBA approves approximately five blocker corporation exceptions for UBTI each year and SBA expects that, after the rule is effective, only a few SBICs will use the ECI exception. On the other hand, there are currently 31 SBICs with BDC investors (BDC–SBICs) holding over 23% of SBA's outstanding guaranteed leverage. If the final rule were to become effective in the form published on December 28, 2016, SBA believes that many BDC–SBICs would structure a number of their investments through passive entities. Because BDC–SBICs represent such a large percentage of SBA's portfolio, significant numbers of investments structured through passive entities would pose a monitoring and examination challenge that could

expose the program to an unacceptable level of risk unless SBA increased significantly its examination and monitoring resources. Therefore, SBA is considering revising the final rule to remove this provision.

SBA is seeking comments from the public to obtain additional input before making a final decision. To provide SBA with sufficient time to seek additional comments and make this determination, this notice further delays the effective date by 90 additional days to August 18, 2017.

Dated: April 25, 2017.

**A. Joseph Shepard,**

*Associate Administrator, Office of Investment and Innovation.*

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**BILLING CODE 8025-01-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### 22 CFR Part 706

[No. FOIA-2016]

RIN 3420-AA02

### Freedom of Information

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements revisions to the Overseas Private Investment Corporation's ("OPIC") Freedom of Information Act ("FOIA") regulations by making substantive and administrative changes. These revisions are intended to supersede OPIC's current FOIA regulations, located at this part. The final rule incorporates the FOIA revisions contained in the FOIA Improvement Act of 2016, makes administrative changes to reflect OPIC's costs, and conforms more closely to the language recommended by the Department of Justice, Office of Information Policy.

**DATES:** This rule is effective on May 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Nichole Skoyles, Administrative Counsel, (202) 336-8400, or [foia@opic.gov](mailto:foia@opic.gov).

**SUPPLEMENTARY INFORMATION:** The revision of part 706 incorporates changes to the language and structure of the regulations and adds new provisions to implement the FOIA Improvement Act of 2016. OPIC is already complying with these changes and this revision serves as OPIC's formal codification of the applicable law and its practice.

OPIC has also updated its regulations to incorporate much of the suggested language provided by the Department of Justice, Office of Information Policy. Adopting this language allows OPIC to adopt many of the recommended best practices in FOIA administration. This update also assists requesters as much of OPIC's regulations are now similar to those of other agencies.

OPIC published a proposed rule on December 22, 2016 at 81 FR 93864 and invited interested parties to submit comments. OPIC received three sets of comments and has made several changes to its rule based on these suggestions.

OPIC adopted all of the suggestions provided. First, OPIC updated its reference to General Records Schedule 14 to General Records Schedule 4.2 and changed the description of the services offered by the Office of Government Information Services from "mediation" to "dispute resolution." Second, OPIC removed references to the voluntary/involuntary tests applied under Exemption 4 as these tests are laid out in case law rather than the FOIA statute itself. Third, OPIC removed the word "professional" from its example for requesting expedited processing to make it clear that a requester need not be paid to disseminate information in order to qualify for expedited processing.

### Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the head of OPIC has certified that this rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. The rule implements the FOIA, a statute concerning the release of Federal records, and does not economically impact Federal Government relations with the private sector. Further, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processes for requesters. Based on OPIC's experience, these fees are nominal.

### Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this rule. However this rule was generally composed with the principles stated in section 1(b) of the Executive Order in mind.

### Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202-05)

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*).

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

### List of Subjects in 22 CFR Part 706

Administrative practice and procedure, Freedom of information, Privacy.

■ For the reasons stated in the preamble the Overseas Private Investment Corporation revises 22 CFR part 706 to read as follows:

### PART 706—INFORMATION DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

#### Subpart A—General

- |       |                                       |
|-------|---------------------------------------|
| Sec.  |                                       |
| 706.1 | Description.                          |
| 706.2 | Policy.                               |
| 706.3 | Scope.                                |
| 706.4 | Preservation and transfer of records. |
| 706.5 | Other rights and services.            |

#### Subpart B—Obtaining OPIC Records

- |        |                                |
|--------|--------------------------------|
| 706.10 | Publicly available records.    |
| 706.11 | Requesting non-public records. |

#### Subpart C—Fees for Requests for Non-Public Records

- |        |   |
|--------|---|
| 706.20 | In general.                                   |
| 706.21 | Types of fees.                                |
| 706.22 | Requester categories.                         |
| 706.23 | Fees charged.                                 |
| 706.24 | Requirements for waiver or reduction of fees. |

#### Subpart D—Processing of Requests for Non-Public Records

- |        |  |
|--------|--|
| 706.30 | Responsibility for responding to requests. |
| 706.31 | Timing of responses to requests.           |
| 706.32 | Responses to requests.                     |
| 706.33 | Confidential commercial information.       |