

*PAPERWORK REDUCTION ACT SUBMISSION FOR
U.S. SMALL BUSINESS ADMINISTRATION'S (SBA)
SMALL BUSINESS INVESTMENT COMPANY (SBIC) PROGRAM*

*INFORMATION COLLECTION 3245-0078
SBA FORM 1031: PORTFOLIO FINANCING REPORT*

A. Justification

1. Circumstances necessitating the collection of information. The Small Business Investment Act of 1958, as amended (Act), authorizes the Small Business Administration (SBA) to license Small Business Investment Companies (SBICs) and to regulate their operations. Section 310(b) provides that each SBIC shall make such reports to SBA at such times and in such form as SBA may require. SBA regulations (13 CFR §107.640) require SBICs to submit SBA Form 1031, Portfolio Financing Report, for each financing that an SBIC provides to a small business concern within 30 days of closing.

AMENDMENTS

On October 5, 2015, SBA published a rule, Small Business Investment Companies; Passive Business Expansion & Technical Clarifications in the Federal Register at 80 FR 60077 to propose various amendments to the SBIC program regulations. The amendments included new requirements for SBICs to provide information on their Impact Investments and passive business investments. Based on the currently approved Form 1031 being reformatted, SBA proposed a new Part D (currently approved Part D was re-designated as Part F) to collect the Impact Investment related financings and a new Part E to collect the passive business financing information. The rule explained that the information concerning impact investments was related to the then pending proposed rule titled “Impact SBICs,” which was subsequently published on February 3, 2016 at 81 FR 5666. After further review, SBA decided not to finalize this rulemaking; therefore, SBA is (i) removing the Impact Investment Information that was proposed for Part D, (ii) re-designating proposed Part E as Part D and (iii) re-designating Part F as Part E. As a result, the following final changes to Form 1031 relate to the passive business investments only:

Passive Business Investments. SBA estimates that approximately 12% of its financings utilize passive business investments. In order to help SBA identify and monitor whether SBICs are performing passive business investments in accordance with regulations, SBA made the following changes:

- a. Part A - Small Business Concern Data. In reviewing the SBIC portfolio, SBA observed that some SBICs are reporting data on the passive business directly financed by the SBIC rather than the non-passive business that is actually receiving “substantially all” of the financing proceeds. Since the passive business is only a pass through entity, typically used for tax reasons, SBA is interested in data on the non-passive business. The form has been changed to instruct SBICs that the SBIC should report data in Part A regarding the non-passive Small Business Concern, rather than data regarding the passive business. This clarification is intended to help SBA identify the non-passive, operating portfolio concerns in the SBIC portfolio and all associated financings to that concern. The only exception to this would be the financing instrument identified in Question 29 which should reflect the direct financing securities and total capital provided by the SBIC.

- b. Part A- Small Business Contact Information. The current Form 1031 collects in Part A, questions 8 and 9, the facsimile number and contact name for the facsimile associated with the small business concern. This has been changed to collect name and email address for the point of contact. SBA believes email is a more common way to communicate than facsimiles.
- c. Part C- Identification of Passive Business Financing. A new question 31 has been added to Part C of the form. This question requires the respondent to check a box to indicate whether the reported financing uses one or more passive businesses. If the response is “yes”, respondent would also complete the new Part D.
- d. Part D – Passive Business Financing Information. If the SBIC used one or more passive businesses in the financing, it would be required to complete this new part to help SBA assess whether the financing was performed in compliance with the regulations, including whether “substantially all” the financing dollars go to the non-passive Small Business Concern. This information would also help SBA in the event the SBIC were transferred to the Office of Liquidation and would aid in financial recoveries.

The SBIC would provide a narrative to be uploaded as a PDF to the Form 1031, including the following information:

- 1) *Qualifying Exception.* Identification of whether the passive business financing was performed under either §107.720(b)(2) (Exception for pass-through of proceeds to subsidiary) or §107.720(b)(3) (Exception for certain Partnership Licensees). Since SBICs may only use the exception under §107.720(b)(3) for specified reasons, SBICs using that exception to form or finance a passive-business blocker corporation must also identify the qualifying reason, such as avoidance of unrelated business taxable income (UBTI) or effectively connected income.
- 2) *Passive Business Entities.* Name and employer ID number for each passive business used in the financing. This information will aid SBA in identifying the passive businesses and requesting information on these entities.
- 3) *Financing Structure Description.* Description of the financing structure, including the flow of money between the SBIC and the non-passive Small Business Concern identified in Part A (including amounts and types of securities), and the ownership interest of the SBIC in each passive entity as well as the non-passive Small Business Concern. The respondent may, but is not required to, include a diagram to explain the financing structure. The information would help enable SBA to assess whether the financing was performed in compliance with the regulations.

To aid SBICs, SBA has provided an example Part D narrative on the form as follows.

Example:

- **Qualifying Exception:** §107.720 (b)(3) Exception for certain Partnership Licensees; Qualifying Reason: UBTI Blocker Corporation
- **Passive Business Entities:**
 - o Name: ABC Corporation; Employer ID: xx-xxxxxx
 - o Name Acme LLC, Employer ID: xx-xxxxxx
- **Financing Structure Description:** The SBIC provided \$1 million in equity to ABC Corporation, which in turn passed \$1 million in equity to Acme LLC, which in turn passed \$995 thousand in equity to Acme Manufacturing LLC, the non-passive Small Business Concern. As part of this Financing, the SBIC also provided \$3 million in debt directly to Acme Manufacturing LLC. The SBIC wholly owns ABC Corporation, which in turn owns 8% of Acme LLC, which in turn owns 80% of Acme Manufacturing LLC.

As shown, the example involves both an indirect financing, which uses two passive business entities, and a direct financing to the non-passive Small Business as part of the overall financing reported in the Form 1031. SBA believes most passive business financings will be simpler than the example, therefore requiring less information than in the example. Furthermore, SBA has found that many SBICs are currently filing two Form 1031s when the transaction includes both an indirect financing and direct financing. This clarification may reduce the number of responses for these types of transactions. Since both transactions are part of the same financing, a single Form 1031 would be more accurate.

The new information being requested is readily available to SBICs completing the form shortly after a financing is closed, either in the financing documents that have just been executed or in the investment memorandum that SBICs prepare as part of their standard pre-investment due diligence.

2. How, by whom, and for what purpose information will be used. The information on Form 1031 is used by SBA staff to evaluate the investment activities of individual SBICs in terms of compliance with applicable regulations and consistency with the overall objectives of the program (to further the growth, expansion and modernization of small business). The information is also used in the aggregate by SBA to evaluate program effectiveness. The information collected can be compared to available financing statistics for the venture capital industry as a whole to determine the extent to which the SBIC program is filling a market gap by meeting the financial needs of small businesses that otherwise do not have adequate access to private equity funding. In addition, the pre-financing information collected, including number of employees, revenues, profits and taxes paid, provides baseline figures, which are then updated annually on SBA Form 468, SBIC Financial Reports, in accordance with 13 CFR 107.630(e). This information helps SBA to measure the impact of the SBIC program over time. The form is SBA's primary source of information for compiling statistics on the SBIC program as a provider of capital to small businesses.
3. Technological collection techniques. SBA provides all SBICs with a web-based version of the Form 1031 for electronic reporting. SBA believes the online form completion and submission to be more convenient for respondents, and it provides SBICs with the option to print and/or save electronic copies of the submitted forms for internal file retention.
4. Avoidance of Duplication. Both the pre-financing financial information for small businesses financed by SBICs and financing information reported on this form is not reported elsewhere. Therefore, there is no duplication of information with this form.
5. Impact on small business or other small entities. The only entities required to complete Form 1031 are licensed SBICs, a majority of which are small entities; however, the economic impact

on these entities is not significant. The information requested on Form 1031 is the type of information that any investment company must maintain in the ordinary course of business, i.e. information about the type of financing being provided, the financing structure, and the company receiving the financing. An SBIC considering whether to make a debt or equity investment in a small business concern normally requests extensive financial and operating information from the concern as part of its due diligence process. SBA has attempted to limit the information collected on Form 1031 to areas that SBICs would ordinarily have access to as a result of their due diligence process.

6. Consequences if collection of information is not conducted. SBA Form 1031 is designed to provide information to evaluate the extent to which the SBIC program is helping to further the growth, expansion and modernization of small business, and to help ensure that SBICs are operating in compliance with program regulations. There is no similar information available which can be used to accomplish the purposes of this collection. If the collection were not conducted, or were conducted less frequently, SBA would be significantly handicapped in its ability to fulfill its statutory oversight and program evaluation responsibilities. For example, SBA would not be able to determine the number or dollar amount of small business financings taking place, the industries and geographic regions in which financings are concentrated, or the intended uses of financing proceeds.
7. Existence of special circumstances. Respondents are required to file Form 1031 within 30 days after closing a financing to a small business. Therefore, depending on the number of financings completed, Form 1031 may be submitted to SBA more often than quarterly. In SBA's experience, this requirement benefits both SBA and the responding SBICs because the form is completed when all the necessary information is readily available from the closing documents. It is more difficult to complete Form 1031 long after an investment has been made, as the details are no longer fresh and relevant documents have been filed away, leading to a more time-consuming and error-prone process.
8. Solicitation of public comment. The notice and request for comment's regarding the proposed changes to Form 1031 was published on October 5, 2015, as part of the proposed rule: Small Business Investment Companies; Passive Business Expansion & Technical Clarifications (RIN: 3245-AG67). SBA received no comments on the Form 1031 collection changes. As discussed above, with the exception of SBA's decision not to include the changes relating to Impact Investments because SBA will not be finalizing the proposed rule to which these changes related, all other proposed changes are adopted as final.
9. Assurance of confidentiality. Assurances of confidentiality to the extent permitted by law are provided to portfolio companies and SBICs responding to this collection. SBA Form 1031 includes confidential SBIC and portfolio company financial data, which is protected from disclosure under the Freedom of Information Act; specifically, exemptions 4, 6 and 8, which allow SBA to withhold financial data on individual companies. Records are maintained under conditions designed to preclude access by persons other than Agency personnel with a need to know.
10. Questions of a sensitive nature. Questions 13 through 15 ask about ethnicity and gender of portfolio company owners and top managers. Respondents are not required to provide this information but where available, it is used to help evaluate the program's contribution to furthering the growth of small business in historically underserved communities. This information is needed to help identify impact to historically underserved communities with respect to SBIC financings. The information is not retrieved by individual identifiers but rather the name of the Small Business Concern; therefore a Privacy Act system of records is not required.

11. Estimate of the hourly burden of the collection of information. The last estimate for the Form 1031 was 12 minutes per form. Since only very minor changes were made to Parts A through C, these changes should not impact the burden. Based on 2,695 annual responses (the average number of Form 1031s received between FY 2014 and FY 2016), the estimated total burden for Parts A through C is 539 hours. This represents 115 hour increase from the last burden due to increased number of SBIC financings which increase the number of Form 1031s.

The new proposed Part D will not be required for most SBIC financings. SBA estimates based on historical financings that the new Part D – Passive Business Financing Information will affect 14% of the reports, or 377 reports/responses. Based on a small sample of SBICs that utilize passive businesses, SBA estimates 30 minutes per Part D response, or an overall burden of 189 hours for all respondents.

The estimated annual hour burden of this information collection is, therefore, 728 hours. This estimate is shown in detail below.

<u>Parts A through C</u>		<u>Estimate</u>	<u>Explanation</u>
1	Number of respondents	316	Number of SBICs as of 6/29/2017
2	Number of annual responses	2,695	Average of FY 2014 - FY 2016
Avg Time Per Response for Parts A through C			
3	In minutes	12	Based on last estimate
4	In Hours	0.20	
5	Total burden hours for Parts A through C	539	Line 2 x Line 4
<u>Part D - Passive Business Financing Information</u>			
6	Estimated % of Responses With Passive Businesses	14%	Estimate based on "Holding Companies" in FY 2014-FY 2016 1031s
7	Estimated Number of Responses With Passive Businesses	377	Line 2 (Number of annual responses) x Line 12 (Estimated % of Responses with Passive Businesses)
Avg Time Per Response for Part D			
8	In minutes	30	
9	In Hours	0.50	
10	Total burden hours for Part D	189	Line 7 x Line 9
<u>Total and Average Burden</u>			
11	Total burden hours	728	Line 5 + Line 11

The estimated hourly cost to respondents is calculated using the median hourly wage of \$46 for an accounting manager of a company or enterprise as reported on www1.salary.com in May 2017. The cost of hour burden for an SBIC to prepare SBA Form 1031 is \$12.43. The estimated aggregate cost is computed as follows:

Estimated hourly costs to respondents

1	Total burden hours	728	
2	Hourly wage for Accounting Manager	\$ 46	Median wage from www1.salary.com in May 30, 2017
3	Estimated total annual cost	\$ 33,488	Line 1 x Line 2
4	Number of responses	2,695	
5	Estimated average cost per response	\$ 12.43	Line 3/Line 4

12. Estimate of total annual cost burden. There is no annual cost burden to respondents other than the estimated cost of the hour burden provided in item 12.
13. Estimated annualized cost to the Federal government. The cost to the Federal Government to collect the information is estimated to be \$18,200 annually, or \$6.75 per form. Estimated annualized cost to Federal Government is computed as follows:

GS-12 program assistant, 182 hrs/yr (3.5 hours weekly) @ \$50/hr	\$	9,100
GS-14 supervisor, 130 hrs/yr (2.5 hours weekly) @ \$70/hr	\$	9,100
Total annualized cost to Federal Government	\$	18,200
Divided by number of responses		<u>2,695</u>
Estimated hour cost per form	\$	6.75

14. Explanation of program changes in Items 13 or 14 on OMB Form 83-I. The increase in the estimated total annual burden hours in item 13 of OMB Form 83-I reflects increases by 115 hours due to increased volume and 189 hours due to the addition of Part D for passive business financings.
15. Collection of information whose results will be published. Not applicable. Results of this collection of information will not be published.
16. Expiration date for collection of information. Not applicable. The expiration date will be displayed.
17. Exceptions to certifications in Block 19 on OMB Form 83-I. Not applicable. There are no exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-1.

B. Collection of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

Attachments:

- SBA Form 83-I
- Authorizing Statutory and Regulatory Provisions
- SBA Form 1031, Portfolio Financing Report
- Related Proposed Rule: Small Business Investment Companies; Passive Business Expansion & Technical Clarifications

Attachment 1 - Authorizing Statutory and Regulatory Provisions

- **Section 310(b) of the Small Business Investment Act of 1958, codified at 15 U.S.C §687b**

EXAMINATIONS AND INVESTIGATIONS

(b) Each small business investment company shall be subject to examinations made by direction of the Investment Division of the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements.

- **13 CFR §§107.630-640**

§107.630 Requirement for Licensees to file financial statements with 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 paragraph (e) 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.* The annual Form 468 must be audited by an independent public accountant acceptable to SBA.

(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. If you have an outstanding Leverage commitment from SBA, see the filing requirements in §107.1220.

(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.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Investment Division of SBA.

(e) *Reporting of economic impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic impact of each Financing, specifying the full-time equivalent jobs created or retained, and the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees.

§107.640 Requirement to file Portfolio Financing Reports (SBA Form 1031).

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