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(2) In the table in paragraph (b)(1) of this section, a Non-leveraged SBIC means any SBIC that, as of the date of the examination, has no outstanding Leverage or Leverage commitment, has no Earmarked Assets, and certifies to SBA that it will not seek Leverage in the future. Beginning on October 1, 2021, SBA will annually adjust the Minimum Base Fee and Maximum Base Fees using the Inflation Adjustment and will publish a Notice prior to such adjustment in the FEDERAL REGISTER identifying the amount of the fees.

(c) *Adjustments to Base Fee.* In order to determine the amount of your examination fee, your Base Fee, as determined in paragraph (b) of this section, will be increased based on the following criteria:

(1) If you were not fully responsive to the letter of notification of examination (that is, you did not provide all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, or you did not prepare or did not have available all information requested by the examiner for on-site review) after a written warning by the SBA, you will pay an additional charge equal to 15% of your Base Fee;

(2) If you maintain your records/files in multiple locations (as permitted under §107.600(b)), you will pay an additional charge equal to 10% of your Base Fee; and

(3) For any regulatory violation that remains unresolved 90 days from the date SBA notified you that you must take corrective action (as established by the date of the notification letter) or such later date as SBA sets forth in the notice, you will pay an additional charge equal to 5% of the Base Fee for every 30 days or portion thereof that the violation remains unresolved after the cure period, unless SBA resolves the finding in your favor.

(d) *Fee additions table.* The following table summarizes the additions noted in paragraph (c) of this section:

Examination fee additions	Amount of addition – % of base fee
Non-responsive	15%.
Records/Files at multiple locations.	10%.

Examination fee additions	Amount of addition – % of base fee
Unresolved Findings.	5% of Base Fee for every 30 days or portion thereof beyond the 90 day cure period or such later date as SBA sets forth in the notice for each unresolved finding.

(e) *Delay fee.* If, in the judgment of SBA, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, SBA may assess an additional fee of \$700 per day. Beginning on October 1, 2021, SBA will annually adjust this fee using the Inflation Adjustment and will publish a Notice prior to such adjustment in the FEDERAL REGISTER identifying the amount of the fee.

[62 FR 23338, Apr. 30, 1997, as amended at 77 FR 25052, Apr. 27, 2012; 82 FR 52185, Nov. 13, 2017]

Subpart G—Financing of Small Businesses by Licensees

DETERMINING THE ELIGIBILITY OF A SMALL BUSINESS FOR SBIC FINANCING

§ 107.700 Compliance with size standards in part 121 of this chapter as a condition of Assistance.

You are permitted to provide financial assistance and management services only to a Small Business. To determine whether an applicant is a Small Business, you may use either the financial size standards in §121.301(c)(2) of this chapter or the industry standard covering the industry in which the applicant is primarily engaged, as set forth in §121.301(c)(1) of this chapter.

[61 FR 3189, Jan. 31, 1996, as amended at 74 FR 33915, July 14, 2009]

§ 107.710 Requirement to finance smaller enterprises.

Your Portfolio must include Financings to Smaller Enterprises.

(a) *Definition of Smaller Enterprise.* A Smaller Enterprise means any small business concern that:

(1) Both together with its Affiliates, and by itself, meets the size standard of §121.201 of this chapter at the time of Financing for the industry in which it is then primarily engaged; or

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(2) Together with its affiliates has a net worth of not more than \$6 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than \$2 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (a)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(b) *Smaller Enterprise Financings.* At the close or each of your fiscal years, and at the time of any application to draw Leverage, you must satisfy the Smaller Enterprise financing requirement in this paragraph (b) that applies to you.

(1) If you were licensed after February 17, 2009, at least 25 percent (in dollars) of your Financings must have been invested in Smaller Enterprises.

(2) If you were licensed on or before February 17, 2009, and you have received no SBA Leverage commitment issued after February 17, 2009, at least 20 percent (in dollars) of your Financings, excluding Financings made in whole or in part with Leverage in excess of \$90 million, must have been invested in Smaller Enterprises. In addition, 100 percent of all Financings made in whole or in part with Leverage in excess of \$90 million (including aggregate Leverage over \$90 million issued by two or more Licensees under

Common Control) must have been invested in Smaller Enterprises.

(3) If you were licensed on or before February 17, 2009, and you have received an SBA Leverage commitment after February 17, 2009:

(i) For all Financings made after the date of the first Leverage commitment issued after February 17, 2009, at least 25 percent (in dollars) of your Financings must have been invested in Smaller Enterprises, and

(ii) For all Financings made before February 17, 2009, at least 20 percent (in dollars) of your Financings, excluding Financings made in whole or in part with Leverage in excess of \$90 million, must have been invested in Smaller Enterprises. In addition, 100 percent of all Financings made in whole or in part with Leverage in excess of \$90 million (including aggregate Leverage over \$90 million issued by two or more Licensees under Common Control) must have been invested in Smaller Enterprises.

(c) *Special requirement for certain leveraged Licensees.* (1) This paragraph (c) applies if you were licensed on or before September 30, 1996, and you issued Leverage after that date, and you have Regulatory Capital of:

(i) Less than \$10,000,000 if such Leverage included Participating Securities; or

(ii) Less than \$5,000,000 if such Leverage was Debentures only.

(2) At the close of each of your fiscal years, at least 50 percent of the total dollar amount of the Financings you extended after September 30, 1996 must have been invested in Smaller Enterprises.

(d) Financing a change of ownership which results in the creation of a Smaller Enterprises. The Financing of a change of ownership under §107.750 which results in the creation of a Smaller Enterprise qualifies as a Smaller Enterprise Financing.

(e) *Non-compliance with this section.* If you have not reached the required percentage of Smaller Enterprise Financings at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year. However, you will not be eligible for additional Leverage until you reach

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the required percentage (*see* §107.1120(c) and (g)).

[62 FR 11760, Mar. 13, 1997, as amended at 63 FR 5866, Feb. 5, 1998; 64 FR 70995, Dec. 20, 1999; 66 FR 30647, June 7, 2001; 74 FR 33915, July 14, 2009]

§ 107.720 Small Businesses that may be ineligible for financing.

(a) *Relenders or reinvestors.* You are not permitted to finance any business that is a relender or reinvestor.

(1) *Definition.* Relenders or reinvestors are businesses whose primary business activity involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(2) *Exceptions—(i) Reinvestor SBICs.* *Reinvestor SBIC* means a Section 301(c) Partnership licensed as a Reinvestor SBIC under §107.300 and approved by SBA at the time of licensing to issue Accrual Debentures and shall provide a meaningful percentage of Equity Capital Investments to underserved Small Business reinvestors (except banks, savings and loans not insured by agencies of the Federal Government, and agricultural credit companies) that make direct financings solely to Small Businesses with at least 50% of employees in the United States, Small Businesses Concerns headquartered in the United States, owned and controlled by United States citizens and/or entities, and Small Businesses eligible for investment based on SBA size standards defined in §121.301 of this chapter or SBIC alternative size standards defined in §121.301(c) of this chapter at the time of initial investment. SBA may require that each Reinvestor SBIC obtain from each such Small Business reinvestor a written agreement that such Small Business reinvestor has only provided and will only provide financing in compliance with this paragraph (a)(2)(i) and will provide to such Reinvestor SBIC information reasonably necessary to verify compliance with this paragraph (a)(2)(i). A Reinvestor SBIC may make Equity Capital Investments to Disadvantaged Businesses that are relenders or reinvestors, including Community Development Financial Institutions (CDFIs) and Minority Deposit Institutions (MDIs), and

any such investments in CDFIs or MDIs pursuant to this section are not subject to the requirement that such CDFIs or MDIs make direct financings solely to Small Businesses. In addition to Equity Capital Investments, Reinvestor SBIC Licensees may provide long-term debt or loan financing to CDFIs and MDIs.

(ii) *Equity Capital Investments to Disadvantaged Businesses.* Licensees may provide Equity Capital Investments to Disadvantaged Businesses that are relenders or reinvestors (except banks or savings and loans not insured by agencies of the Federal Government, and agricultural credit companies).

(b) *Passive Businesses.* You are not permitted to finance a passive business.

(1) *Definition.* A business is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the company does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* You may provide Financing directly to passive businesses, including passive businesses that you have formed, if it is a Small Business and it passes substantially all the proceeds through to (or uses substantially all the proceeds to acquire) one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), “subsidiary company” means a company in which the financed passive business either:

(i) Directly owns, or will own as a result of the Financing, at least 50 percent of the outstanding voting securities; or