



U.S. Small Business Administration
Office of Investment and Innovation
Policy Guidance

TO: Small Business Investment Companies (SBICs) and Program Applicants

SUBJECT: SBIC Regulatory and Process Updates—Forms 468 and 2181, SOP and Model LPA

CONTROL NUMBER: OIIPG002

EFFECTIVE: September 18, 2023

The purpose of this policy guidance is to inform current and prospective Small Business Investment Companies (SBICs) of guidance related to policies, procedures, and information collections related to and incorporating reforms from the [SBIC Investment and Diversification final rule](#) which SBA published in the Federal Register July 18, 2023[Citation: 88 FR 45982, Document # 2023-13981].

As a matter of practice, SBA endeavors to release updated policy and procedural materials expeditiously to minimize market disruptions and keep program stakeholders informed through the regulatory reform process. Engagement from program stakeholders is constructive and supportive of technical updates and continued program advancements. Program stakeholders can contact SBA’s Office of Investment and Innovation by emailing InvestInnovate@sba.gov.

Summary of Updates

- **Use of Legacy Form 468 for Financial Reporting:** SBA **will** accept the legacy Form 468 for the period ending **September 30, 2023**, conditional upon Licensees **also** submitting Form 468 OMB Approval # 3245-0063:
 - **S11 Cumulative Performance Worksheet** (*note demographic data is optional*)
 - **Executive Summary Worksheet Sections A, B and C only.**
- **Corrections and Clarifications related to Form 2181:** Users reported to SBA technical issues with the Historical Cashflows worksheet in the Long and Subsequent Funds Form 2181 and a request for clarification on when Appendix G is required in the application process.
 - **Historical Cashflows Worksheet:** SBA completed technical corrections to the Historical Cashflows worksheet and published version Revision 1.1 on [SBIC program application forms | U.S. Small Business Administration \(sba.gov\)](#).

- **Appendix G, the Transferors Liability Contract** is required for submission with the Final License Application. It *may* be submitted with the Initial Application (MAQ); however, it *must* be submitted with the Final License Application.
- **Standard Operating Procedures:** SBA published Revision 1 to SOP 10 10 0, the standard operating procedures document for the Small Business Investment Company (SBIC) program on **September 15, 2023**. Revision 1 addresses the following subject matter:

- (1) Clarification regarding standards and approval processes pertaining to non-principal ownership in the management company or general partnership of a prospective or current SBIC Licenses. (p 25, 63 and 77)

Program Applicants

As a general matter, SBA permits up to 25% of the equity of an applicant's Investment Adviser/Manager to be held by one or more non-Principals of the fund. Although exceptions to this policy may be considered at licensing, requests for approval of such exceptions may significantly impact licensing time.

SBA recognizes that there are scenarios where an applicant management team may find it advantageous, for example, to grant some form of participation in the general partner's economics as an inducement to secure the commitment of an anchor limited partner. Similarly, there can be scenarios, such as with an Emerging Manager Collaboration, where it could be desirable to grant to a non-Principal some form of ownership in either the applicant's general partner or investment adviser/manager. In such circumstances where alignment of incentives between the Licensee, its investors, and the SBA can be maintained, SBA is generally supportive.

Current Licensees

In circumstances where alignment of incentives between the Licensee, its investors, and the SBA can be maintained, a Licensee may submit a request for approval of a GP Stake or Management Company Stake (investment) transaction. Please note, that the process for approving a GP and/or Management Company Stakes transaction is limited to those transactions which would result in one or more non-Principals owning, in the aggregate, no more than 25% of the either the management company or the General Partner. Transactions which would result in such ownership in excess of 25% are subject to SBA's SBIC Change of Control approval process. The approval process should be initiated prior to transaction close.

- (2) Clarification regarding commitments of direct and indirect federal and state government funds from Qualified Non-Private Fund investors. (p. 36)

Limit on Leverageable Capital from State of Local Government Entities

13 CFR § 107.230(d)(3) permits capital contributions, Private Capital, from State or Local Government Entities: *"Funds invested in any Licensee or license applicant by one or more State or local government entities (including any guarantee extended by such entities) in an*

aggregate amount that does not exceed 33 percent of Regulatory Capital.” Since only 33% of aggregate capital contributions from such entities can be included in Regulatory Capital, only 33% of such capital contributions can become Leverageable Capital.

(3) Clarification regarding number of Examination Major Findings and time frame for exam finding resolutions. *(p 119 and 124)*

(4) Updates to URL links to access new SBIC program related forms. *(Chapter 6)*

- **Accrual and Reinvestment SBIC Interim Limited Partnership Agreement (LPA):** To align SBA’s Model Form of Limited Partnership Agreement for SBICs Issuing Debentures (“Model LPA”—currently in the form of Version 3.0 and dated March 26, 2016) to the new Final Rule and to SOP 10 10 0, this Policy Guidance Document delineates interim changes to the Model LPA. Effective immediately, SBIC applicants should incorporate the modifications set forth below into the Model LPA and should provide, with their application materials, a redline of their proposed limited partnership agreement against the revised Model LPA.

For ease of use, this Policy Guidance Document addresses only those sections of the Model LPA which are being modified.

Item No. 1: Revision to definition of “Management Fee Rate” in Section 1.01:

“Management Fee Rate” means ___%.¹⁶

Item No. 2: Revisions to text of footnote 16:

See Section 3.05. Absent special circumstances justifying a higher fee (which justification must be approved by SBA at the time of application), the Management Fee Rate must not exceed 2% for funds other than Reinvestor SBICs, which following the Management Fee Initial Period may charge a maximum of one percent (1%) on their underlying fund investments and are otherwise limited to the rate established for direct portfolio company investments. Circumstances justifying a higher fee may include an Emerging Manager with a Management Fee Base of \$100 million or less. SBA, however, is generally not supportive of any exception rate exceeding 2.5%. SBICs may negotiate a variety of business issues with Limited Partners, including a lower rate. The Agreement may include alternative terms in order to memorialize such rate. For example, a Limited Partner may wish to use the term “Outstanding Leverage” rather than “Assumed Leverage” in the definition of Management Fee Base.

Item No. 3: Revisions to Section 5.04(a):

Section 5.04. Additional Limited Partners and Increased Commitments.

(a) ~~(c)~~ The General Partner may without the consent of the Limited Partners from time to time after the date of this Agreement and during the twelve (12) month period following the Commencement Date, admit one or more new Limited Partners (the “Additional Limited Partners”) or permit any Limited Partner to increase its Commitment under the terms and conditions set forth in this Section 5.04.

Item No. 4: Revisions to Section 7.01 (note that there are no changes to the text of fn 79 or fn 80):

Section 7.01. Distributions to Partners.⁷⁹

(a) The Partnership may make distributions of cash and/or property, if any, at such times as the SBIC Act permits and at such times and in such amounts as set forth in this Agreement. Distributions shall be made only from Retained Earnings Available for Distribution and as otherwise permitted by the SBIC Act. In lieu of making any distribution, the Partnership may pay or prepay Leverage and any other amounts owed to SBA.⁸⁰ [The following provisions of this paragraph (a) are mandatory for all Accrual SBICs and Reinvestor SBICs but may be deleted by other applicants.] Unless the Partnership obtains prior written approval from SBA to make a distribution solely to cover tax liabilities as determined under Section 7.03 [modify section designation as appropriate],

- (i) No distributions are permitted within the first twelve months following licensure.
- (ii) At or before the next available payment window following any distribution, the Partnership must pay to SBA all accrued interest on outstanding Leverage and all Annual Charges which are then due and payable.
- (iii) A repayment of SBA Leverage principal must also be made at or before the next available payment window following that distribution, and such repayment shall be equal to the SBA Share, as set forth in 13 C.F.R. § 107.585.
- (iv) The General Partner represents and warrants that under the provisions of its Operating Agreement (the “Operating Agreement”), each Principal who has been admitted to the General Partner has severally guaranteed his or her share of the funds due to SBA under subparagraphs (ii) and (iii), above, pending the payment of such funds on or before the applicable payment window date, and has executed the Operating Agreement for such purpose. The General Partner further warrants that each Principal admitted to the General Partner after the date hereof will be required to execute the same guarantee provisions for such purpose.

(b) Subject to Section 7.01(a), distributions to Partners must be made in the following order and amounts:

- (i) [specify order and amounts]

[add any additional provisions for distributions among the General Partner and the Limited Partners]

Item No. 5: Revisions to Section 7.02 (note that there are no changes to the text of fn 81):

Section 7.02. Distributions of Noncash Assets in Kind.⁸¹

(a) Subject to the provisions of the SBIC Act, **section 7.01(a), above** [for Accrual and Reinvestor SBICs—applicant may strike if not applicable], and the provisions of this Section 7.02, the Partnership at any time may distribute Noncash Assets in kind to parties other than SBA.

[add provisions with respect to Noncash Assets if desired]

Item No. 6: Revisions to Section 7.04 (note that there are no changes to the text of fn 83 or fn 84):

Section 7.04. Distributions that Violate the Act Are Prohibited.⁸³

Anything contained in this Agreement to the contrary notwithstanding, no distribution may be made by the Partnership if and to the extent that such distribution would violate the SBIC Act or Section 17-607 of the Act.⁸⁴

[add provisions if desired with respect to distributions relating to transferred interests]

- **SBIC Financial Reporting:** On August 22, 2023, SBA will publish new Excel-based versions of the Form 1031 (portfolio company financing) and Form 468 (SBIC financial report).
 - Form 1031, Form 468, Capital Certificates and other reports to all investors must be uploaded to SBIC-Web. Form 1031, Form 468 and Capital Certificates should be uploaded as Excel (.xls) files. SBIC-Web will be utilized to store and record receipt of all file submissions for Licensees.
- **Valuation Guidelines and Accounting Standards:** SBICs should continue to adhere to the SBA [SBIC Valuation Guidelines](#) and [Accounting Standards](#) as described in Appendix 15 and Appendix 14, respectively. However, effective August 17, 2023, Non-Leveraged Licensees are permitted to utilize [FASB GAAP](#) valuation guidelines and accounting standards as an alternative to SBA valuation guidelines and accounting standards.
- **Model Limited Partnership Agreement (LPA):** SBIC program applicants should continue to follow the existing [Model Debenture SBIC LPA Version 3.0](#) to the extent practicable. SBA intends to publish an updated version in a modular format in the fall of 2023. SBA notes that all bold, mandatory language set forth in the LPA must be retained; however, SBA acknowledges that deviations in LPA terms depend upon the investment strategy of the limited partnership.
- **Accrual Debenture Commitment Request and Draw Instructions:** SBA intends to publish detailed instructions regarding Accrual Debenture Commitment and Draw processes in the fall of 2023. SBA is initially partnering with a single purchaser to offer Accrual Debentures. SOP 10 10 0 will be updated to reflect the additional Commitment request and Draw instructions.