

SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM

The program will be administered by the Small Business Administration.

INVESTMENT COMPANY CRITERIA

- In order to participate, an investment company (incorporated body, LLC or limited partnership) must submit a business plan describing investment strategy in early-stage and small business concerns in targeted industries or other business sectors, information about the expertise of the management team as well as the likelihood of success and profitability.

NOTE: Targeted industries include the following: agriculture technology; energy technology; environmental technology; life science; information technology; digital media; clean technology; defense technology; and photonics technology.

- A participating investment company must make all of its investments in small business concerns, 50% of which must be early-stage small businesses.

NOTE: The Definition of an early-stage small business requires that it is a U.S. small business concern and has less than \$15 million in gross annual sales revenues for the previous 3 years

NOTE: The SBA definition of small business concern is below. This does not include the 51% ownership by individuals requirement which is a limitation is specific to the SBIR program.

INVESTMENT COMPANY APPLICATION PROCESS

- SBA must make conditional approvals or disapprovals of applications within 90 days of receiving the application. If an investment company has met all of SBA conditions final approval will be given 30 days after the date SBA has determined all conditions have been met.
- If there are areas that need to be addressed in order to receive final approval the investment company will have a year to satisfy conditions for final approval. Final approval of applications will be made within 90 days after the date the applicant as met all approval conditions. If conditions are not met within the time period the applicant will not be able to participate in the program.

EQUITY FINANCING

Process:

- The SBA will commit equity financing to the an investment firm that can be drawn upon to:
 - make new investments for 5 years from the date of the first draw; and
 - make follow-on investments and management fees for 10 years from the date of the first draw.

NOTE: The SBA Administrator may grant a maximum of two additional 1 year periods.

Restrictions:

- The SBA will not provide equity financing that is greater than the amount of non-federal capital (on or before date when equity financing is used) and no single investment company can receive more than \$100 million.

INVESTMENT SHARES & EQUITY FINANCING INTERST

Process:

- Each investment made by the investment company shall be treated as comprised of capital from equity financings under the program according to the ratio that capital from the program bears to all capital available to the investment company for investment.
- Equity financing interest conveyed to the SBA has the same rights of other investors (receives distributions in the same time and in the same amount as other investors) in regards to interests but does NOT denote control or voting rights to the SBA.
- The SBA is entitled to a pro rata portion of any distributions made equal to the percentage of capital in the investment company the equity financing comprises.

Restrictions:

- Manger profits interest cannot exceed 20% of the profits (exclusive of any profits that may accrue as result of capital contributions of managers). No manager profits interest (other than a tax distribution) shall be paid prior to the repayment to investors and SBA.
- All distributions must be made in cash.
- Distributions must be made within a reasonable time after exiting investments (ex. IPO or market sale).

PROGRAM FUNDING

- \$1 billion fund will be created within Treasury and will be available to the SBA as a revolving fund.

APPENDIX

SBA Definitions

§ 121.105 How does SBA define “business concern or concern”?

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(2) A small agricultural cooperative is an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C.A. 1141j) whose size does not exceed the size standard established by SBA for other similar agricultural small business concerns. A small agricultural cooperative's member shareholders are not considered to be affiliates of the cooperative by virtue of their membership in the cooperative. However, a business concern or cooperative that does not qualify as small under this part may not be a member of a small agricultural cooperative.

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

(c) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size.

[61 FR 3286, Jan. 31, 1996, as amended at 70 FR 51248, Aug. 30, 2005]

§ 121.106 How does SBA calculate number of employees?

(a) In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (i.e. , individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) Where the size standard is number of employees, the method for determining a concern's size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

- (2) Part-time and temporary employees are counted the same as full-time employees.
- (3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.
- (4)(i) The average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate. If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.
- (ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29203, May 21, 2004]