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SBA issues significant new policy guidance regarding the SBIC program

On August 17, 2023, the U.S. Small Business Administration (SBA) issued significant new policy guidance regarding the Small Business Investment Companies (SBIC) program. Our key takeaways from this new guidance include:

- i. SBA expects to release the anticipated new Standard Operating Procedures (SOP) by August 25. The new SOP will replace all existing SBIC SOPs and all existing SBIC TechNotes.
- ii. Temporary SBIC applications are now available and can be found [here](#). SBA expects to finalize the new SBIC application forms in September and welcomes comments from the SBIC community in the interim.
- iii. The temporary SBIC application forms can be used immediately. Legacy SBIC application forms can also be used for filings before September 30, 2023. However, regardless of which SBIC application form an applicant uses, substantial legal documents must now be submitted as part of the MAQ.
- iv. SBA is enhancing the pre-screen process. Applicants will be required to provide more information as part of the pre-screen than previously required. This new regime should improve the quality of SBA feedback at this stage in the process.
- v. The pre-screen process is open to all applicants, including both Standard Debenture and Accrual Debenture SBIC applicants, and applicants considering the SBIC Critical Technologies (SBICCT) initiative. All applicants will use the same pre-screening form and submit their pre-screen materials to SBA.

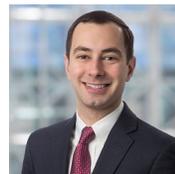
We are reviewing all of the new materials thoroughly and our initial view is that these steps by SBA will materially improve the SBIC program for all stakeholders. The new policy guidance is detailed on the pages below and we encourage you to review it. We will make ourselves available to answer any questions that you have. If you do have questions, please feel free to reach out to any member of your Hogan Lovells SBIC team.

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Contributors



David A. Winter
 Partner, Washington, D.C.
 T +1 202 637 6511
david.winter@hoganlovells.com



Matthew J. Bakios
 Senior Associate, Washington, D.C.
 T +1 202 637 2731
matthew.bakios@hoganlovells.com



Bryan R. Ricapito
 Partner, Washington, D.C.
 T +1 202 637 5481
bryan.ricapito@hoganlovells.com



Myles DePass
 Senior Associate, Washington, D.C.
 T +1 202 637 5522
myles.depass@hoganlovells.com



Carol Fendler
 Consultant, Washington, D.C.
 T +1 202 918 3319
carol.fendler@hoganlovells.com



Pablo Gardea
 Senior Associate, Washington, D.C.
 T +1 202 637 2870
pablo.gardea@hoganlovells.com



Kevin Lees
 Corporate Funds Area Operations
 Manager, Washington, D.C.
 T +1 202 637 5432
kevin.lees@hoganlovells.com



Rachel Bayer
 Associate, New York
 T +1 212 918 3811
rachel.bayer@hoganlovells.com



Madelyn Healy Joseph
 Counsel, Washington, D.C.
 T +1 202 637 3667
madelyn.healy@hoganlovells.com



Justin Bevilacqua
 Associate, Washington, D.C.
 T +1 202 637 3231
justin.bevilacqua@hoganlovells.com



Madison Kirton
 Associate, New York
 T +1 212 918 3788
madison.kirton@hoganlovells.com



Curtis Victor
 Associate, Washington, D.C.
 T +1 202 804 7854
curtis.victor@hoganlovells.com

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*Our associated offices
 Legal Services Centre: Berlin



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

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

CONTROL NUMBER: OIIPG001

SUBJECT: SBIC policies and SOP updates
Incorporating Reforms from the SBIC
Investment Diversification and Growth
Final Rule

EFFECTIVE: August 17, 2023

The purpose of this policy guidance is to inform current and prospective Small Business Investment Companies (SBICs) of updates to program policies, information collections and standard operating procedures (SOP) 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

- **Standard Operating Procedures:** SBA is scheduled to publish a single Standard Operating Procedures (SOP), SOP 10 10 0, document for the Small Business Investment Company (SBIC) program. This SOP replaces all prior SBIC-related SOPs and Technotes, including, but not limited to, 10 04, 10 06, 10 07, 10 09, and Technotes 2 – 17. Publication of SOP 10 10 0 is scheduled to occur **on or before August 25, 2023**.
- **License Application:** SBA is publishing a new temporary Form 2181 effective August 17, 2023 in conjunction with the effective date of the final rule.
 - The new form includes the:
 - Short Form 2181 (Pre-Screen)
 - Long Form 2181 (Management Assessment Questionnaire/MAQ)
 - Sub Funds Form 2181 (Subsequent Funds)

- Going forward, SBA will no longer utilize separate Form 2182 and Form 2183 as part of the licensing process.
 - In addition, SBA will permit SBIC applicants to use the legacy license application (Form 2181, Form 2182, Form 2183, and related exhibits) through September 30, 2023, **OR** to begin using the new Form 2181 effective August 17, 2023. If an applicant uses the legacy license application, please note the following:
 - Draft Limited Partnership Agreements (LPA), Private Placement Memorandum (PPM), General Partner Operating Agreement, and Management Agreement must be submitted with the MAQ application filing.
 - Applicants will have 12 months post Green Light Approval to file a Final License application.
 - SBA welcomes feedback on the new form as the Agency progresses towards publishing a final version in September 2023.
- **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 anticipates working with its current interim lender, Federal Home Loan Bank of Chicago, to facilitate the Accrual Debentures, and intends to publish detailed instructions regarding Accrual Debenture Commitment and Draw processes in the fall of 2023. SOP 10 10 0 will be updated to reflect the additional Commitment request and Draw instructions.