

§ 107.230 Permitted sources of Private Capital for Licensees.

Private Capital means the contributed capital of a Licensee, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a Licensee.

(a) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate Licensee, or the partners' contributed capital of a Partnership Licensee, in either case subject to the limitations in paragraph (b) of this section.

(b) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by a Licensee from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from any Federal, State, or local government agency or instrumentality, except for:

(i) Funds invested by a public pension fund;

(ii) Funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established before October 1, 1987, to the extent that such revenues are reflected in the retained earnings of the corporation; and

(iii) "Qualified Non-private Funds" as defined in paragraph (d) of this section.

(4) Any portion of a commitment from an Institutional Investor with a net worth of less than \$10 million that exceeds 10 percent of such Institutional Investor's net worth and is not backed by a letter of credit from a State or National bank acceptable to SBA.

(c) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 107.240.

(d) *Qualified Non-private Funds.* Private Capital includes "Qualified Non-private Funds" as defined in this paragraph (d); however, investors of Qualified Non-private Funds must not control, directly or indirectly, a Licensee's management, or its board of directors or general partner(s). Qualified Non-private Funds are:

(1) Funds directly or indirectly invested in any Licensee on or before August 16, 1982 by any Federal agency except SBA, under a statute explicitly mandating the inclusion of such funds in "Private Capital";

(2) Funds directly or indirectly invested in any Licensee by any Federal agency under a statute that is enacted after September 4, 1992, explicitly mandating the inclusion of such funds in "Private Capital";

(3) 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; and

(4) Funds invested in or committed in writing to any Section 301(d) Licensee prior to October 1, 1996, from the following sources:

(i) A State financing agency, or similar agency or instrumentality, if the funds invested are derived from such agency's net income and not from appropriated State or local funds; and

(ii) Grants made by a state or local government agency or instrumentality into a nonprofit corporation or institution exercising discretionary authority with respect to such funds, if SBA determines that such funds have taken on a private character and the nonprofit corporation or institution is not a mere conduit.

(e) You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) SBA gives its prior written approval of the capital contribution.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5866, Feb. 5, 1998; 64 FR 70995, Dec. 20, 1999]

§ 107.240 Limitations on including non-cash capital contributions in Private Capital.

Non-cash capital contributions to a Licensee or license applicant are included in Private Capital only if they

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fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Tangible assets used in your operations, priced at no more than their fair market value.

(d) Shares in a Disadvantaged Business received by a subsidiary Section 301(d) Licensee from its parent Licensee, valued at the lower of cost or fair value.

(e) Other non-cash assets approved by SBA.

§ 107.250 Exclusion of stock options issued by Licensee from Management Expenses.

Stock options issued by any Licensee, including a 1940 or 1980 Act Company, are not considered compensation and therefore do not count as part of a Licensee's Management Expenses.

APPLYING FOR AN SBIC LICENSE

§ 107.300 License application form and fee.

SBA evaluates license applicants in two review phases (initial review and final licensing), as follows:

(a) *Initial review.* Except as provided in this paragraph, SBIC applicants must submit a MAQ and the Initial Licensing Fee. MAQ means the Management Assessment Questionnaire in the form approved by SBA and available on SBA's Web site at www.sba.gov/sbic. Initial Licensing Fee means a non-refundable fee of \$10,000. An applicant under Common Control with one or more Licensees must submit a written request to SBA, and the Initial Licensing Fee, to be considered for a license and is exempt from the requirement in this paragraph to submit a MAQ unless otherwise determined by SBA in SBA's discretion.

(b) *Final licensing.* (1) An applicant may proceed to the final licensing phase only if notified in writing by SBA that it may do so. Following receipt of such notice, in order to proceed to the final licensing phase, the applicant must submit a complete license

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application, in the form approved by SBA and available on SBA's Web site at www.sba.gov/sbic, within the time-frame identified by SBA; and the Final Licensing Fee. The Final Licensing Fee means a non-refundable fee (determined as of the date SBA accepts the application) adjusted annually as follows:

Time period	Final licensing fee
December 13, 2017 to September 30, 2018	\$20,000
October 1, 2018 to September 30, 2019	25,000
October 1, 2019 to September 30, 2020	30,000
October 1, 2020 to September 30, 2021	35,000

(2) Beginning on October 1, 2021, SBA will annually adjust both the Initial Licensing Fee and Final Licensing Fee using the Inflation Adjustment and will publish a Notice prior to such adjustment in the FEDERAL REGISTER identifying the amount of the fee.

[82 FR 52184, Nov. 13, 2017]

§ 107.305 Evaluation of license applicants.

SBA will evaluate a license applicant based on the submitted application materials, any interviews with the applicant's management team, and the results of background investigations, public record searches, and other due diligence conducted by SBA and other Federal agencies. SBA's evaluation will consider factors including the following:

(a) Management qualifications, including demonstrated investment skills and experience as a principal investor; business reputation; adherence to legal and ethical standards; record of active involvement in making and monitoring investments and assisting portfolio companies; successful history of working as a team; and experience in developing appropriate processes for evaluating investments and implementing best practices for investment firms.

(b) Performance of managers' prior investments, including investment returns measured both in percentage terms and in comparison to appropriate industry benchmarks; the extent to which investments have been realized as a result of sales, repayments, or