

Annual SBIC Institutional Investor Recertification

AUGUST 21, 2019

On August 16, 2019, the U.S. Small Business Administration (SBA) issued the FY 2019 Annual Investor Recertification memorandum, regarding annual recertification of the institutional investors of small business investment companies (SBICs). The Investment Division of the SBA requires certain SBICs to recertify all limited partners classified as Institutional Investors on an annual basis. Recertifications are required each year from SBICs with outstanding SBA leverage, outstanding SBA leverage commitments, or both.

Because the unfunded portion of an institutional investor's commitments to an SBIC is included when calculating regulatory capital, the SBA has determined that it is necessary to take steps on a regular basis to ensure all institutional investors remain qualified for that designation. If limited partners are no longer qualified, the SBIC's regulatory capital must be adjusted accordingly and a new capital certificate must be filed with the SBA.

An SBIC's level of regulatory capital has a direct bearing on its operations, including its capital impairment ratio, over-line limitation, management fee calculation, leverage commitment eligibility, etc. Misstatements of regulatory capital can be a violation of federal law and may subject violators to criminal prosecution and civil penalties.

The SBA explains in their memorandum that SBICs may accomplish the annual recertification of their institutional investors by submitting to their SBA operations analyst either:

OPTION 1: A letter certifying that a review of the licensee's unfunded commitments from institutional investors has occurred and no changes are required to the most recent capital certificate filed by the licensee with the SBA; or

OPTION 2: A letter summarizing the change(s) to the status of the licensee's institutional investor(s) and a new capital certificate that reflects the changes to the licensee's institutional investor(s) and/or regulatory capital.

An SBIC does not need to recertify in 2019 if all of its private capital has been fully funded, or if it was licensed after October 1, 2018.

Based on the level of regulatory capital reflected on the last capital certificate submitted to the SBA by an SBIC, the SBIC must upload required recertification documents to SBIC-WEB pursuant to the following schedule:

Filing Deadlines and Unfunded Commitment Range

- August 31, 2019 – from \$20,000 and above
- September 30, 2019 – from \$15,000,000 to \$19,999,999
- October 31, 2019 – from \$10,000,000 to \$14,999,999
- November 30, 2019 – from \$5,000,000 to \$9,999,999
- December 31, 2019 – from \$1 to \$4,999,999

If you have questions regarding the annual recertification process or the SBIC program in general, please contact your SBIC counsel at Winston & Strawn.

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