

CLIENT ALERT

First Priority Applications for Underlicensed States

SEPTEMBER 26, 2019

Effective September 10, 2019, the U.S. Small Business Administration (“SBA”) began giving “first priority” status with respect to the Small Business Investment Company (“SBIC”) licensing process to SBIC license applicants (each, an “Applicant”) located in an “underlicensed State” with below median financing.

On December 19, 2018, the President signed into law the Spurring Business in Communities Act of 2017, P.L. 115-333 (the “Act”). The Act requires that SBA give “first priority” to any Applicant located in an underlicensed State with below median financing (each such State, a “First Priority State”). An Applicant will be deemed to be located in a First Priority State if (i) its headquarters is in a State in which the number of licensees per capita is less than the median number of licensees per capita for all States, and (ii) such State has received less than the median financing given to all States over the prior three fiscal years.

SBA has determined that the following States are First Priority States for the period ending December 31, 2020:

| · ALABAMA | · KENTUCKY | · NORTHERN MARIANA ISLANDS |
|------------------|-----------------|-------------------------------|
| · Alaska | · Mississippi | · Oklahoma |
| · American Samoa | · Montana | · Puerto Rico |
| · Delaware | · Nevada | · U.S. Virgin Islands |
| · Guam | · New Hampshire | · Vermont |

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| · | Hawaii | · | New Mexico | · | West Virginia |
| · | Idaho | · | North Dakota | · | Wyoming |

Applicants from the 21 First Priority States (each such Applicant, a “First Priority Applicant”) will have priority in the licensing queue during the initial review phase and the licensing phase of the SBIC licensing process. In addition, First Priority Applicants may qualify for certain exceptions relating to minimum capitalization and leverage eligibility. However, the same SBIC license application process and underwriting standards will apply to all Applicants regardless of whether or not an Applicant is located in a First Priority State.

SBA will update its list of First Priority States annually, with its first update to be effective December 31, 2020. An Applicant will not lose priority if the State of its headquarters is removed from the First Priority State list, but will lose priority if the Applicant moves its headquarters to a State that is not a First Priority State during the SBIC licensing process.

If you would like copies of SBA’s guidance or have any questions regarding First Priority States and how the new guidance may impact the SBIC licensing process, please contact your SBIC counsel at Winston & Strawn LLP.

2 Min Read

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