

Small Business Administration

§ 107.240

§ 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.

The license application must be submitted on SBA Form 415 together with a processing fee computed as follows:

(a) All license applicants will pay a base fee of \$10,000.

(b) All applicants who will be Partnership Licensees will pay an additional \$5,000 fee, for a total of \$15,000.

(c) All applicants who will be issuing Participating Securities will pay an additional \$5,000 fee, for a total of \$15,000, or a total fee of \$20,000 if they also intend to be Partnership Licensees.

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Subpart D—Changes in Ownership, Control, or Structure of Licensee; Transfer of License

CHANGES IN CONTROL OR OWNERSHIP OF LICENSEE

§ 107.400 Changes in ownership of 10 percent or more of Licensee but no change of Control.

(a) *Prior approval requirements.* You must obtain SBA's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock or partnership capital.

(b) *Fee.* A processing fee of \$200 must accompany each such request for approval of a change of ownership.

§ 107.410 Changes in Control of Licensee (through change in ownership or otherwise).

(a) *Prior approval requirements.* You must obtain SBA's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by SBA.

(b) *Fee.* A processing fee of \$10,000 must accompany any application for approval of one or more transactions or events that will result in a transfer of Control.

§ 107.420 Prohibition on exercise of ownership or Control rights in Licensee before SBA approval.

Without prior written SBA approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any shareholders' or partnership meeting);

(c) Permit the proposed new owner(s) to participate in any manner in the