

Investment Funds and SBIC Formation

SBA Guidelines on Late Stage Capital Distributions by SBIC Funds

By [Alan B. Roth](#), [Kate L. Price](#) and [Breanne K. Long](#)

When a small business investment company (SBIC) begins to wind down its fund operations, questions often arise about the ability to make capital distributions to its limited partners in compliance with the Small Business Investment Act of 1958, as amended (the SBIC Act). Even in their late stages, SBIC funds should take care to remain in compliance with regulations issued by the U.S. Small Business Administration (the SBA). Crucially, such regulations (1) establish minimum Regulatory Capital requirements and (2) require SBA approval for certain reductions in Regulatory Capital.

All SBIC funds must meet certain minimum capital requirements pursuant to the SBIC Act. Unless otherwise approved by the SBA, SBIC funds (other than Participating Securities issuers and Early Stage SBICs) must maintain Regulatory Capital of at least \$5,000,000 at all times. (Participating Securities issuers and Early Stage SBICs must meet even higher Regulatory Capital thresholds.) Such requirements apply even after a fund has repaid all of its SBA debentures. Accordingly, if a fund wants to make a distribution that would result in its Regulatory Capital falling below the applicable threshold, it must request prior SBA approval. Since the SBA recognizes that the liquidation process requires returning all of a fund's capital to its investors, most of these requests will go through a straightforward approval process at the SBA.

In addition to the minimum Regulatory Capital requirements above, debenture funds with outstanding SBA leverage face additional regulations. Subject to limited exceptions, such funds must obtain the SBA's prior written approval in order to reduce Regulatory Capital by more than two percent in any fiscal year. Conversely, debenture funds that no longer have any outstanding SBA leverage because it has all been paid off are exempt from the requirement to obtain such approval, but must report the reduction in Regulatory Capital to the SBA within 30 days. It should also be noted that Early Stage SBICs must request approval for *all* reductions in Regulatory Capital, not just those over two percent.

As your SBIC fund begins to wind down, you should remember that SBA regulations governing distributions remain in effect. If you have questions regarding any of the foregoing regulations or the SBIC program in general, please contact your SBIC counsel at Jenner & Block.

CONTACT US



Alan B. Roth, Partner, Jenner & Block

Phone: 312 923-2673 Email: aroth@jenner.com [Download V-Card](#)

Practice Groups: [Corporate](#), [Investment Funds and SBIC Formation](#), [Private Equity](#)



Kate L. Price, Special Counsel, Jenner & Block

Phone: 312 923-2771 Email: kprice@jenner.com [Download V-Card](#)

Practice Groups: [Corporate](#), [Investment Funds and SBIC Formation](#), [Private Equity](#)



Breanne K. Long, Associate, Jenner & Block

Phone: 212 891-1636 Email: blong@jenner.com [Download V-Card](#)

Practice Groups: [Corporate](#), [Investment Funds and SBIC Formation](#), [Mergers & Acquisitions](#), [Securities](#)

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