

SBIA Summary
Small Business (Subtitle D) House-FY22 Budget Reconciliation
Small Business Investment Company Proposals and Related Rural Proposals
Last updated: September 9, 2021

Below is a high-level summary of the key proposals for the SBIC program in the “small business” section of the draft House FY22 Budget Reconciliation proposal released on September 7, 2021. This draft is subject to change during the legislative process. This SBIA-prepared summary is for informational purposes only and readers should not rely upon it for legal or investment advice. Please contact your firm’s private legal and financial counsels if you have questions regarding the draft’s potential effects on your firm’s specific interests.

1. Sec. 100401(a). Venture SBIC (“VSBIC”) Program (39-47)

- Proposal (Sec. 321) to increase equity investments by the SBIC program through a new fund facility within the SBIC program to provide patient capital to undeserved markets and small manufacturers.
- Key Elements of the VSBIC Proposal:
 - Overall. Authorizes a new fund facility with a 10-year appropriation (FY22-31) of **\$9.5 billion** for long-term equity investments in VSBIC licensees. 15 U.S.C. 681 et seq.
 - “Fund of Funds” Investments. A VSBIC must invest solely in small business concerns provided that a VSBIC may invest in other venture capital funds if those funds are: (i) majority-controlled by under-represented individuals; (ii) invested in covered investments at not less than 50 percent of the fund’s total capital; and (iii) the VSBIC “provides annual assistance to the venture capital fund.” (Sec. 321 (d)(2)).
 - A covered investment means a small business investment in one of these categories: (i) critical infrastructure (e.g., physical infrastructure; water/sewer; electrical grid; broadband/communications; clean energy; child/elder care); (ii) manufacturing; (iii) low-income communities, (defined at 26 U.S.C. 45D(e)); (iv) HUBZones; and, (v) “small business concerns” owned or controlled by: (A) a federally-recognized Indian Tribe, (B) an individual with a disability, (C) a veteran; or (D) SBA-designated as “critical,” and are majority controlled by underrepresented individuals. (Sec. 321(a)(1)).
 - A Venture Small Business Investment Company means a fund that makes early-stage investments in SBA-approved small business concerns. At least 75 percent of the fund’s financings must be in “covered investments” of which manufacturing may represent only up to one-third of total investments. (Sec. 321(a)(4)).

- Capital Requirements, Required Investments, and Leverage.
 - Private capital: minimum of \$20 million indexed every five (5) years. (Sec. ___401(a)(2)(B)).
 - Leverage Limits/Partnership interests: Lesser of 100% of private capital or an amount established by the SBA. (“Partnership interest” terms to be established by SBA. Sec. 321(e)(3)).
- Other Stand-Alone Provisions:
 - Raise leverage limits/SBICs with multiple licenses under common control from \$350M to \$400M at 15 U.S.C. 683(b)(2)(B).
 - Exempt from the current list of exclusions under the definition of “private capital” (15 U.S.C. 662 (9)(b)) “funds obtained from any financial institution identified under section 302(b)” (i.e., 15 U.S.C. 682(b)); add “partnership interests” to “leverage” definition at 15 U.S.C. 662 (10).

2. Sec. 100401(b). Emerging Managers Program (47-50).

- Generally. Proposal to authorize a new program (Sec. 322) appropriated at **\$20 million** for 10 years (FY22-31) whereby experienced SBIC fund managers can enter into agreement with the SBA to provide “guidance and assistance” to an “emerging manager company” that has applied for an SBIC license.
 - An emerging manager company is a private equity fund that meets at least two (2) of these criteria: (1) the managers have 10-years or less of combined investment experience, or a documented record of successful business experience; (2) the fund focuses on underserved markets; and (3) the firm’s ownership and control is held by members of an underrepresented community (as defined in Sec. 50 of the Small Business Act). (47-48)
 - The approved veteran SBIC fund manager” may hold a minority financial interest in the new SBIC managed by the emerging manager company. (48)
- Licensing. The emerging manager company applying for an SBIC license must meet these criteria: (1) private capital not exceeding \$100 million; (2) management team of at least two (2) managers; (3) be a second-generation (or earlier) SBIC fund; and (4) focus investments on covered investments. (49)
- Benefits to Experienced SBIC Fund Managers. Experienced SBIC fund managers approved as advisors may receive a waiver from the leverage cap governing maximum leverage/multiple SBICs at 15 U.S.C. 683(b)(2)(B). Sec. 322(d). Additionally, an existing SBIC that enters into agreement to advise a new SBIC under this program may receive a waiver to increase its leverage cap/existing SBICs: (i) individual SBIC license (up to \$17.5 million); (ii) multiple SBIC licenses under common control (up to \$35 million). Sec. 322(e). (49-50)

3. **Sec. 100402. Microcap SBIC License (50-53).**

- Generally. Proposal to appropriate **\$40 million** to establish a new license under the SBIC program at 15 U.S.C. 681(c) for licensee applicants that do not meet the basic requirements for a standard SBIC license, but do have the following qualifications: (1) documented record of “successful business experience” or (2) documented record of “business management success; or, (3) “knowledge in the particular industry or business where the applicant seeks to pursue investments; and (4) demonstrated “appropriate qualifications for the license based on SBA-determined factors”. (51)
- Leverage. Capped at the lesser of \$50 million or 200 percent/private capital for licensees. (52)
- Required Investments. Not less than 50 percent of the licensed fund’s financings must be in “covered investments” of which manufacturing may represent only up to one-third of total investments. (52)
- Control Decoupled. If licensee has investment committee members with separate SBIC licenses that are not MicroCap SBICs then such licenses shall not be deemed under common control with the MicroCap SBIC licensee. (53)

4. **Sec. 100403. SBIC Outreach and Education (53-54).**

- Generally. The bill includes a **\$2.5 million** appropriation over ten years (FY22-FY31) for SBA outreach and education efforts to prospective licensees regarding the SBIC program. (53)

5. **Sec. 100404. SBIC Working Group (54-61)**

- Generally. The bill includes a **\$2 million** appropriation to stand up an SBIC Working Group, chaired by the SBA, to develop recommendations for (1) increasing the number of SBIC applicants, with a focus on management teams located in low-income and underserved communities; (2) increasing SBIC investments in underfunded states; (3) developing recommendations to incent SBICs to invest and locate in under-licensed states, invest in small business concerns owned and controlled by members of underrepresented communities, veterans, and women; and (4) developing metrics and benchmarks to measure success. (54)
- Membership. Members shall be appointed by the SBA and Congress and shall come from: (i) SBIC general partners with a demonstrated record of investing in low-income areas, business owned or controlled by members of underrepresented communities, veterans, and women and manufacturers; (ii) SBIC licensees including at least one with experience investing in low-income areas, business owned or controlled by members of underrepresented communities, veterans, and women; and (iii) the investment industry or academia. (SBIA is not expressly mentioned in the target list of Working Group members.) (54-58)
- Report. Not later than one (1) year after establishment, the Working Group shall submit to Congress a report on its recommendations. (60)

6. **Sec. 100203. Office of Rural Affairs (26-28).** (Subtitle B – Empowering Small Business Creation in Underrepresented Communities).
- Generally. Authorizes the establishment of a new SBA Office of Rural Affairs (**\$2 million** appropriations annually/FY22-FY31) to, among other duties, conduct conferences, coordinate with other federal agencies on rural small business matters, conduct program evaluation.
 - Rural Small Business Conference. The Office shall execute at least one (1) conference for small businesses annually across the country to promote federal policies and programs specific to rural small businesses, coordinate with other federal agencies on rural small business matters, and conduct program evaluation.