

NOTICE OF INTENT

Department of Economic Development Louisiana Economic Development Corporation

SSBCI Venture Capital ARPA 2021

(LAC 19:VII.Chapter 29)

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, hereby give notice of their intent to adopt Rules for the Venture Capital Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise known as “**SSBCI Venture Capital ARPA 2021**”.

Title 19

Part VII. Louisiana Economic Development Corporation Subpart 2. Louisiana Venture Capital Program Chapter 29. SSBCI Venture Capital ARPA 2021

§2901. Purpose

A. The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses as a response to the economic effects of the COVID-19 pandemic, in accordance with prevailing federal guidelines issued by the U.S. Treasury.

B. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds from ARPA 2021 to make investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses.

C. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment opportunities located in the underserved markets that will be targeted with SSBCI funds.

D. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Board—Board of Directors of Louisiana Economic Development Corporation.

“Business Partner” of an SSBCI insider—a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.

Community Development Financial Institution (CDFI)- has the meaning given that term under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

Community Development Financial Institution (CDFI) Investment Area—areas defined by CDFI which are generally low-income, high poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

Corporation—Louisiana Economic Development Corporation.

Direct investment—an investment in which financial investors take part with each other and act jointly by uniting or combining together to invest directly into individual companies or businesses

“Family Member” of an SSBCI insider—Such person’s spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and any other relatives who live in the same household as the SSBCI insider.

Independent Non-Profit Entity—any non-profit entity that is not state- sponsored.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation, as known as Corporation.

Owned and Controlled—means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

Personal Financial Interest—any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).

Risk Investment—an investment that may provide equity through the purchase of common stock, preferred stocks, partnership rights or any other equity investment. Additionally it may mean debt positions, which may act as equity or have equity features such as subordinated debt, debentures or other such instruments used in conjunction with features intended to yield significant capital appreciation.

Socially and Economically Disadvantaged Individuals (SEDI) Owned Business—(for the purposes of this program)

1. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their (1) membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society; (2) gender; (3) veteran status; (4) limited English proficiency; (5) physical handicap; (6) long-term residence in an environment isolated from the mainstream of American society; (7) membership of a federally or state-recognized Indian Tribe; (8) long-term residence in a rural community; (9) residence in a U.S. territory; (10) residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or (11) membership of another “underserved community” as defined in U.S. Executive Order 13985;

2. business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury;

3. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in prevailing federal guidelines issued by the U.S. Treasury; or

4. business enterprises that are located in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury.

SSBCI insider—a person who, in the 12- month period preceding the date on which SSBCI support for a specific investment in a venture capital fund or company is closed or completed:

1. Was:

a. a manager or staff member, whether by employment or contract, in the state's SSBCI venture capital program;

b. a government official with direct oversight or jurisdiction over an SSBCI venture capital program, or such an official's immediate supervisor;

c. a member of the board of directors or similar body for a state-sponsored non-profit entity who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;

d. a member of the board of directors or similar body for an independent non- profit or for-profit entity that operates an SSBCI venture capital program; or

e. an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments under the SSBCI venture capital program; or

2. Exercised a controlling influence on state decisions regarding:

a. The allocation of SSBCI funds among approved state venture capital programs;

b. Eligibility criteria for the state's SSBCI venture capital programs; or

c. The processes for approving investments of SSBCI funds under the state's SSBCI venture capital program.

State-Sponsored Non-Profit Entity—a non-profit entity created by state legislation to pursue policies of the state government and over which state officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

Valuation of Investment Fund—the value of any monies invest or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital.

Venture Capital Fund—a fund that makes and manages a portfolio of investments in individual companies or businesses. also referred to herein as the applicant organization;

Very Small Business (VSB) —a business which employees 10 or less employees, including independent contractors and sole proprietors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2905. Eligibility for Venture Capital Fund to Participate in This Program

A. LEDC will undertake a formal evaluation process and consider various factors when determining which applicants will be selected to participate in this program. Among the factors which may be taken into account in the evaluation process are the following;

B. Eligible applicants are venture capital funds:

1. with a minimum of \$500,000 in investments or has a minimum of \$2 1/2 million under management;

2. already has on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Venture Capital Program;

3. Has proven, experienced management recognized in the venture capital community. The management should have significant management experience in risk investments of the types and volumes contemplated by the applicant venture capital funds;

4. are encouraged to have a production office based in Louisiana with permanent employees employed by the fund capable of evaluating potential investment opportunities.

C. In addition to the eligibility provisions provided in the Section mentioned in the above Subsection A, LEDC investments made in venture capital funds and programs in connection with this program shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. It is strongly encouraged for each venture capital fund(s) to make every effort to target and invest in SEDI-owned businesses and VSB;

3. such individual business investments shall not be extended to businesses with more than 750 employees;

4. any investment targeted in this program shall not exceed the amount of \$ 5,000,000; and

5. any investment transaction or investment round extended through this program shall not exceed the amount of \$20,000,000.

D. The Board has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for program participation, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2907. Valuation of Investment Fund

A. The amount of privately raised funds under management shall mean the value of any monies invested or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital. The value of an equity investment and/or risk capital investment shall be the amount of dollars actually invested. For the purpose of calculating private capital, only cash and commitments which are available for risk investments at the time of LEDC's investment, may be counted in the investment amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2909. Application Requirements for Investment

A. Prior to a venture capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) for consideration of an investment, a prospective fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the fund's existing or proposed management team; and

2. the business plan for the venture capital fund. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant shall provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for qualification will then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2911. Application Procedure

- A. The application shall contain, but not be limited to, an offering memorandum which includes, but is not limited to, the following:
1. name of fund, address (mailing and physical);
 2. specify the amount of LEDC investment/ commitment requested;
 3. specify the minimum and maximum amounts of non-LEDC capital to be raised if LEDC makes the requested investment/commitment;
 4. specify applicant's projected timetable, with milestones for completion of the fund raising;
 5. specify whether applicant anticipates receiving all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;
 6. *market*—identify the proposed market of the applicant:
 - a. describe and discuss the types of businesses that the fund will finance. Discuss the extent to which the fund intends to specialize in certain industries, or if special circumstances will be addressed;
 - b. describe the size range of businesses that it is contemplated the fund will finance, with a general indication of where most of the focus is expected;
 - c. discuss the life cycle stage or stages of the companies which the fund will likely finance, with an indication of where most of the focus is contemplated, e.g., start-up, expansion;
 - d. discuss the geographic area in which the fund plans to focus. Specify the city or parish in which the fund's principal office will be located, and discuss intentions, if any, to establish any additional offices;
 - e. describe the types of financing instruments intended to be utilized for investments, e.g., debentures, notes, preferred stock, royalties, etc.;
 7. *management assistance*—discuss the plans of the fund to provide management and/or technical assistance to companies for which the fund provides financing. Discuss the fund's plans for monitoring its financing, and enforcing provisions of investment agreements. Discuss how the fund plans to handle problem loans and investments;
 8. *idle funds*—describe plans for the management of the idle funds in the fund;
 9. *realization of returns by investors*—discuss long-term plans and strategies for providing a tangible return to the investors in the fund;
 10. *tax and accounting issues*—discuss relevant tax and accounting issues for the fund;
 11. *management structure*—describe the proposed management structure for the fund;
 12. describe the proposed responsibilities of each of the members of the management team. If any will not be full time, describe their other activities;
 13. describe the responsibilities of any management position for which a person has not been identified;
 14. specify any other key people including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. LEDC reserves the right to perform general and criminal background checks on these key people.

B. All applications under this program must be submitted to the Louisiana Economic Development Corporation, as directed by staff.

C. All applications received by LEDC will be reviewed by the LEDC staff; and the staff may request additional information beyond that which has been provided. After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2913. Amount of Investment

A. A qualified or eligible fund led by a non-profit entity may receive an investment equal to \$1 of LEDC funds for each \$2 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed \$10,000,000.

B. Any other qualified or eligible fund may receive an investment equal to \$1 of LEDC funds for each \$4 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed \$10,000,000.

C. Subject to availability of SSBCI funding and associated allocation to this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2915. Investment Criteria

A. The criteria for investment may include but not be limited to the following.

1. The applicant will be required to make investments that will at least create jobs in, create wealth in, and shall have a positive economic impact to the economy of Louisiana.

2. The investment made by LEDC shall be made on no less than the same terms and conditions, and with the same expected return on investment, as other private investors.

B. A qualified or eligible fund may charge for services as allowed by the U.S. Treasury.

C. Investment funds may be used for out of state investments, after approval by LED.

D. Investment funds must make investments in accordance to U.S. Treasury guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2917. Reporting

A. Upon closing of each investment, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. Name of company, census tract, naics code, amount of investment, total amount of round of funding, and date of investment

2. The number of jobs with corresponding salaries, new and retained;

3. Narrative of business, use of funds, board presentation;

4. Prior and post investment of private capital; and

5. assurances and certifications in accordance to U.S. Treasury guidelines.

B. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. a list of all investors in the fund, including the amounts of each investment and the nature of each investment;

2. a statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;

3. a current reconciliation of the fund's net worth; and

4. an annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

C. Investment funds must submit assurances and certifications in accordance to U.S. Treasury guidelines on each investment prior to closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

§2919. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR.

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses with less than 500 employees. Voluntary participation in the program could cause a direct economic impact on some very small businesses that have no more than 10 employees, if meeting certain criteria. However, the benefit from additional funding received, at a nominal cost of some additional planning and paperwork associated with the application process and reporting requirements should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Susan Bigner through the close of business on Wednesday, April 27, 2022 at Department of Economic Development, 617 North 3rd Street, 11th Floor, Baton Rouge, LA 70802 or via email to Susan.Bigner@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 11 a.m. on Thursday, April 28, 2022 in the Griffon Conference Room at the LaSalle Building, 617 North 3rd Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary, LED

Fiscal and Economic Impact Statement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule establishes program guidelines for the Venture Capital Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise known as "SSBCI Venture Capital ARPA 2021".

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules, since they will be managed by existing staff under the current budget.

Louisiana anticipates receiving over \$74 M with incentives which could bring total Federal funding for the SSBCI program to \$113M, of which a portion will be devoted to the Venture Capital program. The current estimate is \$43 M for this program. These Federal funds may be utilized for any additional administrative costs in connection with the new program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no expected direct impact or effect on revenue collections or state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

SSBCI funds are Federal funds (Department of the US Treasury) intended to support new and existing small businesses as a response to the economic effects of the COVID-19 pandemic. US Treasury guidance for SSBCI funds also states that these funds will support socially and economically disadvantaged individuals (SEDIs).

Louisiana anticipates receiving over \$74 M with incentives which could bring total Federal funding for the SSBCI program to \$113M, of which a portion will be devoted to the Venture Capital program. The current estimate is \$43 M for this program. The program will require adherence to the application procedures which will involve submission of paperwork by the applicants. However, recipients will benefit by obtaining access to capital made available to them through the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The long term effects of the overall SSBCI program could be significant. The program should result in a significant amount of additional capital being deployed in Louisiana over the program's existence, due to the potential to leverage Federal SSBCI funds to attract private capital matches. The impact of this additional capital could be extensive, particularly for new and existing small businesses and SEDIs.