

New Pennsylvania Venture Guarantee

Program Guidelines | February 2007

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Section I – General

A. Introduction

A key part of Governor Rendell’s Economic Stimulus package, the New Pennsylvania Venture Guarantee Program will increase available investment for Pennsylvania’s high growth industries. These guidelines outline the nature and focus of the CFA New Pennsylvania Venture Guarantee Program as well as processes and procedures in the administration of the program. All investment guarantees will be made pursuant to the statutory authority of the Commonwealth Financing Authority (CFA).

The CFA, through the New Pennsylvania Venture Guarantee Program, shall provide guarantees to venture capital partnerships for investments in early and expansion stage Pennsylvania-related companies. The New Pennsylvania Venture Guarantee Program will allow the Commonwealth to actively partner with the investment community by providing \$250M in investment guarantees on private equity investments of \$500M. The guarantee will cover the first loss of the aggregate amount of principal invested in Pennsylvania – related companies covered by the guarantee up to 50% of the total principal invested. For example, if a fund was to make a submission for an allocation of the guarantee totaling \$15M with a commitment to invest at least \$30M in Pennsylvania related companies, the guarantee will indemnify the first \$15M of Pennsylvania portfolio losses of the fund.

The Enhanced Marketing Component (described in Appendix A) will use the CFA issued guarantees to create a leverage mechanism that can substantially enhance venture capital partnership returns on its Pennsylvania portfolio.

B. Program Overview

A venture capital partnership may submit an application to the authority requesting a guarantee of investments of principal to be made in Pennsylvania-related companies. Upon being satisfied that all requirements have been met, the CFA Board may approve the application, and, if approved, the authority shall execute a guarantee agreement in favor of the applicant. A guarantee approved by the CFA Board shall not exceed 50% of the total investments made in Pennsylvania-related companies or \$37,500,000, whichever is less. The commitment to Pennsylvania related companies will be required to be at least \$15 million. This amount would result in a guarantee worth up to \$7.5 million.

The CFA board will have the ability to determine that the subject of a proposed investment to be covered by the guarantee is a Pennsylvania-related company acceptable to the CFA Board prior to the venture capital partnership making an investment in the company. The purpose of this review is to ensure the guarantees will not cover investments into industries considered illicit such as pornography. This determination will be made through an expeditious board-designated staff review procedure described in Appendix B. Following the initial eligible investment by the venture capital partnership, a claim of loss against the aggregate Pennsylvania portfolio may be placed anytime after the completion of the seventh year following the first investment by the venture capital partnership in a Pennsylvania-related company which is covered by the guarantee.

C. Program Eligibility

1. Guarantees authorized under the CFA New Pennsylvania Venture Guarantee Program are available to qualified venture capital partnerships. A venture capital partnership is deemed to be qualified once an application has been reviewed by the CFA Board, approved, and a guarantee agreement specifying terms and guarantee amount has been finalized.

2. An applicant must certify to the CFA Board that the managing partner of the applicant has managed one or more venture capital partnerships which have performance rankings in the top quartile nationwide when compared to other venture capital partnerships with similar investments made over the same period of time.
3. Listed below are certain requirements that will apply to venture capital partnerships receiving a guarantee:
 - a. The ultimate beneficiary of the guaranteed financing must be a Pennsylvania-related company which is defined as an entity with operations located in this Commonwealth or an entity willing to locate significant business operations in this Commonwealth. A procedure (described in Appendix B) will be in place for an expeditious process for the CFA Board to determine that proposed investments to be covered by the guarantee will be made to Pennsylvania-related companies acceptable to the board.
 - b. The partnership must commit to invest at least \$15,000,000 in Pennsylvania-related companies.
 - c. The partnership will agree to notify the board of all advisory, valuation and annual meetings of the partnership for the duration of the guarantee and will permit a representative of the board to attend such meetings. The board may request that the applicant provide reimbursement for reasonable travel expenses if meetings are held outside of the Commonwealth or that a board representative be able to participate in meetings by acceptable telecommunication means.
 - d. The partnership has or will open an office in Pennsylvania staffed with at least one senior-level partner and will maintain the office for the duration of the guarantee.
 - e. The partnership will provide the board with its annual financial statements, audited by a nationally recognized independent certified public accountant, for the duration of the guarantee. Financial statements shall be prepared in accordance with generally accepted accounting principles.
 - f. There will be a prohibition against the transfer of the benefits of the guarantee to another person without the prior approval of the CFA Board.
 - g. The partnership will comply with all other requirements established by the board.

Section II – The Application Process

A. Application for an Allocation of the Guarantee

1. A venture capital partnership may submit an application to the CFA for consideration under the New Pennsylvania Venture Guarantee Program by utilizing the DCED Single Application form. This allows processing through the DCED system.
 - a. The Single Application can be printed and/or completed online by accessing: www.newPA.com. Click on “Funding and Program Finder”.
 - b. Copies of the Single Application kit may be obtained by contacting the DCED Customer Service Center at 1-800-379-7448 or 717-787-3405 or e-mailing: ra-dcedcs@state.pa.us.
 - c. Applications may be filed at any time during the fiscal year, with approval subject to available funding and CFA Board approval.
 - d. Applications should be submitted to:

PA Department of Community and Economic Development
Customer Service Center – New PA Venture Guarantee Program
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
(800) 379-7448
2. Application for an allocation of the guarantee made by or on behalf of a venture capital partnership wishing to access the New Pennsylvania Venture Guarantee Program must submit the following supplemental information:
 - a. A PPM pursuant to 17 CFR, § 230.501 through 230.508 (Relating to Reg. D – Rules governing the limited offer and sale of securities without registration under the Securities Act of 1933).
 - b. A statement of any recent changes in the principals or partners of the applicant.
 - c. A statement of current fundraising status including dates of first and/or final closing or when such are anticipated as well as a listing of Limited Partner (LP) commitments. LP’s that are re-investing should be designated as such.
 - d. A description of the partnership’s previous and current Fund experience using the format listed in Appendix C.
 - e. A description of the partnership’s Pennsylvania investment strategy and intentions.
 - f. A detailed description of the managing partner’s Fund that meets the qualifying top quartile performance ranking including the following:
 - 1.) What managing partners were involved and a description of their involvement.
 - 2.) A citation of the publicly verifiable data used to determine top quartile rank.
 - g. The references requested in Appendix C.
 - h. Any other information required by the CFA Board.

B. Approval Process

1. Staff will work with the applicant to obtain a full understanding of the venture capital partnership. Staff may include employees of DCED as well as consultants, analysts, and other professionals under contract to the CFA during the due diligence process. Staff will review and analyze all necessary documentation relating to among other things:
 - a. The venture capital partnership's prior investment performance record and the top quartile status of at least one of its Funds.
 - b. The fund's existing or proposed office location in Pennsylvania staffed with at least one senior level partner.
 - c. The ability of the venture capital partnership to follow through on its Pennsylvania investment commitment of at least \$15 million.
 - d. Any other information deemed necessary by the CFA Board.
2. Projects that complete a satisfactory staff review will be submitted to the CFA Board for review and consideration. Upon being satisfied that all requirements have been met, the CFA Board may approve the application, and, if approved, the authority shall execute a guarantee agreement in favor of the applicant.
3. Applications for financing may be rejected or deferred for any one or more of the following reasons:
 - a. In applicant's failure or refusal to provide pertinent information regarding the fund deemed essential to adequately perform a due diligence review.
 - b. There is inadequate participation by other investors in the fund or the level of participating investment committed to the fund is insufficient to close the fund.
 - c. The anticipated economic development return to the region or the Commonwealth is non-existent or negligible.
 - d. The fund is not willing to open an office and assign a senior level partner to Pennsylvania.
 - e. There are insufficient guarantees available to the CFA to issue a guarantee to the fund.
 - f. Any other criteria adopted by the CFA Board pursuant to an appropriate resolution.
4. A guarantee approved by the CFA Board shall not exceed 50% of the total investments made in PA related companies or \$37,500,000, whichever is less.
 - a. The CFA Board may approve one or more guarantee agreements not to exceed \$50,000,000 in the aggregate for venture capital partnerships in which the State Employees' Retirement System (SERS) or the Public School Employees' Retirement System (PESRS) is a limited partner.
5. Applications for guarantees may be accepted until July 1, 2007, or until the aggregate of approved guarantees equal the appropriated \$250,000,000.

C. Post Approval Process

1. Subsequent to the approval of a fund investment guarantee by the CFA Board, staff will work with the applicant to close the investment guarantee agreement documentation in accordance with the approved terms, including verification that the fund has or is in the process of establishing a Pennsylvania office.

2. No investment will be closed until the following have been satisfactorily resolved:
 - a. The applicant must certify that it shall not discriminate against any employee or against any applicant for employment because of race, religion, color, handicap, national origin, age or sex.
 - b. The applicant and its principals must be current in payment of all Pennsylvania state and local taxes unless they have entered into a workout agreement satisfactory to the respective taxing authority and are in full compliance with the terms thereof.
3. Following the designation of investments that are deemed guarantee eligible, staff will monitor the activities of the financing recipient to ensure that the conditions of the CFA investment are being observed and met. Staff will promptly advise the CFA Board of any substantive failure in performance by the applicant and any failure or delay in making any required payment. The CFA Board shall have full authority to engage in any and all activities required in order to protect and preserve its guarantee obligation, including but not limited to appropriate legal action when required, and the Board may empower staff to initiate action in this regard.
4. If a fund's guarantee is approved and it is subsequently determined that the application contained material misrepresentations, or funds were used for ineligible activities or activities not permitted under the terms of the approval process or within the guarantee documents, the applicant will be in default and the CFA Board could demand immediate loss of all guarantee benefits. In addition, the matter may be referred to the appropriate authorities for criminal investigation.

D. Reporting Requirements

1. All recipients will be required to provide quarterly reports quantifying the Fund's progress to include the following:
 - a. All the same information provided to Limited Partners on a quarterly basis.
 - b. The number of Pennsylvania company investments to date and the number of Pennsylvania employees at that company at the date of investment.
 - c. Information on the financing round relating to each Pennsylvania company investment including total amount of financing in the round and what other entities participated.
2. Audited annual financials, audited by a nationally recognized independent certified public accountant, are required. Financial statements shall be prepared in accordance with generally accepted accounting principles.
3. Jobs Created – On an annual basis each Fund will report any change in jobs at their Pennsylvania-related companies since the date of investment.

E. Filing a Claim Against an Allocated Guarantee

1. The liability of the Authority for any guarantee approved under this program will be limited to the approved amount of the guarantee.
2. A claim of loss against the guaranteed investments may be placed anytime after the completion of the seventh year following the first investment by the venture capital partnership in a Pennsylvania-related company which is covered by the guarantee.
3. A venture capital partnership will be required to have an audit performed by a nationally recognized independent certified public accounting firm prior to notifying the board it is making a claim under the guarantee.

3. A procedure and schedule for the periodic reconciliation of amounts payable under the guarantee will be established by the CFA Board.
4. Any increase in the valuation of an investment in a Pennsylvania-related company covered under the guarantee agreement subsequent to the payment of a claim by the CFA, must be reported immediately to the CFA Board and may require a portion of the claim being returned to the CFA Board.

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Appendix A – Expeditious Review Process

- A. Prior to each Pennsylvania investment by a venture capital partnership approved to participate in the New Pennsylvania Venture Guarantee program, the Chairman of the CFA Board or designated staff will receive and confirm certification of the following:
 - 1. The investment is not in one of the following industries:
 - a. Pornography
 - b. Gambling
 - 2. The investment is in a Pennsylvania-related company which is defined as an entity with operations located in this Commonwealth or an entity willing to locate significant business operations in this Commonwealth.
- B. The CFA Board Chairman will communicate these certifications to the whole Board at its next scheduled meeting.

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Appendix B – Required Supplemental Application Information

1. Describe your previous and current Fund experience using the format provided below:

| Funds | Fund | Fund | Fund |
|---|------|------|------|
| Final Closing | | | |
| Total committed capital | | | |
| Total invested at cost | | | |
| Realized Proceeds | | | |
| Cash-on-cash multiple | | | |
| Performance ending most recent quarter stated as net IRR to LPs | | | |
| Total Number of companies financed (including write-offs) | | | |
| Average size of investment | | | |
| Number of investment professionals | | | |

2. References (please provide telephone numbers)

- a. Provide a reference listing of CEOs of all portfolio investment companies in your most recent fund.
- b. Provide a reference listing of any mezzanine/subordinated lenders who have provided capital in your previous fund's investments.
- c. Provide a reference listing of any senior debt lenders who have provided capital in your previous fund's investments.
- d. Provide a reference listing of all venture capitalists/private equity investors who have provided capital in your previous fund's investments.
- e. Provide a listing of at least three (3) individuals who have an understanding of your firm's investment expertise.
- f. Provide a reference listing of one CEO who was turned down, one CEO who has left a company, and one CEO whom you recruited for a portfolio company.
- g. Please list the firm's partner departures within the last five years, citing reasons for each departure and contacts for departed partners.
- h. Provide a description of any litigation pending against any general partner.