



## Venture Capital Investment Policy

*This Venture Capital Investment Policy (“VC Investment Policy”) was adopted on the 27<sup>th</sup> day of July 2023 by the Board of Directors of the New Mexico Finance Authority (“NMFA”), a public body politic and corporate, separate and apart from the State of New Mexico constituting a governmental instrumentality, created by the New Mexico Finance Authority Act, Section 6-21-1 et. seq., NMSA 1978.*

### I. PURPOSE

#### A. Statutory Authority

On March 1, 2022, Governor Michelle Lujan Grisham signed into law the Venture Capital Program Act, NMSA 1978, Section 6-33-1 *et seq.* (“Act”). The Act creates the Venture Capital Program Fund (“Fund”) within the New Mexico Finance Authority (“NMFA”) and authorizes the NMFA to establish guidelines and policies to administer the Act and to pay the costs of administering the Act from the Fund. On April 4, 2023, following the 56th Legislature, Governor Lujan Grisham signed into law Senate Bill 402, which contains amendments to the Act, effective June 16, 2023; and

The NMFA, pursuant to NMSA 1978, Section 6-33-4,, as amended, is granted authority to make investments including differential rate investments in venture private equity funds or early-stage investments in New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

#### B. Policy Objectives

The goal of this VC Investment Policy is to provide guidance regarding program objectives and implementation including general considerations, eligible investments, proposal requirements and diligence, investment parameters and monitoring requirements. This VC Investment Policy is intended to provide a foundation for standards of discipline guiding the execution and monitoring of venture capital investments from the Fund.

This VC Investment Policy shall be implemented by the NMFA Board of Directors, pursuant to the authority of the Act, as amended and supplemented from time to time, and may, at times, be waived or revised, if the NMFA Board of Directors determines a deviation or revision is appropriate. Any revisions to the VC Investment Policy will be reflected in a new documented version dated as of the NMFA Board of Directors approval of the revision. Any waiver or revision must not conflict with the provisions of the Act.

## II. DEFINITIONS

A. “**Act**” means the Venture Capital Program Act, Sections 6-33-1 through 6-33-[8], NMSA 1978, as may be amended and supplemented.

B. “**Board**” means the NMFA Board of Directors.

C. “**Economic Development Committee**” means a committee, appointed by the chair of the Board, from the members of the Board.

D. “**Fund**” means the Venture Capital Program Fund, created pursuant to NMSA 1978, Section 6-33-3 of the Act.

E. “**New Mexico Business**” means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico, or in the case of a limited partnership, a business with its principal place of business and at least eighty percent of its assets located in New Mexico.

F. “**NMFA**” means the New Mexico Finance Authority.

G. “**Rules**” means the rules governing the Venture Capital Program Fund under the Venture Capital Program Act adopted by the NMFA Board of Directors governing the implementation and administration of the Act.

H. “**Rural**” means areas with populations less than 606,000 or frontier communities with populations less than 15,000 both outside of metropolitan statistical areas, Native American lands, or Federally designated Colonias in New Mexico.

I. “**State**” means the State of New Mexico.

J. “**Underserved Communities**” means populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

K. “**VC Investment Policy**” means this policy adopted by NMFA to provide guidance regarding program objectives, implementation, strategy, investment and portfolio parameters and monitoring requirements.

L. “**Venture Private Equity Fund**” means an entity that makes, manages or sources potential investments in New Mexico businesses and that: (i) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing

capital for start-up, expansion, product or market development, recapitalization or business purposes in early-stage development; (ii) holds out prospects for capital appreciation; (iii) has at least one full-time manager with at least three (3) years professional experience in assessing growth prospects of businesses or evaluating business plans; and (iv) accepts investments only from accredited investors, as that term is defined in the federal Securities Act of 1933, as amended, or federally recognized Indian nations, tribes and pueblos with at least five million dollars (\$5,000,000) in overall investment assets.

**M.** “**Venture Capital Investment Committee**” means a committee of NMFA staff providing oversight of the Fund, including evaluation of investments and monitoring of portfolio risks, financial performance, mission objectives and policy compliance.

### **III. ROLES AND RESPONSIBILITIES**

NMFA staff and investment consultant(s) will source and evaluate each investment proposal in accordance with the Rules and this VC Investment Policy and present investment recommendations to the Venture Capital Investment Committee. Staff and investment consultant(s) are additionally responsible for ongoing portfolio and policy monitoring, performance measurement, benchmarking and reporting, and for making strategic and/or operational recommendations for the consideration of the Venture Capital Investment Committee.

The Venture Capital Investment Committee meets monthly or at the discretion of the Chair to evaluate potential investments and monitor portfolio risks, financial performance, economic impact and policy compliance. The Venture Capital Investment Committee reviews reporting information on a quarterly and annual basis and may recommend changes to Rules, the VC Investment Policy or related operating procedures as relevant. NMFA staff and the VC Investment Committee with the support of investment consultant(s) are responsible for monitoring program strategy and recommending any changes. The Venture Capital Investment Committee may recommend, suggest removal from further consideration, or request further due diligence on potential investments.

Recommendations made by the Venture Capital Investment Committee are presented to the Economic Development Committee. Recommendations made by the Economic Development Committee are presented to the Board for its approval or disapproval. The Board may approve all or part of the Investment as recommended by the Economic Development Committee and shall either adopt the findings set forth in the recommendation with respect to, without limitation, eligibility, nature of the investment, and the adequacy of consideration, or shall specify the Board’s own findings on those subjects. Board approval may specify, at the Board’s discretion, terms and conditions of the investment.

If an investment is approved by the Board, subject to satisfactory legal negotiation and documentation, closing shall occur within one hundred and twenty (120) days following Board approval unless at a later date for good cause at the sole discretion of the Chief Executive Officer.

## **IV. GENERAL CONSIDERATIONS**

### **A. Mission and diversification objectives**

The Fund shall invest in Venture Private Equity Funds that advance two or more of the following economic development objectives within the State:

- create and/or retain new and/or early-stage businesses
- invest in emerging and expanding businesses
- create and/or retain quality jobs for New Mexicans
- increase access to capital for businesses owned by entrepreneurs from or benefiting Underserved Communities
- attract additional private sector investment in early stage and emerging businesses

The Fund shall make investments in Venture Private Equity Funds investing in equity or debt of New Mexico Businesses for the purpose of providing capital for, but not limited to start-up, expansion, product or market development, recapitalization or early-stage business development. Overall the Fund will invest in a portfolio diversified across underlying investment strategies, industries, companies, geographies and communities throughout the State.

Unlike traditional venture capital, the Fund will target investment strategies that utilize equity or debt instruments to support New Mexico Businesses during the start-up and growth phases. Further, the Fund will not only consider investments in Venture Private Equity Funds which seek to invest in high-growth companies but which will also seek to invest in businesses that enhance additional important drivers of economic development, namely small businesses and suppliers with business-to-business (B2B) and business-to-government (B2G) business models.

The Fund shall invest across diverse sectors including but not limited to agriculture, accommodation and food service, arts and entertainment, construction, education and early childcare, environmental remediation and related services including sustainable water and wastewater management, financial services, healthcare and social services, information technology, manufacturing, outdoor recreation, professional and tech-enabled business services, renewable energy, retail trade, and transportation.

The Fund will seek to address capital gaps facing entrepreneurs representing and located in Underserved Communities by making investments benefiting such populations as explicitly measured by the impact objectives of the Venture Private Equity Fund and reflected in the ownership, location and/or customer base of underlying New Mexico Businesses in the portfolio.

The Fund will seek to attract additional private sector investment to New Mexico Businesses through matching investments. The Fund will seek to invest in Venture Private Equity Funds managed by investment managers located in New Mexico that meet the qualifications contained in the guidelines of this Policy. The Fund will also seek to invest in Venture Private Equity Funds managed by investment managers located outside of New Mexico that meet the qualifications contained in the guidelines of this Policy and that bring additional investment

expertise (e.g. investing in a specific sector or community) and private capital to the State, thereby advancing the economic development objectives of the Fund.

Financial performance of investments in Venture Private Equity Funds will be evaluated and monitored relative to relevant private and public market benchmarks. NMFA may approve investments targeting financial returns lower than traditional market benchmarks in consideration of expected economic development benefits of the potential investment, including local job creation, economic sector diversification, investment in businesses owned by entrepreneurs from Underserved Communities or investment in businesses located in and/or serving Underserved Communities.

#### **B. Differential rate investments for economic development purposes**

The Act authorizes differential rate investments for economic development purposes. Traditional venture capital investors target high financial returns to compensate for the high risk of making equity investments in start-up and early-stage businesses, typically with the expectation many investments may realize losses which will be compensated for by outsized financial returns generated by successful investments in the portfolio. Unlike traditional venture capital, the Fund will seek to invest in Venture Private Equity Funds that invest their capital via equity or debt and may deploy alternative equity-like and debt-like instruments including preferred, convertible, revenue-based and profit-sharing instruments structured to generate fixed income-like returns.

The Fund will seek to invest in a diversified portfolio of equity and debt-based investment strategies to achieve economic development objectives, prioritizing potential economic development benefit over maximizing financial returns. Based on targeted diversification of underlying strategies and instruments, the Fund is expected to generate a more balanced financial return on a portfolio basis relative to a traditional venture capital portfolio, and absolute returns lower than returns targeted (but often not realized) by traditional venture capital funds.

#### **C. Risk of capital loss with investments in early and growth stage businesses**

Risk of losing all or some of the investment is an unavoidable component of investments in early stage and growing businesses such as start-ups, businesses testing market validation and client acquisition, businesses early in revenue generation, and businesses yet to achieve positive net operating cash flow and profitability. NMFA shall target, via the strategy of selecting multiple Venture Private Equity Funds, portfolio diversification across underlying companies, sectors, stages and financial instruments to help mitigate potential capital losses.

#### **D. Conflicts of interest**

NMFA staff, Committee members and the NMFA Board shall refrain from personal business activity that could conflict with proper execution and monitoring of venture capital investments or that could impair their ability to make decisions in accordance with this VC Investment Policy. NMFA staff and Committee members must disclose personal financial interests in proposed Venture Private Equity Funds seeking investment from the Fund and recuse themselves from the investment approval process. Venture Private Equity Funds seeking

investment from the Fund may not seek to influence NMFA staff, Committee or Board members involved in the investment approval process outside of the investment proposal review and due diligence process.

## **V. CONFIDENTIALITY**

Information obtained by NMFA in order to make investments from the Fund which is proprietary, technical, trade secret or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act.

## **VI. ELIGIBILITY FOR INVESTMENT**

Venture Private Equity Funds, as defined in the Rules and this Policy, demonstrating potential to enhance economic development within the State through local business and job creation or expansion, increased access to capital for Underserved Communities, and contribution to sector diversification and sustainability of the State's economy are eligible for investment.

## **VII. INVESTMENT PROPOSALS FOR VENTURE PRIVATE EQUITY FUNDS; DUE DILIGENCE PROCESS**

Venture Private Equity Funds seeking investment shall complete a publicly available interest form. NMFA staff and investment consultant(s) will review information submitted in interest forms and determine eligibility for investment based on guidelines and restrictions outlined in this Policy.

Venture Private Equity Funds deemed eligible will be invited to submit an investment proposal including if available, some or all of the following:

- (1) Due diligence questionnaire
- (2) Legal documentation including:
  - Private Placement Memorandum
  - Limited Partnership Agreement
  - Legal documentation for previous fund
  - Partnership agreement of the general partner
  - Investment advisory agreement between fund and the general partner
- (3) Annual general meeting materials from the last two (2) years
- (4) Fund manager most recent regulatory registration/disclosure form
- (5) Fund manager ownership and management structure
- (6) Fund manager operating budget projections for the next three (3) years
- (7) Fund budget including all projected expenses
- (8) List of limited partners from most recent fund
- (9) Fund manager references including current and former limited partners
- (10) Prior fund track record(s) relative to performance benchmarks
- (11) Annual and quarterly reporting packages for limited partners
- (12) Audited financial statements and applicable Federal tax returns for the last three (3) years

- (13) Examples of capital call and distribution notices
- (14) Presentations and minutes of limited partner advisory meetings over the last two (2) years
- (15) Fund investment policy
- (16) Economic impact policy
- (17) Due diligence/investment memorandum for two recent investments
- (18) Valuation policy
- (19) Environmental, social and governance (ESG) policy and/or diversity, equity and inclusion (DEI) policy
- (20) Conflict of interest policy
- (21) Risk management policy
- (22) Compliance manual
- (23) Code of ethics/conduct
- (24) Business continuity plan
- (25) List of standard fund, portfolio company and economic development reporting metrics

The due diligence process will include review and analysis of information contained in investment proposals, due diligence meetings, and reference checks to assess: (1) investment strategy fit with economic development and diversification objectives; (2) investment and management team skill sets, track record, specialized expertise and capability to execute on its proposed investment strategy; (3) strategy capacity, pipeline and expected pace of deployment; (4) fund management operations including adequate financial, accounting, reporting and compliance controls, procedures and service providers.

Staff and investment consultant(s) will present due diligence findings and recommendations to the Venture Capital Investment Committee. Venture Private Equity Funds under consideration for potential investment may be required to present to the Venture Capital Investment Committee.

## **VIII. INVESTMENT GUIDELINES & RESTRICTIONS**

### **A. Fund Manager Qualifications**

During the due diligence process fund managers must demonstrate various qualifications, including but not limited to:

- adequate investment expertise and team capacity with professional staff qualified to execute on investments in New Mexico Businesses
- capacity to meet best practice operational, reporting and compliance standards
- sustainability as evidenced by operating budget projections
- effective mitigation of key man risk and succession planning
- adherence to adequate conflict of interest policies
- alignment with funds under management

Emerging fund managers with limited operating history and limited assets under management may demonstrate adequate investment expertise and team capacity by demonstrating

verifiable relevant past experience and track record during the due diligence process. Emerging fund managers must demonstrate adequate operational sustainability for the expected investment time horizon.

## **B. Investments outside of New Mexico**

Venture Private Equity Funds may invest in companies that do not meet the definition of New Mexico Businesses as long as the Venture Private Equity Fund meets the Match Requirement contained in this Policy.

## **C. Investment Amounts; Concentration Limits**

Initially the Fund will seek to invest in a portfolio of five (5) to ten (10) Venture Private Equity Funds with diverse underlying investment strategies. Investment commitments to a Venture Private Equity Fund are expected to range from two million dollars (\$2,000,000) to ten million dollars (\$10,000,000), and cannot exceed twenty percent (20%) of the balance of the Fund at the time of investment approval.

Fund commitments to Venture Private Equity Funds expecting to invest at least eighty percent (80%) in New Mexico Businesses shall not exceed fifty percent (50%) of total commitments to the Venture Private Equity Fund. Fund commitments to Venture Private Equity Funds expecting to invest less than 80% in New Mexico Businesses shall not exceed twenty percent (20%) of total commitments to the Venture Private Equity Fund.

Investments in any one New Mexico Business shall not exceed ten percent (10%) of the balance of the Venture Private Equity Fund at the time of investment approval. Venture Private Equity Funds must address concentration limits in their investment and risk management policies and are expected to manage single portfolio company concentrations to within 15% of the total portfolio at the time of investment.

Venture Private Equity Funds investing equity instruments are expected to seek minority non-controlling interests. Investments in any one New Mexico Business shall not exceed fifty-one percent (51%) of the total investment capital in the business unless the additional ownership interest is due to foreclosure or other action by NMFA pursuant to agreements with the business or other investors in the business, is necessary to protect the business, and does not require additional investment of the Fund.

Investments in any one industry shall not exceed thirty percent (30%) of the balance of the Fund at the time of investment approval.

## **D. Maximum Term**

Investment commitments issued by NMFA will be for a term determined by the NMFA, not to exceed fifteen (15) years, including all extensions.



### **E. Match Requirement**

Investments secured by the Venture Private Equity Fund in which the Fund invests, shall require a commitment to investing or securing investment by private, third-party investors in an amount at least equal to the total commitment made by the Fund (a 1:1 match). The Fund may make a total commitment up to a certain amount contingent on funding or draw down as matching private investment commitments are secured.

### **F. General Partner/Fund Manager Commitments**

Investments in Venture Private Equity Funds shall require commitments by the general partners and/or key persons at the fund manager to align Fund, general partner and fund manager interests.

### **G. State Small Business Credit Initiative**

The Fund may invest proceeds of the State Small Business Credit Initiative (SSBCI) award to the State. SSBCI provides federal funding to states, the District of Columbia, territories, and Tribal governments to promote American entrepreneurship, support small business ownership, and democratize access to capital across the country.

Investments funded with SSBCI proceeds target:

- Venture capital funds that invest in small businesses (500 employees or less)
- Venture capital funds investing in businesses owned or controlled by Socially and Economically Disadvantaged Individuals (SEDI) with diminished access to credit, residing in or operating in Community Development Financial Institution (CDFI) Investment Areas
- Investments in Very Small Businesses (VSBs) with fewer than 10 employees
- Incubation and Early-Stage Investment Models

Investments in Venture Private Equity Funds funded by SSBCI shall comply with all federal requirements for SSBCI Equity/Venture Capital Programs, including but not limited to:

- Meet the definition of venture capital fund as defined by the U.S. Securities Exchange Commission
- Secure a 1:1 private financing ratio
- Expect a 10:1 private financing ratio over a ten (10) year horizon
- Total transaction (including investment rounds) cannot exceed \$20 million
- SSBCI investment must be held in a separate fund or otherwise separately accounted for
- Certification from investees that use of investment proceeds is for permissible business purposes
- Adherence to Equity/Venture Capital Program Conflict-of-Interest Standards
- Equity/Venture Capital Program Certification Relating to Sex Offenses

- Equity/Venture Capital Program Certification Relating to Services to Portfolio Companies

Proposals seeking investment from the State’s SSBCI award must meet definitions specified in the SSBCI Capital Program Guidelines for qualifying Equity/Venture Capital Program investments including SEDI and VSB investments, and must meet all SSBCI certification, reporting and compliance requirements as outlined in the SSBCI Capital Program Policy Guidelines.<sup>1</sup>

## **H. Regulatory Compliance**

Venture Private Equity Funds and respective fund managers must comply with all relevant State and federal regulations, including but not limited to registration with the Securities and Exchange Commission when required.

## **I. Key Terms**

Legal documents shall incorporate terms no less favorable than with the Institutional Limited Partners Association (“ILPA”) standard terms, including, but not limited to:

- Target fund size, fund term and commitment period;
- General Partner commitment;
- Organizational and annual fund expense cap;
- Key person clause;
- Standard of care provision;
- General Partner removal for cause;
- Annual audited financial statements within 120 days of each fiscal year;
- ILPA portfolio company and diversity metrics template reporting;
- Limited Partnership Advisory Committee representation;
- Conflict of Interest policy;
- Fund portfolio valuation methodology;
- Indemnification provisions, to the extent permitted by law;
- No fault provisions for dissolution of the investment fund;
- Governing law and venue provisions.

All legal documents shall further provide that NMFA has all available remedies available at law or in equity.

## **J. Cash Management**

NMFA staff manages Fund cash reserves in according with the separate NMFA Investment Policy. Cash distributions received are held in the Fund.

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<sup>1</sup> For additional definitions and requirements: [SSBCI at the US Department of Treasury](#)

## **IX. MONITORING AND REPORTING**

Venture Private Equity Funds shall submit periodic financial statements and reports to NMFA staff and investment consultant(s) including but not limited to:

- Complete financial statements on a quarterly basis;
- Quarterly investment performance report, including list of portfolio companies and narrative on company financial performance and economic impacts;
- Quarterly market outlook for the investment strategy or business;
- Quarterly capital calls, distributions and all fees and expenses charged to the Fund;
- Annual economic impact reporting including data on new business creation; job creation; job quality; payroll/average salaries; number of companies funded; locations of companies funded; number of companies owned by entrepreneurs representing Underserved Communities; number of sectors invested; and number of companies benefiting Underserved Communities and measures of those benefits
- Annual audits;
- Annual compliance reports submitted to relevant regulatory bodies;
- Annual certification attesting that each investment in New Mexico Businesses meets the definition of New Mexico Business as specified in the Venture Capital Program Act Section 6-33-2;
- Annual certification of all representations, warranties, and covenants; and any other information the NMFA reasonably requests.

Investments funded by SSBCI proceeds are subject to additional quarterly and annual SSBCI reporting requirements for Equity/Venture Capital Programs. NMFA reserves the right to request additional information for monitoring and reporting purposes.

NMFA staff and investment consultant(s) will review all monitoring information, conduct periodic monitoring meetings and may attend annual general and Advisory Committee meetings. Staff and investment consultant(s) will prepare Fund portfolio risk and performance reports on a quarterly and annual basis for review by NMFA staff, the Venture Capital Investment Committee, the Economic Development Committee, the NMFA Board and interim committees of the New Mexico State Legislature. Fund reporting by NMFA includes but is not limited to:

- Amounts committed to and invested by each Venture Private Equity Fund;
- Objectives of each Venture Private Equity Fund;
- Portfolio companies of each Venture Private Equity Fund including description of business, industry classification (two-digit and six-digit NAICS codes), company headquarters and location(s) both in and out of state;
- Economic impact of each Venture Private Equity Fund including projected and realized job creation, payroll/average salaries; total investment in Underserved Communities; and total investment in businesses owned by representatives of Underserved Communities

**X. REFERENCES**

- NMSA 1978, Section 6-33-1 *et seq.*