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OFFICE OF ADMINISTRATIVE RULES
OKLAHOMA SECRETARY OF STATE
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TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 160. INVEST IN OKLAHOMA ACT

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- 150:160-1-1. Purpose and authority [NEW]
- 150:160-1-2. Definitions [NEW]
- 150:160-1-3. Qualifying firms [NEW]
- 150:160-1-4. Applications, renewal, and removal from program [NEW]
- 150:160-1-5. Participating public entities [NEW]
- 150:160-1-6. Sharing of information [NEW]
- 150:160-1-7. Requests for additional information [NEW]

AUTHORITY:

62 O.S. §2403; Oklahoma Department of Commerce

ADOPTION:

November 23, 2021

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2022, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

This rule is necessary because a compelling public interest requires an emergency rule and imminent peril exists to the preservation of public welfare. Adoption of these rules provides the mechanism for private equity funds, venture capital funds and growth funds to apply the Oklahoma Department of Commerce for inclusion as a participating venture capital and growth fund for purposes of the Invest in Oklahoma Act. This would help populate a list of available venture capital and growth funds in which public entities are encouraged to invest. As this is a new program, if these emergency rules were not enacted, neither public entities nor venture capital and growth funds could take advantage of this new statutory program until permanent rules were enacted in the Spring of 2022.

GIST/ANALYSIS:

This action establishes the application process for the Invest in Oklahoma Act located at 62 O.S. §2400 et. seq. It also clarifies criteria for participation in the program.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

150:160-1-1. Purpose and Authority

These rules implement the Invest in Oklahoma Act as set forth in Section 2400 et. seq. of Title 62 of the Oklahoma Statutes.

150:160-1-2. Definitions

The following words and terms, when used in this chapter, shall have the following meaning, unless context clearly indicates otherwise:

"Department" means the Oklahoma Department of Commerce.

"Firm" means the legal entity charged with management of the private equity fund, venture capital fund, or growth fund.

"Fund" means a private equity fund, venture capital fund or growth fund.

"Oklahoma based" means that the Fund or other business entity maintains their principal physical place of business in the State of Oklahoma.

"Principal place of business" means the place where a company's officers direct, control and coordinate the business's activities.

"Principal" means any person employed by the Fund responsible for making decisions about investments for the Firm, regardless of their job title.

"Program" means the Invest in Oklahoma Program.

"Public entity" means a public entity listed in section 2402 of Title 62 of the Oklahoma Statutes.

"Substantial investments in this state" means that the Fund has invested at least One Million Dollars (\$1,000,000) in Oklahoma based businesses over the three (3) years prior to application and is committed to invest at least ten percent (10%) of any funds received by one of the Public Entities in an Oklahoma Based business.

"Venture capital fund" means as defined in paragraph (a) of section 275.203(I) of Title 17 of the Code of Federal Regulations.

150:160-1-3. Qualifying firms

(a) To qualify to participate in the Program, a Firm must meet all of the following criteria at the time the application is received by the Department:

(1) An internal rate of return, including realized and unrealized gains, for the Firm's portfolio over the last since inception which is the greater of either:

(A) One-third (1/3) of the annual rate of return for venture capital firms as reported by Pitchbook Data, Inc., or

(B) Five percent (5%).

(2) The Firm managing the Fund will have been active for at least one full year prior to application.

(3) The Firm managing the Fund will have at least Five Million Dollars (\$5,000,000.00) in assets under management over the most recent year prior to application.

(4) Principals or Limited Partners associated with the Firm cannot have ever been convicted of or received a deferred sentence for the following:

(A) Any felony offense.

(B) Any misdemeanor offense involving a financial related crime.

(5) The Firm will commit to investing at least ten percent (10%) of any investment they receive from a Public Entity in Oklahoma Based businesses.

(6) A Firm participating in the program may charge no more than 2.5% of its capital as a management fee and may collect no more than 30% of carried interest.

(7) Principals affiliated with the Firm will have a minimum of five (5) years of experience in one of the following areas:

(A) Institutional Investment,

(B) Executive level management, or

(C) Investment Banking.

(b) In addition to the criteria set forth above, a Firm which is not Oklahoma Based may only participate if the Firm has made Substantial Investments in this State.

150:160-1-4. Application, renewal, and removal from program

(a) A Firm who wishes to participate in the Program will apply to the Department for participation using a form created by the Department.

(b) The application will mandate that the Firm provide all of the following information:

(1) Documentation concerning the rate of return for the Firm's portfolio from at least the most recent full calendar year to the time of application.

(2) Documentation establishing the Firm's years of operation.

(3) Documentation establishing the amount of assets under management by the Firm from at least the most recent full calendar year to the time of application.

(4) Documentation concerning the differentiation and sustainability of investment strategy.

(5) Documentation establishing that a Firm who is Oklahoma-based meets the definition of an Oklahoma-based Firm.

(6) Documentation of the Firm's fee structure.

(7) Documentation establishing the experience of Principals associated with the Firm.

(8) Other documentation requested by the Department.

(c) Incomplete or improperly completed applications may be returned to the Firm without further consideration.

(d) Firms approved for participation in the Program may be approved for three (3) years.

(e) Renewal of program participation

(1) If a Firm which is participating in the Program seeks to continue in the Program after their approval period expires, the Firm will complete a renewal application and submit the same to the Department along with all documentation requested by the Department.

(2) The Department may provide a simplified renewal application for participation if it is deemed by the Department to be sufficient to determine the Fund meets program criteria.

(3) A Firm who applies for renewal must submit proof that it has invested at least ten percent (10%) of the amount received from a Public Entity in an Oklahoma Based business along with the renewal application. If a Firm cannot provide this information, it will not be renewed.

(3) If a Firm is approved for participation in the Program, the decision as to the length of its participation or renewal will be made in the sole discretion of the Department.

(4) If a Firm is not renewed for participation in the program, the Department will notify each Public Entity that

the Firm has been removed from the program for failure to renew participation.

(f) Suspension and Removal of a Firm from the Program.

(1) The Department may suspend a Firm from participation in the Program at any time for any of the following reasons:

(A) If the Department reasonably believes the Firm is not being appropriately managed and invested.

(B) If an event occurs that, had it happened prior to the Firm's application, the Firm would have not been allowed to participate in the program.

(2) If the Department suspends a Firm from the Program, the Department will notify the Firm of the suspension within five (5) business days and will also notify each Public Entity that the Firm has been suspended from the Program.

(3) A Firm who is suspended from the Program may request an administrative hearing pursuant to the provisions regarding Individual Proceedings found in 150:1-11-1 et. seq. of the Department's General Rules of Practice and Procedures. If a hearing is held, each Public Entity will be notified of the result of the administrative hearing within a reasonable time.

(4) If the Firm does not prevail at the hearing, or if they do not timely request a hearing, they may be removed from participation in the Program and each Public Entity will be notified of the removal.

(5) Firms who are removed from the program may be disqualified from future participation by the Department either permanently or for a number of years if the Department believes that it is in the best interest of the State to do so.

150:160-1-5. Participating public entities

(a) Public Entities who are considering investing under the act should not rely, either solely or in part, on the fact that a Firm has been approved for participation in making investment decisions.

(b) Because the needs of each Public Entity may be different, each Public Entity should do their own due diligence before investing in a participating Firm.

(c) By allowing a Firm to participate, the Department does not make any representation as to the performance or viability of any Fund or Firm. Public entities who choose to participate do so at their own risk after performing their own due diligence

and make decisions in accord with their fiduciary duties to their clients.

150:160-1-6. Sharing of information

The Department of Commerce will maintain a list of Firms who have been approved for participation in the Program. This list, along with a brief description of the Fund and contact information for the Firm may be shared with Public Entities upon request, and/or shared publicly on the website of the Department of Commerce.

150:160-1-7. Requests for additional information

The Department may request additional information from a Firm as deemed reasonably necessary by the Department at any time. Failure to provide such information within a time period set forth by the Department will be grounds for immediate suspension from the Program.

ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of new Chapter 160, Invest in Oklahoma Act, which was adopted by The Oklahoma Department of Commerce on November 23, 2021 under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et. seq.

I, the undersigned, do hereby attest that such rules were adopted in substantial compliance with the Administrative Procedures Act.



B. Joshua McGoldrick, Attestation Officer
General Counsel and Chief of Staff
Oklahoma Department of Commerce
December 15, 2021