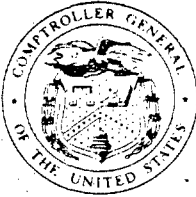


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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

ADDRESSEE ↑

FILE: B-197439

DATE: July 29, 1980

MATTER OF: Authority of SBA to leverage against Minority Business Resource Center investments in minority enterprise small business companies

DIGEST:

The Small Business Administration (SBA) does not have authority to "leverage against" (partially match) funds invested by the Federal Railroad Administration in minority enterprise small business investment companies (MESBICs) because, generally, SBA may only leverage against investments made by private sources in MESBICs.

AGIC 0002

During a review of a Federal Railroad Administration program by the General Accounting Office (see GAO Report CED-80-55, Feb. 1, 1980), a question arose concerning the Small Business Administration's (SBA's) practice of partially matching investments of other Federal agencies in minority enterprise small business investment companies (MESBICs). SBA's matching is accomplished through a process known as "leveraging." Leveraging means investing in MESBICs (or other small business investment companies) through the purchase or guarantee of debentures, or through the purchase of preferred securities. 13 C.F.R. §107.3.

SBA sometimes bases its investments in MESBICs on the amount of Federal funds invested by other agencies-- i.e., it leverages against (partially matches) investments made by other Federal agencies. One of the agencies that invests Federal funds in MESBICs is the Minority Business Resource Center, established within the Federal Railroad Administration pursuant to 49 U.S.C. §1657a. The Minority Business Resource Center is authorized to invest money (called venture capital) to enable minority businessmen to take advantage of business opportunities related to maintenance and improvement of railroads. 49 U.S.C. §1657a(c)(6). The Center has been investing in MESBICs based on this authority, and SBA has agreed to leverage against (partially match) these investments.

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[SBA's Practice of Matching INVESTMENTS
of FEDERAL AGENCIES IN MINORITY
ENTERPRISE]

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[The question is whether SBA has authority to leverage against investments by Federal agencies. We think not, unless a statute specifically authorizes it in particular cases.]

The law that authorizes SBA to leverage investments in MESBICs only authorizes leveraging against private money. Section 303(c)(2)(iii) of the Small Business Act, as amended, 15 U.S.C. §683(c)(2) (iii), authorizes SBA to purchase or guarantee debentures in MESBICs, provided:

" * * * the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than \$500,000 shall not exceed 300 per centum of its combined private paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of \$500,000 or more, 400 per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities." (Emphasis added.)

Since the Minority Business Resource Center is clearly a Federal entity, its contributions to MESBICs are not private capital or surplus and the above quoted provision does not authorize SBA to leverage against them. We are aware of nothing in the law or legislative history that suggests otherwise.

According to a letter from SBA's General Counsel, 13 C.F.R. §107.101(d)(2), quoted below, authorizes SBA to leverage against the Center's investments in MESBICs:


"Nonprivate funds for licensees.
(i) A Licensee [MESBIC] may include nonprivate funds (e.g., funds granted under Title VII of the Community Services Act of 1974, as amended) in its Private Capital for purposes of sections 302(a), 303(c), and 306 of the

Act: Provided, however, That the minimum capital of \$150,000 (\$500,000 on or after October 1, 1979) specified by section 302(a)(1) of the Act may not include nonprivate funds and that for Leverage purposes nonprivate funds will be included in Private Capital only to the extent that private funds totaling at least ten percent of the nonprivate funds are also included."

"Nonprivate funds" are defined in the regulations as including funds derived from the Federal Government. See 13 C.F.R. §107.101(d)(2) (ii), which provides:

"(ii) For purposes of this paragraph (d)(2), 'nonprivate funds' shall mean funds obtained, directly or indirectly, from another agency or department of the Federal Government or from any State or subdivision thereof, except as limited by Pub. L. 92-512 (commonly known as the General Revenue Sharing Act) and regulations of the Treasury Department, 31 CFR Part 51."

The regulation thus specifically allows Federal funds to be included as "private" funds in determining SBA's investment. The Small Business Act, however, provides no basis for treating Federal funds as "private" funds for leveraging purposes. Accordingly, the legal authority for such a result must be found elsewhere. The Community Services Act, cited in the above SBA regulation, does specifically authorize money invested in MESBICs to be considered private money. See 42 U.S.C. §2985a (a)(1) (1976). By the same token, the inclusion of this specific authority in the Community Services Act, which was added in 1975, tends to confirm that Federal funds cannot generally be considered to be private for purposes of SBA leveraging. Absent a provision like 42 U.S.C. §2985a(a)(1), therefore, we see no legal basis for SBA to leverage against Federal funds invested in MESBICs.


Luther B. Atwater
Comptroller General
of the United States