



## MEMORANDUM OF INSTRUCTIONS

### SBIC DRAW REQUEST AGAINST SBA'S LEVERAGE COMMITMENT

This Memorandum of Instructions provides the information necessary for a Small Business Investment Company (SBIC) to submit a request to draw against SBA's commitment to guarantee debenture leverage ("Leverage"). All forms and documents described below (the "Draw Request") must be received by SBA before the specified times and deadlines in order for SBA to process the SBIC's request to take down funds in connection with the SBIC's issuance of SBA-guaranteed debentures ("Debentures").

**All Draw Requests remain subject to the Small Business Investment Act of 1958, as amended, and the regulations promulgated thereunder, including, but not limited to, 13 CFR §107.1230.**

#### Submitting the Draw Request

An SBIC requesting a draw against SBA's commitment **must** submit the Draw Request in PDF format to the e-mail addresses below:

[Lyn.Womack@sba.gov](mailto:Lyn.Womack@sba.gov)

[SBICFunding@sba.gov](mailto:SBICFunding@sba.gov)

SBA also recommends that the SBIC copy its Financial Analyst.

#### Draw Request Deadlines

Draw Requests may be submitted at any time but are processed only twice a month. The cutoff deadline for submitting a Draw Request is 10:30 AM Eastern Time (ET) on the first and third Wednesdays of each month (each, a "Cutoff Date"). Draw Requests received after a Cutoff Date will be processed in the next funding cycle. Therefore, SBICs should submit Draw Requests as early as possible and not wait until the deadline on the Cutoff Date to submit a Draw Request. SBA may alter these Cutoff Dates from time to time to accommodate holidays and/or other situations that require flexibility. SBA will provide advance notice by email to SBICs of any changes to Cutoff Dates and deadlines.

#### Draw Request Approval & Funding Process

If your Draw Request is approved, SBA will e-mail you a separate "Approval Notice" for each approved takedown by 5:00PM ET on the Wednesday following the Cutoff Date.

To take down funds, you must complete Section II of the *Approval Notice* and email a PDF of the entire document to The Bank of New York Mellon at the email address indicated in the Approval

Notice. Completed *Approval Notices* received by The Bank of New York Mellon before 2:00 PM ET will be funded by close of business on the next business day.

*Approval Notices* expire 58 days from the approval date. If you do not request a takedown of funds under an approved Draw Request before the Approval Notice expires, you may submit another Draw Request for those funds as long as SBA's commitment to guarantee those funds has not expired. There are no penalties or extra charges if you do not take down funds approved under an Approval Notice.

## Important Points

Please keep in mind when submitting a Draw Request and taking down Leverage:

- Under each Draw Request you may request a maximum of five (5) Debentures.
- SBA will send you one *Approval Notice* for each approved Debenture. Only one Debenture is permitted per *Approval Notice*.
- Debentures may only be prepaid in full. No partial prepayments are allowed, so choose the amount of each Debenture with that in mind.
- Debentures must be in a minimum dollar amount of \$5,000 and in all cases, the amount of each Debenture must be in increments of \$5,000.
- There is no sequence in which the *Approval Notices* must be used. You may use them in any order that you deem appropriate.
- The term of any *Approval Notice* issued will never extend beyond the stated expiration date of the underlying commitment and, in the event of any conflict between the expiration date of the *Approval Notice* and the underlying commitment, the earlier expiration date will control.
- The amount taken down under an *Approval Notice* can be less than, but not greater than, the maximum amount approved for:
  - Standard Debenture, stated as the approved "Maximum Guaranteed Disbursement" amount;
  - LMI Debenture, stated as the approved "Maximum Face Amount of LMI Debenture";
  - Energy Saving Debenture, stated as the approved "Maximum Face Amount of Energy Saving Debenture".
- The maximum amount of Leverage commitments or draws that an SBIC may have outstanding at any time may not exceed the number of tiers of Leverage the SBIC was licensed, or otherwise approved by SBA under 13 CFR §107.1150, to issue (e.g., if licensed to draw 1.5 tiers of Leverage, an SBIC may not have Leverage commitments in an amount greater than 150% of Regulatory Capital or draws outstanding in an amount greater than 150% of Leverageable Capital). This maximum does not apply to SBICs limited to less than two tiers of Leverage solely by reason of having Regulatory Capital exceeding half of the maximum amount of Leverage permitted under Section 303(b) of the Act (i.e., as of the date hereof, greater than \$87.5 million in Regulatory Capital).
- A file size exceeding 10MB may result in SBA's server rejecting the e-mail. If your file size is larger than 10MB, break the Draw Request into smaller parts and e-mail the parts individually.

## Draw Request Documentation to be Submitted

The Summary section below lists the supporting documentation you must submit with your Draw Request. The next section provides detailed instructions regarding the submission of various SBA forms, documents, and certifications an SBIC must provide. Electronic or scanned handwritten signatures are acceptable for the certifications; however, **you must digitally sign the Leverage Security Instruments** as detailed below.

### Summary

**A. Required Documentation for All Debenture Draw Requests.** SBICs must submit the following documentation with a Draw Request, regardless of the type of Leverage being requested:

1. Leverage Security Instrument(s) - specific to the type of Debenture Leverage requested
2. SBA Form 468 certifications
3. Statement of Compliance
4. Statement of Need
5. Opinion of counsel – specific to the type of Debenture Leverage requested
6. Smaller Business Financing Certification

**B. Required Certifications for Non-Standard Debentures.** In addition to the documents noted above, SBICs applying for LMI or Energy Saving Debentures must also provide the following certifications, as appropriate:

1. LMI Debentures - Certification of actual and expected LMI investments
2. Energy Saving Debentures (only SBICs licensed after September 30, 2008 are eligible) - Certification of actual and expected Energy Saving Qualified Investments

**C. Other Required Certifications Based on Circumstance.** Under the following circumstances, SBA requires the additional documents specified below.

<b>Circumstance</b>	<b>Certification</b>
If you and any other Licensees are under Common Control and this Draw Request will cause all Licensees under Common Control to have aggregate outstanding Leverage in excess of \$175 million.	<u>Condition of Capital Impairment Certification</u> from Licensees under Common Control as required by 13 CFR §107.1120(d) and §107.1150(b)
If the aggregate Leverage (outstanding and committed) would exceed \$175 million for commonly controlled SBICs.	<u>Co-investment Certification</u> for subsequent SBICs per SBA SOP 10 04 01, Processing Applications for SBIC Licenses (Aug. 6, 2014).
If Leverageable Capital has recently increased to be eligible for the additional Leverage requested.	<u>Capital Certificate and Bank Letter for Changes in Leverageable Capital</u> ( <b>due one week prior to Draw Request submission, if applicable</b> ).

## Detailed Instructions

**A. All Draw Requests.** SBICs must submit the following documentation with a Draw Request, regardless of the type of Leverage being requested:

### 1. Leverage Security Instruments

The appropriate form of Debenture listed below must be used for each type of Debenture requested. You may click on the links provided to obtain the form or you can go to [SBA's website](#) and locate the appropriate Debenture.

- a. Standard Debenture,  
[SBA Form 444C: Debenture Certification Form](#)
- b. LMI Debenture, 5-Year,  
[SBA Form 2163: 5-Yr LMI Debenture Certification Form](#)
- c. LMI Debenture, 10-Year,  
[SBA Form 2162: 10-Yr LMI Debenture Certification Form](#)
- d. Energy Saving Debenture, 5-Year,  
[SBA Form 2434: 5-Yr Energy Saving Debenture Certification](#)
- e. Energy Saving Debenture, 10-Year,  
[SBA Form 2433: 10-Yr Energy Saving Debenture Certification](#)

Download the appropriate form and complete the signature block appropriate for your type of entity. (Conform this block as necessary if you are a limited liability company.) Include in your Draw Request one (1) Debenture with the signature block fully executed for each Debenture you expect to issue.

**Signatures must only be electronic signatures.** Examples of acceptable forms of electronic signature include Adobe certificate-based digital signature and DocuSign. **Handwritten signatures will not be accepted.** (If you would like to use a different signature program, please submit a request to [SBICFunding@sba.gov](mailto:SBICFunding@sba.gov) for review and approval.)

### **DO NOT COMPLETE ANY OTHER PORTION OF THE DEBENTURE.**

For Standard Debentures, you will receive a copy of the Debenture with the long-term features filled-in after the Debenture is placed in the long-term pool. More information on the funding mechanism for Standard Debentures may be found in [Funding the SBIC Program](#). Unlike the Standard Debentures, LMI Debentures and Energy Saving Debentures will not be pooled. The Federal Home Loan Bank of Chicago (FHLBC) has agreed to purchase these Debentures and hold to maturity.

If you are applying for one or more LMI or Energy Saving Debentures, SBA strongly recommends that you use the “[Debenture Calculator](#)” to help you determine the face amount you should request in order to obtain actual proceeds in an amount commensurate with your stated need. [The Debenture Calculator](#) is a computer program provided by FHLBC that calculates the net proceeds to be generated from

specific Debenture face amounts, based upon then-current interest rates plus applicable fees.

## **2. Amount of Debenture Funding Requested**

Include a separate, single-page enclosure entitled “AMOUNT OF DEBENTURE FUNDING REQUESTED” with a list of:

- a. the number of Debentures you wish to issue (a limit of 5 per Draw Request);
- b. the dollar amount of each Debenture (in increments of \$5,000); and
- c. the type(s) of Debentures requested (Standard; LMI 5-year or 10-year; Energy Saving 5-year or 10-year).

## **3. SBA Form 468 and Statement of No Material Adverse Change**

You must submit a certification that you have filed your Form 468 in the SBIC-WEB system and that there has been no material adverse change in your financial position since that submission. (Do not provide a copy of the Form 468 with the Draw Request.)

*“The undersigned Licensee does hereby certify with the understanding that any Leverage issued by SBA will be issued in reliance upon such certification that:*

- a. *On [insert date], Licensee filed Form 468 for the period ended [insert date] in the SBIC-WEB system; and*
- b. *there has been no material adverse change in the Licensee’s financial position since the date of that submission.”*

In accordance with §107.1220, Licensees with outstanding Leverage commitments are required to file a financial statement on SBA Form 468 (Short Form) reflecting the Licensee’s financial condition as of the close of each fiscal quarter. This statement is required to be filed in the SBIC-WEB system within 30 days after the end of each of your first three fiscal quarters. If you are submitting a Draw Request more than 30 days after the end of your fiscal year, but before the due date of your annual audited SBA Form 468, you must file an unaudited Short Form SBA Form 468 (select the Q4 quarterly filing option) as of your fiscal year end through the SBIC-WEB system.

## **4. Statement of Compliance**

You must submit a certified statement in the following form:

*“Except as SBA has informed us, and except as stated below, to the best of our knowledge and belief we are in compliance with all provisions of the Small Business Investment Act of 1958, as amended, and SBA Regulations: [Insert “None” or give an explanation.]”*

## **5. Statement of Need**

If your Draw Request is needed to fund investments in small concerns, list:

- a. the name and address of the Small Business(es),
- b. the amount of the Licensee's proposed financing,
- c. the nature of financing (initial or follow-on),

- d. the type of financing (Loan, Debt Security or Equity),
- e. the scheduled closing date, and
- f. the type of Debenture (Standard; LMI 5-year or 10-year; Energy Saving 5-year or 10-year).

If you are applying to issue an LMI Debenture, indicate if the financing qualifies as an LMI Investment.

If you are applying to issue an Energy Saving Debenture, indicate if the financing is a Qualified Energy Saving Investment.

SBA understands that you cannot predict with certainty which specific financings will close in the next eight weeks. Therefore, the aggregate amount shown on your Statement of Need may exceed the amount you are requesting under your Draw Request.

If the proceeds of this draw are needed for liquidity (i.e. capital to be used for expenses), so state and indicate the current balance of funds available to the SBIC, including checking account balances and any idle funds maintained.

Include a cash reconciliation showing your current cash balance, the changes to your cash balance since the date of your last filed SBA Form 468, and all projected cash inflow and outflows over the next 45-60 days. Generally, SBA will not approve a Draw Request where an SBIC's projected cash balance exceeds \$1 million or where proceeds from the Draw Request will pay for more than one calendar quarter of management fee expense.

## **6. Opinion of Counsel**

In connection with each Draw Request, SBA requires you to submit a new executed legal opinion. SBA has prepared a model form of opinion of counsel for each type of Debenture. Copies of the model opinions can be obtained by clicking on the links below or from [SBA's Office of Investment & Innovation web page](#).

- a. Standard Debenture.  
[SBA Form 27b Debenture Opinion of Counsel](#)
- b. LMI Debenture.  
[SBA Form 27c LMI Debenture Opinion of Counsel](#)
- c. Energy Saving Debenture.  
[SBA Form 27f Energy Saving Debenture Opinion of Counsel](#)

### Required Prior Approval by SBA's Office of General Counsel

Please note that if your form of legal opinion has not already been approved by SBA's Office of General Counsel, your counsel must provide that form to the SBIC's assigned SBA Financial Analyst at least seven days in advance of submitting a Draw Request to give SBA sufficient time to review the form of opinion and determine if it is acceptable to SBA.

A legal opinion based on a previously approved form of opinion must also be

reviewed and approved by SBA's Office of General Counsel if the legal opinion has substantively changed – i.e., any change other than a change in date of the opinion – from the previously approved form. **Note that a change in the law firm rendering the draw opinion constitutes a material change in the opinion that must be reviewed and formally approved in advance by SBA's Office of General Counsel.**

An SBIC seeking SBA approval of a legal opinion for Draw Requests may submit the legal opinion in electronic format to its Financial Analyst at SBA. Please indicate whether this is a submission of a form of legal opinion that fully conforms with one of SBA's model opinions (SBA Forms 27b, 27c, or 27f) (a "conforming opinion") or is a submission of a form that does not fully conform (a "nonconforming opinion"). With the form of opinion, you must also include a marked (or blacklined) version to show all changes from the SBA model form of opinion.

If there is any question as to whether SBA has already approved your counsel's form of legal opinion, please contact your Financial Analyst.

#### Approved Legal Opinion

If your counsel's form of legal opinion has been approved by SBA, you do not need to submit a form of that opinion to SBA for review with each Draw Request, provided that your counsel submits an executed opinion in substantially the same form with each Draw Request. SBA requires each legal opinion as part of a Draw Request to be submitted along with a marked version to show all changes from the SBA-approved form of opinion. Please make sure that you direct your legal counsel to submit the marked (or blacklined) version to show all changes. The failure to submit marked opinions may delay approval of your Draw Request. Legal opinions, in PDF format, in support of a Draw Request should be e-mailed to:

[Lyn.Womack@sba.gov](mailto:Lyn.Womack@sba.gov)

[SBICFunding@sba.gov](mailto:SBICFunding@sba.gov)

SBA also recommends that the SBIC's Financial Analyst be copied on the submission.

If you have any questions concerning these procedures, please contact your Financial Analyst.

### **7. Smaller Business Financing Certification**

You must submit the following certified statement:

*"The undersigned Licensee does hereby certify with the understanding that any Leverage issued by SBA will be issued in reliance upon such certification that not less than 25 percent of the aggregate dollar amount of the financings of the Licensee will be provided to Smaller Enterprises (as defined in 13 CFR §107.50)."*

**B. Required Certifications for Non-Standard Debentures.** In addition to the documentation noted above, SBICs applying for LMI or Energy Saving Debentures must also provide the following certifications, as appropriate:

#### **1. Debenture Certifications Required to issue LMI Debentures**

If you are applying for one or more LMI Debentures, you must submit the following certified statement:

*“The undersigned Licensee does hereby certify with the understanding that any Leverage issued by SBA will be issued in reliance upon such certification that:*

- a. *the Licensee’s outstanding LMI Investments, and their respective investment costs, are as follows: [insert names and addresses of businesses and cost of investments]; and*
- b. *the Licensee intends to make the following LMI Investment(s): [insert names and addresses of businesses and dollar amount(s) of planned investment].”*

The above certified statement must contain the name of the Licensee and must be signed and dated by an authorized official of the Licensee.

## **2. Debenture Certifications Required to issue Energy Saving Debentures**

If you were licensed after September 30, 2008, and you are applying for one or more Energy Saving Debentures, you must submit the following certified statement:

*“The undersigned Licensee does hereby certify with the understanding that any Leverage issued by SBA will be issued in reliance upon such certification that:*

- a. *the Licensee’s outstanding Energy Saving Qualified Investments, and their respective investment costs, are as follows: [insert names and addresses of businesses and cost of investments]; and,*
- b. *the Licensee intends to make the following Energy Saving Qualified Investment(s): [insert names and addresses of businesses and dollar amount(s) of planned investment].”*

The above certified statement must contain the name of the Licensee and must be signed and dated by an authorized official of the Licensee.

**C. Other Required Certifications Based on Circumstance.** In addition to the documentation noted above, SBICs under certain circumstances below must also provide the following certifications, as appropriate:

### **1. Certification Regarding Conditions of Capital Impairment for SBICs under Common Control** (as defined under 13 CFR §107.50)

If you and any other Licensees are under Common Control, and this Draw Request will cause all Licensees under Common Control to have aggregate outstanding Leverage in excess of \$175 million, the Licensee applying for one or more Debentures under this Draw Request AND each Licensee under Common Control must submit the following certified statement:

*“The undersigned Licensee does hereby certify with the understanding that any Leverage issued by SBA will be issued in reliance upon such certification that, pursuant to 13 CFR §107.1120(d) and §107.1150(b), neither the Licensee nor any other Licensee under Common Control with the Licensee has a condition of*

***Capital Impairment, as defined under 13 CFR §107.1830(c).”***

The above certified statement must contain the name of the Licensee, must be signed and dated by an authorized official of the Licensee, and must be completed by each Licensee under Common Control.

**2. Certification Regarding Co-investments For Subsequent SBICs under Common Control** (as defined under 13 CFR §107.50) and per SBA SOP 10 04 01, *Processing Applications for SBIC Licenses* (Aug. 6, 2014).

If you and any other Licensee(s) under Common Control have aggregate Leverage (outstanding and committed) in excess of \$175 million and the Licensee is not a drop-down from the same parent as the SBIC(s) under Common Control, then co-investing is limited to 30% in aggregate dollar amount of Financings by the SBIC. If aggregate Leverage (outstanding and committed) would exceed \$175 million and the subsequent fund is a drop-down from the same parent as the existing SBIC(s), then no co-investing is permitted. The Licensee’s requirement to comply with the 30% limitation must be achieved by the earlier-of either: 1) the end of the third year from the date of licensing; or 2) the time at which the subsequent SBIC has invested 60% of its Regulatory Capital plus assumed Leverage.

SBA originally established the co-investment limitation in its *Guidance on applying for an SBIC license for a subsequent fund* issued in June 2012. If you were licensed subsequent to June 2012 and are subject to the co-investment limitation, you must submit the applicable certification with each Draw Request:

Before the earlier of either: 1) the end of the third year from the date of licensing; or 2) the time at which the subsequent SBIC has invested 60% of its Regulatory Capital plus assumed Leverage:

***“The undersigned Licensee does hereby certify with the understanding that Leverage issued by SBA will be issued in reliance upon such certification that the percentage of co-investments with [Name of Licensee(s) under Common Control] will not exceed 30% in aggregate dollar amount of Financings by the Licensee.***

***The Licensee certifies that the amount of co-investing will not exceed 30% by the earlier of the end of the third year from date of licensing [Date of Licensing] or by the time Licensee has invested 60% of the sum of Regulatory Capital plus assumed Leverage.”***

After the earlier of either: 1) the end of the third year from the date of licensing; or 2) the time at which the subsequent SBIC has invested 60% of its Regulatory Capital plus assumed Leverage:

***“The undersigned Licensee does hereby certify with the understanding that Leverage issued by SBA will be issued in reliance upon such certification that the percentage of co-investments with [Name of Licensee(s) under Common Control] does not exceed 30% in aggregate dollar amount of Financings by the***

*Licensee.”*

The above certified statements must contain the name of the Licensee and must be signed and dated by an authorized official of the Licensee. Please include with this certification the referenced amounts and percentages of Regulatory Capital, Leverage, Financings, and co-investments among the Licensees under Common Control.

**3. Capital Certificate and Bank Letter for Changes in Leverageable Capital (Due no later than one week prior to Draw Request, if applicable)**

Often a Licensee will increase its Leverageable Capital immediately prior to a Draw Request in order to be eligible for a greater amount of SBA Leverage. In order to do so, a Licensee must file an updated Capital Certificate and provide a bank letter evidencing this increase in Leverageable Capital. To provide adequate time for SBA's data system to receive and update this information, Licensees are required to submit these documents in SBIC-WEB **at least one week** prior to the Cutoff Date for any Draw Request. Do not submit the updated Capital Certificate with the Draw Request.

If you have any questions concerning the preparation of the documents, please call your Financial Analyst.