



MEMORANDUM OF INSTRUCTIONS

SBIC DRAW REQUEST AGAINST SBA'S LEVERAGE COMMITMENT

This Memorandum of Instructions ("Memorandum") provides the information necessary for a Small Business Investment Company ("SBIC") to submit a request to draw against SBA's Leverage (as defined in 13 CFR § 107.50) commitment. All forms and documents described below (the "Draw Request") must be received by SBA before the specified times and deadlines set forth in this Memorandum 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 address below:

SBICFunding@sba.gov

SBA also recommends that the SBIC copy its Investment 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. 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.

Draw Request Approval and Funding Process

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

To take down funds, the SBIC must complete and properly execute 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 generally expire 58 days from the approval date. If the SBIC does not request a takedown of funds under an approved Draw Request at the time the *Approval Notice* expires, the SBIC may submit another Draw Request for those funds if SBA's commitment to guarantee those funds has not expired. There are no penalties or extra charges from SBA for unused and expired *Approval Notices*.

Fees and Interest Rates

Refer to the [Commitment Application Instructions](#) for an explanation of fees withheld from draw proceeds.

For Standard Debentures, a short term (interim) interest rate is charged prior to pooling and is calculated on an interpolated Federal Home Loan Bank of Chicago Advance Rate plus 41 basis points. At pooling, the rate converts to a long term (pooled) interest rate, which is set at the 10-year Treasury rate plus a spread that is based on market conditions.

If applying for one or more LMI or Energy Saving Debentures, SBA recommends that the SBIC use the FHLBC's [Debenture Calculator](#), which is an online tool 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.

Estimated current interest rates for Accrual Debentures are also available through FHLBC's [Debenture Calculator](#).

Additional Important Points

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

- Under each Draw Request, an SBIC may request a maximum of five (5) Debentures.
- SBA will issue one *Approval Notice* for each approved Debenture.
- The SBIC may request a maximum amount of each approved Debenture to meet its funding needs, but should consider these parameters:
 - 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.
 - Each Debenture must be drawn down against one commitment loan number. If an SBIC has multiple commitments, it should consider available balances under each commitment loan number when determining Debenture amounts.
 - Pooled Debentures may only be prepaid in full. Please refer to [Instructions for Prepayment of SBIC Pooled Debentures | U.S. Small Business Administration \(sba.gov\)](#)
 - For information on prepayment of non-pooled Debentures, please refer to the terms in the Debenture instrument.
- There is no sequence in which the *Approval Notices* must be used. SBICs may use *Approval Notices* in any order that they 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”; and
 - Accrual Debenture, stated as the approved “Maximum Face Amount of Debenture”.
- The maximum amount of Leverage that an SBIC may have outstanding at any time may not exceed the lesser of (a) SBIC’s Total Intended Leverage Commitment and (b) the maximum amounts permitted under Section 303(b) of the Act and 13 CFR § 107.1150. For Accrual SBICs, the maximum amount of Leverage **and unpaid accrued interest** that an SBIC may have outstanding at any time may not exceed the Individual Maximum specified under 13 CFR § 107.1150.
- It is the SBIC’s responsibility for ensuring that SBA receives draw application submissions by the application deadline. Receipt confirmation requests may be sent to SBICFunding@sba.gov.

Required Draw Request Documentation

The Summary section below lists the supporting documentation required in a Draw Request. The next section provides detailed instructions regarding the submission of various SBA forms, documents, and certifications an SBIC must provide. Only an authorized official of the SBIC (as described in 13 CFR 107.1230(d)(3)) may sign Draw Request documentation, and **all** signatures throughout the request must comply with the SBIC Signature Policy in SOP 10 10 0: Small Business Investment Companies (SBIC) Program. Multiple certifications may be aggregated and signed by an authorizing official of the SBIC; however, each Debenture form submitted must be individually signed.

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 requested
2. SBA Form 468 certifications
3. Statement of Compliance
4. Statement of Need
5. Opinion of Counsel – specific to the type of Debenture 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.

Circumstance	Certification
If this Draw Request will cause all Licensees under Common Control to have aggregate outstanding Leverage, (including accrued and unpaid interest for any Accrual Debentures), 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 outstanding Leverage and undrawn Leverage commitments exceeds or is expected to exceed \$175 million for commonly controlled SBICs.	<u>Co-investment Certification</u> for subsequent SBICs under Common Control.
If Leverageable Capital has recently increased to be eligible for the additional Leverage requested.	<u>Capital Certificate and Bank Letter</u> for changes in Leverageable Capital (due one week prior to Draw Request submission, if applicable).

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. An SBIC may click on the links provided to obtain the form or 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 Form](#)

- e. Energy Saving Debenture (10-Year),
[SBA Form 2433: 10-Yr Energy Saving Debenture Certification Form](#)
- f. Accrual Debenture,
[SBA Form 2536: 10-Yr Accrual Debenture Certification Form](#)

Download the appropriate form and complete the signature block appropriate for the correct type of entity. Include in the Draw Request one (1) Debenture with the signature block fully executed for each Debenture the SBIC expects to issue.

DO NOT COMPLETE ANY OTHER PORTION OF THE DEBENTURE.

For Standard Debentures, SBA will email the SBIC a copy of the Standard Debenture with the long-term features filled in after the Standard Debenture is pooled. More information on the funding mechanism for Standard Debentures may be found in [Funding the SBIC Program](#).

Unlike the Standard Debentures, Accrual 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.

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 to be issued by the SBIC (limited to 5 Debentures per Draw Request);
- b. The dollar amount of each Debenture (in increments of \$5,000) and the commitment loan number against which the Debenture will be issued; and
 - 1) LMI and Energy Savings: Face Amount of the Debenture
 - 2) Accrual: Principal Face Amount of the Debenture
 - 3) For help identifying commitment loan number(s), contact SBICFunding@sba.gov.
- c. The type(s) of Debentures requested (Standard; LMI 5-year or 10-year; Energy Saving 5-year or 10-year; Accrual).

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

The SBIC must submit a signed certification that the SBA Form 468 was filed in SBIC-WEB and that there has been no material adverse change in its financial position since that submission. (Do not provide a copy of the SBA 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 SBA Form 468 for the period ended [insert date] in SBIC-WEB; and***
- b. ***there has been no material adverse change in the Licensee's financial position since the date of that submission.***

In accordance with 13 CFR §107.1220, Leveraged Licensees are required to file a financial statement on SBA Form 468 reflecting the Licensee's financial condition as of the close of each fiscal quarter. This statement is required to be filed in SBIC-WEB within 45 days after the end of each of the SBIC's first three fiscal quarters. If the SBIC is newly licensed and has not yet filed its first SBA Form 468, the SBIC must file an interim SBA Form 468 prior to submitting its first Draw Request.

In accordance with 13 CFR § 107.1230(d)(2), if submitting a Draw Request more than 30 days after the end of the SBIC's fiscal year but before the due date of the annual audited SBA Form 468, the SBIC must file an unaudited **signed** SBA Form 468 (select the Annual Unaudited filing option) as of the SBIC's fiscal year end through SBIC-WEB.

4. Statement of Compliance

The SBIC must submit a signed 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.]”

This statement must be executed by an officer of the SBIC, an officer of the corporate general partners of the SBIC, or an individual who is authorized to act as or for a general partner of the SBIC.

5. Statement of Need with Cash Reconciliation

If the Draw Request is needed to fund investments in small concerns, or needed to repay a line of credit used to invest 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; Accrual).

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

If applying to issue an Energy Saving Debenture, indicate if the financing is a

Qualified Energy Saving Investment.

SBA understands that SBICs cannot predict with certainty which specific financings will close in the next eight weeks. Therefore, the aggregate amount shown on the Statement of Need may exceed the amount requested in the Draw Request. Indicate in the Statement of Need if the proceeds of the Draw Request are needed for liquidity (i.e. capital to be used for expenses). **Include a cash reconciliation** showing the SBIC's current cash balance, changes to the cash balance since the date of the most recently 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

SBA requires the submission of a new executed legal opinion supporting each Draw Request. SBA has prepared model forms of opinion of counsel for each type of Debenture. The opinions of counsel must be provided by independent counsel with no direct or indirect affiliation with the SBIC.

- 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](#)
- d. Accrual Debenture
[SBA Form 27A Accrual Debenture Opinion of Counsel](#)

Required Prior Approval by SBA's Office of General Counsel

Please note that if the SBIC's form of legal opinion has not already been approved by SBA's Office of General Counsel (OGC), the SBIC's counsel must provide that form to the SBIC's assigned SBA Investment Analyst at least five business 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.

OGC must also review and approve a previously approved form of opinion if the 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 and must be reviewed and formally approved in advance by OGC.**

An SBIC seeking SBA approval of a legal opinion for Draw Requests may submit the legal opinion in electronic format to its Investment Analyst at SBA. With the form of opinion, the SBIC 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 the SBIC's legal counsel's form of legal opinion, please contact the SBIC's Investment Analyst.

Approved Legal Opinion

If the SBIC counsel's form of legal opinion has been approved by SBA, executed opinions must be 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. SBICs should direct their legal counsel to submit the marked (or blacklined) version to show all changes. Signed legal opinions and associated blacklined versions in support of a Draw Request should be e-mailed by the SBIC's legal counsel directly to SBA at the following email address:

SBICFunding@sba.gov

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

7. Smaller Business Financing Certification

The SBIC must submit a signed certified statement in the following form:

"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 the SBIC is applying for one or more LMI Debentures, the SBIC must submit a signed certified statement in the following form:

"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]."***

2. Debenture Certifications Required to issue Energy Saving Debentures

If applying for one or more Energy Saving Debentures, the SBIC must submit a signed

certified statement in the following form:

“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].”***

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 the SBIC 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 (inclusive of accrued and unpaid interest with respect to any Accrual Debentures), 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).

If the SBIC and any other Licensee(s) under Common Control have or will 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 (cumulative financings since inception, inclusive of any exited or written off investments) 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.

Illustration of Co-Investment Compliance Determination

Determination Points for Compliance (earlier of #1 or #2)	
1) Based on invested capital	
Regulatory Capital	\$ 50,000,000
Assumed leverage (\$'s)	\$100,000,000
Total Capital	\$250,000,000
60% of Total Capital	\$150,000,000
2) Based on License date	
Third year anniversary of license	9/30/25
Co-investment Calculation	
Current co-investments	\$25,000,000
Current total investments	\$50,000,000
Current co-investment %	50%

If the SBIC is subject to the co-investment limitation upon licensing, the SBIC 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 with [Name of Licensee(s) under Common Control] will not exceed 30% in aggregate dollar amount of financings by the Licensee by the earlier of the end of the third year from [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. You may use the following template or another format to provide this information:

As of _____, the Licensee has \$ _____ in Regulatory Capital and \$ _____ in Assumed Leverage for a total of \$ _____. Therefore, the 30% co-investment threshold would be \$ _____ by the earlier of the end of the third year from date of licensing, _____, or by the time Licensee has invested 60% of the sum of Regulatory Capital plus Assumed Leverage. As of _____, the Licensee has made co-investments totaling \$ _____ out of a \$ _____ in aggregate dollar amount of financings, representing _____ % in co-investments to-date.

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

A Licensee may increase its Leverageable Capital immediately prior to a Draw Request in order to be eligible for a greater amount of SBA Leverage. In such instances, a Licensee must file an updated Capital Certificate and provide an acceptable 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.

Please direct any questions concerning the preparation of the documents to the SBIC’s Investment Analyst.