



**INVESTMENT DIVISION  
MEMORANDUM OF INSTRUCTIONS  
SBIC APPLICATION FOR DRAW AGAINST  
SBA'S LEVERAGE COMMITMENT**

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**INTRODUCTION**

This Memorandum of Instructions provides the information necessary for a small business investment company (SBIC) to request a draw against SBA's commitment to guarantee debenture leverage. Since the funding process is an expedited one, all steps must be completed by specific time deadlines in order for SBA to approve your request for funds.

An SBIC requesting a draw against SBA's commitment must submit the appropriate forms and documents described below (the Draw Request) by overnight courier to:

Johnny Kitts, Funding Control Officer  
Investment Division, 6<sup>th</sup> Floor  
U.S. Small Business Administration  
409 3rd Street, S.W.  
Washington, D.C. 20416.

Draw Requests may be submitted at any time, but are processed only twice a month. The cutoff time for processing a Draw Request is 10:30 AM on the first and third Wednesdays of each month. Any Draw Requests received after the 10:30 AM cutoff on Wednesday, will not be processed until the next funding cycle. Therefore, we suggest that you file your application early, and not wait until the Tuesday before the Wednesday cutoff date. Please note that Draw Requests are not always processed bi-weekly. The last week of any month that contains five Wednesdays is skipped and is not a part of any draw funding cycle.

SBA will take six days to review and process your Draw Request. If your Draw Request is approved, SBA will send you a separate "Approval Notice" for each approved takedown by 3:00 PM on the following Wednesday. These *Approval Notices* are always sent to you by SBA on the second and fourth Wednesday of each month.

To take down funds, you must complete Section II of the *Approval Notice* and fax the entire document to The Bank of New York Mellon by 2:00 PM on the day prior to your takedown. You should receive the funds by close of business on the day of your takedown.

The earliest you will be able to receive funds will be at the close of business on the Friday following your receipt of an *Approval Notice* from SBA. The latest you will be able to receive funds will be on the 58<sup>th</sup> day following your receipt of the *Approval Notice*. 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 due SBA if you fail to take

down funds approved under an *Approval Notice*.

Some important points to keep in mind when applying for a draw approval:

- **Under each Draw Request you may request multiple takedowns. However, there is a limit of 5 takedowns per each Draw Request. This limit is necessary to allow SBA to manage the accelerating volume of Draw Requests with limited staff resources.**
- You must submit one original SBA Form 444C Debenture (a “Standard Debenture”) or one original LMI Debenture for each expected takedown of debentures.
- SBA will send you one *Approval Notice* for each approved takedown. Only one takedown is permitted per *Approval Notice*.
- The amount taken down under an *Approval Notice* can be less than, but not greater than, the stated approved “Maximum Guaranteed Disbursement” amount for Standard Debentures or the “Maximum Face Amount of LMI Debenture” for LMI Debentures. In all cases, the amount taken down must be in an increment of \$5,000.
- There is no sequence in which the *Approval Notices* must be used. Rather, you should use them in the order that fits your needs best.
- **The term of any *Approval Notice* issued will never extend beyond the stated expiration date of the underlying commitment. The term of any *Approval Notice* will be reduced, if necessary, to conform to the term of the underlying SBA commitment.**

### DOCUMENTS TO BE SUBMITTED

You must submit the following documents in order for SBA to consider funding your Draw Request.

#### 1. Leverage Security Instruments

Standard Debenture and/or LMI Debenture. The appropriate form (i.e., Standard Debenture, 5-year LMI Debenture, 10-year LMI Debenture) should be obtained from the Investment Division’s web page, <http://www.sba.gov/inv>, click menu buttons in sequence - *For SBIC Licensees, SBIC Forms*, either: *Form 444c Debenture Certification Form*, *Form 2163 5-Yr LMI Debenture Certification Form*, or *Form 2162: 10-Yr LMI Debenture Certification Form*.

- Download the form and complete the signature block appropriate for your type of entity. (Conform this block as necessary if you are a limited liability company.)
- Forward one signed original to SBA for each takedown you expect to make under this Draw Request.
- DO NOT complete any other portions of the debenture.
- Include on a single-page separate enclosure entitled AMOUNT OF DEBENTURE FUNDING REQUESTED, the amount(s), each in an increment of \$5,000, and the type of debenture (standard, 5-year LMI, 10-year LMI) for each such requested amount, that you wish to takedown at this time. Please note that there is a 5 takedown limit per Draw Request.

After SBA's review and approval, a copy of each completed debenture will be provided to you when the debenture is purchased. For Standard Debentures, you will also receive a second copy of the debenture, with the long term features filled in, after the debenture is placed in the long term pool.

If you are applying for one or more LMI Debentures, we strongly recommend that you use the "LMI Debenture Calculator" to help you decide the face amount of LMI Debenture(s) you should request. The LMI Debenture Calculator is a computer program that calculates the net proceeds that different face amount of LMI Debentures would generate based on then current interest rates. It is provided by the Federal Home Loan Bank of Chicago (FHLB) and can be accessed through the Investment Division's web page, <http://www.sba.gov/inv>, click menu buttons in sequence – *For SBIC Licensees, Background Information and Link to LMI Debenture Calculator*).

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

- (a) You must submit a certified statement that there has been no material adverse change in your financial position since the last Form 468 which was filed with SBA.
- (b) In accordance with §107.1220, Licensees with outstanding SBA leverage commitments are required to file a financial statement on SBA Form 468 (Short Form) reflecting the Licensee's condition as of the close of each fiscal quarter. This statement is required to be filed within 30 days of the end of each of your first three fiscal quarters. If you submit a Draw Request following the close of your fiscal year and have not yet filed your Annual Form 468 (Long Form), you must submit an internal, unaudited Short Form 468 (as you would following the first three fiscal quarters) to SBA within 30 days of the close of your fourth fiscal quarter.

## **3. 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].”

NOTE: SBA is now required by statute to provide annual economic data to Congress to support the SBIC program. Please be advised that SBA will not consider you to be in compliance if you have not completed and electronically filed the Economic Data For Portfolio Concerns (EDFPC) schedule found on Page 22 of the Annual Financial Statement, Form 468 (Long Form), no later than five months after your fiscal year end. Henceforth, the completeness and accuracy of a Licensee's most recent required EDFPC schedule will be an important consideration in approving leverage requests.

## **4. Statement of Need**

If your Draw Request is needed to fund investments in small concerns, list the name and address of the Small Business(es), the amount of the Licensee's proposed financing, the type of financing (Loan, Debt Security or Equity), and the scheduled closing date. If you are applying to issue an LMI Debenture, you should also indicate if the financing qualifies as an LMI Investment. If the

proceeds of this draw are needed for liquidity, so state and indicate the current balance of funds available to the SBIC, including checking account balances and any idle funds maintained.

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

Please note that within 30 calendar days after the actual closing date of the financing to the Small Business, the Licensee must submit an SBA Form 1031 confirming the closing of the transaction(s) with the proceeds of the draw. Failure to submit a complete and accurate Form 1031 for completed investments will preclude consideration of any subsequent Draw Requests.

## 5. Opinion of Counsel

In connection with each Draw Request, SBA requires you to submit a new legal opinion. SBA has prepared a model form of opinion of counsel for each type of leverage security and copies of the model forms can be obtained from the Investment Division's web page, <http://www.sba.gov/inv>, click menu buttons in sequence – *For SBIC Licensees, SBIC Forms*, either *Form 27b Debenture Opinion of Counsel* or *Form 27c LMI Debenture Opinion of 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 in advance to SBA. **Also, 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.**

Any such form not previously approved, must be submitted to SBA as soon as possible but in any event at least seven business days before your next Draw Request to give SBA sufficient time to review the form of opinion and, if necessary, discuss the form with your counsel. Please express mail those submissions to: Johnny Kitts, Funding Control Officer, Investment Division, 6<sup>th</sup> Floor, U.S. Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416. Please indicate in a cover letter whether this is a submission of a form of legal opinion that fully conforms with one of SBA's model opinions (*SBA Form 27b* or *SBA Form 27c*) (a "conforming opinion"), or is a submission of a form that does not fully conform (a "nonconforming opinion").

Please note that, if there is any question as to whether SBA has already approved your counsel's form of legal opinion, please contact your account executive. If your counsel's legal opinion has been approved by SBA, you do not need to submit a form of that opinion to SBA for review, provided that your counsel intends to submit the same form of opinion with your next Draw Request.

In addition and in order to expedite the review process for Draw Requests, SBA now requires each legal opinion to be marked to show all changes from the last opinion submitted to SBA. Please make sure that you direct your legal counsel to submit opinions that are marked to show all changes since the failure to submit marked opinions may delay approval of your Draw Request.

If you have any questions concerning these procedures, please contact your account executive.

## 6. Smaller Business Financing Certification

- (a) If you were licensed before October 1, 1996, and you are with Regulatory Capital of less than \$5 million, 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 at least 50 percent of the aggregate dollar amount of the financings of the Licensee after October 1, 1996 will be provided to Smaller Enterprises (as defined in 13 CFR §107.50)."

- (b) All other Licensees must submit the appropriate certified statement from the following:

- (i) For Licensees with one or more leverage Commitments from SBA, all of which were issued prior to February 17, 2009:

"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 20 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)."

- (ii) For Licensees with one or more leverage Commitments from SBA, all of which were issued after February 17, 2009:

"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)."

- (iii) For Licensees with multiple leverage Commitments from SBA including one or more leverage Commitments issued before February 17, 2009 and one or more leverage Commitments issued after February 17, 2009:

"The undersigned Licensee does hereby certify with the understanding that any Leverage issued by SBA will be issued in reliance upon such certification that: (i) not less than 20 percent of the aggregate dollar amount of the financings made by the Licensee before [Date of first Commitment issued by SBA to Licensee after February 17, 2009] were provided to Smaller Enterprises (as defined in 13 CFR §107.50), and (ii) not less than 25 percent of the aggregate dollar amount of the financings of the Licensee on and after [Date of first Commitment issued by SBA to Licensee after February 17, 2009] will be provided to Smaller Enterprises (as defined in 13 CFR §107.50)."

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

**7. Condition of Capital Impairment Certification Required From Licensees Under Common Control, as required by 13 CFR §107.1120(d) and §107.1150(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 \$150 million:

- (a) The Licensee applying for Leverage must submit the following certified statement signed on behalf of the Licensee by an authorized representative of the Licensee and dated:

“The undersigned Licensee does hereby certify with the understanding that any Leverage issued by SBA will be issued in reliance upon such certification that 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).” and,

- (b) Each other Licensee under Common Control with the Licensee applying for leverage must submit the following certified statement signed on behalf of such other Licensee by an authorized representative of such other Licensee and dated:

“The undersigned Licensee [NAME OF LICENSEE] (“Licensee”) does hereby certify that the Licensee does not have a condition of Capital Impairment, as defined under 13 CFR §107.1830(c).”

**8. LMI (Low or Moderate Income) Debenture Certification (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:

- (1) the Licensee’s outstanding LMI Investments, and their respective book values, are as follows: [insert names and addresses of businesses and book values of investments];
- (2) the Licensee intends to make the following LMI Investment(s): [insert names and addresses of businesses and dollar amount(s) of planned investment]; and
- (3) the sum of (a) the face amount of the Licensee’s outstanding LMI Debentures and (b) the face amount of the LMI Debenture(s) requested in this Draw Request, does not exceed 1.7 times the sum of (c) the book value of the Licensee’s outstanding LMI Investments and (d) the planned LMI Investments identified in #2 above.”

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

**9. Capital Certificate and Bank Letter for Changes in Leverageable Capital (May be required)**

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. Licensees need to 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 **at least one week** prior to the cutoff date for any Draw Request.

If you have any questions concerning the preparation of the documents, please call your account executive.

PLEASE NOTE: The burden hour estimate for the completion of all forms required in this application (excluding SBA Form 468) is 1 hr. per application. You will not be required to respond to this collection of information unless a current, valid OMB control number is displayed. If you have any questions or comments concerning this estimate or any other aspects of this information collection, please contact the Chief, Administrative Information Branch, U.S. Small Business Administration, 409 Third St, S.W., Washington, D.C. 20416 and/or the Clearance Officer for SBA, Paperwork Reduction Project (3245-0081), Office of Management and Budget, Washington, D.C. 20503.