

**MEMORANDUM OF INSTRUCTIONS
SBIC DRAW REQUEST
AGAINST SBA'S LEVERAGE COMMITMENT
SBA OFFICE OF INVESTMENT & INNOVATION**

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 the specified times and deadlines in order for SBA to consider 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:

Lyn Womack, Funding Control Officer
Office of Investment and Innovation, 6th Floor
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, D.C. 20416

SBA also recommends that prior to submitting a Draw Request an SBIC notify its Financial Analyst by email of its intention to submit a draw request.

Draw Request Deadlines

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, Eastern Time (ET), on the first and third Wednesdays of each month. Any Draw Requests received after the Wednesday 10:30 AM ET cutoff 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 may alter the draw funding cycle upon certain circumstances, such as holidays, but will provide advance notice by email to SBICs of any changes to dates and deadlines.

Draw Request Approval & Funding Process

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 ET 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 ET on the Business Day prior to your takedown. You should receive the funds by close of business on the Business 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 58th 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*.

Types of Debenture Leverage

For each expected takedown of funds, you must submit an original SBA Form appropriate for each amount and type of debenture you wish to draw:

- Standard
- LMI (5 year or 10 year): SBIC must have or plan to make LMI investments
- Energy Savings Debenture (5 year or 10 year): SBIC must plan to make Qualified Energy Savings Investments
- Early Stage Debentures: SBIC must be specifically licensed as an Early Stage SBIC and may only use Early Stage Debentures

Important Points

Please keep in mind when applying for a draw approval and taking down Leverage:

- For each Draw Request you may request up to 5 takedowns.
- SBA will send you one *Approval Notice* for each approved takedown. Only one takedown is permitted per *Approval Notice*.
- Debentures may only be prepaid in full – no partial payments allowed – so choose takedown amounts wisely.
- In all cases, the amount taken down must be in increments 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 and will be reduced, if necessary, to conform to that date.
- 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"; or,

Early Stage Discount Debenture, stated as the approved "Maximum Face Amount of Early Stage Debenture"; or

Early Stage Current Pay Debentures, stated as the "Maximum Guaranteed Disbursement" amount.

DRAW REQUEST DOCUMENTATION TO BE SUBMITTED

Section I below provides a summary of the supporting documentation you must submit in order for SBA to consider funding your Draw Request. Section II provides detailed instructions regarding the submission of various SBA Forms, documents and certifications an SBIC must provide. Clicking on the links in Section I will take you to the detailed instructions in Section II.

I. 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. [Form 468 and Statement of No Material Adverse Change](#)
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, Energy Savings, or Early Stage Debentures must also provide the following certifications, as appropriate:

1. [LMI Debentures](#) - Certification of actual and expected LMI investments
2. [Energy Savings Debentures \(only SBICs licensed after September 30, 2008 are eligible\)](#) - Certification of actual and expected Energy Saving Qualified Investments
3. [Early Stage Debentures](#) – The following certifications:
 - a. Early Stage financing certification
 - b. Interest reserve certification
 - c. “No third party debt” certification

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

Circumstance	Certification
1. 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.	Condition of Capital Impairment Certification from Licensees under Common Control as required by 13 CFR §107.1120(d) and §107.1150(b)
2. If the aggregate leverage (outstanding and committed) would exceed \$150MM for a family of SBICs.	Co-investment certification for subsequent SBICs per SBA guidance issued June 20, 2012
3. If Leverageable Capital has recently increased to be eligible for the additional leverage requested.	Capital Certificate and Bank Letter for Changes in Leverageable Capital (Due one week prior to Draw Request submission, if applicable)

II. Detailed Instructions

A. 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 Instruments

The appropriate debenture form 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 <http://www.sba.gov/content/sbic-forms-procedures> and locate the appropriate document.

- Standard Debenture. [*SBA Form 444c: Debenture Certification Form.*](#)
- LMI Debenture. [*SBA Form 2163: 5-Year LMI Debenture Certification Form; or SBA Form 2162: 10-Year LMI Debenture Certification Form.*](#)
- Energy Saving Debenture. [*SBA Form 2434: 5-Year Energy Saving Debenture Certification Form; or SBA Form 2433: 10-Year Energy Saving Debenture Certification Form.*](#)
- Early Stage Debenture. [*SBA Form 2432: Early Stage Discount Debenture Certification Form; or SBA Form 2435: Early Stage Current Pay Debenture Form.*](#)

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.)

Forward one(1) 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 a separate, single-page enclosure entitled “AMOUNT OF DEBENTURE FUNDING REQUESTED” with a list of:

- 1) the number of debentures you wish to take down (a limit of 5 per Draw Request);
- 2) the dollar amount(s) of each debenture (in increments of \$5,000); and,
- 3) the type(s) of debentures requested (Standard; LMI 5-year or 10-year; Energy Saving 5-year or 10-year; Early Stage Discount or Early Stage Current Pay).

Once SBA has reviewed and approved a draw request, a copy of each completed debenture will be provided to you at the time 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. More information on the funding mechanism for Standard Debentures may be found in [*Funding the SBIC Program: An Overview.*](#) Unlike the Standard Debentures, LMI Debentures, Energy Savings Debentures, and Early Stage Debentures will not be pooled. The Federal Home Loan Bank of Chicago has agreed to purchase these Debentures and hold to maturity.

If you are applying for one or more LMI, Energy Saving, or Early Stage Debentures, we strongly recommend 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 the Federal Home Loan Bank of Chicago (FHLBC) that calculates the net proceeds to be generated from specific debenture face amounts, based upon then current interest rates plus applicable fees. It can be accessed by going to <http://www.fhlbc.com/Documents/sbacalculatorpage.htm>.

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 you 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 a signed, unaudited Short Form 468 (as you would following your 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 nature of financing (Initial or Follow-on), the type of financing (Loan, Debt Security or Equity), the scheduled closing date, and the type of debenture (Standard; LMI 5-year or 10-year; Energy Saving 5-year or 10-year; Early Stage Discount or Current Pay). 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. 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.

Additionally, please include a cash reconciliation showing your current cash balance, the changes to your cash balance since the date of your last SBA Form 468, and all projected cash inflow and outflows over the next 45-60 days. Note that SBA will generally not approve a draw request where an SBIC's projected cash balance exceeds \$1 million. SBA will also not approve a draw for more than one quarter of management fee expense.

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 any financing to a Small Business, the Licensee must submit an SBA Form 1031 confirming the closing of the financing. 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:

- Standard Debenture. [*SBA Form 27b Debenture Opinion of Counsel*](#)
- LMI Debenture. [*SBA Form 27c LMI Debenture Opinion of Counsel*](#)
- Energy Saving Debenture. [*SBA Form 27f Energy Saving Debenture Opinion of Counsel*](#)
- Early Stage Debenture.
[*SBA Form 27d Early Stage Current Pay Debenture Opinion of Counsel*](#) or
[*SBA Form 27e Early Stage Discount Debenture Opinion of Counsel*](#)

Copies of the model opinions can be obtained from clicking on the links above or from the Office of Investment's web page at <http://www.sba.gov/content/sbic-forms-procedures>.

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:

Lyn Womack, Funding Control Officer
Office of Investment and Innovation, 6th 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 Forms 27b, 27c, 27d, 27e or 27f*) (a "conforming opinion"), or is a submission of a form that does not fully conform (a "nonconforming 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. 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.

To expedite the review process for Draw Requests, SBA 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, because the failure to submit marked opinions may delay approval of your Draw Request.

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

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

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

1. Debenture Certifications Required to issue LMI (Low or Moderate Income) 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.

3. Debenture Certifications Required to issue Early Stage Debentures

If you were licensed as an Early Stage SBIC as defined in [§107.50](#) as amended by the [Early Stage SBIC Rule](#) on April 27, 2012, and you are applying for one or more Early Stage Debentures, you must submit the following certified statements:

- (a) Requirement to Finance Early Stage Investments (13 CFR 107.1120 & 13 CFR 107.1810(f)(11))

“The undersigned Licensee does hereby certify that in accordance with §107.1810(f)(11), at least 50 percent of the aggregate dollar amount of Financings will be provided to “early stage” companies as defined under the definition of Early Stage SBIC in 13 CFR § 107.50.”

- (b) Interest Reserve Certification (13 CFR 107.1181)

“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 107.1181, for each Debenture that requires periodic interest payments to SBA during the first five years of its term, the Licensee will maintain a reserve sufficient to pay the interest and Charges on such Debenture for the first 21 Payment Dates following the issuance.”

- (c) “No Third Party Debt” Certification (13 CFR 107.565)

“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 107.565 the Licensee will not have, incur or refinance any third party debt without SBA’s prior written approval other than accounts payable from routine business operations.”

The above certified statements 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 \$150 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 *Guidance on Applying for an SBIC License for a Subsequent Fund*** (issued June 20, 2012)

If you and any other Licensee(s) under Common Control have aggregate Leverage (outstanding and committed) in excess of \$150 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 \$150 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 established the co-investment limitation in its Additional Fund Request Policy issued in June 2012. If you were licensed subsequent to June 2012 and are subject to the co-investment limitation, you must submit the following certification with each Draw Request:

“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.”

The above certified statement must contain the name of the Licensee and must be signed and dated by an authorized official of the Licensee. For purposes of expediency, you may wish to preempt a request from your Financial Analyst and 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. 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 Financial Analyst.

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.