



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

**DATE:** April 27, 2012

**TO:** All Small Business Investment Companies (“SBICs”) & SBIC Applicants

**SUBJECT:** SBIC Final Rules for Energy Savings Debentures and Conflicts of Interest and Investment of Idle Funds

1. The Small Business Administration (“SBA”) published two final rules in April 2012 as follows:
  - a. **Energy Saving Investments**. This final rule only applies to SBICs licensed after September 30, 2008. It allows SBICs licensed after September 30, 2008 to issue Energy Saving Debentures in order to finance an “Energy Saving Qualified Investment”. The attachment provides some frequently asked questions regarding the Energy Saving Debenture. These will be posted and updated as necessary on the Office of Investment’s website ([www.sba.gov/inv](http://www.sba.gov/inv)). The final rule may be found by clicking [here](#) or searching [www.regulations.gov](http://www.regulations.gov).
  - b. **Conflicts of Interest and Investment of Idle Funds**: This final rule implements the following changes to SBIC regulations: (1) removes the requirement for an SBIC to obtain a conflict of interest exemption from SBA for certain financings, (2) revises the public notice requirements for conflicts of interest financings to conform with requirements under the Small Business Investment Act of 1958, as amended (“SBI Act”), and (3) expands an SBIC’s options for investing its “idle funds”, in conformity with the SBI Act. The final rule may be found [here](#) or searching [www.regulations.gov](http://www.regulations.gov).
2. If you have any questions regarding these rules, please contact your analyst.

Respectfully,

Sean J. Greene  
Associate Administrator for Investment

## **Attachment - Energy Saving Debenture Frequently Asked Questions**

(Ctrl-Click on blue underlined text to jump to the relevant section or website.)

### **1. What is an Energy Saving Debenture?**

The Energy Saving Debenture is SBA-guaranteed leverage authorized by the Energy Independence and Security Act of 2007 (“Energy Act”) and can only be issued for the purpose of making “[Energy Saving Qualified Investments](#)”. It is structured as a discount debenture similar to the Low and Moderate Income (“LMI”) Debenture. The Energy Saving Debenture differs from the standard SBA-guaranteed debenture in several respects:

- SBA does not intend to pool Energy Saving Debentures. The Federal Home Loan Bank of Chicago (“FHLBC”) has agreed to purchase all Energy Saving Debentures and hold them until maturity. Interest rates for this debenture will be determined by FHLBC on the draw date as a spread over the FHLBC's cost of funds.
- The debenture is a deferred-interest debenture issued at a discount, requiring no interest payments or SBA annual charge for the first 5 years, plus the stub period between the debenture’s issuance date and the next March 1 or September 1 payment date. (The stub period allows all Energy Saving to have common March 1 or September 1 payment dates.) You may use the FHLBC’s Discount Debenture calculator to estimate the net proceeds you would receive if you were to issue an Energy Saving debenture. It is located at the following address: [www.fhlbc.com/sba/sbacalculatorpage.htm](http://www.fhlbc.com/sba/sbacalculatorpage.htm).
- The debenture is available in two maturities - 5 year and 10 year (plus the stub period). The 10 year discount debenture requires semi-annual interest payments and annual charge payments during the last 5 years of its term.
- The debenture does not permit prepayment for a ‘lockout’ period of 12 months (plus the stub period) after issuance. Thereafter, it permits prepayment in full, but only on March 1 or September 1 of each year. Thus, the actual period during which you cannot prepay may be from 12-18 months depending upon the length of the stub period. Prepayments after the lockout period can be made without a prepayment fee.

### **2. Who may issue Energy Saving Debentures?**

Only SBICs licensed *after* September 30, 2008, are eligible to issue Energy Saving Debenture.

### **3. How do SBICs issue Energy Saving Debentures?**

SBA will issue draw instructions describing how SBICs licensed after September 30, 2008 may draw leverage under existing leverage commitment for the purpose of issuing Energy Saving Debentures. Draw instructions will be very similar to those for the LMI debenture. Energy Saving Debentures will be available on an ‘as requested’ basis. SBA has budgeted approximately \$240 million for Energy Saving Debentures spread across all outstanding SBIC commitments issued through September 30, 2012. If demand for the Energy Saving Debenture appears to exceed this budget, SBA may establish

allocation procedures. SBICs should contact their analyst if they intend to issue Energy Saving Debentures so that SBA may assess demand.

#### **4. What is an Energy Saving Qualified Investment?**

SBA's [final rule](#) defines Energy Saving Qualified Investments under 13 CFR §107.50. An Energy Saving Qualified Investment is generally defined as an investment made to a small business that is primarily engaged in [Energy Saving Activities](#). A small business is presumed to be primarily engaged in Energy Saving Activities if:

- (i) The Small Business derived at least 50% of its revenues during its most recently completed fiscal year from Energy Savings Activities; or
- (ii) The Small Business will utilize 100% of the Financing proceeds received from a Licensee to engage in Energy Saving Activities.

Under certain circumstances, a pre-Financing determination by SBA is required, as described in the final rule.

#### **5. What are Energy Saving Activities?**

SBA's final rule defines Energy Saving Activities under 13 CFR §107.50. The following table provides a general reference table for SBICs to help determine whether or not the potential portfolio company's activities qualify as Energy Saving Activities or if the potential investment requires a pre-financing determination.

**Small Business Investment Company Energy Saving Activity Reference Table**

Please refer to 13 CFR §107.50 for the exact Energy Saving Activity Definition. This table shows the areas that are presumed to qualify as Energy Saving Activities. Licensees will need to obtain a pre-financing determination by SBA for any other activities as discussed in the regulations.

Technical Area	Relevant Standards (Ctrl-Click on blue underlined text to go to the relevant website.)	Type of Activity		
		Manufacturing or Research & Development <sup>(1)</sup>	Deployment services <sup>(2)</sup>	Auditing or Consulting Services <sup>(3)</sup>
<b>Residential Energy Efficiency</b>	Improves residential energy efficiency as demonstrated by meeting Department of Energy and Environmental Protection Agency <a href="#">Energy Star criteria</a> for use of the Energy Star trademark label.	X		X
	Deploys products that qualify, in the year in which the investment is made, for installation-related <a href="#">Federal Tax Credits for Residential Consumer Energy Efficiency</a> .		X	X
<b>Commercial Energy Efficiency</b>	Improves commercial energy efficiency as demonstrated by being in the upper 25% of efficiency for all similar products as designated by DOE's <a href="#">Federal Energy Management Program (FEMP)</a> .	X	X	X
<b>Automobile Efficiency</b>	Improves automobile efficiency or reduces consumption of non-renewable fuels through the use of advanced batteries, power electronics, or electric motors; advanced combustion engine technology; alternative fuels; or advanced materials technologies, such as lightweighting.	X		X
<b>Combined Heat and Power (CHP)</b>	Improves industrial energy efficiency through <a href="#">CHP</a> prime mover or power generation technologies, heat recovery units, absorption chillers, desiccant dehumidifiers, packaged CHP systems, more efficient process heating equipment, more efficient steam generation equipment, heat recovery steam generators, or more efficient use of water recapture, purification and reuse for industrial application.	X	X	X
<b>Advances Commercialization of Energy Technologies</b>	Advances commercialization of technologies developed by recipients of awards from the Department of Energy under the <a href="#">Advanced Research Projects Agency – Energy, Small Business Innovation Research, or Small Business Technology Transfer programs</a> .	X		X
<b>Renewable Energy</b>	Reduces the consumption of non-renewable energy by providing renewable energy sources, as demonstrated by meeting the standards, applicable to the year in which the investment is made, for receiving a Renewable Electricity Production Tax Credit as defined in <a href="#">Internal Revenue Code Section 45</a> or an Energy Credit as defined in <a href="#">Internal Revenue Code Section 48</a> .	X	X	X
<b>Energy Conversion Systems</b>	Reduces the consumption of non-renewable energy for electric power generation as described in <a href="#">Internal Revenue Code Section 48(c)(1)(A)</a> by providing highly efficient energy conversion systems that can use renewable or non-renewable fuel through fuel cells.	X		X
<b>Smart Grid</b>	Improves electricity delivery efficiency by supporting one or more of the smart grid functions as identified in <a href="#">42 U.S.C. 17386(d)</a> , by means of a product, service, or functionality that serves one or more of the following smart grid operational domains: equipment manufacturing, customer systems, advanced metering infrastructure, electric distribution systems, electric transmission systems, storage systems, and cyber security.	X	X	X

(1) Manufacturing or research and development of products, integral product components, integral material, or related software.

(2) Installation and/or inspection services associated with the deployment of energy saving products.

(3) Auditing or consulting services performed with the objective of identifying potential improvements of the type described in (1) or (2).