

MEMORANDUM OF INSTRUCTIONS APPLICATION FOR COMMITMENT OF SBIC DEBENTURES

INTRODUCTION. This Memorandum of Instructions provides the information necessary for a small business investment company (SBIC) to apply for a commitment by the Small Business Administration (SBA) to reserve financial assistance on its behalf for the future issuance of Debentures. Congress has not renewed our authorization to issue commitments for Participating Securities; and as a result, Participating Security commitments cannot be offered at this time.

Any SBIC requesting the reservation of financial assistance ("Leverage") by obtaining SBA's conditional commitment to guarantee Debentures, must submit the appropriate enclosed application forms and documents. The application forms and documents described below must be properly completed and executed, and should be submitted to the Office of Investment, Suite 6300, U.S. Small Business Administration, Attn: Johnny Kitts, Funding Control Officer, 409 3rd Street SW, Washington, D.C. 20416. The Small Business Investment Act of 1958 as amended, and current SBIC regulations can be found on the Investment Division web page (<http://www.sba.gov/inv>, click item *For SBICs*, see **Regulation** section).

I. APPLICATION FOR COMMITMENT. Any SBIC requesting a commitment from SBA for funding through Debentures must apply to SBA by submitting a letter requesting a commitment. The letter must include the following:

1. The name, address and license number of the applicant.
2. The requested amount of the commitment.
3. For SBA to approve a commitment application, the letter shall include the following language which is printed below in bold typeface:

The undersigned Licensee does hereby certify with the understanding that any commitment letter issued by SBA will be issued in reliance upon such certifications that:

- A. As of the date of execution of this application letter, [the corporate Licensee is not] [neither the limited partnership Licensee nor its Corporate (or Individual) General Partner is] in violation of its respective charter or Limited Partnership Agreement, as the case may be, or the license, or any of the provisions of the Small Business Investment Act of 1958, as amended (the "Act"), or the regulations issued thereunder (the "Regulations").**

- B. The proceeds of the issuance and sale of the securities to be committed by SBA as requested herein will be used by the Licensee only for the purposes contemplated by the Act and the Regulations.**
- C. There has been no change in the officers, directors, beneficial owners of 10 or more percent of the securities [of the corporate Licensee] [of the limited partnership Licensee and its Corporate (or Individual) General Partner], or in the investment policy, operations, or capital of the Licensee since the issuance of its license except as indicated by post-licensing amendment(s) heretofore filed with and approved by SBA, or as filed herewith.**
- D. The Licensee shall not withdraw this application for a commitment without prior written approval of SBA.**
- E. There has been no material adverse change in the financial condition of the Licensee since the filing of the last Financial Report (SBA Form 468), except as indicated by the Financial Report filed herewith as an Exhibit. Except as disclosed in writing to SBA in connection with this application letter, the Licensee has no knowledge of any existing or impending litigation or of any proceedings or actions for the assessment or collection of additional taxes, and the Licensee has no contingent liabilities not provided for or disclosed in the financial or other statements submitted to SBA in connection with this application letter.**
- F. The Licensee has not paid or incurred any obligation to pay to any Federal employee or special Federal employee any fee, gratuity or anything of value for obtaining the assistance hereby requested. If such fee, gratuity, etc., has been solicited by any such employee, the Licensee agrees to report such information to the Office of the Inspector General, Small Business Administration, Washington, D.C. 20416. The Licensee has not and will not, directly or indirectly, pay any amount to any person in connection with this application except for services actually performed on behalf of the Licensee.**

Furthermore, the amount of payment for such services shall not exceed an amount deemed reasonable by SBA. If such payment exceeds \$300 then an itemization thereof will be submitted as an Exhibit.

- G. All statements, warranties, and representations made herein and in the accompanying Exhibits as well as in any additional documents required by SBA to be filed in connection with this application letter are true and complete, are considered material, are made for the purpose of inducing SBA to issue a commitment and are made with full knowledge of the provisions of 15 U.S.C. 645, 18 U.S.C. 1001, and 18 U.S.C. 1006 which provide certain criminal penalties for making false statements or representations.**

H. Any intentionally false statement or willful misrepresentation in connection with this application is a violation of Federal law, subject to criminal and civil prosecution under 18 U.S.C. Sections 287, 371, 1001, and 1006; 15 U.S.C. Section 645; and 31 U.S.C. Section 231; carrying fines up to \$10,000 and imprisonment up to five years.

I. (a) If you were licensed before October 1, 1996, and you are with Regulatory Capital of less than \$5 million, include the following 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 statement from the following:

(i) For Licensees with one or more leverage Commitments from SBA, all of which were issued on or after February 17, 2009 (including Licensees currently applying for their first leverage Commitment):

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).

(ii) For Licensees with one or more leverage Commitments issued before February 17, 2009 and currently applying for their first leverage Commitment 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) with respect to the aggregate dollar amount of the financings made by the Licensee before the date on which it is awarded the leverage Commitment that is the subject of this application, not less than 20 percent of such financings will be provided to Smaller Enterprises (as defined in 13 CFR §107.50), and (ii) with respect to the aggregate dollar amount of the financings made by the Licensee on or after the date on which it is awarded the leverage Commitment that is the subject of this application, not less than 25 percent of such financings 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) with respect to 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], not less than 20 percent of such financings were provided to Smaller Enterprises (as defined in 13 CFR §107.50), and (ii) with respect to the aggregate dollar amount of the financings made by the Licensee on or after [date of first Commitment issued by SBA to Licensee after February 17, 2009], not less than 25 percent of such financings will be provided to

Smaller Enterprises (as defined in 13 CFR §107.50).

The letter needs to be signed by an authorized official of the Licensee and dated.

II. EXHIBITS TO BE SUBMITTED. The following is an explanation of the Exhibits required to be submitted with the Licensee's letter of application for a commitment.

1. Financial Report, SBA Form 468. If you have an outstanding SBA leverage commitment you must continue to meet the quarterly filing requirements for Financial Report, SBA Form 468. If you do not currently have an outstanding SBA leverage commitment, a Short Form SBA Form 468 is required to be filed as part of your commitment application. That Short Form must be submitted on diskette using the electronic software previously provided to you by SBA and must cover the period stated below: (A signed paper copy of that electronic submission must also be filed.)

Beginning date: The first day of the Licensee's current fiscal year.

Ending date: No earlier than the end of the third month preceding the month in which the commitment is issued (for example, for a commitment issued in the month of November, the Short Form must be dated August 31 or later).

Note: Notes to the financial statements are an integral part of the Financial Report and should be included.

The SBA is now required by statute to provide annual economic data to Congress to support the SBIC program. It is therefore extremely important that you fully complete the Economic Data For Portfolio Concerns (EDFPC) schedule that is part of the Annual Financial Statement, Form 468 (Long Form), and electronically file the schedule with SBA no later than five months after your fiscal year end. Henceforth, the completeness and accuracy of a Licensee's most recent required EDFPC schedule is an important consideration in approving leverage applications.

2. Resolution of the Board of Directors or General Partner, SBA Forms 25. Attached are three model resolutions; one for corporate licensees, one for partnership licensees with a corporate general partner, and one for partnership licensees with individual general partners. Licensees with organizational structures other than the above must modify the model closest to its structure for its own use. A licensee's resolution must strictly follow the language in the applicable resolution, and must be certified and executed as indicated.
3. Transferor's Liability Contract, SBA Form 2182. Please read and follow instructions on the form. File using the SBA Form that is provided. File original only. Form number and revision date must be visible on executed submission.
4. Compensation Agreement, SBA Form 159. This form is to be completed by the person(s) providing service to the Licensee in connection with its application, and must be certified by the proper official of the Licensee. If no person assisted with the application, so state in the form. File using the SBA Form that is provided. File original only. Form number and revision date must be visible on executed submission.

5. Applicant's Assurance of Compliance, SBA Form 652. This form is to be completed by the appropriate official of the Licensee. File using the SBA Form that is provided. File original only. Form number and revision date must be visible on executed submission.
6. Capital Certificate. Any Licensee which has unfunded commitments from Institutional Investors shall submit an updated capital certificate if the one on file with SBA is no longer accurate.).
7. Applicant Licensee's Assurance of Compliance (Public Interest), SBA Form 1065. This form is to be completed by the appropriate official of the Licensee. File using the SBA Form that is provided. File original only. Form number and revision date must be visible on executed submission.
8. Investment Plan. The investment plan shall consist of a forecast for the use of Licensee's funds available for investment and the requested commitment from SBA. The plan shall identify formal written commitments (conditional or unconditional) to invest in small concerns, as well as funding requests from small concerns which are under active consideration but have not matured to the level of a commitment.
9. Disclosure of Third Party Debt. The applicant Licensee must describe the amount of its outstanding non-SBA debt. The description should include the terms, conditions, security (if any), and priority of all such debt.
10. Statement For Loan Guarantees and Loan Insurance, SBA Form 1846. This form is to be completed by the appropriate official of the Licensee. File using the SBA Form that is provided. File original only. Form number and revision date must be visible on executed submission.
11. Opinion of Counsel – (File if not previously approved by SBA.)
SBA requires that you submit a new legal opinion, as part of your draw application, each time you apply to draw funds under an approved commitment. 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, www.sba.gov/INV, clicking menu items in sequence, *For SBICs*, *SBIC Forms*, and choosing appropriate form. Prior written approval of SBA's Office of General Counsel is required for any opinion submitted. If SBA has not previously approved the form of legal opinion your counsel plans to submit with each draw application, you must provide a form of your counsel's opinion as part of this commitment application.
12. Evidence of Amended Articles of Incorporation or Limited Partnership Agreement. Please see attached supplement to this Memorandum of Instructions entitled *REQUIREMENTS NECESSARY TO COMPLY WITH 13 CFR § 107.1810(i) AND/OR § 107.1820, AS APPLICABLE, EFFECTIVE APRIL 25, 1994, FOR COMMITMENT ELIGIBILITY*. Licensees who have adopted Annex PS or Annex GDP have already complied with this requirement.

III. SELLING DOCUMENTATION TO BE SUBMITTED. The only required documentation that must accompany the application letter is the following:

1. Bank Identification, SBA Form 34. This form provides us with the necessary routing instructions to credit your designated account with the appropriate amounts by electronic funds transfer (after your commitment application and subsequent draw request(s) have been approved). If your account is not with a member bank of the Federal Reserve System, you must identify the member bank whose routing code is utilized as your correspondent or affiliate bank. All Licensees applying for a commitment must complete this form.
2. Debit Authorization. Debit Authorization establishes an efficient and low cost way for licensees to make the scheduled payments after pooling on SBA Form 444C Debentures ("Standard Debentures") by Automated Clearinghouse (ACH) debit. The covering instructions to this authorization explain its purpose in more detail. It must be properly completed and executed as indicated on the attached sample form. Please submit a Debit Authorization even if you expect to issue only LMI Debentures under your commitment, so that you will have the option of issuing Standard Debentures as well.
3. Authorization to Disburse Proceeds, SBA Form 33 [Refunding Maturing Debenture(s)] Only those applying for SBA's commitment of guaranteed Debenture Leverage for the purpose of refunding maturing Debenture(s) are to file this form. File using the SBA Form that is provided. File original only. Form number and revision date must be visible on executed submission.

IV. FEES & INTEREST RATES.

1. Leverage Fee. Participating securities and Debentures are subject to a 3% leverage fee. Effective December 2, 1997, only 1% of the issued amount of the commitment is due up-front. This up-front 1% commitment fee is due SBA by the earlier of the date that you apply to SBA to draw funds under this Commitment Letter, or within 30 days of the issuance of the commitment. **The 1% commitment fee payment must be made to SBA by wire transfer. Checks will not be accepted for this payment.** The wire instructions for sending funds to SBA are as follows: Treas NYC (Bank Name); 021 030 004 (ABA#); U.S. Small Business Administration (Beneficiary) and 73000001 (Bank Account #). In the message portion (for further credit portion) of the instructions, please provide SBA's commitment account number. **Please note that SBA will provide you with this commitment account number along with a copy of the current draw instructions by email notice immediately after your approval.** The commitment account number is important because it is the account number to be further credited after the payment is received by SBA. Also include the phrase "tran code 368" in the message (to indicate that the payment is a leverage fee). The remaining leverage fee of 2% (of the face amount disbursed) is deducted from the proceeds of each disbursement.

2. Annual Charge. An annual charge (fee) is payable to SBA on Participating Securities and Debentures guaranteed with federal funds appropriated on or after October 1, 1996. The annual charge is payable to SBA under the same terms and conditions as prioritized payments for Participating Securities, and interest for Debentures. The annual charge is adjusted each federal fiscal year on commitments issued during that fiscal year. Once established, the annual charge rate remains the same for all draws on a commitment though its entire term (of up to 5 fiscal years). The current SBA annual charge rate for disbursements from FY 2009 Debenture commitments is **0.406%**. SBA annual charge rates remain unchanged for draws on commitments issued in prior federal fiscal years. Prior annual charge rates (still in effect) for draws from commitments issued in prior fiscal years are as follows: Debentures-- a) 0.871% on draws from FY 2005 commitments, b) 0.941% on draws from FY 2006 commitments, c) 0.906% on draws from FY 2007 commitments; and d) 0.717% on draws from FY 2008 commitments.
3. Underwriter Fee. For Participating Securities and Standard Debentures, an underwriter fee will be collected each time funds are disbursed to the Licensee. This fee will not be collected as part of the commitment process, but will be deducted from the proceeds remitted to the Licensee. The underwriter fee for 10-year securities is 0.375% of the face amount. There is no underwriter fee for LMI Debentures.
4. Administrative Fee. For Participating Securities and Standard Debentures, an administrative fee will be collected each time funds are disbursed to the Licensee. This fee will not be collected as part of the commitment process, but will be deducted from the proceeds remitted to the Licensee. The administrative fee is withheld for payment to the SBIC Funding Corp. for services rendered on behalf of SBICs as the Selling Agent. The administrative fee is 0.05% of the face amount. There is no administrative fee for LMI Debentures.
5. INTEREST RATES. 1. For pooled securities [both Participating Securities (as the Rate of Prioritized Payment) & Standard Debentures], A. short term (interim) period prior to pooling – set at LIBOR rate (on Settlement Date) for the # of days in the interim period plus 30 basis points & B. long term (post pooling) period – set at 10 year treasury rate (on pricing date) plus a spread that has fluctuated recently based on market conditions (from approx. 145 to 230 basis points); 2. For LMI Debentures, A. 5-Yr. Term (Zero coupon to maturity), & B. 10-Yr. Term (Zero coupon through approx. 1st 5 years, due semi-annually thereafter at Yield to Maturity rate). Original Yield to Maturity rates - set at average of several comparable securities (on Settlement Date) by the Federal Home Loan Bank of Chicago. Rates are updated daily and accessible through <http://www.sba.gov/INV>, clicking menu items in sequence *For SBICs, Background Information and Link to LMI Debenture Calculator*.

If there are any questions concerning the preparation of the commitment application letter, any Exhibits or accompanying Selling Documentation, please call your analyst.

PLEASE NOTE: The burden hour estimate for the completion of all forms required in this application (excluding SBA Form 468) is 3 hrs. per application. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0081).

**Supplement to Memorandum of Instructions
REQUIREMENTS NECESSARY TO COMPLY
WITH 13 CFR § 107.1810(i) AND/OR § 107.1820, AS APPLICABLE,
EFFECTIVE APRIL 25, 1994, FOR COMMITMENT ELIGIBILITY**

Any licensee applying for commitment eligibility after April 25, 1994, must provide the SBA with evidence that it has amended its respective Articles of Incorporation or Limited Partnership Agreement so as to be in compliance with 13 CFR § 107.1810(i) and/or § 107.1820. The evidence must be provided to the SBA upon the first submission of a leverage application by the licensee after April 25, 1994.

- 1.) The submission of any of the following as part of the application will be considered evidence of the required amendment:

- a) Corporate Licensees -- (i) Submit the amendment to SBA and provide evidence to SBA that the amendment has been filed, or (ii) Submit the amendment to SBA together with an affidavit stating that the licensee has filed the amendment. Where an affidavit is provided as evidence, subsequent confirmation of the amendment filing must be provided to SBA.

- b) Unincorporated Licensees -- Submit the amendment to SBA and provide certification to SBA that such amendment has been adopted by the partnership.

- 2.) Provided below is the suggested wording for the required changes to the licensee's Articles of Incorporation or Limited Partnership Agreement. However, corporate licensees should confirm with their own counsel that this wording would comply with the filing requirements in the state of incorporation:

[Please include only the applicable section(s) of the Regulations in place of the blank brackets. Include either: (i) 13 CFR § 107.1810(i) (ii) 13 CFR § 107.1820 or (iii) 13 CFR § 107.1810(i) and § 107.1820]:

- a) Corporate Licensees: "The provisions of [] are hereby incorporated by reference in these Articles of Incorporation as if fully set forth herein. This corporation hereby consents to the exercise by SBA of all of the rights of SBA under [], and agrees to take all actions which SBA may require in accordance with such provision."

- b) Unincorporated Licensees: "The provisions of [] are hereby incorporated by reference into this Agreement of Limited Partnership as if fully set forth herein. The Partnership and the partners hereby consent to the exercise by SBA of all the rights of SBA under [], and agree to take all actions which SBA may require in accordance with such provision."