

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

(a) *Licensee's authorization of SBA to purchase or guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture or Participating Security and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of \$5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on Licensee's eligibility for draws—(1) General rule.* You are eligible to make a draw against SBA's Leverage commitment only if you are in compliance with all applicable provisions of the Act and SBA regulations (i.e., no unresolved statutory or regulatory violations).

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) SBA determines that your outstanding violations are of non-substantive provisions of the Act or regulations and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with SBA on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 107.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 107.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and SBA regulations (i.e., no unresolved regulatory or statutory violations), or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the Licensee;

(ii) An officer of a corporate general partner of the Licensee; or

(iii) An individual who is authorized to act as or for a general partner of the Licensee.

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. If required by SBA, the statement must include the name and address of each Small Business, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) If SBA required you to provide information concerning a specific planned Financing under paragraph (d)(3) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must give SBA a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. SBA may also determine that you are not in compliance with the terms of your Leverage under §§ 107.1810 or 107.1820.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998; 64 FR 70996, Dec. 20, 1999]

§ 107.1240 Funding of Licensee's draw request through sale to short-term investor.

(a) *Licensee's authorization of SBA to arrange sale of securities to short-term investor.* By submitting a request for a draw of Debenture or Participating Security Leverage, you authorize SBA, or any agent or trustee SBA designates, to enter into any agreements (and to

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bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture or Participating Security to a short-term investor at a rate that may be different from the Trust Certificate Rate which will be established at the time of the pooling of your security;

(2) The purchase of your security from the short-term investor, either by you or on your behalf; and

(3) The pooling of your security with other securities with the same maturity date.

(b) *Sale of Debentures to a short-term investor.* If SBA sells your Debenture to a short-term investor:

(1) The sale price will be the face amount.

(2) At the next scheduled date for the sale of Debenture Trust Certificates, whether or not the sale actually occurs, you must pay interest to the short-term investor for the short-term period. If the actual sale of Trust Certificates takes place after the scheduled date, you must pay the short-term investor interest from the scheduled sale date to the actual sale date. This additional interest is due on the actual sale date.

(3) Failure to pay the interest constitutes noncompliance with the terms of your Leverage (see §107.1810).

(c) *Sale of Participating Securities to a short-term investor.* If SBA sells your Participating Security to a short-term investor, the sale price will be the face amount.

(d) *Licensee's right to repurchase its Debentures before pooling.* You may repurchase your Debentures from the short-term investor before they are pooled. To do so, you must:

(1) Give SBA written notice at least 10 days before the cut-off date for the pool in which your Debenture is to be included; and

(2) Pay the face amount of the Debenture, plus interest, to the short-term investor.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998]

PREFERRED SECURITIES LEVERAGE— SECTION 301(D) LICENSEES

§107.1400 Dividends or partnership distributions on 4 percent Preferred Securities.

If you issued Preferred Securities to SBA on or after November 21, 1989, you must pay SBA a dividend or partnership distribution of 4 percent per year, from the date you issued Preferred Securities to the date you repay them, both inclusive. The dividend or partnership distribution is:

(a) Computed on the par value of the outstanding stock or the face value of the outstanding limited partnership interest.

(b) Cumulative. This means that if you do not pay the entire dividend or partnership distribution for a given fiscal year, the unpaid balance accumulates as a distribution in arrears. You do not have to pay interest on distributions in arrears.

(c) Preferred. This means that you must pay SBA in full (including distributions in arrears) before setting aside or paying any amount to any other equity holder.

(d) Payable at the discretion of your Board of Directors or General Partner(s), except that all distributions in arrears must be paid in full when you redeem the Preferred Securities.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5869, Feb. 5, 1998]

§107.1410 Requirement to redeem 4 percent Preferred Securities.

You must redeem 4 percent Preferred Securities not later than 15 years from the date of issuance. At the redemption date, you must pay to SBA:

(a) The par value (of preferred stock) or face value (of a preferred limited partnership interest); plus

(b) Any unpaid dividends or partnership distributions accrued to the redemption date.

§107.1420 Articles requirements for 4 percent Preferred Securities.

If you have outstanding 4 percent Preferred Securities, your Articles must contain all the provisions in §§107.1400 and 107.1410.

[63 FR 5869, Feb. 5, 1998]