

## Small Business Administration

## § 120.410

with requirements established by SBA from time to time for 7a loans and loans made under the American Recovery and Reinvestment Act of 2009.

(o) *Loan servicing.* Each originating lender shall service all of its ARC Loans in accordance with the existing practices and procedures that the Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with SBA Loan Program Requirements as defined in §120.10. SBA's prior written consent is required for servicing actions that may have significant exposure implications for SBA. SBA may require written notice of other servicing actions it considers necessary for portfolio management purposes.

(p) *Liquidations.* Each Lender shall be responsible for liquidating any defaulted ARC Loan originated by the Lender. ARC Loans will be liquidated in accordance with the existing practices and procedures that the Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with SBA Loan Program Requirements as defined in Section 120.10. Loans with de minimis value may, at the Lender's request and with SBA's approval, be liquidated by SBA or its agent(s). Significant liquidation actions taken on ARC Loans must be documented. The reimbursement of liquidation related fees by SBA to the Lender is limited to the amount of the recovery on the ARC Loan.

(q) *Purchase requests.* Any purchase request to SBA to honor its guaranty on a defaulted ARC Loan shall be made by the originating lender. Lenders may request SBA to purchase an ARC Loan when there has been an uncured payment default exceeding 60 days or when the borrower has declared bankruptcy. SBA requires Lenders to submit loans for purchase no later than 120 days after the earliest uncured payment default on the ARC Loan. Additionally, SBA may honor its guarantee and require a Lender to submit an ARC Loan for purchase at any time. Except as

noted above, the Lender is required to complete all recovery actions on the ARC Loan after purchase.

(r) *Prohibition on secondary market sales and loan participations.* A lender may not sell an ARC loan into the secondary market nor may a lender participate a portion of an ARC loan with another lender.

(s) *Loan volume.* SBA reserves the right to allocate loan volume under the ARC Loan Program among Lenders (as defined in §120.10).

(t) *Delegated authority.* SBA may allow lenders to use their delegated authority to process ARC Loans.

(u) *Personal resources test.* The personal resources test provisions of §120.102 do not apply to ARC Loans.

(v) *Statutory loan limit.* The provisions of §120.151 do not apply to ARC Loans.

[74 FR 27247, June 9, 2009]

### Subpart D—Lenders

#### § 120.400 Loan Guarantee Agreements.

SBA may enter into a Loan Guarantee Agreement with a Lender to make deferred participation (guaranteed) loans. Such an agreement does not obligate SBA to participate in any specific proposed loan that a Lender may submit. The existence of a Loan Guarantee Agreement does not limit SBA's rights to deny a specific loan or establish general policies. *See also* §§120.441(b) and 120.451(d) concerning Supplemental Guarantee Agreements.

#### PARTICIPATION CRITERIA

#### § 120.410 Requirements for all participating Lenders.

A Lender must:

(a) Have a continuing ability to evaluate, process, close, disburse, service, liquidate and litigate small business loans including, but not limited to:

(1) Holding sufficient permanent capital to support SBA lending activities (for SBA Lenders with a Federal Financial Institution Regulator, meeting capital requirements for an adequately capitalized financial institution is considered sufficient permanent capital to support SBA lending activities; for