

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

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SBLCs, meeting its SBA minimum capital requirement; and for NFRLs, meeting its state minimum capital requirement); and

(2) Maintaining satisfactory SBA performance, as determined by SBA in its discretion. The 7(a) Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

(b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);

(c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140

(d) Be supervised and examined by either:

(1) A Federal Financial Institution Regulator,

(2) A state banking regulator satisfactory to SBA, or

(3) SBA;

(e) Be in good standing with SBA as defined in § 120.420(f) (and determined by SBA in its discretion) and, as applicable, with an SBA Lender's state regulator and Federal Financial Institution Regulator; and

(f) Operate in a safe and sound condition using commercially reasonable lending policies, procedures, and standards employed by prudent Lenders.

[61 FR 3235, Jan. 31, 1996, as amended at 62 FR 302, Jan. 3, 1997; 73 FR 75510, Dec. 11, 2008]

### § 120.411 Preferences.

An agreement to participate under the Act may not establish any Preferences in favor of the Lender.

### § 120.412 Other services Lenders may provide Borrowers.

Subject to § 120.140 Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small

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business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Fees cannot exceed those charged by established professional consultants providing similar services. *See also* § 120.195.

### § 120.413 Advertisement of relationship with SBA.

A Lender may refer in its advertising to its participation with SBA. The advertising may not:

(a) State or imply that the Lender, or any of its Borrowers, has or will receive preferential treatment from SBA;

(b) Be false or misleading; or

(c) Make use of SBA's seal.

### PARTICIPATING LENDER FINANCINGS

SOURCE: Sections 120.420 through 120.428 appear at 64 FR 6507-6509, Feb. 10, 1999, unless otherwise noted.

### § 120.420 Definitions.

(a) *7(a) Loans*—All references to 7(a) loans under this subpart include loans made under section 7(a) of the Small Business Act (15 U.S.C. 631 *et seq.*) and loans made under section 502 of the Small Business Investment Act (15 U.S.C. 661 *et seq.*), both of which may be securitized under this subpart.

(b) *Bank Regulatory Agencies*—The bank regulatory agencies are the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

(c) *Benchmark Number*—The maximum number of percentage points that a securitizer's Currency Rate can decrease without triggering the PLP suspension provision set forth in § 120.425. SBA will publish the Benchmark Number in the FEDERAL REGISTER.

(d) *Currency Rate*—A securitizer's "Currency Rate" is the dollar balance of its 7(a) guaranteed loans that are less than 30 days past due divided by the dollar balance of its portfolio of 7(a) guaranteed loans outstanding, as calculated quarterly by SBA, excluding