

## § 120.1701

## 13 CFR Ch. I (1–1–12 Edition)

and normal Loan Interest repayments occur.

### § 120.1701 Program purpose.

As authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act), SBA establishes the Program to authorize an entity to apply for SBA's guarantee of Pools comprised of portions of First Lien Position 504 Loans backing Pool Certificates to be sold to Pool Investors. The purpose of the Program is to temporarily provide a federal guarantee for Pools of First Lien Position 504 Loans to facilitate the sale of such loans and increase the liquidity of the lenders holding the loans so that the lenders can use the sale proceeds to fund more such loans. The Program's authorization expires on September 23, 2012 and the Administrator may guarantee not more than \$3,000,000,000 of pools under this authority pursuant to section 503(c)(B)(iii) of the Recovery Act, as amended by section 1119 of the Small Business Jobs Act of 2010.

[61 FR 3235, Jan. 31, 1996, as amended at 76 FR 63547, Oct. 12, 2011]

### § 120.1702 Program fee.

*Ongoing Guarantee Fee.* The Ongoing Guarantee Fee is payable to SBA, and it is calculated and payable monthly from the amounts received in respect of interest on Loan Interests in the SBA-guaranteed portion of a Pool. This amount is set forth in the First Lien Position 504 Loan Pool Guarantee Agreement. This fee is used to pay program losses.

### § 120.1703 Qualifications to be a Pool Originator.

(a) *Application to become Pool Originator.* The application to become a Pool Originator is available from the SBA and can be found on SBA's website. In order to qualify as a Pool Originator, an entity must send the application to the SBA and certify that it is a Pool Assembler or it:

(1) Is regulated by the appropriate agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Meets all financial and other applicable requirements of its regulatory authority and the Government Securi-

ties Act of 1986, as amended (Pub. L. 99–571, 100 Stat. 3208);

(3) Has the financial capability to originate acceptable pools consisting of eligible First Lien Position 504 Loans in sufficient quantity to support the issuance of Pool Certificates;

(4) Is in good standing with SBA (as the SBA determines), the Office of the Comptroller of the Currency (OCC) if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, the Financial Institutions Regulatory Authority, if it is a member, the National Credit Union Administration if it is a credit union; and

(5) for any Pool Originator that is an SBA Lender, that the SBA Lender has satisfactory SBA performance, as determined by SBA in its sole discretion.

(b) *Approval by SBA.* An entity may not submit applications to form Pools to the CSA until SBA has approved its application to become a Pool Originator.

(c) *Conduct of business by Pool Originator.* An entity continues to qualify as a Pool Originator so long as it:

(1) Meets the eligibility standards in paragraph (a) of this section;

(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards;

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities; and

(4) Has not been suspended or terminated from the Program by SBA.

### § 120.1704 Pool Loans eligible for Pooling.

(a) *General Pool Loan eligibility requirements.* For a First Lien Position 504 Loan to be eligible for Pooling it must:

(1) Be a loan that is:

(i) A Third Party Loan as defined in § 120.801(c)(3);

(ii) Made by a private sector lender acceptable to SBA in its sole discretion; and

(iii) Secured by a first lien on the Project Property as defined in § 120.801 of this chapter;