until SBA reviews and approves the Pool Loan for such purpose. Copies of Pool Loan documents related to underwriting and origination, and any other Pool Loan-related documents SBA may, in its sole discretion, request to review in writing, must be sent to SBA's Sacramento Pool Loan Processing Center. The Pool Originator must identify and SBA must review Pool Loan documents before a Loan Interest is added to a Pool if:

(1) The Pool Loan is to a business within NAICS code 713940 covering Fitness and Recreational Sports Centers; (If SBA determines that a Pool Loan has had any of its proceeds used for any of the restricted purposes listed above, the Pool Loan will be prohibited from being part of a Pool.)

(2) The Pool Loan was part of a 504 financing involving a 504 loan that was processed under SBA's Premier Certified Lenders Program; or

(3) The Project the Pool Loan financed included the refinancing of existing debt owed to the Seller or Third Party Lender (not including interim financing associated with the Project).

§ 120.1705 Pool formation requirements.

(a) *Initiation of Pool formation.* Only an entity approved by SBA to be a Pool Originator under the Program that continues to qualify to be a Pool Originator pursuant to this subpart may initiate the formation of a Pool. The Pool Originator creates the Pool subject to Program Rules and Regulations, including the parameters set forth in the Guide, and SBA approval.

(b) *Adjustment of Pool requirements.* SBA may adjust the Pool characteristics periodically based on program experience and market conditions and will publish a revised version of the Guide in the FEDERAL REGISTER to implement such adjustments. Any such adjustments shall not affect Pools formed prior to the adjustment.

(c) *When the Pool Originator is the Seller.* When a Pool Originator proposes to form a Pool involving a Pool Loan it owns, it must execute the First Lien Position 504 Loan Pool Guarantee Agreement as Pool Originator and as Seller and, consequently, will be subject to all applicable Program Rules

and Regulations pertaining to both roles.

(d) *When the Pool Originator does not own the Pool Loan.* When a Pool Originator proposes to form a Pool involving a Pool Loan it does not own, it must purchase the Loan Interest it proposes to pool from a Seller that owns the whole Pool Loan and that has the servicing rights. The Pool Originator must purchase the Loan Interest and take it into inventory or settle the purchase of the Loan Interest through the CSA concurrently with the formation of the Pool. The entity selling the Loan Interest to the Pool Originator must execute the First Lien Position 504 Loan Pool Guarantee Agreement as Seller and, consequently, will be subject to all applicable Program Rules and Regulations pertaining to a Seller. The Pool Originator must also execute the First Lien Position 504 Loan Pool Guaranty Agreement.

(e) *What CSA must receive prior to Pool formation.* Before the CSA may carry out its responsibilities relating to the formation of a Pool, it must receive:

(1) From the Pool Originator: A properly completed First Lien Position 504 Loan Pool application form, First Lien Position 504 Loan Guarantee Agreement, and any other documentation which SBA may require, if applicable; and

(2) All cost reimbursement due and payable to the CSA prior to Pool formation owed by the Participants participating in the formation of the Pool.

§ 120.1706 Pool Originator's retained interest in Pool.

The Pool Originator must retain an ownership interest in any Pool it has formed that is equal to at least 5% of the aggregate of the total outstanding principal balance of each Pool Loan with a Loan Interest in the Pool as calculated at the time of Pool formation. Such interest will decline with Loan Interest payments, prepayments, defaults and any other early termination. At Pool formation, the CSA will issue the Pool Originator a Pool Originator Receipt evidencing the Pool Originator's retained interest in the Pool. The Pool Originator may not sell, pledge, participate, or otherwise transfer its

Pool Originator Receipt or any interest therein for the life of the Pool.

§ 120.1707 Seller's retained Loan Interest.

The Seller must retain a 15% or greater Loan Interest in each of its loans included in a Pool. At Pool formation, the CSA will issue the Seller a Seller Receipt evidencing the Seller's retained ownership in the Pool Loan. With SBA's written permission, the Seller may sell the Seller Receipt and Servicing Retention Amount in whole, but not in part, to a single entity at one time. The Seller may not sell less than 100% of the Seller Receipt and Servicing Retention Amount, and may not sell a participation interest in any portion of any of its Pooled loans. In addition, in order to complete such sale, Seller must have the purchaser of its rights to the Pool Loan execute the First Lien Position 504 Loan Pool Guarantee Agreement as Seller and deliver the executed original to the CSA.

§ 120.1708 Pool Certificates.

(a) *SBA Guarantee of Pool Certificates*. SBA guarantees to a Pool Investor the timely payment of principal and interest installments and any prepayment or other recovery of principal to which the Pool Investor is entitled. If an Obligor misses a scheduled payment pursuant to the terms of the Pool Note underlying a Loan Interest backing a Pool Certificate, SBA, through the CSA, will make advances to maintain the schedule of interest and principal payments to the Pool Investor. If SBA makes such payments, it is subrogated fully to the rights satisfied by such payment.

(b) *SBA guarantee backed by full faith and credit*. SBA's guarantee of the Pool Certificate is backed by the full faith and credit of the United States.

(c) *SBA purchase of a Loan Interest*. SBA will determine whether to purchase a Loan Interest backing a Pool Certificate with an underlying Pool Note that is 60 days or more in arrears. SBA reserves the right to purchase a Loan Interest from a Pool at any time.

(d) *Self-liquidating*. A Pool Certificate represents a fractional beneficial interest in a Pool that is self-liquidating by

Pool Loan Receivables and/or SBA Loan Interest payment or redemption.

(e) *Pool Certificate form*. The CSA prepares the Pool Certificate. SBA must approve the form and terms of the Pool Certificate.

(f) *Pool Certificate registration*. A Pool Certificate must be registered with the CSA.

(g) *Face amount of Pool Certificate*. The face amount of a Pool Certificate cannot be less than a minimum amount as specified in the Guide, and the dollar amount of Pool Certificates must be in increments which SBA will specify in the Guide (except for one Pool Certificate for each Pool). SBA may change these requirements based upon an analysis of market conditions and program experience, and will publish any such change in the FEDERAL REGISTER.

(h) *Basis of payment for Pool Certificates*. All payments on a Pool Certificate are due pursuant to terms, conditions, and percentages set forth or referenced therein and are based on the unpaid principal balance of the Pool represented by the Pool Certificate. Any Pool Loan Receivables applicable to a Loan Interest in the SBA-guaranteed portion of a Pool will be passed through to the appropriate Pool Investors with the regularly scheduled payments to such Pool Investors.

(i) *Pool Certificate interest rate*. A Pool Certificate must have a Weighted Average Interest Rate.

(j) *Pool Certificate maturity*. A Pool Certificate must have a Maturity and a Weighted Average Maturity.

(k) *Early Pool Certificate redemption*. SBA, or the CSA on behalf of SBA, may redeem a Pool Certificate prior to its Maturity because of Obligor prepayment and/or SBA purchase of all Loan Interests in the Pool backing the Pool Certificate.

§ 120.1709 Transfers of Pool Certificates.

(a) *Transfer of Pool Certificates*. A Pool Certificate is transferable. A transfer of a Pool Certificate must comply with Article 8 of the Uniform Commercial Code of the State of New York. The seller may use any form of assignment acceptable to SBA and the CSA. The