

Subpart K—Establishment of an SBA Direct Loan Program for Systemically Important Secondary Market Broker-Dealers (SISMBD Loan Program)

SOURCE: 74 FR 59896, Nov. 19, 2009, unless otherwise noted.

§ 120.1800 Definitions used in subpart K.

(a) *Administrator*. The Administrator of the U.S. Small Business Administration.

(b) *Authority*. The Secondary Market Lending Authority defined herein.

(c) *Certificate*. The document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate), or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

(d) *Collateral (or Collateral for a SISMBD Loan)*. All Guaranteed Portions and Certificates (and proceeds thereof) that are purchased with SISMBD Loan proceeds, collateral assignments of the SBA Form 1086 (Secondary Market Participation Agreement) or SBA Form 1088 (Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate) for all Guaranteed Portions and Certificates purchased with SISMBD Loan proceeds, the agreement for Lender/FTA payment of amounts due under the Guaranteed Portions and Certificates, and any other asset that is pledged to secure an SISMBD Loan.

(e) *Commitment Letter*. The document or documents containing the terms and conditions under which SBA agrees to lend money for a specific period of time to a Systemically Important SBA Secondary Market Broker-Dealer defined in Section 120.1810 of Subpart K and pursuant to Section 509 of the American Recovery and Reinvestment Act of 2009.

(f) *FTA*. SBA's fiscal and transfer agent.

(g) *Guaranteed Portion*. That portion of an SBA 7(a) loan sold in an SBA Secondary Market transaction. This guaranteed portion of a 7(a) loan once sold is certificated, carries a guarantee

backed by the full faith and credit of the United States and bestows upon the Registered Holder the right to receive payments.

(h) *Individual Certificate*. The instrument representing a beneficial interest in the Guaranteed Portion of an individual 7(a) loan sold in the SBA Secondary Market Program and carries a guarantee which is backed by the full faith and credit of the United States.

(i) *Loan Advance Request Form*. The form approved by SBA wherein an SISMBD requests a specific dollar amount that will be used to purchase certain guaranteed portions or Certificates. This amount, when added to the balance outstanding of the SISMBD's existing SISMBD Loan, must be equal to or less than the SISMBD loan amount.

(j) *Loan Agreements*. Collectively, any loan agreement executed between SBA and the SISMBD that contains the basic terms and conditions which control the SISMBD Loan, together with any notes, security documentation, custodial agreement, and any other ancillary documentation executed in connection therewith, including by reference, the regulations and other documents referenced in the regulations.

(k) *On-going Subsidy Fee*. An annual fee collected monthly, based on the outstanding SISMBD loan balance, pursuant to section 509(F) of the Recovery Act, to result in a cost of the direct loan of zero, as determined under the Federal Credit Reform Act of 1990, as amended. These funds generated by the fee serve as a reserve for program losses. The fee will be published in a notice by SBA prior to the commencement of the Program and from time to time thereafter. SBA will communicate the SBA On-going Subsidy Fee to the systemically important broker-dealers.

(1) *Pool Assembler*. A financial institution that is authorized by SBA to:

(1) Organize and package Pools by acquiring SBA guaranteed portions of 7(a) loans from Lenders or Individual Certificates from Registered Holders;

(2) Resell fractional interests in the Pools to Registered Holders; and

(3) Direct the FTA to issue Certificates.

(m) *Pool Certificate*. The instrument representing a beneficial fractional interest in a Pool of SBA guaranteed portions of 7(a) loans. Pool Certificates are backed by the SBA guaranteed portions of 7(a) loans comprising a Pool and carry a timely payment guarantee which is backed by the full faith and credit of the United States.

(n) *Pool*. The aggregate of SBA guaranteed portions of loans formed into a single pool by the Pool Assembler in accordance with the SBA Secondary Market laws, regulations and Program Guide.

(o) *Premium*. Any amount in excess of the principal balance of a Guaranteed Portion or of a Certificate balance.

(p) *Program*. The program authorized by Section 509 of the American Recovery and Reinvestment Act of 2009.

(q) *Registered Holder*. The Certificate owner listed in the FTA's records.

(r) *SBA*. The United States Small Business Administration, an agency of the United States Government.

(s) *SBA Secondary Market*. Consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. Transactions involving interests in Pools or the sale of individual guaranteed portions of loans are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and Subpart F of Chapter 13 of the Code of Federal Regulations.

(t) *Secondary Market Lending Authority*. The office established under Section 509(c) of the American Recovery and Reinvestment Act of 2009 to provide loans to systemically important SBA Secondary Market broker-dealers to be used for the purpose of financing the inventory of the government guaranteed portion of loans originated, underwritten and closed under the Small Business Act or pools of such loans.

(u) *SISMBD*. Systemically Important SBA Secondary Market Broker-Dealer, as defined in Section 120.1810 of this Subpart K of Chapter 13 of the Code of Federal Regulations.

(v) *SISMBD Loan Application*. The application, in the form approved by

SBA, wherein an SISMBD applies for an SISMBD Loan.

(w) *SISMBD Loan*. A direct loan made by SBA to a Systemically Important SBA Secondary Market Broker-Dealer to assist with the financing of the purchase and sale of Guaranteed Portion of loans originated, underwritten and closed under Section 7(a) of the Small Business Act. Recipients of an SISMBD loan must use the proceeds for the sole purpose of purchasing Guaranteed Portions of 7(a) loans from SBA Lenders and Individual Certificates or Pool Certificates from Registered Holders.

(x) *On-going Subsidy Fee*. An annual fee collected monthly, based on the outstanding SISMBD loan balance, pursuant to section 509(F) of the Recovery Act, to result in a cost of the direct loan of zero, as determined under the Federal Credit Reform Act of 1990, as amended. The funds generated by this fee serve as a reserve for program losses. The fee will be published in a notice by SBA prior to the commencement of the Program and from time to time thereafter.

§ 120.1801 Program purpose.

Section 509 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) authorizes SBA to temporarily make direct loans to broker-dealers to ensure the continued operation of the SBA Secondary Market for 7(a) small business loans guaranteed by SBA. Such broker-dealers are referred to in the Recovery Act as Systemically Important SBA Secondary Market Broker-Dealers.

§ 120.1802 How does a broker-dealer participate in the SISMBD Loan Program?

A Pool Assembler must meet the eligibility requirements in § 120.1820, submit an SISMBD Loan Application to SBA that includes the information specified in § 120.1822, obtain a written loan commitment from SBA, execute, among other documents, Loan Agreements, and satisfy all other SBA requirements. The Loan Agreements provide further details on the requirements that apply to an SISMBD seeking an SISMBD Loan.