

§ 120.471 What are the minimum capital requirements for SBLCs?

(a) *Minimum capital requirements.* Each SBLC must maintain, at a minimum, unencumbered paid-in capital and paid-in surplus of at least \$1,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever is more.

(b) *Composition of capital.* For purposes of complying with paragraph (a) of this section, capital consists only of one or more of the following:

- (1) Common stock;
- (2) Preferred stock that is noncumulative as to dividends and does not have a maturity date;
- (3) Additional paid-in capital representing amounts paid for stock in excess of the par value;
- (4) Retained earnings of the business; and/or
- (5) For limited liability companies and limited partnerships, capital contributions must not be subject to repayment at any specific time, must not be subject to withdrawal and must have no cumulative priority return.

(c) *Voluntary capital reduction.* Without prior written SBA approval, an SBLC must not voluntarily reduce its capital, or repurchase and hold more than 2 percent of any class or combination of classes of its stock.

(d) *Issuance of securities.* Without prior written SBA approval, an SBLC must not issue any securities (including stock options and debt securities) except stock dividends.

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§ 120.472 Higher individual minimum capital requirement.

The Associate Administrator for Capital Access (AA/CA) may require, under § 120.473(d), an SBLC to maintain a higher level of capital, if the AA/CA determines, in his/her discretion, that the SBLC's level of capital is potentially inadequate to protect the SBA from loss due to the financial failure of the SBLC. The factors to be considered in the determination will vary in each case and may include, for example:

- (a) Specific conditions or circumstances pertaining to the SBLC;
- (b) Exigency of those circumstances or potential problems;

(c) Overall condition, management strength, and future prospects of the SBLC and, if applicable, its parent or affiliates;

(d) The SBLC's liquidity and existing capital level, and the performance of its SBA loan portfolio;

(e) The management views of the SBLC's directors and senior management; and

(f) Other risk-related factors, as determined by SBA.

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§ 120.473 Procedures for determining individual minimum capital requirement.

(a) *Notice.* When SBA determines that an individual minimum capital requirement above that set forth in this subpart or other legal authority is necessary or appropriate for a particular SBLC, SBA will notify the SBLC in writing of the proposed individual minimum capital requirement, the date by which it should be reached and will provide an explanation of why the requirement proposed is considered necessary or appropriate.

(b) *SBLC response.* The SBLC may respond to the notice. The response should include any matters which the SBLC would have SBA consider in deciding whether individual minimum capital requirements should be established for the SBLC, what those capital requirements should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the AA/CA within 30 days after the date on which the SBLC received the notice. SBA may shorten the time for response when, in the opinion of SBA, the condition of the SBLC so warrants, provided that the SBLC is informed promptly of the new time period, or the SBLC consents to the shortening of its response time. In its discretion, SBA may extend the time period for good cause.

(c) *Failure to respond.* An SBLC that does not respond within 30 days or such other time period as may be specified by SBA will have waived any objections to the proposed minimum capital requirement and the deadline for its achievement. Failure to respond will also constitute consent to the individual minimum capital requirement.