

§ 120.474

(d) *Decision.* After the close of the SBLC's response period, the AA/CA will decide, based on a review of SBA reasons for proposing the individual minimum capital requirement, the SBLC's response, and other information concerning the SBLC, whether the individual minimum capital requirement should be established for the SBLC and, if so, the requirement and the date it will become effective. The SBLC will be notified of the decision in writing. The notice will include an explanation of the decision; except for a decision not to establish an individual minimum capital requirement for the SBLC.

(e) *Submission of plan.* The decision may require the SBLC to develop and submit to SBA, within a time period specified, an acceptable plan to reach the individual minimum capital requirement by the date required.

(f) *Change in circumstances.* If, after SBA's decision in paragraph (d) of this section, there is a change in the circumstances affecting the SBLC's capital adequacy or its ability to reach the required individual minimum capital requirement by the specified date, either the SBLC or the AA/CA may propose to the other a change in the individual minimum capital requirement for the SBLC, the date when the individual minimum must be achieved, and/or the SBLC's plan (if applicable). The AA/CA may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision by the AA/CA on reconsideration, SBA's original decision and any plan required under that decision will continue in full force and effect.

[73 FR 75516, Dec. 11, 2008]

§ 120.474 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the individual minimum capital requirement for an SBLC may be established or revised through a written agreement or cease and desist proceedings under subpart I of this part.

[73 FR 75517, Dec. 11, 2008]

13 CFR Ch. I (1-1-14 Edition)

§ 120.475 Change of ownership or control.

(a) Any change of ownership or control without prior written approval of SBA is prohibited. An SBLC must request approval of any such change from the appropriate Office of Capital Access official in accordance with Delegations of Authority. Pending the approval, the SBLC may not register the proposed new owners on its transfer books nor permit them to participate in any manner in the conduct of the SBLC's affairs. Change of ownership or control includes:

(1) Any transfer of 10 percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of 10 percent or more of any class of its stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that transfers control of the SBLC.

(b) If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority must, at the same time, be transmitted to the appropriate Office of Capital Access official in accordance with Delegations of Authority.

[61 FR 3235, Jan. 31, 1996. Redesignated and amended at 73 FR 75516, Dec. 11, 2008]

§ 120.476 Prohibited financing.

An SBLC may not make a loan to a small business that has received financing (or a commitment for financing) from an SBIC that is an Associate of the SBLC.

[61 FR 3235, Jan. 31, 1996. Redesignated at 73 FR 75516, Dec. 11, 2008]

§ 120.490 Audits.

Every SBLC is subject to periodic audits by SBA's Office of Inspector General, Auditing Division, and the cost of such audits will be assessed against the SBLC, except for the first audit. Fees

Small Business Administration

§ 120.520

are structured based on the SBLC's assets as of the date of the latest audited financial statement submitted to SBA before the audit. The fee schedule is set forth in SBA's Standard Operating Procedures manual.

[61 FR 3235, Jan. 31, 1996. Redesignated at 73 FR 75516, Dec. 11, 2008]

Subpart E—Servicing, Liquidation and Debt Collection Litigation of 7(a) and 504 Loans

SBA'S PURCHASE OF A GUARANTEED PORTION

§ 120.520 Purchase of 7(a) loan guarantees.

(a) *When SBA will purchase*—(1) *For loans approved on or after May 14, 2007.* A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured, provided all business personal property securing the defaulted SBA loan has been liquidated. A Lender may also submit a request for purchase of a defaulted 7(a) loan when a Borrower files for federal bankruptcy once a period of at least 60 days has elapsed since the last full installment payment. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses. SBA considers liquidation of business personal property collateral to be completed when a Lender has exhausted all prudent and commercially reasonable efforts to collect upon these assets. In addition, SBA, in its sole discretion, may purchase the guaranteed portion of a loan at any time whether in default or not, with or without the request from a Lender.

(2) *For loans approved before May 14, 2007.* The regulations applicable to the time that a Lender may make demand for purchase that were in effect immediately prior to this date will govern such loans.

(b) *Documentation for purchase.* SBA will not purchase its guaranteed portion of a loan from a Lender unless the Lender has submitted to SBA documentation that SBA deems sufficient to allow SBA to determine whether

purchase of the guarantee is warranted under § 120.524.

(c) *Purchase of loans sold in Secondary Market.* When the Lender has sold the guaranteed portion of a loan in the Secondary Market, under subpart F of this part, Lenders must perform all necessary servicing and liquidation actions for such loan even after SBA has purchased the guaranteed portion of such loan from a Registered Holder (as that term is defined in § 120.600(i)). In the event that SBA purchases its guaranteed portion of such a loan from the Registered Holder, Lenders must provide SBA with a loan status report within 15 business days of such purchase. This report should include but not be limited to, a status report on the borrower and current condition of the collateral, plans for any type of loan workout or loan restructuring, existing liquidation activities including the sale of loan collateral, or the status of ongoing foreclosure proceedings. The report should accompany requested documentation that SBA deems sufficient to be able to review the Lender's administration of the loan under § 120.524. A Lender's failure to provide sufficient documentation may constitute a material failure to comply with SBA requirements under § 120.524(a)(1), and may lead to initiation of an action for recovery from the Lender of all or some of the monies SBA paid to a Registered Holder on a guarantee. SBA will also evaluate the Lender's continued participation in the Secondary Market and may restrict further sale of guaranteed portions into the Secondary Market until SBA determines that the Lender has provided sufficient documentation for purchases.

(d) *No waiver of SBA's rights.* Purchase by SBA of the guaranteed portion of a loan, or of a portion of SBA's guarantee of a loan, either through a negotiated agreement with a Lender or otherwise, does not waive any of SBA's rights to recover from the responsible Lender any money paid on the guarantee based upon the occurrence of any of the events set forth in § 120.524(a) in connection with that loan.

[72 FR 18360, Apr. 12, 2007]