

Small Business Administration

§ 120.700

§ 120.651 Claim to FTA by Registered Holder to replace Certificate.

(a) To replace a Certificate because of loss, theft, destruction, mutilation, or defacement, the Registered Holder must:

(1) Give the FTA information about the Certificate and the facts relating to the claim;

(2) File an indemnity bond acceptable to SBA and the FTA with a surety to protect the interests of SBA and the FTA;

(3) Pay the FTA its fee to replace a Certificate; and

(4) Use an affidavit of loss (form available from the FTA) to report:

(i) The name and address of the Registered Holder (and the name and capacity of any representative actually filing the claim);

(ii) The Certificate by Pool number, if applicable;

(iii) The Certificate number;

(iv) The original principal amount;

(v) The name in which the Certificate was registered;

(vi) Any assignment, endorsement or other writing on the Certificate; and

(vii) A statement of the circumstances of the theft or loss.

(b) When the FTA receives notice of the theft or loss, it will stop any transfer of the Certificate. The Registered Holder must send to the FTA all available portions of a mutilated or defaced Certificate. When the Registered Holder completes these steps, the FTA will replace the Certificate.

§ 120.652 FTA fees.

The FTA may charge reasonable servicing fees, transfer fees, and other fees as the SBA and FTA may negotiate under contract.

SUSPENSION OR REVOCATION OF PARTICIPANT IN SECONDARY MARKET

§ 120.660 Suspension or revocation.

(a) *Suspension or revocation of Lender, broker, dealer, or Registered Holder for violation of Secondary Market rules and regulations.* The D/FA may suspend or revoke the privilege of a Lender, broker, dealer, or Registered Holder to sell, purchase, broker, or deal in loans or Certificates for:

(1) Committing a serious violation, in SBA's discretion, of:

(i) The regulations governing the Secondary Market; or

(ii) Any provisions in the contracts entered into by the parties, including SBA Forms 1085, 1086, 1088 and 1454; or

(2) Knowingly submitting false or fraudulent information to the SBA or FTA.

(b) *Additional rules for suspension or revocation of broker or dealer.* In addition to acting under paragraph (a) of this section, the D/FA may suspend or revoke the privilege of any broker or dealer to sell or otherwise deal in Certificates in the Secondary Market if:

(1) Its supervisory agency has revoked or suspended the broker or dealer from engaging in the securities business, or is investigating the firm or broker for a practice which SBA considers, in its sole discretion, to be relevant to the broker's or dealer's fitness to participate in the Secondary Market;

(2) The broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony which bears on its fitness to participate in the Secondary Market; or

(3) A civil judgment is entered holding that the broker or dealer has committed a breach of trust or a violation of any law or regulation protecting the integrity of business transactions or relationships.

(c) *Notice to suspend or revoke.* The D/FA shall notify the affected party in writing, providing the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. The affected party may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the D/FA will remain in effect pending resolution of the appeal. Revocation will last a minimum of five years.

Subpart G—Microloan Program

§ 120.700 What is the Microloan Program?

The Microloan Program assists women, low income individuals, minority entrepreneurs, and other small businesses which need small amounts

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of financial assistance. Under this program, SBA makes direct and guaranteed loans to Intermediaries (as defined below) who use the proceeds to make loans to eligible borrowers. SBA may also make grants under the program to Intermediaries and other qualified nonprofit entities to be used for marketing, management, and technical assistance to the program's target population.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47073, Sept. 11, 2001]

§ 120.701 Definitions.

(a) *Deposit account* is a demand, time, savings, passbook, or similar account maintained with an insured depository institution (not including an account evidenced by a Certificate of Deposit).

(b) *Economically Distressed Area* is a county or equivalent division of local government of a state in which, according to the most recent available data from the United States Bureau of the Census, 40 percent or more of the residents have an annual income that is at or below the poverty level.

(c) *Grant* is a Federal award of money, or property in lieu of money (including cooperative agreements) to an eligible grantee that must account for its use. The term does not include the provision of technical assistance, revenue sharing, loans, loan guarantees, interest subsidies, insurance, direct appropriations, or any fellowship or other lump sum award.

(d) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(e) *Intermediary* is an entity participating in the Microloan Program which makes and services Microloans to eligible small businesses and which provides marketing, management, and technical assistance to its borrowers. It may be:

(1) A private, nonprofit community development corporation or other entity;

(2) A consortium of private, nonprofit community development corporations or other entities;

(3) A quasi-governmental economic development entity, other than a state, county, municipal government or any agency thereof; or

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(4) An agency of or a nonprofit entity established by a Native American Tribal Government.

(f) *Microloan* is a short-term, fixed interest rate loan of not more than \$50,000 made by an Intermediary to an eligible small business.

(g) *Non-Federal sources* are sources of funds other than the Federal Government and may include indirect costs or in-kind contributions paid for under non-Federal programs. Community Block Development Grants are considered non-Federal sources.

(h) *Non-lending technical assistance provider* (NTAP) is an entity which receives grant funds from SBA to provide technical assistance to Microloan borrowers.

(i) *Specialized Intermediary* is an Intermediary which maintains a portfolio of Microloans averaging \$10,000 or less.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47073, Sept. 11, 2001; 66 FR 47878, Sept. 14, 2001; 76 FR 63546, Oct. 12, 2011]

§ 120.702 Are there limitations on who can be an Intermediary or on where an Intermediary may operate?

(a) *Prior experience requirement.* To be eligible to be an Intermediary, an organization must:

(1) Have made and serviced short-term fixed rate loans of not more than \$50,000 to newly established or growing small businesses for at least one year; and

(2) Have at least one year of experience providing technical assistance to its borrowers.

(b) *Limitation to one state.* An Intermediary may not operate in more than one state unless the appropriate Office of Capital Access official in accordance with Delegations of Authority determines that it would be in the best interests of the small business community for it to operate across state lines.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47878, Sept. 14, 2001; 73 FR 75517, Dec. 11, 2008; 76 FR 63546, Oct. 12, 2011]

§ 120.703 How does an organization apply to become an Intermediary?

(a) *Application Process.* Organizations interested in becoming Intermediaries should contact SBA for information on the application process.

(b) *Documentation in support of application.* The application must include a detailed narrative statement describing:

(1) The types of businesses assisted in the past and those the applicant intends to assist with Microloans;

(2) The average size of the loans made in the past and the average size of intended Microloans;

(3) The extent to which the applicant will make Microloans to small businesses in rural areas;

(4) The geographic area in which the applicant intends to operate, including a description of the economic and demographic conditions existing in the intended area of operations;

(5) The availability and cost of obtaining credit for small businesses in the area;

(6) The applicant's experience and qualifications in providing marketing, management, and technical assistance to small businesses; and

(7) Any plan to use other technical assistance resources (such as counselors from the Service Corps of Retired Executives) to help Microloan borrowers.

§ 120.704 How are applications evaluated?

(a) *Evaluation criteria.* In selecting Intermediaries, SBA will attempt to insure that Microloans are available to small businesses in all industries and particularly to small businesses located in urban and rural areas.

(b) *Preference for organizations which make very small loans.* In selecting Intermediaries, SBA will give priority to applicants which maintain a portfolio of loans averaging \$10,000 or less.

(c) *Consideration of quasi-governmental organizations.* Generally, SBA will consider applications by quasi-governmental organizations only when it determines that program services for a particular geographic area would be best provided by such organization.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47878, Sept. 14, 2001]

§ 120.705 What is a Specialized Intermediary?

At the end of an Intermediary's first year of participation in the program, SBA will determine whether it quali-

fies as a Specialized Intermediary. An Intermediary qualifies as a Specialized Intermediary if it maintains a portfolio of Microloans averaging \$10,000 or less. Specialized Intermediaries qualify for more favorable interest rates on SBA loans. If, after the first year, an Intermediary qualifies as a Specialized Intermediary, the special interest rate is applied retroactively to SBA loans made to the Intermediary. After the first year SBA will determine an Intermediary's qualifications as a Specialized Intermediary annually, based on its lending practices during the term of its participation in the program. Specialized Intermediaries also qualify for a greater amount of technical assistance grant funding.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47878, Sept. 14, 2001]

§ 120.706 What are the terms and conditions of an SBA loan to an Intermediary?

(a) *Loan Amount.* An Intermediary may not borrow more than \$750,000 in the first year of participation in the program. In later years, the Intermediary's obligation to SBA may not exceed an aggregate of \$5 million, subject to statutory limitations on the total amount of funds available per state.

(b) *Repayment terms.* During the first year of the loan, an Intermediary is not required to make any payments, but interest accrues from the date that SBA disburses the loan proceeds to the Intermediary. After that, SBA will determine the periodic payments. The loan must be repaid within 10 years.

(c) *Interest rate.* The interest rate is equal to the rate applicable to five-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less 1.25 percent. However, the interest rate for Specialized Intermediaries is equal to the rate applicable to five-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less two percent.

(d) *Collateral.* As security for repayment of the SBA loan, an Intermediary must pledge to SBA a first lien position in the MRF (described below), LLRF (described below), and all notes receivable from Microloans.

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(e) *Default.* If for any reason an Intermediary is unable to make payment to SBA when due, SBA may accelerate maturity of the loan and demand payment in full. In this event, or if an Intermediary violates this part or the terms of its loan agreement, it must surrender possession of all collateral described in paragraph (d) of this section to SBA. The Intermediary is not obligated to pay SBA any loss or deficiency which may remain after liquidation of the collateral unless the loss was caused by fraud, negligence, violation of any of the ethical requirements of §120.140, or violation of any other provision of this part.

(f) *Fees.* SBA does not charge Intermediaries any fees for loans under this Program. An Intermediary may, however, pay minimal closing costs to third parties, such as filing and recording fees.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47073, Sept. 11, 2001; 76 FR 63546, Oct. 12, 2011]

§ 120.707 What conditions apply to loans by Intermediaries to Microloan borrowers?

(a) *General.* An intermediary may make Microloans to any small business eligible to receive financial assistance under this part. A borrower may also use Microloan proceeds to establish a nonprofit child care business. Proceeds from Microloans may be used only for working capital and acquisition of materials, supplies, furniture, fixtures, and equipment. SBA does not review Microloans for creditworthiness.

(b) *Amount and maturity.* Generally, Intermediaries should not make a Microloan of more than \$10,000 to any borrower. An Intermediary may not make a Microloan of more than \$20,000 unless the borrower demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. An Intermediary may not make a Microloan of more than \$50,000, and no borrower may owe an Intermediary more than \$50,000 at any one time. Each Microloan must be repaid within six years.

(c) *Interest rate.* The maximum interest rate that can be charged a Microloan borrower is:

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(1) On loans of more than \$10,000, the interest rate charged on the SBA loan to the Intermediary, plus 7.75 percentage points; and

(2) On loans of \$10,000 or less, the interest rate charged on the SBA loan to the Intermediary, plus 8.5 percentage points.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47073, Sept. 11, 2001; 66 FR 47878, Sept. 14, 2001; 76 FR 63547, Oct. 12, 2011]

§ 120.708 What is the Intermediary's financial contribution?

The Intermediary must contribute from non-Federal sources an amount equal to 15 percent of any loan that it receives from SBA. The contribution may not be borrowed. For purposes of this program, Community Development Block Grants are considered non-Federal sources.

§ 120.709 What is the Microloan Revolving Fund?

The Microloan Revolving Fund (“MRF”) is an interest-bearing Deposit Account into which an Intermediary must deposit the proceeds from SBA loans, its contributions from non-Federal sources, and payments from its Microloan borrowers. An Intermediary may only withdraw from this account the money needed to establish the Loan Loss Reserve Fund (§120.710), proceeds for each Microloan it makes, and any payments to be made to SBA.

§ 120.710 What is the Loan Loss Reserve Fund?

(a) *General.* The Loan Loss Reserve Fund (“LLRF”) is an interest-bearing Deposit Account which an Intermediary must establish to pay any shortage in the MRF caused by delinquencies or losses on Microloans. An Intermediary must maintain the LLRF until it has repaid all obligations it owes SBA.

(b) *Level of Loan Loss Reserve Fund.* Until it is in the Microloan program for at least five years, an Intermediary must maintain a balance on deposit in its LLRF equal to 15 percent of the outstanding balance of the notes receivable owed to it by its Microloan borrowers (“Portfolio”).

(c) *SBA review of Loan Loss Reserve Fund.* After an Intermediary has been

in the Microloan program for five years, it may request SBA's appropriate Office of Capital Access official in accordance with Delegations of Authority to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. Upon receipt of such request, he/she will review the Intermediary's annual loss rate for the most recent five-year period preceding the request.

(d) *Reduction of Loan Loss Reserve Fund.* The appropriate Office of Capital Access official in accordance with Delegations of Authority has the authority to reduce the percentage of an Intermediary's Portfolio that it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. The appropriate Office of Capital Access official in accordance with Delegations of Authority cannot reduce the LLRF to less than ten percent of the Portfolio.

(e) *What must an intermediary demonstrate to get a reduction in Loan Loss Reserve Fund?* To receive a reduction in its LLRF, an Intermediary must:

(1) Have satisfactory SBA performance, as determined by SBA in its discretion. The Intermediary's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission); and

(2) No other factors exist that may impair the Intermediary's ability to repay all obligations which it owes to the SBA under the Microloan program.

[61 FR 3235, Jan. 31, 1996, as amended at 65 FR 17439, Apr. 3, 2000; 73 FR 75517, Dec. 11, 2008]

§ 120.711 What rules govern Intermediaries?

Intermediaries must operate in accordance with applicable statutes, regulations, policy notices, SBA's Stand-

ard Operating Procedures (SOPs), and the information in the application.

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

(a) *General.* An Intermediary is eligible to receive grant funding from SBA of not more than 25 percent of the outstanding balance of all SBA loans to the Intermediary. The Intermediary must contribute, solely from non-Federal sources, an amount equal to 25 percent of the grant. Contributions may be made in cash or in kind.

(b) *Limitations on grant funds.* An Intermediary may not borrow its contribution. It may only use grant funds to provide Microloan borrowers with marketing, management, and technical assistance, except that:

(1) Up to 25 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; and

(2) Grant monies may be used to attend training required by SBA.

(c) *Exception to contribution requirement.* Intermediaries which make at least 50 percent of their loans to small businesses located in or owned by residents of Economically Distressed Areas are not subject to the contribution requirement in paragraph (a) of this section.

(d) *Intermediaries eligible to receive additional grant monies.* An Intermediary may receive an additional SBA grant equal to five percent of the outstanding balance of all loans received from SBA (with no obligation to contribute additional matching funds) if:

(1) The Intermediary makes at least 25 percent of its loans to small businesses located in or owned by residents of an Economically Distressed Area; or

(2) The Intermediary is a Specialized Intermediary.

(e) *Third party contracts for technical assistance.* An Intermediary may use no more than 25 percent of the grant funds it receives from SBA for contracts with third parties for the latter to provide technical assistance to Microloan borrowers.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47073, Sept. 11, 2001; 76 FR 63547, Oct. 12, 2011]

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§ 120.713 Does SBA provide technical assistance to Intermediaries?

SBA may procure technical assistance for an Intermediary to improve its knowledge, skill, and understanding of microlending by awarding a grant to a more experienced Intermediary. SBA may also obtain such assistance for prospective Intermediaries in areas of the country that are either not served or underserved by an existing Intermediary.

§ 120.714 How are grants made to non-lending technical assistance providers (NTAP)?

SBA selects non-lending technical assistance providers (NTAP) to receive grant funds for technical assistance to Microloan borrowers.

(a) *Grant procedure for non-Intermediaries.* Any nonprofit entity that is not an Intermediary may apply to SBA for a grant to provide marketing, management and technical assistance to low-income individuals for the purpose of assisting them in obtaining private sector financing in amounts of \$50,000 or less. To qualify, it must submit information regarding its ability to provide this assistance. If approved, the grant agreement will establish the terms and conditions for the grant.

(b) *Number and amount of grants.* In each year of the Microloan Program, SBA may make no more than 55 grants to non-Intermediaries for terms of up to five years. A grant may not exceed \$200,000.

(c) *Contribution by nonprofit entity.* The nonprofit entity must contribute an amount equal to 20 percent of the grant. The contribution from the nonprofit entity must come solely from non-Federal sources, and may include direct costs or in-kind contributions paid for under non-Federal programs.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47073, Sept. 11, 2001; 66 FR 47878, Sept. 14, 2001; 76 FR 63547, Oct. 12, 2011]

§ 120.715 Does SBA guarantee any loans an Intermediary obtains from another source?

(a) SBA may guarantee not less than 90 percent of loans made by for-profit or nonprofit entities (or an alliance of such entities) to no more than 10 Intermediaries in urban areas and 10 Inter-

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mediaries in Rural Areas (as defined in § 120.10).

(b) Any loan guaranteed by SBA under this section will have a term of 10 years. If an Intermediary receives such a loan, it will not need to repay any principal or interest during the first year, although the interest will accrue. During the second through fifth years, the Intermediary will pay interest only. During the sixth through tenth years, it will pay interest and fully amortize the principal.

(c) The interest rate on any loan under this section shall be calculated as described in § 120.706.

[61 FR 3235, Jan. 31, 1996, as amended at 66 FR 47073, Sept. 11, 2001]

Subpart H—Development Company Loan Program (504)

§ 120.800 The purpose of the 504 program.

As authorized by Congress, SBA has established this program to foster economic development, create or preserve job opportunities, and stimulate growth, expansion, and modernization of small businesses.

§ 120.801 How a 504 Project is financed.

(a) One or more small businesses may apply for 504 financing through a CDC serving the area where the 504 Project is located. SBA issues an Authorization if it agrees to guarantee part of the funding for a Project.

(b) Usually, a Project requires interim financing from an interim lender (often the same lender that later provides a portion of the permanent financing).

(c) Generally, permanent financing of the Project consists of:

(1) A contribution by the small business in an amount of at least 10 percent of the Project costs;

(2) A loan made with the proceeds of a CDC Debenture for up to 40 percent of the Project costs and certain administrative costs, collateralized by a second lien on the Project Property; and

(3) A *Third Party Loan* comprising the balance of the financing, collateralized by a first lien on the Project property (see § 120.920).