

## § 108.2040

### § 108.2040 Reporting and record-keeping requirements.

(a) *NMVC Companies*. Policies governing reporting, record retention, and recordkeeping requirements applicable to NMVC Companies may be found in subpart H of this part. NMVC Companies also must comply with all reporting, record retention, and recordkeeping requirements set forth in Circular A-110 of the Office of Management and Budget (for availability, see 5 CFR 1310.3) and any grant award document executed between SBA and the NMVC Company.

(b) *SSBICs*. An SSBIC receiving an Operational Assistance grant award must comply with all reporting, record retention and recordkeeping requirements set forth in Circular A-110 of the Office of Management and Budget and any grant award document executed between SBA and the SSBIC, as well as the reporting requirements in § 108.630(f) and the filing requirement in § 108.640.

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## PART 109—INTERMEDIARY LENDING PILOT PROGRAM

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### Subpart A—Introduction

#### § 109.10 Description of the Intermediary Lending Pilot program.

The Small Business Intermediary Lending Pilot program (ILP program) provides direct loans to ILP Intermediaries to make loans of up to \$200,000 to startup, newly established, or growing small businesses. ILP Intermediaries continue to relend a portion of the payments received on small business loans made under the program until they have fully repaid their loans to SBA.

#### § 109.20 Definitions.

*Affiliate* has the meaning set forth in § 121.103 of this chapter.

*Associate*. (1) An Associate of an ILP Intermediary is:

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the ILP Intermediary or its debt instruments, or an agent involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraph

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(1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent;

(2) An Associate of an Eligible Small Business Concern is:

(i) An officer director, owner of more than 20 percent of the equity, or key employee of the Eligible Small Business Concern;

(ii) Any entity in which one or more individuals referred to in paragraphs (2)(i) of this definition owns or controls at least 20 percent; and

(iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company (SBIC) licensed by SBA).

(3) For the purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the ILP Note or the loan to the Eligible Small Business Concern is outstanding:

(i) For an ILP Intermediary, the date of the ILP Note;

(ii) For an Eligible Small Business Concern, the date of the loan application to the ILP Intermediary.

*Close Relative* is a spouse; a parent; a child or sibling, or the spouse of any such person.

*Eligible Small Business Concern* is a small business that meets the requirements of § 109.400.

*ILP Intermediary* means a private, nonprofit entity that has applied for and been selected by SBA to receive an ILP Loan through the competitive application process described in this Part.

*ILP Loan* means a direct loan made by SBA to an ILP Intermediary under this program.

*ILP Note* means the instrument that represents the obligation of the ILP Intermediary to repay the ILP Loan to SBA.

*ILP Program Activities Report* means the quarterly report that identifies the use and management of ILP program funds.

*ILP Program Requirements* are requirements imposed upon an ILP Intermediary by statute, SBA regulations, any agreement executed between SBA and the ILP Intermediary, SBA SOPs, SBA procedural guidance, official SBA

notices and forms applicable to the ILP program, any NOFA applicable to the ILP program, and the ILP Note and Loan Authorization, as such requirements are issued and revised by SBA from time to time.

*ILP Relending Fund* means a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution which includes, at a minimum, the ILP Loan proceeds and the principal portion of repayments from Eligible Small Business Concerns.

*Intermediary Lending Program Electronic Reporting System (ILPERS)* means the web-based, electronic reporting system used by the ILP Intermediary to report each loan made to Eligible Small Business Concerns, to provide aging information on each loan, and to update the outstanding principal balance of each loan until all loans are either paid in full or charged off.

*Native American Tribal Government* means the governing body of any Native American tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans.

*Portfolio Identification Report* means the electronic report that collects identifying information on loans made to Eligible Small Business Concerns, including demographic information, use of proceeds, payment terms, and jobs created and retained.

*Portfolio Status Report* means the quarterly electronic report that summarizes the payment status and outstanding principal balances of an ILP Intermediary's loans to Eligible Small Business Concerns.

**Subpart B—ILP Intermediary Application and Selection Process**

**§ 109.100 ILP Intermediary eligibility and continuing participation requirements.**

(a) *Organization type:* An ILP Intermediary must be a private, nonprofit entity other than an intermediary participating in the SBA Microloan program as described in subpart G of Part 120. Eligible entities include:

- (1) Private, nonprofit community development corporations;
- (2) Consortiums of private, nonprofit organizations or nonprofit community development corporations; and
- (3) Agencies of or nonprofit entities established by Native American tribal governments.

(b) *Prior experience:* An ILP Intermediary must have at least one year of successful experience making and servicing loans to startup, newly established, or growing small businesses.

(c) *Management and operations.* (1) An ILP Intermediary must have paid staff with loan making and servicing experience acceptable to SBA.

(2) An ILP Intermediary must have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans including, but not limited to:

- (i) Holding sufficient permanent capital (as determined by SBA) to support lending activities under this program; and
- (ii) Maintaining satisfactory SBA performance, as determined by SBA in its discretion.

(3) An ILP Intermediary must meet and maintain the ethical requirements of 13 CFR 120.140.

(4) An ILP Intermediary (and any Affiliates) that participates in other SBA programs must be in compliance with those program requirements.

(5) An ILP Intermediary must be in good standing with its Federal and/or State regulator, as applicable.

(6) An ILP Intermediary must have the ability to comply with the ILP Program Requirements, including reporting requirements, as such requirements are revised from time to time, and maintain compliance with ILP Program Requirements for as long as

the ILP Intermediary participates in the ILP program.

**§ 109.200 Application to become an ILP Intermediary.**

(a) *Notice of Funds Availability (NOFA).* SBA will periodically publish a NOFA in the FEDERAL REGISTER, advising potential applicants of the availability of funds for the ILP program. Any eligible entity may then submit an application to become an ILP Intermediary. When submitting its application, an applicant must comply with both these regulations and any requirements specified in the NOFA, including submission deadlines. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round.

(b) *Contents of application.* The application to become an ILP Intermediary must include:

(1) Documentation that the applicant meets the eligibility and continuing participation requirements for the ILP program set forth in §109.100;

(2) A completed ILP Intermediary application form provided by SBA;

(3) A description of:

- (i) The type of small businesses to be assisted;
- (ii) The size and range of loans to be made;
- (iii) The interest rate and terms of the loans to be made;
- (iv) The geographic area to be served and the economic, poverty, and unemployment characteristics of the area;
- (v) The status of small businesses in the area to be served and an analysis of the availability of credit; and

(4) Any additional forms and documentation required by SBA.

**§ 109.210 Evaluation and selection of ILP Intermediaries.**

(a) *General.* SBA will evaluate and select applicants to participate in the ILP program in accordance with this section and the NOFA. SBA reserves the right, in its discretion, to loan less than all available funds.

(b) *Number of ILP Intermediaries.* SBA will make loans to not more than 20 of the selected ILP Intermediaries in each of the fiscal years for which funding is available.

(c) *Eligibility and completeness.* SBA will not consider any application that is not complete or that is submitted by an applicant that does not meet the eligibility and participation criteria established by SBA. SBA, at its sole discretion, may request from an applicant additional information, including information concerning participation criteria or the application, in order to allow SBA to consider that applicant's application. Failure to provide such additional information may be considered grounds to reject the application.

(d) *Evaluation criteria.* Eligible and complete applications will be evaluated and scored based on the criteria established by SBA, as set forth in the NOFA. In general, eligible applications with the highest scores will be granted ILP Intermediary status, up to the maximum number allowed by statute. SBA reserves the right to select ILP Intermediaries in such a way as to ensure geographic diversity of areas served by ILP Intermediaries.

**§ 109.220 Loan limits—loans to ILP Intermediaries.**

No ILP Intermediary (including Affiliates) may receive more than \$1,000,000 in ILP Loans.

**Subpart C—ILP Program Requirements**

**§ 109.300 General.**

An ILP Intermediary must maintain compliance with all ILP Program Requirements until the ILP Intermediary has repaid its ILP Loan to SBA. With respect to its activities in the ILP program, the ILP Intermediary is subject to the requirements of §§ 120.140 (What ethical requirements apply to participants?), 120.197 (Notifying SBA's Office of Inspector General of suspected fraud), 120.412 (Other services Lenders may provide Borrowers), and 120.413 (Advertisement of relationship with SBA) of this chapter, in addition to the regulations specifically set forth in this Part. The ILP Intermediary and any contractor(s) it may have are independent contractors that are responsible for their own actions with respect to small business loans made under this program. SBA has no responsibility or liability for any claim by an

Eligible Small Business Concern or other party for any injury as a result of any wrongful action taken by the ILP Intermediary or an employee, agent or contractor of an ILP Intermediary.

**§ 109.310 Terms of loans to ILP Intermediaries.**

(a) *Disbursement.* An ILP Intermediary must be in compliance with ILP Program Requirements in order to draw down its ILP Loan funds. SBA may place restrictions on disbursement, including the amount disbursed to an ILP Intermediary at one time or conditions on subsequent disbursements.

(b) *Term.* An ILP Loan must be repaid within 20 years from the date of the ILP Note.

(c) *Interest rate.* The interest rate for an ILP Loan to an ILP Intermediary is fixed at one percent per annum.

(d) *Repayment.* Payments of principal and interest must be made on a quarterly basis, except SBA will defer the first payment on an ILP Loan for two years from the date of the first disbursement. Interest will accrue on all disbursed funds during the deferment period. Accrued interest will be added to the outstanding principal balance at the end of the deferment period and amortized over the remaining life of the loan. An ILP Intermediary may prepay an ILP Loan at any time without penalty.

(e) *Collateral.* SBA does not require the ILP Intermediary to provide any collateral for an ILP Loan.

(f) *Fees.* SBA does not charge an ILP Intermediary any fees for an ILP Loan.

**§ 109.320 ILP Loan purposes.**

(a) ILP Loan funds must only be used to provide direct loans to Eligible Small Business Concerns for working capital, real estate, or the acquisition of materials, supplies, furniture, fixtures, or equipment.

(b) ILP Loan funds must not be used for any other purpose, including maintenance of loan loss reserves or payment of administrative costs or expenses of the ILP Intermediary.

**§ 109.330 ILP Relending Fund.**

(a) *General.* The ILP Intermediary must establish and maintain an ILP

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Relending Fund for as long as it has an outstanding balance owed to SBA under this program. The ILP Relending Fund must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities.

(b) *Contents of the ILP Relending Fund.* All ILP Loan proceeds disbursed from SBA to the ILP Intermediary must be deposited into the ILP Relending Fund. All payments received by the ILP Intermediary on loans made to Eligible Small Business Concerns must also be deposited into the ILP Relending Fund. The ILP Intermediary must not commingle funds from any other public programs (including other SBA programs) in this account.

(c) *Interest earned.* The ILP Intermediary is not required to retain the interest portion of payments received on loans made to Eligible Small Business Concerns in the ILP Relending Fund or to retain the interest earned on the ILP Relending Fund in the ILP Relending Fund.

(d) *Allowable uses of the ILP Relending Fund.* The ILP Intermediary must use the ILP Relending Fund to disburse loans made to Eligible Small Business Concerns under this program and to make payments to SBA on its ILP Loan; it may not use the ILP Relending Fund for any other purposes.

### § 109.340 Lending requirements.

(a) *Initial lending requirement.* The ILP Intermediary must commit 100% of its ILP Loan funds to Eligible Small Business Concerns within two years of the date of the ILP Note. The Associate Administrator for Capital Access (AA/CA) or designee may approve extensions to the initial lending requirement on a case-by-case basis.

(b) *Ongoing relending requirement.* After meeting the initial lending requirement, the ILP Intermediary must relend the funds in the ILP Relending Fund so that the total principal balance of loans outstanding to Eligible Small Business Concerns does not fall below 75% of the outstanding principal balance of the ILP Loan at any time while the ILP Loan is outstanding. Exceptions to this requirement will be considered by the AA/CA or designee on a case by case basis based on the par-

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ticular facts and circumstances of the ILP Intermediary.

### § 109.350 Maintenance of loan loss reserve.

The ILP Intermediary must maintain a reasonable loan loss reserve appropriate for the quality of the ILP Intermediary's portfolio in a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution. The loan loss reserve must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities. This reserve must be maintained at not less than 5% of the principal balance of all outstanding loans to Eligible Small Business Concerns made from the ILP Relending Fund. The AA/CA or designee may require the ILP Intermediary to maintain a larger loss reserve if the AA/CA determines that the ILP Intermediary's loss reserve level is potentially inadequate to protect SBA from loss. ILP Relending Fund proceeds must not be used to establish or maintain the loan loss reserve.

### § 109.360 Recordkeeping and reporting requirements.

(a) *Maintenance of records.* The ILP Intermediary must maintain at its principal business office accurate and current financial records, including books of accounts, and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program, including files on loans made to Eligible Small Business Concerns. Records may be preserved electronically if the original is available for retrieval within 15 calendar days.

(b) *ILP Intermediary reporting.* The ILP Intermediary must submit the following to SBA:

(1) *Portfolio Identification Reports.* All loans made by the ILP Intermediary to an Eligible Small Business Concern under this program must be entered into the Intermediary Lending Program Electronic Reporting System (ILPERS) within seven calendar days of closing the loan.

(2) *Quarterly reports.* By the 30th calendar day following the end of each

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calendar quarter, each ILP Intermediary must submit a Portfolio Status Report via ILPERS to update the payment status and outstanding principal balances of its loans to Eligible Small Business Concerns. Additionally, each ILP Intermediary must submit an ILP Program Activities Report with accompanying bank statements to demonstrate the use and management of ILP program funds.

(3) *Audited financial statements.* Within four months after the close of the ILP Intermediary's fiscal year, the ILP Intermediary must submit to SBA audited financial statements as prepared by an independent certified public accountant, except that ILP Intermediaries subject to OMB Circular A-133 must submit audits prepared in accordance with that circular. The AA/CA or designee may provide extensions to the filing deadline.

(4) *Reports of changes.* An ILP Intermediary must submit to SBA a summary of any changes in the ILP Intermediary's organization or financing (within 30 calendar days of the change), such as:

(i) Any change in its name, address or telephone number;

(ii) Any change in its charter, by-laws, or its officers or directors (to be accompanied by a statement of personal history on the form approved by SBA);

(iii) Any material change in capitalization or financial condition; and

(iv) Any change affecting the ILP Intermediary's eligibility to continue to participate in the ILP program.

(5) *Other reports.* Each ILP Intermediary must submit such other reports as SBA may require from time to time.

### Subpart D—Requirements for ILP Intermediary Loans to Small Businesses

#### § 109.400 Eligible Small Business Concerns.

(a) To be eligible to receive loans from an ILP Intermediary under this program, a small business must:

- (1) Be organized for profit;
- (2) Be located in the U.S.;

(3) Be small under the size requirements applicable to 7(a) business loans (including Affiliates);

(4) Be a startup, newly established, or growing small business;

(5) Together with Affiliates and principal owners, not have credit elsewhere; and

(6) Be creditworthy and demonstrate reasonable assurance of repayment of the loan.

(b) The following types of businesses are not eligible to receive a loan from an ILP Intermediary under this program:

(1) Nonprofit businesses (for-profit subsidiaries are eligible);

(2) Financial businesses primarily engaged in the business of lending;

(3) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds;

(4) Life insurance companies;

(5) Businesses located in a foreign country;

(6) Pyramid sale distribution plans;

(7) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;

(8) Businesses engaged in any illegal activity;

(9) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(10) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(11) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(12) Consumer and marketing cooperatives (producer cooperatives are eligible);

(13) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;

(14) Businesses in which the ILP Intermediary or any of its Associates owns an equity interest;

(15) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;

(16) Businesses which:

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(i) Present live performances of a prurient sexual nature; or

(ii) Derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(17) Businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss unless the agreement provides otherwise;

(18) Businesses primarily engaged in political or lobbying activities; and

(19) Speculative businesses (such as oil wildcatting);

(20) Businesses located in a Coastal Barrier Resource Area (as defined in the Coastal Barriers Resource Act);

(21) Businesses owned or controlled by an applicant or any of its Associates who are more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement;

(22) Businesses in which any Associate is an undocumented (illegal) alien; or

(23) Businesses owned or controlled by an applicant or any of its Associates who are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

**§ 109.410 Loan limits—loans to Eligible Small Business Concerns.**

No small business (including Affiliates) may have more than \$200,000 outstanding under this program at one time. The provisions of §120.151 do not apply to loans under this program.

**§ 109.420 Terms of loans from ILP Intermediaries to Eligible Small Business Concerns.**

(a) *General.* The terms of a loan made by the ILP Intermediary to an Eligible Small Business Concern must be agreed to by the ILP Intermediary and the Eligible Small Business Concern. The loan terms must be within the limits established by SBA in these regulations.

(b) *Maximum loan size.* The maximum amount of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program is \$200,000.

(c) *Maturity.* The term of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program must be the shortest appropriate term. The maximum loan term is 10 years or less, unless the loan finances or refines real estate or equipment with a useful life exceeding ten years, in which case the maximum loan term is 25 years.

(d) *Interest rate.* The maximum interest rate the ILP Intermediary may charge for loans less than or equal to \$50,000 is 8.75 percent. The maximum interest rate the ILP Intermediary may charge for loans greater than \$50,000 is 7%. SBA may adjust the maximum interest rates from time to time; SBA will publish any such change by Notice in the FEDERAL REGISTER. Changes to the maximum interest rate do not apply to loans made to Eligible Small Business Concerns prior to publication of the change in the FEDERAL REGISTER.

(e) *Fees.* The ILP Intermediary must not impose any fees or direct costs on an Eligible Small Business Concern, except for the following allowed fees or direct costs:

(1) Necessary out-of-pocket expenses, such as filing or recording fees;

(2) The reasonable direct costs of any liquidation;

(3) A late payment fee not to exceed 5 percent of the scheduled loan payment; and

(4) Reasonable application and origination fees, subject to a maximum total fee cap of 1 percent of the amount of the loan to the Eligible Small Business Concern. SBA may adjust the maximum total fee cap from time to time; SBA will publish any such

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change by Notice in the FEDERAL REGISTER.

### § 109.430 Loan purposes.

(a) An Eligible Small Business Concern may only use the proceeds of a loan under this program for the following purposes:

- (1) Working capital;
- (2) Real estate (except for real estate acquired and held primarily for sale, lease, or investment); and
- (3) The acquisition of materials, supplies, furniture, fixtures, or equipment.

(b) Revolving lines of credit are permitted. However, if, at any time, SBA determines that the ILP Intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the AA/CA or designee may terminate the ILP Intermediary's authority to use the ILP Relending Fund proceeds for revolving lines of credit. Such termination will be by written notice and will prevent the ILP Intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

### § 109.440 Requirements imposed under other laws and orders.

Loans made by the ILP Intermediary under this program must comply with all applicable laws, including §§ 120.170 (Flood insurance), 120.172 (Flood-plain and wetlands management), 120.173 (Lead-based paint), 120.173 (Earthquake hazards), and the civil rights laws (see parts 112, 113, 117, and 136 of this chapter) prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age.

### § 109.450 SBA review of ILP Intermediary loans to Eligible Small Business Concerns.

(a) *Review restrictions.* SBA does not review loans made by an ILP Intermediary under this program before approval of the loan by the ILP Intermediary. The ILP Intermediary is responsible for all loan decisions regarding eligibility (including size).

(b) *Subsequent review.* SBA will periodically review loans made by an ILP

Intermediary after approval of the loan by the ILP Intermediary as part of the on-site and off-site reviews described in § 109.510. If SBA discovers that an ILP Intermediary has made a loan under this program to an ineligible business or for an ineligible purpose, SBA will require the ILP Intermediary to refinance the ineligible loan with non-ILP program funds and to deposit into its ILP Relending Fund an amount equal to the outstanding principal balance on the ineligible loan.

### § 109.460 Prohibition on sales of ILP Intermediary Loans to Eligible Small Business Concerns.

An ILP Intermediary may not sell all or any portion of a loan made to an Eligible Small Business Concern without prior written consent from the AA/CA or designee.

## Subpart E—Oversight

### § 109.500 SBA access to ILP Intermediary files.

The ILP Intermediary must allow SBA's authorized representatives, including other officers of any other Federal agency and representatives authorized by the SBA Inspector General, during normal business hours, timely access to its facility and files to review, inspect, and copy all records and documents, including electronic and hard copy, relating to the operations of the ILP Intermediary, the ILP Loan, and the loans made from the ILP Relending Fund and other records and documents as requested for oversight of the ILP Intermediary.

### § 109.510 On-site and off-site reviews.

(a) *General.* SBA may conduct off-site reviews and monitoring of ILP Intermediaries, including ILP Intermediaries' self-assessments. SBA may also perform on-site reviews of ILP Intermediaries as needed, as determined by SBA in its discretion.

(b) *Corrective actions.* SBA may require an ILP Intermediary to take corrective actions to address findings from on-site or off-site reviews. Failure to take required corrective actions may constitute an event of default, as described in § 109.520(c).

(c) *Confidentiality of reports.* On-site and off-site review reports and other SBA prepared review related documents are subject to the confidentiality requirements of § 120.1060.

**§ 109.520 Events of default and revocation of authority to participate in the ILP program.**

(a) *Automatic events of default.* Upon the occurrence of one or more of the events in this paragraph (a), the ILP Loan balance, including accrued interest, is immediately due and payable to SBA without notice and the ILP Intermediary's authority to participate in the ILP program is revoked.

(1) *Insolvency.* The ILP Intermediary becomes equitably or legally insolvent.

(2) *Voluntary assignment.* The ILP Intermediary makes a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(3) *Bankruptcy.* The ILP Intermediary files a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against the ILP Intermediary and is not dismissed within 60 calendar days.

(b) *Events of default with notice and possible opportunity to cure.* Except as provided in paragraph (c) of this section, upon receipt of written notice to the ILP Intermediary of the occurrence (as determined by SBA) of one or more of the events in this paragraph (b), the ILP loan balance, including accrued interest, is immediately due and payable to SBA and the ILP Intermediary's authority to participate in the ILP program is revoked.

(1) *Fraud.* The ILP Intermediary commits a fraudulent act.

(2) *Violation of SBA's ethical requirements.* The ILP Intermediary violates 13 CFR § 120.140.

(3) *Non-notification of events of default.* The ILP Intermediary fails to notify SBA in writing as soon as it knows or reasonably should have known that any event of default exists under this section.

(4) *Non-notification of defaults to others.* The ILP Intermediary fails to notify SBA in writing within ten calendar days from the date of a declaration of an event of default or nonperformance

under any note, debenture or indebtedness, issued to or held by anyone other than SBA.

(5) *Failure to make timely payment.* Unless otherwise approved by the AA/CA or designee in writing, the ILP Intermediary fails to make timely payment to SBA on its ILP Loan.

(6) *Failure to take adequate corrective actions.* The ILP Intermediary fails to take adequate corrective actions, to SBA's satisfaction, as required by SBA under § 109.510 within the timeframe requested by SBA.

(7) *Violation of ILP Program Requirements.* The ILP Intermediary violates one or more ILP Program Requirement.

(8) *Actions that increase risk.* The ILP Intermediary takes other action which increases the risk of loss to SBA.

(c) *Opportunity to Cure.* SBA may, in its discretion, provide the ILP Intermediary with an opportunity to cure an event of default identified in paragraph (b) of this section. If SBA provides the ILP Intermediary with such a cure opportunity, SBA will issue written notice discussing the relevant facts, and directing the ILP Intermediary to cure the default and provide SBA with documentation to show that the default has been cured within a specified period of time (generally 15 days). SBA will then provide the ILP Intermediary with a final notification advising whether the default has been satisfactorily cured. In the event SBA determines the default has not been cured, the ILP Loan balance, including accrued interest, is immediately due and payable to SBA and the ILP Intermediary's authority to participate in the ILP program is revoked upon the ILP Intermediary's receipt of this final notification.

(d) *Appeals.* Notification of default without opportunity to cure under paragraph (b) of this section and final notification of uncured default under paragraph (c) of this section are final agency decisions. An ILP Intermediary may appeal a final agency decision only in the appropriate federal district court.

**§ 109.530 Debarment and Suspension.**

In accordance with 2 CFR Parts 180 and 2700, SBA may take any necessary

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## § 112.2

action to debar or suspend an ILP Intermediary or any officer, director, general partner, manager, employee, agent or other participant in the affairs of an ILP Intermediary's SBA operations.

### **PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

Sec.

- 112.1 Purpose.
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- 112.3 Discrimination prohibited.
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- 112.12 Effect on other regulations; forms and instructions.

#### APPENDIX A TO PART 112

AUTHORITY: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1).

SOURCE: 30 FR 298, Jan. 9, 1965, unless otherwise noted.

#### **§ 112.1 Purpose.**

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the *Act*) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any financial assistance activities of the Small Business Administration to which the Act applies.

#### **§ 112.2 Application of this part.**

(a) This part applies to all recipients of Federal financial assistance administered by the Small Business Administration. (See appendix A)

(b) The term *Federal financial assistance* includes: (1) Grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the

permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(c) This part does not apply to financial assistance extended by way of insurance or guarantee.

(d) The terms *applicant* and *recipient* mean, respectively, one who applies for and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section. The term *recipient* also shall be deemed to include *subrecipients* of SBA financial assistance, i.e., concerns which secondarily receive financial assistance from the primary recipients of such financial assistance.

(e) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or