

the proceeds remitted to you, unless you prepaid the fee under §107.1210.

(c) *Refundability.* The leverage fee is not refundable under any circumstances.

(d) *Additional charge for Leverage—(1) Debentures.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Debentures issued on or after October 1, 1996, payable under the same terms and conditions as the interest on the Debentures. This Charge does not apply to Debentures issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

(2) *Participating Securities.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Participating Securities issued on or after October 1, 1996, payable under the same terms and conditions as the Prioritized Payments on the Participating Securities. This Charge does not apply to Participating Securities issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

(e) *Other Leverage fees.* SBA may establish a fee structure for services performed by the CRA. SBA will not collect any fee for its guarantee of TCs.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998]

**§107.1140 Licensee's acceptance of SBA remedies under §§107.1800 through 107.1820.**

If you issue Leverage after April 25, 1994, you automatically agree to the terms and conditions in §§107.1800 through 107.1820 as they exist at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

**MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A LICENSEE IS ELIGIBLE**

**§107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.**

A Section 301(c) Licensee may have maximum outstanding Leverage as set forth in paragraphs (a) through (c) of this section. In general, SBA will approve Leverage commitment requests in excess of 200 percent of Regulatory Capital and draw requests in excess of

200 percent of Leverageable Capital only after a Licensee has demonstrated consistent, sustainable profitability based on a conservative investment strategy that limits downside risk. Any such Leverage request must be supported by an up-to-date business plan that reflects continuation of the Licensee's successful investment strategy and demonstrates the Licensee's ability to pay all SBA obligations in accordance with their terms.

(a) *Individual Licensee.* Subject to SBA's credit policies, if you are a Section 301(c) Licensee, the maximum amount of Leverage you may have outstanding at any time is the lesser of:

(1) 300 percent of your Leverageable Capital, or

(2) \$150 million.

(b) *Multiple Licensees under Common Control.* Subject to SBA's credit policies, two or more Licenses under Common Control may have maximum aggregate outstanding Leverage of \$225 million. However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed \$150 million, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. See also §107.1120(d).

(c) *Additional Leverage based on investment in low-income geographic areas.* Subject to SBA's credit policies, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (c). If you were licensed before October 1, 2009, you may seek additional Leverage under paragraph (c)(1) only. If you were licensed on or after October 1, 2009, you may seek additional Leverage under paragraph (c)(1) or paragraph (c)(2), but not both. In this paragraph (c), "low-income geographic areas" are as defined in §108.50 of this chapter.

(1) *Investment in Smaller Enterprises located in low-income geographic areas.* To determine whether you may request a draw that would cause you to have outstanding Leverage in excess of the amount determined under paragraph (a) of this section:

(i) Determine the cost basis, as reported on your most recent filing of SBA Form 468, of any investments in

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the Equity Securities of a Smaller Enterprise located in a low-income geographic area.

(ii) Calculate the amount that equals 50 percent of your Leverageable Capital.

(iii) Subtract from your outstanding Leverage the lesser of (c)(1)(i) or (c)(1)(ii).

(iv) If the amount calculated in paragraph (c)(1)(iii) is less than the maximum leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

(2) *Investment in Small Businesses located in low-income geographic areas.* This paragraph (c)(2) applies only to Licensees licensed on or after October 1, 2009. You may substitute a maximum Leverage amount of \$175,000,000 for the \$150,000,000 set forth in paragraph (a)(2) of this section, and a maximum Leverage amount of \$250,000,000 for the \$225,000,000 set forth in paragraph (b) of this section, if you satisfy the following conditions:

(i) At least 50 percent (in dollars) of your Financings preceding the date of such request must have been invested in Small Businesses located in low-income geographic areas. In addition, you must certify that at least 50 percent (in dollars) of your Financings on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(ii) If you are requesting a draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of \$225,000,000, at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control preceding the date of such request must have been invested in Small Businesses located in low-income geographic areas. In addition, each such Licensee must certify that at least 50 percent (in dollars) of its Financings on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

[74 FR 33916, July 14, 2009]

**§ 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.**

This section applies to Leverage issued by a Section 301(d) Licensee on

or before September 30, 1996. Effective October 1, 1996, a Section 301(d) Licensee may apply to issue new Leverage, or refinance existing Leverage, only on the same terms permitted under § 107.1150.

(a) *Maximum amount of subsidized Leverage.* (1) “Subsidized Leverage” means Debentures with a reduced interest rate and Preferred Securities. If you are a Section 301(d) Licensee:

(i) The maximum amount of subsidized Leverage you may have outstanding at any time is the lesser of 400 percent of your Leverageable Capital, or \$35,000,000. The same limit applies to a group of Section 301(d) Licensees under Common Control.

(ii) The maximum amount of Preferred Securities you may have outstanding at any time is 200 percent of your Leverageable Capital.

(2) Certain types and amounts of subsidized Leverage have special eligibility requirements (see paragraphs (c) and (d) of this section).

(b) *Maximum amount of total Leverage.* Use § 107.1150 to determine your maximum amount of Leverage as if you were a Section 301(c) Licensee. If the result is more than your maximum subsidized Leverage, then this is your maximum total (subsidized plus non-subsidized) Leverage. Otherwise, your maximum total Leverage is the same as your maximum subsidized Leverage. For Participating Securities, see § 107.1170.

(c) *Special eligibility requirements for fourth tier of Leverage.* A “fourth tier of Leverage” is any amount of outstanding Leverage in excess of 300 percent of your Leverageable Capital.

(1) To qualify for a fourth tier of Leverage, you must have invested (or have Commitments to invest) at least 30 percent of your “Total Funds Available for Investment” in “Venture Capital Financings” (see the definitions in paragraphs (e) and (f) of this section).

(2) While you have a fourth tier of Leverage, you must maintain Venture Capital Financings (at cost) that equal at least 30 percent of your Total Funds Available for Investment.

(d) *Special eligibility requirements for second tier of Preferred Securities.* A “second tier of Preferred Securities” is any amount of outstanding Preferred