

## Small Business Administration

## § 107.1410

you must give SBA a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. SBA may also determine that you are not in compliance with the terms of your Leverage under §§ 107.1810 or 107.1820.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998; 64 FR 70996, Dec. 20, 1999]

### **§ 107.1240 Funding of Licensee's draw request through sale to short-term investor.**

(a) *Licensee's authorization of SBA to arrange sale of securities to short-term investor.* By submitting a request for a draw of Debenture or Participating Security Leverage, you authorize SBA, or any agent or trustee SBA designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture or Participating Security to a short-term investor at a rate that may be different from the Trust Certificate Rate which will be established at the time of the pooling of your security;

(2) The purchase of your security from the short-term investor, either by you or on your behalf; and

(3) The pooling of your security with other securities with the same maturity date.

(b) *Sale of Debentures to a short-term investor.* If SBA sells your Debenture to a short-term investor:

(1) The sale price will be the face amount.

(2) At the next scheduled date for the sale of Debenture Trust Certificates, whether or not the sale actually occurs, you must pay interest to the short-term investor for the short-term period. If the actual sale of Trust Certificates takes place after the scheduled date, you must pay the short-term investor interest from the scheduled sale date to the actual sale date. This additional interest is due on the actual sale date.

(3) Failure to pay the interest constitutes noncompliance with the terms of your Leverage (see § 107.1810).

(c) *Sale of Participating Securities to a short-term investor.* If SBA sells your Participating Security to a short-term

investor, the sale price will be the face amount.

(d) *Licensee's right to repurchase its Debentures before pooling.* You may repurchase your Debentures from the short-term investor before they are pooled. To do so, you must:

(1) Give SBA written notice at least 10 days before the cut-off date for the pool in which your Debenture is to be included; and

(2) Pay the face amount of the Debenture, plus interest, to the short-term investor.

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

### PREFERRED SECURITIES LEVERAGE— SECTION 301(D) LICENSEES

### **§ 107.1400 Dividends or partnership distributions on 4 percent Preferred Securities.**

If you issued Preferred Securities to SBA on or after November 21, 1989, you must pay SBA a dividend or partnership distribution of 4 percent per year, from the date you issued Preferred Securities to the date you repay them, both inclusive. The dividend or partnership distribution is:

(a) Computed on the par value of the outstanding stock or the face value of the outstanding limited partnership interest.

(b) Cumulative. This means that if you do not pay the entire dividend or partnership distribution for a given fiscal year, the unpaid balance accumulates as a distribution in arrears. You do not have to pay interest on distributions in arrears.

(c) Preferred. This means that you must pay SBA in full (including distributions in arrears) before setting aside or paying any amount to any other equity holder.

(d) Payable at the discretion of your Board of Directors or General Partner(s), except that all distributions in arrears must be paid in full when you redeem the Preferred Securities.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5869, Feb. 5, 1998]

### **§ 107.1410 Requirement to redeem 4 percent Preferred Securities.**

You must redeem 4 percent Preferred Securities not later than 15 years from

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the date of issuance. At the redemption date, you must pay to SBA:

(a) The par value (of preferred stock) or face value (of a preferred limited partnership interest); plus

(b) Any unpaid dividends or partnership distributions accrued to the redemption date.

### § 107.1420 Articles requirements for 4 percent Preferred Securities.

If you have outstanding 4 percent Preferred Securities, your Articles must contain all the provisions in §§ 107.1400 and 107.1410.

[63 FR 5869, Feb. 5, 1998]

### § 107.1430 Redeeming 4 percent Preferred Securities with proceeds of non-subsidized Debentures.

If SBA approves, a Section 301(d) Licensee may use the proceeds of a Debenture to redeem Preferred Securities at their mandatory redemption date, including any accrued unpaid dividends or partnership distributions.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5869, Feb. 5, 1998]

### § 107.1440 Three percent preferred stock issued before November 21, 1989.

Before November 21, 1989, Preferred Securities were available only in the form of preferred stock and had a preferred and cumulative dividend of 3 percent. If you have such preferred stock outstanding, you must follow § 107.1400 (except for § 107.1400(d), substituting "3 percent" for "4 percent" throughout.) Dividends on 3 percent preferred stock are payable at the discretion of your Board of Directors or General Partner(s), except that all dividends in arrears must be paid in full before any non-SBA investor receives any distribution. Upon your liquidation, SBA is entitled to payment of all dividends in arrears even if you have no Retained Earnings Available for Distribution at such time.

### § 107.1450 Optional redemption of Preferred Securities.

(a) *Redemption at par or face value.* A Section 301(d) Licensee may redeem Preferred Securities at any time, provided you give SBA at least 30 days written notice. You may redeem all or

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only part of your Preferred Securities, but the par value or face value of the securities being redeemed must be at least \$50,000. At the redemption date, you must pay to SBA:

(1) The par value (of preferred stock) or face value (of a preferred limited partnership interest); plus

(2) Any unpaid dividends or partnership distributions accrued to the redemption date.

(b) *Repurchase of 3 percent preferred stock for less than par value.* If you issued 3 percent preferred stock to SBA, you may ask SBA to sell it back to you at a price less than its par value. The terms and conditions of any such transaction will be as set forth in the Notice published in the FEDERAL REGISTER on April 1, 1994 (Copies of this notice are available from SBA, 409 3rd Street, SW., Washington, DC, 20416). SBA has sole discretion to:

(1) Approve or disapprove the sale.

(2) Determine the sale price after considering any factors SBA considers appropriate.

(3) Determine the form of payment SBA will accept. SBA is not authorized to accept the proceeds of a subsidized Debenture as payment.

## PARTICIPATING SECURITIES LEVERAGE

### § 107.1500 General description of Participating Securities.

(a) *Types of Participating Securities.* Participating Securities are redeemable, preferred, equity-type securities. SBA may purchase or guarantee Participating Securities issued by Licensees in the form of limited partnership interests, preferred stock, or debentures with interest payable only to the extent of earnings. The structure, terms and conditions of Participating Securities are set forth in detail in §§ 107.1500 through 107.1590.

(b) *Special eligibility requirements for Participating Securities.* In addition to the general eligibility requirements for Leverage under § 107.1120, Participating Securities issuers must also comply with special rules on:

(1) Minimum capital (see § 107.210).

(2) Liquidity (see § 107.1505).

(3) Non-SBA borrowing (see § 107.570).

(4) Equity investing, as set forth in this paragraph (b)(4). If you issue Participating Securities, you must invest