Small Business Administration

§ 107.1570

(1) All Distributions to private investors reduce Retained Earnings Available for Distribution.

(2) Distributions to SBA, or its designated agent or Trustee, reduce Retained Earnings Available for Distribution if they are applied as payments of Profit Participation or distributions on Preferred Securities (see paragraph (g) of this section).

(3) Distributions to SBA, or its designated agent or Trustee, do not reduce Retained Earnings Available for Distribution if they are applied as a repayment or redemption of Leverage (see paragraph (g) of this section).

(e) SBA’s share of the total Distribution. Use the following table to determine the percentage share of the total Distribution (from paragraph (b) of this section) that goes to SBA (or its designated agent or Trustee):

<table>
<thead>
<tr>
<th>SBA’S PERCENTAGE SHARE OF TOTAL DISTRIBUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>If your ratio of Leverage to Leverageable Capital as of the fiscal period end is:</td>
</tr>
</tbody>
</table>
| Over 200% | \[
| [\text{Leverage} / (\text{Leverage} + \text{Leverageable Capital})] \times 100. \]
| Over 100% but not over 200%, 100% or less | 50%. |
| Profit Participation Rate from § 107.1530. |

(f) Exceptions to the Distribution requirement. (1) With SBA’s prior written approval, you may withhold from distribution reasonable reserves necessary to protect your investments or relative position in Loans and Investments and to meet contingent liabilities.

(i) If you submit a written request for SBA approval, you may consider it approved unless SBA notifies you otherwise within 30 days from receipt.

(ii) Reserves that you withhold from distribution may not be used to make investments in additional portfolio companies.

(iii) Withholding of reserves under this paragraph (f)(1) is not a “payment failure” in violation of § 107.1820(e)(6).

(2) SBA may restrict Distributions under this § 107.1560 if SBA determines that the value of your assets is materially overstated. SBA must give you notice of such a determination in advance of your proposed Distribution.

(g) How SBA will apply your Distributions. Your Distributions to SBA (or its designated agent or Trustee) under this § 107.1560 will be applied in the following order:

(1) First, to Profit Participation;

(2) Second, to the extent there remain any Retained Earnings Available for Distribution, to distributions on Preferred Securities;

(3) Third, as a redemption of Participating Securities in order of issue;

(4) Fourth, as a redemption of Preferred Securities; and

(5) Fifth, as the repayment of principal of any outstanding Debentures, with such repayment to be made into escrow on terms and conditions SBA determines.

§ 107.1570 Distributions by Licensee—optional Distribution to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, you may make two types of optional Distributions under this § 107.1570: quarterly Distributions determined the same way as the required annual Distributions in § 107.1560, and Distributions allocated between SBA and your private investors in proportion to the capital contributions of each. You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) Quarterly Distributions subject to conditions in § 107.1560. (1) You may make Distributions under this paragraph (a) as of the end of any fiscal quarter, giving SBA (or its designated agent or Trustee) a percentage share determined under § 107.1560(e).

(2) Such Distributions are subject to all the provisions in § 107.1560 (a)(1), (a)(3), (a)(4), (d), (f)(2), and (g).

(3) You may make such Distributions only on the next Payment Date following the end of your fiscal quarter.

(4) The total amount of such Distributions may not exceed the result of the following computation:

(i) Your Retained Earnings Available for Distribution as of the end of your fiscal quarter; minus
§ 107.1575  Distributions on other than Payment Dates.

(a) Permitted Distributions on other than Payment Dates. Notwithstanding any provisions to the contrary in §§107.1540 through 107.1570, you may make Distributions on dates other than Payment Dates as follows:

1. Required annual Distributions under §107.1540(a)(1), annual Distributions under §107.1550, and any Distributions under §107.1560 must be made no later than the second Payment Date following the end of your fiscal year.

2. Required Distributions under §107.1540(b) must be made no later than the first Payment Date following the end of the applicable fiscal quarter.

3. Optional Distributions under §107.1540(a)(2) and §107.1570 may be made on any date.

4. Quarterly Distributions under §107.1550 must be made no earlier than the last day of the calendar quarter for which the Distribution is being made and no later than the first Payment

(ii) If your Capital Impairment Percentage under §107.1840 is greater than zero, you must modify the formula in paragraph (b)(2)(i) of this section by replacing Leverage with:

\[
\text{Leverageable Capital} \times (100\% - \text{CIP})
\]

where “CIP” is your Capital Impairment Percentage or 100 percent, whichever is less.

(3) How SBA will apply Distributions. Any amounts you distribute to SBA, or its designated agent or Trustee, under this paragraph (b) will be applied as a repayment or redemption of Leverage in the order set forth in §107.1560(g)(3) through (g)(5).

(4) Effect of Distributions on Retained Earnings Available for Distribution. Any amounts you distribute to non-SBA investors under this paragraph (b) must reduce your Retained Earnings Available for Distribution to zero before reducing your Private Capital.

(5) Permitted exception to §107.585. You may make any Distribution permitted by this paragraph (b), even if the result is a reduction in your Regulatory Capital that would otherwise be prohibited under §107.585.