

Small Business Administration

§ 120.1511

under §120.462 or §120.1055) to achieve the applicable capital requirement;

(iii) Submit and adhere to a capital restoration plan acceptable to SBA describing the means and time schedule by which the SBLC will achieve the applicable capital requirement (The SBLC must provide its capital restoration plan within 30 days from the date of the SBA order unless SBA notifies the SBLC that the plan is to be filed within a different time period. SBA may perform an on-site examination (generally within 90 days after the restoration plan is submitted) to verify the implementation of the plan and verify that the SBLC meets minimum capital requirements.);

(iv) Refrain from taking certain actions without obtaining SBA's prior written approval (Such actions may include but are not limited to: paying any dividend; retiring any equity; maintaining a rate of growth that causes further deterioration in the capital percentage; securitizing any unguaranteed portion of its 7(a) loans; or selling participations in any of its 7(a) loans); or

(v) Undertake a combination of any of these or similar actions.

(2) *Civil action for termination.* SBA may institute a civil action to terminate the rights, privileges, and franchises of an SBLC.

(e) *Enforcement actions specific to CDCs.* In addition to those enforcement actions listed in paragraph (a) of this section, SBA may take any one or more of the following enforcement actions specific to CDCs:

(1) Require the CDC to transfer part or all of its existing 504 loan portfolio and/or part or all of its pending 504 loan applications to SBA, another CDC, or any other entity designated by SBA. Any such transfer may be on a temporary or permanent basis, in SBA's discretion; or

(2) Instruct the Central Servicing Agent to withhold payment of servicing, late and/or other fee(s) to the CDC.

[73 FR 75521, Dec. 11, 2008]

§ 120.1510 Other Regulated SBLCs.

Other Regulated SBLCs are exempt from §§120.465, 120.1050(b), 120.1400(d), 120.1500(c), and 120.1600(b). This exemp-

tion is not intended to preclude SBA from seeking any other remedy authorized by law or equity.

[73 FR 75521, Dec. 11, 2008]

§ 120.1511 Certification and other reporting and notification requirements for Other Regulated SBLCs.

(a) *Certification.* An SBLC seeking Other Regulated SBLC status must certify to SBA in writing that its lending activities are subject to regulation by a Federal Financial Institution Regulator or state banking regulator. This certification must be executed by the chair of the board of directors of the SBLC and submitted to SBA either:

(1) Within 60 calendar days of the effective date of this section or

(2) If the SBLC becomes subject to regulation by a Federal Financial Institution Regulator or state banking regulator after the effective date of this section for any reason (e.g. license transfers), within 60 days of the date that the SBLC becomes directly examined and directly regulated by such regulator.

(b) *Contents of Certification:* This certification must include:

(1) The identity of the Federal Financial Institution Regulator or state banking regulator that regulates the lending activities of the SBLC;

(2) A statement that the Federal Financial Institution Regulator or state banking regulator identified in paragraph (b)(1) of this section regularly conducts safety and soundness examinations on the SBLC itself and not only on the SBLC's parent company or affiliate, if any; and

(3) The date of the most recent safety and soundness examination conducted on the SBLC by the Federal Financial Institution Regulator or state banking regulator. To qualify as an Other Regulated SBLC, the SBLC must have received this examination within the past 3 years of the date of certification.

(c) *Notification of examination.* An Other Regulated SBLC must notify SBA in writing each time a Federal Financial Institution Regulator or state banking regulator conducts a safety and soundness examination, and this notification must be submitted to SBA within 30 calendar days of the SBLC receiving the results of the examination.

§ 120.1540

13 CFR Ch. I (1–10 Edition)

To retain its status as an Other Regulated SBLC, the Other Regulated SBLC must receive such examination, and provide the written notification to SBA, at least once every two years following initial certification.

(d) *Report.* An Other Regulated SBLC must report in writing to SBA on its interactions with other Federal Financial Institution Regulators or state banking regulator (e.g., the results of the safety and soundness examinations and any order issued against the Other Regulated SBLC), to the extent allowed by law.

(e) *Notification of change in status.* If, for any reason, an Other Regulated SBLC becomes no longer subject to regulation by a Federal Financial Institution Regulator or state banking regulator, the Other Regulated SBLC must immediately notify SBA in writing, and the exemption provided in §120.1510 will immediately no longer apply.

(f) *Extension of timeframes.* SBA may in its discretion extend any timeframe imposed on the SBLC under this section if the SBLC can show good cause for any delay in meeting the time requirement. The SBLC may appeal this decision to the AA/CA.

(g) *Failure to satisfy requirements.* In the event that an SBLC fails to satisfy the requirements set forth in paragraphs (a), (b), and (c) of this section, then the exemption provided in §120.1510 will not apply to the SBLC.

[73 FR 75521, Dec. 11, 2008]

§120.1540 Types of enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.

Upon a determination that any ground set out in §120.1425 exists, the SBA may take in its discretion, one or more of the following enforcement actions against an Intermediary or NTAP:

(a) Suspension or pre-revocation sanctions which may include, but are not limited to:

- (1) Accelerated reporting requirements;
- (2) Accelerated loan repayment requirements for outstanding program debt to SBA, as applicable;

(3) Imposition of a temporary lending moratorium, as applicable; or

(4) Imposition of a temporary training moratorium.

(b) Revocation of authority to participate in the Microloan program which will include:

- (1) Removal from the program;
- (2) Liquidation of Intermediary's Microloan Revolving Fund and Loan Loss Reserve Fund accounts by SBA, and application of the liquidated funds to any outstanding balance owed to SBA;

(3) Payment of outstanding debt to SBA by the Intermediary;

(4) Forfeiture or repayment of any unused grant funds by the Intermediary or NTAP;

(5) Debarment of the organization from receipt of federal funds until loan and grant repayments are met; or

(6) Taking such other actions available under law.

[73 FR 75521, Dec. 11, 2008]

§120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, Intermediaries, and NTAPs.

(a) *In general.* Except as otherwise set forth for the enforcement actions listed in paragraphs (b) and (c) of this section, SBA will follow the procedures listed below.

(1) *SBA's notice of enforcement action.*

(i) When undertaking an immediate suspension under §120.1500(a)(4), or prior to undertaking an enforcement action set forth in §120.1500(a), (b), and (e) and §120.1540, SBA will issue a written notice to the affected SBA Lender, Intermediary, or NTAP identifying the proposed enforcement action or notifying it of an immediate suspension. The notice will set forth in reasonable detail the underlying facts and reasons for the proposed action or immediate suspension. If the notice is for a proposed or immediate suspension, SBA will also state the scope and term of the proposed or immediate suspension.

(ii) If a proposed enforcement action or immediate suspension is based upon information obtained from a third party other than the SBA Lender,