

## § 120.1715

manner, consistent with prudent lending standards, and in accordance with applicable Program Rules and Regulations. The Seller receives the Servicing Retention Amount for servicing the Seller's Pool Loan.

### § 120.1715 Seller's Pool Loan liquidation.

Subject to § 120.1718 of this subpart J, the Seller must liquidate and conduct debt collection litigation for Seller's Pool Loan in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, in accordance with applicable Program Rules and Regulations, and with SBA approval of a liquidation plan and any litigation plan, and any amendment of either such a plan, if applicable.

### § 120.1716 Required SBA approval of servicing actions.

Seller shall not, without prior written consent of SBA, take the following actions with respect to Seller's Pool Loan:

- (a) Make or consent to any substantial alteration in the terms ("substantial" includes, but is not limited to, any changes to the principal amount or interest rate);
- (b) Accelerate the maturity;
- (c) Sue; or
- (d) Waive or release any claim. Guidance on other servicing actions, some of which may need prior SBA approval, is provided in the Guide.

### § 120.1717 Seller's Pool Loan deferments.

Without the prior written consent of SBA, Seller, at the request of Obligor, may grant one deferment of Obligor's scheduled payments for a continuous period not to exceed three months of past or future installments. Seller shall immediately notify CSA of any payment deferment and that notification shall include:

- (a) The SBA Pool Loan number;
- (b) The Obligor's name;
- (c) The terms of such deferment;
- (d) The date Obligor is to resume payment; and
- (e) Reconfirmation of the basis of interest calculation (e.g. 30/360 or Actual Days/365).

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### § 120.1718 SBA's right to assume Seller's responsibilities.

SBA may, in its sole discretion, undertake the servicing, liquidation and/or litigation of Seller's Pool Loan at any time and, in such event, Seller must take any steps necessary to facilitate the assumption by SBA of such responsibilities, which can be transferred by SBA at its discretion to a contractor, agent or other entity, and such steps shall include, among other things, providing or assigning to SBA any documents requested by SBA within 15 calendar days of Seller's receipt of such request. SBA will notify the Obligor of the change in servicing.

### § 120.1719 SBA's right to recover from Seller.

SBA is entitled to recover from Seller any monies paid on SBA's guarantee of a Pool Certificate backed in part by Seller's Pool Loan, plus interest, if SBA in its sole discretion determines that any of the following events has occurred:

- (a) Seller's improper action or inaction has put SBA at risk;
- (b) Seller has failed to disclose a material fact to SBA regarding a Seller's Pool Loan in a timely manner;
- (c) Seller has misrepresented a material fact to SBA regarding Seller's Pool Loan;
- (d) Seller has failed to comply materially with § 120.1720 of this subpart;
- (e) SBA has received a written request from Seller to terminate the SBA's guarantee on the Loan Interest in Seller's Pool Loan;
- (f) Seller has failed to comply materially with Program Rules and Regulations; or
- (g) Seller has failed to make, close, service or liquidate Seller's Pool Loan in a prudent manner.

### § 120.1720 SBA's right to review Pool Loan documents.

In the event that SBA purchases a Loan Interest in Seller's Pool Loan, Seller must provide to SBA copies of the Pool Loan collateral documents, Pool Loan underwriting documents, and any other documents SBA may require in writing within 15 calendar days of a written request from SBA (which SBA will review in connection

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with its efforts to determine if Seller is obligated to reimburse SBA pursuant to this subpart). A Seller's failure to provide the requested documentation may constitute a material failure to comply with the Program Rules and Regulations and may lead to an action for recovery under §120.1719. SBA will also evaluate a Seller's continued participation in the Program and may restrict further sales under the Program until SBA determines that the Seller has provided sufficient documentation.

### § 120.1721 SBA's right to investigate.

SBA may undertake such investigation as it deems necessary to determine whether it is entitled to seek recovery from the Seller and Seller agrees to take whatever actions are necessary to facilitate such investigation.

### § 120.1722 SBA's offset rights.

SBA shall have the right to offset any amount owed by Lender to SBA, including, without limitation, an offset against CSA's obligation to pay Lender pursuant to any Section 504 First Mortgage Loan Pool Guarantee Agreement.

### § 120.1723 Pool Loan receivables received by Seller.

Any Pool Loan Receivables received by Seller in connection with obligations under Seller's Pool Loan must be forwarded by Seller to CSA within two business days of receipt of collected funds.

### § 120.1724 Servicing and liquidation expenses.

All ordinary and reasonable expenses of servicing and liquidating Seller's Pool Loan shall be paid by, or be recoverable from, Obligor, and all such ordinary and reasonable expenses incurred by Seller or SBA which are not recoverable from Obligor shall be shared ratably by Seller, SBA, and the Pool Originator pursuant to the applicable percentages set forth in the First Lien Position 504 Loan Pool Guarantee Agreement.

### § 120.1725 No Program Preference by Seller or Pool Originator.

The Seller and the Pool Originator must not establish a Program Pref-

erence, which is defined in 13 CFR 120.10.

### § 120.1726 Pool Certificates a Seller cannot purchase.

Neither a Seller, nor any of its Program Associates or Affiliates, may purchase a Pool Certificate that is backed by a Loan Interest in a Pool Loan that the Seller, or any of its Program Associates or Affiliates, originated or owned, and, in the event such purchase occurs, SBA's guarantee shall not be in effect with respect to any such Pool Certificate.

## Subpart K—Establishment of an SBA Direct Loan Program for Systemically Important Secondary Market Broker-Dealers (SISMBD Loan Program)

SOURCE: 74 FR 59896, Nov. 19, 2009, unless otherwise noted.

### § 120.1800 Definitions used in subpart K.

(a) *Administrator*. The Administrator of the U.S. Small Business Administration.

(b) *Authority*. The Secondary Market Lending Authority defined herein.

(c) *Certificate*. The document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate), or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

(d) *Collateral (or Collateral for a SISMBD Loan)*. All Guaranteed Portions and Certificates (and proceeds thereof) that are purchased with SISMBD Loan proceeds, collateral assignments of the SBA Form 1086 (Secondary Market Participation Agreement) or SBA Form 1088 (Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate) for all Guaranteed Portions and Certificates purchased with SISMBD Loan proceeds, the agreement for Lender/FTA payment of amounts due under the Guaranteed Portions and Certificates, and any other asset that is pledged to secure an SISMBD Loan.