writing of the proposed individual minimum capital requirement, the date by which it should be reached and will provide an explanation of why the requirement proposed is considered necessary or appropriate.

(b) **SBLC response.** The SBLC may respond to the notice. The response should include any matters which the SBLC would have SBA consider in deciding whether individual minimum capital requirements should be established for the SBLC, what those capital requirements should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the AA/CA within 30 days after the date on which the SBLC received the notice. SBA may shorten the time for response when, in the opinion of SBA, the condition of the SBLC so warrants, provided that the SBLC is informed promptly of the new time period, or the SBLC consents to the shortening of its response time. In its discretion, SBA may extend the time period for good cause.

(c) **Failure to respond.** An SBLC that does not respond within 30 days or such other time period as may be specified by SBA will have waived any objections to the proposed minimum capital requirement and the deadline for its achievement. Failure to respond will also constitute consent to the individual minimum capital requirement.

(d) **Decision.** After the close of the SBLC’s response period, the AA/CA will decide, based on a review of SBA reasons for proposing the individual minimum capital requirement, the SBLC’s response, and other information concerning the SBLC, whether the individual minimum capital requirement should be established for the SBLC and, if so, the requirement and the date it will become effective. The SBLC will be notified of the decision in writing. The notice will include an explanation of the decision; except for a decision not to establish an individual minimum capital requirement for the SBLC.

(e) **Submission of plan.** The decision may require the SBLC to develop and submit to SBA, within a time period specified, an acceptable plan to reach the individual minimum capital requirement by the date required.

(f) **Change in circumstances.** If, after SBA’s decision in paragraph (d) of this section, there is a change in the circumstances affecting the SBLC’s capital adequacy or its ability to reach the required individual minimum capital requirement by the specified date, either the SBLC or the AA/CA may propose to the other a change in the individual minimum capital requirement for the SBLC, the date when the individual minimum must be achieved, and/or the SBLC’s plan (if applicable). The AA/CA may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision by the AA/CA on reconsideration, SBA’s original decision and any plan required under that decision will continue in full force and effect.

[73 FR 75516, Dec. 11, 2008]

§ 120.474 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the individual minimum capital requirement for an SBLC may be established or revised through a written agreement or cease and desist proceedings under subpart I of this part.

[73 FR 75517, Dec. 11, 2008]

§ 120.475 Change of ownership or control.

(a) Any change of ownership or control without prior written approval of SBA is prohibited. An SBLC must request approval of any such change from the appropriate Office of Capital Access official in accordance with Delegations of Authority. Pending the approval, the SBLC may not register the proposed new owners on its transfer books nor permit them to participate in any manner in the conduct of the SBLC’s affairs. Change of ownership or control includes:

1. Any transfer of 10 percent or more of any class of the SBLC’s stock, and any agreement providing for such transfer;

2. Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of 10 percent or more of any class of its stock, and any agreement providing for such transfer;
§ 120.520 Purchase of 7(a) loan guarantees.

(a) When SBA will purchase—(1) For loans approved on or after May 14, 2007. A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured, provided all business personal property securing the defaulted SBA loan has been liquidated. A Lender may also submit a request for purchase of a defaulted 7(a) loan when a Borrower files for federal bankruptcy once a period of at least 60 days has elapsed since the last full installment payment. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender’s right to request purchase on that default lapses. SBA considers liquidation of business personal property collateral to be completed when a Lender has exhausted all prudent and commercially reasonable efforts to collect upon these assets. In addition, SBA, in its sole discretion, may purchase the guaranteed portion of a loan at any time whether in default or not, with or without the request from a Lender.

(2) For loans approved before May 14, 2007. The regulations applicable to the time that a Lender may make demand for purchase that were in effect immediately prior to this date will govern such loans.

(b) Documentation for purchase. SBA will not purchase its guaranteed portion of a loan from a Lender unless the Lender has submitted to SBA documentation that SBA deems sufficient to allow SBA to determine whether purchase of the guarantee is warranted under § 120.524.

(c) Purchase of loans sold in Secondary Market. When the Lender has sold the guaranteed portion of a loan in the Secondary Market, under subpart F of this part, Lenders must perform all necessary servicing and liquidation actions for such loan even after SBA has purchased the guaranteed portion of such loan from a Registered Holder (as that term is defined in § 120.600(i)). In the event that SBA purchases its guaranteed portion of such a loan from the Registered Holder, Lenders must provide SBA with a loan status report within 15 business days of such purchase. This report should include but not be limited to, a status report on the borrower and current condition of the collateral, plans for any type of loan workout or loan restructuring, existing liquidation activities including the sale of loan collateral, or the status of ongoing foreclosure proceedings.