

## Small Business Administration

## § 120.520

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that transfers control of the SBLC.

(b) If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority must, at the same time, be transmitted to the appropriate Office of Capital Access official in accordance with Delegations of Authority.

[61 FR 3235, Jan. 31, 1996. Redesignated and amended at 73 FR 75516, Dec. 11, 2008]

### § 120.476 Prohibited financing.

An SBLC may not make a loan to a small business that has received financing (or a commitment for financing) from an SBIC that is an Associate of the SBLC.

[61 FR 3235, Jan. 31, 1996. Redesignated at 73 FR 75516, Dec. 11, 2008]

### § 120.490 Audits.

Every SBLC is subject to periodic audits by SBA's Office of Inspector General, Auditing Division, and the cost of such audits will be assessed against the SBLC, except for the first audit. Fees are structured based on the SBLC's assets as of the date of the latest audited financial statement submitted to SBA before the audit. The fee schedule is set forth in SBA's Standard Operating Procedures manual.

[61 FR 3235, Jan. 31, 1996. Redesignated at 73 FR 75516, Dec. 11, 2008]

## Subpart E—Servicing, Liquidation and Debt Collection Litigation of 7(a) and 504 Loans

### SBA'S PURCHASE OF A GUARANTEED PORTION

#### § 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 per-

sonal 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.

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The report should accompany requested documentation that SBA deems sufficient to be able to review the Lender's administration of the loan under §120.524. A Lender's failure to provide sufficient documentation may constitute a material failure to comply with SBA requirements under §120.524(a)(1), and may lead to initiation of an action for recovery from the Lender of all or some of the monies SBA paid to a Registered Holder on a guarantee. SBA will also evaluate the Lender's continued participation in the Secondary Market and may restrict further sale of guaranteed portions into the Secondary Market until SBA determines that the Lender has provided sufficient documentation for purchases.

(d) *No waiver of SBA's rights.* Purchase by SBA of the guaranteed portion of a loan, or of a portion of SBA's guarantee of a loan, either through a negotiated agreement with a Lender or otherwise, does not waive any of SBA's rights to recover from the responsible Lender any money paid on the guarantee based upon the occurrence of any of the events set forth in §120.524(a) in connection with that loan.

[72 FR 18360, Apr. 12, 2007]

### **§ 120.521 What interest rate applies after SBA purchases its guaranteed portion?**

When SBA purchases the guaranteed portion of a fixed interest rate loan, the rate of interest remains as stated in the note. On loans with a fluctuating interest rate, the interest rate that the Borrower owes will be at the rate in effect at the time of the earliest uncured payment default, or the rate in effect at the time of purchase (where no default has occurred).

### **§ 120.522 Payment of accrued interest to the Lender or Registered Holder when SBA purchases the guaranteed portion.**

(a) *Rate of interest.* If SBA purchases the guaranteed portion from a Lender or from a Registered Holder (if sold in the Secondary Market), it will pay accrued interest at:

(1) The rate in the note if it is a fixed rate loan; or

(2) The rate in effect on the date of the earliest uncured payment default, or of SBA's purchase (if there has been no default).

(b) *Payment to Lender—*(1) *For loans approved on or after May 14, 2007.* SBA will pay up to a maximum of 120 days interest to a Lender at the time of guarantee purchase.

(2) *For loans approved before May 14, 2007.* The regulations applicable to the amount of interest that SBA will pay to a Lender upon loan default that were in effect immediately prior to this date will govern such loans.

(c) *Payment to Registered Holder.* SBA will pay a Registered Holder all accrued interest up to the date of payment.

[61 FR 3235, Jan. 31, 1996, as amended at 72 FR 18361, Apr. 12, 2007]

### **§ 120.523 What is the "earliest uncured payment default"?**

The earliest uncured payment default is the date of the earliest failure by a Borrower to pay a regular installment of principal and/or interest when due. Payments made by the Borrower before a Lender makes its request to SBA to purchase are applied to the earliest uncured payment default. If the installment is paid in full, the earliest uncured payment default date will advance to the next unpaid installment date. If a Borrower makes any payment after the Lender makes its request to SBA to purchase, the earliest uncured payment default date does not change because the Lender has already exercised its right to request purchase.

### **§ 120.524 When is SBA released from liability on its guarantee?**

(a) SBA is released from liability on a loan guarantee (in whole or in part, within SBA's exclusive discretion), if any of the events below occur:

(1) The Lender has failed to comply materially with any Loan Program Requirement for 7(a) loans.

(2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;

(3) The Lender's improper action or inaction has placed SBA at risk;

(4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;