

§ 120.554

D/FA. Until the conclusion of any appeal, the Borrower may retain possession of the homestead property.

§ 120.554 Conflict of laws.

In the event of a conflict between the homestead provisions at §§ 120.550 through 120.553 of this part, and any state law relating to the right of a Borrower to designate for separate sale or to redeem part or all of the real property securing a loan foreclosed by the Lender, state law shall prevail.

Subpart F—Secondary Market

FISCAL AND TRANSFER AGENT (FTA)

§ 120.600 Definitions.

(a) *Certificate* is 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).

(b) *Current* means that no repayment from a Borrower to a Lender is over 29 days late measured from the due date of the payment on the records of the FTA's central registry (Pools) or the entity servicing the loan (individual guaranteed portion).

(c) *Dollar-Weighted Average Net Rate* of a Pool is calculated by multiplying the interest rate of each loan in the Pool by the ratio of that loan's current outstanding guaranteed principal to the current outstanding guaranteed principal of all loans in the Pool, and adding the sum of the resulting products. The Dollar-Weighted Average Net Rate of a Pool will fluctuate over the life of the Pool as loan defaults, prepayments and normal loan repayments occur.

(d) *FTA* is the SBA's fiscal and transfer agent.

(e) *Note Rate* is the interest rate on the Borrower's note.

(f) *Net Rate* is the interest rate on an individual guaranteed portion of a loan in a Pool.

(g) *Pool* is an aggregation of SBA guaranteed portions of loans made by Lenders.

(h) *Pool Assembler* is a financial institution that:

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(1) Organizes and packages a Pool by acquiring the SBA guaranteed portions of loans from Lenders;

(2) Resells fractional interests in the Pool to Registered Holders; and

(3) Directs the FTA to issue Certificates.

(i) *Pool Rate* is the interest rate on a Pool Certificate.

(j) *Registered Holder* is the Certificate owner listed in FTA's records.

(k) *SBA's Secondary Market Program Guide* is an issuance from SBA which describes the characteristics of Secondary Market transactions.

(1) *Weighted Average Coupon (WAC) Pool* is a Pool where the interest rate payable to the investor is equal to the Dollar-Weighted Average Net Rate of the Pool.

[61 FR 3235, Jan. 31, 1996, as amended at 73 FR 67102, Nov. 13, 2008]

§ 120.601 SBA Secondary Market.

The SBA secondary market ("Secondary Market") consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. By the terms of such Certificate, SBA guarantees a Registered Holder timely payment of principal and interest from the loan or loans underlying the Certificate. Transactions involving interests in Pools or the sale of individual guaranteed portions of loans are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and this subpart. See sections 5 (f), (g), and (h) of the Small Business Act (15 U.S.C. 634 (f), (g) and (h)).

CERTIFICATES

§ 120.610 Form and terms of Certificates.

(a) *General form and content.* Each Certificate must be registered with the FTA. SBA must approve the terms of the Certificate.

(b) *Face amount of Pool Certificate.* The face amount of a Pool Certificate cannot be less than a minimum amount as specified in the Program

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Guide, and the dollar amount of Certificates must be in increments which SBA will specify in the Program Guide (except for one Certificate in each Pool). SBA may change these requirements based upon an analysis of market conditions and program experience, and will publish any such change in the FEDERAL REGISTER.

(c) *Basis of payment for Pool Certificates.* Principal installments and interest payments are based on the unpaid principal balance of the portion of the Pool represented by a Pool Certificate. All prepayments on loans in the Pool must be passed through to the appropriate Registered Holders with the regularly scheduled payments to such Holders.

(d) *Basis of payment for Individual Certificates.* Principal installments and interest payments are based on the unpaid principal balance of the SBA guaranteed portion of the loan supporting an Individual Certificate. The Certificate must provide for a pass through to the Registered Holder of payments which the FTA receives from a Lender or any entity servicing the loan, less applicable fees.

(e) *Interest rate on Pool Certificate.* The interest rate on a Pool Certificate will be either the lowest Net Rate of any individual guaranteed portion of a loan in the Pool or the Dollar-Weighted Average Net Rate of the Pool.

[61 FR 3235, Jan. 31, 1996, as amended at 73 FR 67102, Nov. 13, 2008]

§ 120.611 Pools backing Pool Certificates.

(a) *Pool characteristics.* As set forth in the Program Guide, each Pool must have:

(1) A minimum number of guaranteed portions of loans;

(2) A minimum aggregate principal balance of the guaranteed portions;

(3) A maximum percentage of the Pool which an individual guaranteed portion may constitute;

(4) A maximum allowable difference between the highest and lowest note interest rates;

(5) A maximum allowable difference between the remaining terms to maturity of the loans in the Pool;

(6) A minimum weighted average maturity at Pool formation; and

(7) A maximum allowable difference between the highest and lowest Net Rate on the guaranteed portions that are placed in a WAC Pool.

(b) *Adjustment of Pool characteristics.* SBA may adjust the Pool characteristics periodically based upon program experience and market conditions.

[61 FR 3235, Jan. 31, 1996, as amended at 73 FR 67102, Nov. 13, 2008]

§ 120.612 Loans eligible to back Certificates.

(a) Pool Certificates are backed by the SBA guaranteed portions of loans comprising the Pool. An Individual Certificate is backed by the SBA guaranteed portion of a single loan. Any such loan must:

(1) Be current as of the date the Pool is formed or the individual guaranteed portion of a loan is initially sold in the Secondary Market;

(2) Be guaranteed under the Act; and

(3) Meet such other standards as SBA may determine to be necessary for the successful operation of the Secondary Market program.

(b) The loans that back a Pool must meet the SBA requirements in effect at the time the Pool is formed.

§ 120.613 Secondary Participation Guarantee Agreement.

When a Lender wants to sell the guaranteed portion of a loan, it enters into a Secondary Participation Guarantee Agreement ("SPGA") with SBA and the prospective purchaser. The terms of sale between the Lender and the purchaser cannot require the Lender or SBA to repurchase the guaranteed portion of the loan except in accordance with the terms of the SPGA. Before execution of the SPGA, the Lender must:

(a) Submit to FTA a copy of the proposed SPGA, the note, and such other documents as SBA may require;

(b) Except for export working capital loans, disburse to the Borrower the full amount of the loan; and

(c) Pay SBA all guarantee fees relevant to the loan in full.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 51680, Aug. 28, 2003]