§ 107.590 Licensee’s requirement to maintain active operations.

(a) Activity test. You must conduct active operations, as determined under this §107.590, as a condition of your license. You will be considered active if:

1. During the eighteen months preceding your most recent fiscal year end, you made Financings totaling at
least 20 percent of your Regulatory Capital; or

(2) Your idle funds did not exceed 20 percent of your total assets (at cost) at your most recent fiscal year end.

(b) Permitted exceptions to activity requirements. You are considered active if your failure to meet the requirements in paragraph (a) of this section is the result of one or more of the following factors:

(1) Your excess idle funds are the result of the receipt, within the previous nine months, of realized gains, repayments, additional capital contributions, or Leverage.

(2) It is necessary for you to maintain excess idle funds to conduct your operations because:

(i) Your unfunded commitments from investors are no more than 20 percent of your Regulatory Capital; and

(ii) You cannot receive additional Leverage, solely because SBA has insufficient funds available.

(3) You have not made sufficient Financings because of a lack of available funds, evidenced by Loans and Investments (at cost) equal to at least 90 percent of your Combined Capital as of your most recent fiscal year end.

(4) You have not made sufficient Financings solely because SBA has restricted your ability to make investments.

(c) Applicability of activity requirements. The activity requirements in paragraph (a) of this section do not apply if you have filed a “Wind-up Plan” approved by SBA. “Wind-up Plan” means a plan that you prepare when you decide that you will no longer make any Financings other than follow-on investments, and that you update annually when you file your SBA Form 468. The plan must contain your best estimates of the following:

(1) The remaining number of years you expect to operate.

(2) For each of your Loans and Investments, the expected liquidation date and anticipated proceeds.

(3) The timing of your repayment of obligations to SBA.

(d) Phase-in of activity requirements—

(1) General rule. You must meet the activity requirements in this $107.590 as of the end of your first full fiscal year beginning after January 31, 1996. Until then, you will be considered active if you meet the activity requirements in effect on January 30, 1996.

(2) Rule for new Licensees. If you received your license after January 31, 1996, or if you received your license less than eighteen months before the fiscal year end determined under paragraph (d)(1) of this section, you must meet the activity requirements in this §107.590 as of the end of your second full fiscal year beginning after the date you received your license.

Subpart F—Recordkeeping, Reporting, and Examination Requirements for Licensees

RECORDKEEPING REQUIREMENTS FOR LICENSEES

§ 107.600 General requirement for Licensee to maintain and preserve records.

(a) Maintaining your accounting records. You must establish and maintain your accounting records using SBA’s standard chart of accounts for Licensees, unless SBA approves otherwise.

(b) Location of records. You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or non-SBA lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker’s per-account insurance coverage.

(c) Preservation of records. You must retain all the records that are the basis for your financial reports. Such records