§ 107.700 Compliance with size standards in part 121 of this chapter as a condition of Assistance.

You are permitted to provide financial assistance and management services only to a Small Business. To determine whether an applicant is a Small Business, you may use either the financial size standards in §121.301(c)(2) of this chapter or the industry standard covering the industry in which the applicant is primarily engaged, as set forth in §121.301(c)(1) of this chapter.


§ 107.710 Requirement to finance smaller enterprises.

Your Portfolio must include Financings to Smaller Enterprises.

(a) Definition of Smaller Enterprise. A Smaller Enterprise means any small business concern that:

(1) Both together with its Affiliates, and by itself, meets the size standard of §121.201 of this chapter at the time of Financing for the industry in which it is then primarily engaged; or

(2) Together with its affiliates has a net worth of not more than $6 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than $2 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant’s “net income after Federal income taxes” will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant’s net income, less any deduction for State and local income taxes calculated under paragraph (a)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(b) Smaller Enterprise Financings. At the close or each of your fiscal years, and at the time of any application to draw Leverage, you must satisfy the Smaller Enterprise financing requirement in this paragraph (b) that applies to you.

(1) If you were licensed after February 17, 2009, at least 25 percent (in dollars) of your Financings must have been invested in Smaller Enterprises.

(2) If you were licensed on or before February 17, 2009, and you have received no SBA Leverage commitment issued after February 17, 2009, at least 20 percent (in dollars) of your Financings, excluding Financings made in whole or in part with Leverage in excess of $90 million, must have been invested in Smaller Enterprises. In addition, 100 percent of all Financings made in whole or in part with Leverage in excess of $90 million (including aggregate Leverage over $90 million issued by two or more Licensees under Common Control) must have been invested in Smaller Enterprises.

(3) If you were licensed on or before February 17, 2009, and you have received an SBA Leverage commitment after February 17, 2009:

(i) For all Financings made after the date of the first Leverage commitment issued after February 17, 2009, at least 25 percent (in dollars) of your Financings must have been invested in Smaller Enterprises, and

(ii) For all Financings made before February 17, 2009, at least 20 percent (in dollars) of your Financings, excluding Financings made in whole or in part with Leverage in excess of $90 million, must have been invested in Smaller Enterprises. In addition, 100 percent of all Financings made in whole or in part with Leverage in excess of $90 million (including aggregate Leverage over $90
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million issued by two or more Licens-
sees under Common Control) must have
been invested in Smaller Enterprises.

(c) Special requirement for certain lever-
aged Licensees. (1) This paragraph (c)
applies if you were licensed on or be-
fore September 30, 1996, and you issued
Leverage after that date, and you have
Regulatory Capital of:

(i) Less than $10,000,000 if such Lever-
age included Participating Securities; or

(ii) Less than $5,000,000 if such lever-
age was Debentures only.

(2) At the close of each of your fiscal
years, at least 50 percent of the total
dollar amount of the Financings you
extended after September 30, 1996 must
have been invested in Smaller Enter-
prises.

(d) Financing a change of ownership
which results in the creation of a
Smaller Enterprises. The Financing of
a change of ownership under § 107.750
which results in the creation of a
Smaller Enterprise qualifies as a
Smaller Enterprise Financing.

(e) Non-compliance with this section.
If
you have not reached the required per-
centage of Smaller Enterprise
Financings at the end of any fiscal
year, then you must be in compliance
by the end of the following fiscal year.
However, you will not be eligible for
additional Leverage until you reach
the required percentage (see §107.1120(c)
and (g)).

FR 5866, Feb. 5, 1998; 64 FR 70995, Dec. 20,
1999; 66 FR 30647, June 7, 2001; 74 FR 33915,
July 14, 2009]

§ 107.720 Small Businesses that may be
ineligible for financing.

(a) Relenders or reinvestors. You are
not permitted to finance any business
that is a relender or reinvestor.

(1) Definition. Relenders or reinves-
tors are businesses whose primary busi-
ness activity involves, directly or indi-
rectly, providing funds to others, pur-
chasing debt obligations, factoring, or
long-term leasing of equipment with no
provision for maintenance or repair.

(2) Exception. You may provide Ven-
ture Capital Financing to Disadvan-
taged Businesses that are relenders or
reinvestors (except banks or savings
and loans not insured by agencies of
the federal government, and agricul-
tural credit companies). Without SBA’s
prior written approval, total Financings under this paragraph (a)(2)
that are outstanding as of the close of
your fiscal year must not exceed your
Regulatory Capital.

(b) Passive Businesses. You are not
permitted to finance a passive busi-
ness.

(1) Definition. A business is passive if:

(i) It is not engaged in a regular and
continuous business operation (for pur-
poses of this paragraph (b), the mere
receipt of payments such as dividends,
rents, lease payments, or royalties is
not considered a regular and contin-
uous business operation); or

(ii) Its employees are not carrying on
the majority of day to day operations,
and the company does not provide ef-
effective control and supervision, on a
day to day basis, over persons em-
ployed under contract; or

(iii) It passes through substantially
all of the proceeds of the Financing to
another entity.

(2) Exception for pass-through of pro-
cceeds to subsidiary. You may finance a
passive business if it is a Small Busi-
ness and it passes substantially all the
proceeds through to one or more sub-
sidiary companies, each of which is an
eligible Small Business that is not pas-
sive. For the purpose of this paragraph
(b)(2), “subsidiary company” means a
company in which at least 50 percent of
the outstanding voting securities are
owned by the Financed passive busi-
ness.

(3) Exception for certain Partnership Li-
censees. With the prior written ap-
proval of SBA, if you are a Partnership
Licensee, you may form one or more
wholly-owned corporations in accord-
ance with this paragraph (b)(3). The
sole purpose of such corporation(s)
must be to provide Financing to one or
more eligible, unincorporated Small
Businesses. You may form such cor-
poration(s) only if a direct Financing
to such Small Businesses would cause
any of your investors to incur unre-
lated business taxable income under
section 511 of the Internal Revenue
Your ownership of such corporation(s)
will not constitute a violation of
§107.865(a) and your investment of