

## Small Business Administration

## § 107.1180

Leverage” is any amount of outstanding Leverage in excess of 300 percent of your Leverageable Capital.

(1) To qualify for a fourth tier of Leverage, you must have invested (or have Commitments to invest) at least 30 percent of your “Total Funds Available for Investment” in “Venture Capital Financings” (see the definitions in paragraphs (e) and (f) of this section).

(2) While you have a fourth tier of Leverage, you must maintain Venture Capital Financings (at cost) that equal at least 30 percent of your Total Funds Available for Investment.

(d) *Special eligibility requirements for second tier of Preferred Securities.* A “second tier of Preferred Securities” is any amount of outstanding Preferred Securities in excess of 100 percent of your Leverageable Capital.

(1) To qualify for a second tier of Preferred Securities:

(i) If your license was issued after October 13, 1971, you must have at least \$500,000 of Leverageable Capital.

(ii) You must have invested (or have Commitments to invest) at least the same dollar amount in Venture Capital Financings.

(2) While you have a second tier of Preferred Securities, you must maintain at least the same dollar amount of Venture Capital Financings (at cost).

(e) *Definition of “Total Funds Available for Investment”.* Total Funds Available for Investment means the result obtained from the following formula:

$$T = .90 \times (CA + LI)$$

Where:

T = Total funds available for investment

CA = Total current assets

LI = Total Loans and Investment at cost (as reported on SBA Form 468), net of current maturities

(f) *Definition of “Venture Capital Financing”.* Venture Capital Financing means an investment represented by common or preferred stock, a limited partnership interest, or a similar ownership interest; or by an unsecured debt instrument that is subordinated by its terms to all other borrowings of the issuer.

(1) A debt secured by any agreement with a third party is not a Venture Capital Financing, whether or not you have a security interest in any asset of

the third party or have recourse against the third party.

(2) A Financing that originally qualified as a Venture Capital Financing will continue to qualify (at its original cost), even if you later must report it on SBA Form 468 under either Assets Acquired in Liquidation of Portfolio Securities or Operating Concerns Acquired.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998; 74 FR 33916, July 14, 2009]

### § 107.1170 Maximum amount of Participating Securities for any Licensee.

The maximum amount of Participating Securities you may have outstanding at any time is 200 percent of your Leverageable Capital. If you are a Section 301(d) Licensee, the maximum combined amount of Participating Securities and Preferred Securities you may have outstanding at any time is 200 percent of your Leverageable Capital.

#### SPECIAL RULES FOR LEVERAGE ISSUED BY AN EARLY STAGE SBIC

### § 107.1180 Required distributions to SBA by Early Stage SBICs.

(a) *Distribution requirement.* If you are an Early Stage SBIC with outstanding Leverage, you may make Distributions to your investors and to SBA only as permitted under this section. See also § 107.585. For the purposes of this section, “Distributions” do not include required payments to SBA of interest and Charges and payments of Leverage principal at maturity, all of which shall be paid in accordance with the terms of the Leverage. You may make a Distribution on any Payment Date. Unless SBA permits otherwise, you must notify SBA in writing of any planned distribution under this section, including computations of the amounts distributable to SBA and your investors, at least 10 business days before the distribution date.

(b) *How SBA will apply Distributions.* Any amounts you distribute to SBA, or its designated agent or Trustee, under this section will be applied to repayment of principal of outstanding Debentures in order of issue. You may

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prepay any Debenture in whole, but not in part, on any Payment Date without penalty.

(c) *Condition for making a Distribution.* You may make a Distribution under this section only if you have paid all interest and Charges on your outstanding Debentures that are due and payable, or will pay such interest and Charges simultaneously with your Distribution.

(d) *SBA's share of Distribution.* For each proposed Distribution, determine SBA's share of the Distribution as follows:

(1) Determine the highest ratio of outstanding Leverage to Leverageable Capital that you have ever attained (your "Highest Leverage Ratio"). For the purpose of determining your Highest Leverage Ratio, any deferred interest Debentures issued at a discount must be included in the computation at their face value.

(2) Determine SBA's percentage share of cumulative Distributions:

(i) If your Capital Impairment Percentage under §107.1840 is less than 50 percent as of the Distribution date or your Highest Leverage Ratio equals 0.5 or less, except as provided in paragraph (d)(2)(iii) of this section, SBA's percentage share of cumulative Distributions equals:

$$\left[ \frac{\text{Highest Leverage Ratio}}{\text{Highest Leverage Ratio} + 1} \right] \times 100$$

For example, if your Highest Leverage Ratio equals 1, then SBA's share of any distribution you make will be 50 percent.

(ii) If your Capital Impairment Percentage under §107.1840 is 50 percent or greater as of the Distribution date and your Highest Leverage Ratio is greater than 0.5, SBA's percentage share of cumulative Distributions equals 100 percent.

(iii) If you have a condition of Capital Impairment under §107.1830 and your Highest Leverage Ratio equals 0.5 or less as of the Distribution date, SBA's percentage share of cumulative Distributions equals 100 percent.

(3) Multiply the sum of all your prior Distributions and your current proposed Distribution (including Distributions to SBA, your limited partners and your General Partner) by SBA's percentage share of cumulative Dis-

tributions as determined in paragraph (d)(2) of this section.

(4) From the result in paragraph (d)(3) of this section, subtract the sum of all your prior Distributions to SBA under this §107.1180.

(5) The amount of your Distribution to SBA will be the least of:

(i) The result in paragraph (d)(4) of this section;

(ii) Your current proposed Distribution; or

(iii) Your outstanding Leverage.

(e) *Additional Leverage prepayment.* On any Payment Date, subject to the terms of your Leverage, you may make a payment to SBA to be applied to repayment of the principal of one or more outstanding Debentures in order of issue, without making any Distribution to your investors.

[77 FR 25053, Apr. 27, 2012]

**§107.1181 Interest reserve requirements for Early Stage SBICs.**

(a) *Reserve requirement.* If you are an Early Stage SBIC with outstanding Leverage, for each Debenture which requires periodic interest payments to SBA during the first five years of its term, you must maintain a reserve sufficient to pay the interest and Charges on such Debenture for the first 21 Payment Dates following the date of issuance. This reserve may consist of any combination of the following:

(1) Binding unfunded commitments from your Institutional Investors that cannot be called for any purpose other than the payment of interest and Charges to SBA, or the payment of any amounts due to SBA; and

(2) Cash maintained in a separate bank account or separate investment account permitted under §107.530 of this part and separately identified in your financial statements as "restricted cash" available only for the purpose of paying interest and Charges to SBA, or for the payment of any amounts due to SBA.

(b) The required reserve associated with an individual Debenture shall be reduced on each Payment Date upon payment of the required interest and Charges. If you prepay a Debenture prior to the 21st Payment Date following its date of issuance, the reserve