

Small Business Administration

§ 107.1590

Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§107.1500 through 107.1570, must be:

- (i) The distribution date, or
- (ii) If your Distribution includes annual Distributions under §§107.1540(a)(1), 107.1550 and/or 107.1560, your most recent fiscal year end;
- (3) If your Distribution includes an amount which SBA will apply as a redemption of Participating Securities, the effective date of such redemption, for all purposes including future computations of Prioritized Payments, will be the next Payment Date following the distribution date.

[63 FR 5872, Feb. 5, 1998, as amended at 64 FR 70997, Dec. 20, 1999]

§107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions while Licensee has outstanding Participating Securities.* A Distribution under §§107.1540, 107.1560 or 107.1570 may consist of securities (an "In-Kind Distribution"). Such a Distribution must satisfy the conditions in this paragraph (a).

(1) You may distribute only Distributable Securities.

(2) You must distribute each security pro-rata to all investors and to SBA or its designated agent or Trustee, based on the amounts that each party would receive if the Distribution were in cash.

(3) You must impute a gain (loss) on each security being distributed as if it were being sold, using the value of the security as of the declaration date of the Distribution (if you are a Corporate Licensee) or the distribution date (if you are a Partnership Licensee).

(4) You must deposit SBA's share of securities being distributed with a disposition agent designated by SBA. As an alternative, if you agree, SBA may direct you to dispose of its shares. In this case, you must promptly remit the proceeds to SBA.

(b) *In-Kind Distributions after Licensee has redeemed all Participating Securities.* This paragraph (b) applies from the time you redeem all your Participating Securities until you dispose of all your Earmarked Assets.

(1) You may make an In-Kind Distribution of an Earmarked Asset only if you pay SBA the lower of:

- (i) An amount equal to the Unrealized Appreciation on the asset; or
- (ii) The full amount of your Accumulated Prioritized Payments and unpaid Adjustments.

(2) You must obtain SBA's prior written approval of any In-Kind Distribution of Earmarked Assets that are not Distributable Securities, specifically including approval of the valuation of the assets.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5872, Feb. 5, 1998; 64 FR 70997, Dec. 20, 1999]

§107.1585 Exchange of Debentures for Participating Securities.

You may, in SBA's discretion, retire a Debenture through the issuance of Participating Securities. To do so, you must:

- (a) Obtain SBA's approval to issue Participating Securities;
- (b) Pay all unpaid accrued interest on the Debenture, plus any applicable prepayment penalties, fees, and other charges;
- (c) Have outstanding Equity Capital Investments (at cost) equal to the amount of the Debenture being refinanced; and
- (d) Classify all your existing Loans and Investments as Earmarked Assets.

[63 FR 5869, Feb. 5, 1998]

§107.1590 Special rules for companies licensed on or before March 31, 1993.

This section applies to companies licensed on or before March 31, 1993 that apply to issue Participating Securities.

(a) *Election to exclude pre-existing portfolio.* You may choose to exclude all (but not a portion) of your Loans and Investments as of March 31, 1993, from classification as Earmarked Assets if:

- (1) The proceeds of your first issuance of Participating Securities are not used to refinance outstanding Debentures (see §107.1585(a)). SBA will consider payment or prepayment of any outstanding Debenture to be a refinancing unless you demonstrate to SBA's satisfaction that you can pay