

## § 120.1701

First Lien Position 504 Loan Pool Guarantee Agreement.

*Seller Receipt.* The document that evidences a Seller's Loan Interest.

*Servicing Retention Amount.* The amount of a Pool Loan interest payment retained by Seller for servicing the Pool Loan that is payable and calculated pursuant to the First Lien Position 504 Loan Pool Guarantee Agreement.

*Weighted Average Interest Rate.* The dollar-weighted average interest rate of a Pool Certificate calculated by multiplying the interest rate of each Loan Interest in the Pool by the ratio of that Loan Interest's current outstanding principal in the SBA-guaranteed portion of the Pool (that is, the portion of the Pool Loan backing the Pool Certificates) to the current aggregate or outstanding principal of each Loan Interest in the SBA-guaranteed portion of the Pool, and adding the sum of the resulting products. The Pool Certificate interest rate will fluctuate over the life of the Pool as defaults, prepayments and normal repayments applicable to Loan Interests in the Pool occur.

*Weighted Average Maturity.* The weighted average maturity of a Pool Certificate is a dollar weighted average maturity that is calculated by multiplying the remaining term, in months, of each Loan Interest in a Pool by the ratio of that Loan Interest's current outstanding pooled principal to the current aggregate outstanding pooled principal of all Loan Interests in the Pool, and adding the sum of the resulting products. The weighted average maturity of a Pool Certificate will fluctuate over the life of the Pool as Loan Interest defaults, prepayments and normal Loan Interest repayments occur.

### § 120.1701 Program purpose.

As authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act), SBA establishes the Program to authorize an entity to apply for SBA's guarantee of Pools comprised of portions of First Lien Position 504 Loans backing Pool Certificates to be sold to Pool Investors. The purpose of the Program is to temporarily provide a federal guarantee for

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Pools of First Lien Position 504 Loans to facilitate the sale of such loans and increase the liquidity of the lenders holding the loans so that the lenders can use the sale proceeds to fund more such loans. The Program's authorization expires on September 23, 2012 and the Administrator may guarantee not more than \$3,000,000,000 of pools under this authority pursuant to section 503(c)(B)(iii) of the Recovery Act, as amended by section 1119 of the Small Business Jobs Act of 2010.

[61 FR 3235, Jan. 31, 1996, as amended at 76 FR 63547, Oct. 12, 2011]

### § 120.1702 Program fee.

*Ongoing Guarantee Fee.* The Ongoing Guarantee Fee is payable to SBA, and it is calculated and payable monthly from the amounts received in respect of interest on Loan Interests in the SBA-guaranteed portion of a Pool. This amount is set forth in the First Lien Position 504 Loan Pool Guarantee Agreement. This fee is used to pay program losses.

### § 120.1703 Qualifications to be a Pool Originator.

(a) *Application to become Pool Originator.* The application to become a Pool Originator is available from the SBA and can be found on SBA's website. In order to qualify as a Pool Originator, an entity must send the application to the SBA and certify that it is a Pool Assembler or it:

(1) Is regulated by the appropriate agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Meets all financial and other applicable requirements of its regulatory authority and the Government Securities Act of 1986, as amended (Pub. L. 99-571, 100 Stat. 3208);

(3) Has the financial capability to originate acceptable pools consisting of eligible First Lien Position 504 Loans in sufficient quantity to support the issuance of Pool Certificates;

(4) Is in good standing with SBA (as the SBA determines), and is Satisfactory with the Office of the Comptroller of the Currency (OCC) if it is a national bank, the Federal Deposit Insurance

Corporation if it is a bank not regulated by the OCC, the Financial Institutions Regulatory Authority if it is a member, the National Credit Union Administration if it is a credit union, as determined by SBA; and

(5) for any Pool Originator that is an SBA Lender, that the SBA Lender has satisfactory SBA performance, as determined by SBA in its sole discretion.

(b) *Approval by SBA.* An entity may not submit applications to form Pools to the CSA until SBA has approved its application to become a Pool Originator.

(c) *Conduct of business by Pool Originator.* An entity continues to qualify as a Pool Originator so long as it:

(1) Meets the eligibility standards in paragraph (a) of this section;

(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards;

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities; and

(4) Has not been suspended or terminated from the Program by SBA.

[74 FR 56093, Oct. 30, 2009, as amended at 82 FR 39506, Aug. 21, 2017]

#### § 120.1704 Pool Loans eligible for Pooling.

(a) *General Pool Loan eligibility requirements.* For a First Lien Position 504 Loan to be eligible for Pooling it must:

(1) Be a loan that is:

(i) A Third Party Loan as defined in § 120.801(c)(3);

(ii) Made by a private sector lender acceptable to SBA in its sole discretion; and

(iii) Secured by a first lien on the Project Property as defined in § 120.801 of this chapter;

(2) Be part of a 504 financing that is comprised of only one Third Party Loan and one CDC 504 loan; the CDC 504 loan must be funded by a Debenture that was sold on or after February 17, 2009;

(3) Be Current and have been Current for the six-month-period immediately prior to the date the Pool is formed or

for the life of the Pool Loan, whichever time period is shorter;

(4) Have been made and closed in a commercially reasonable manner, consistent with prudent lending standards;

(5) Be part of a completed 504 financing, funded by a 504 debenture, which means that the Pool Loan must be fully disbursed and the debenture funding the related loan by a CDC must have been sold on or after February 17, 2009; and

(6) Not be:

(i) To a business deriving more than one-third of its gross annual revenue from legal gambling activities;

(ii) To a casino, gambling establishment, or casino hotel;

(iii) For financing the acquisition, construction or renovation of an aquarium, zoo, golf course, or swimming pool; or

(iv) To a business covered by a six-digit North American Industry Classification System (NAICS) code for casinos—713210 (“Casinos (Except Casino Hotels)”); casino hotels—721120 (“Casino Hotels”); other gambling institutions—713290 (“Other Gambling Industries”); golf courses—713910 (“Golf Courses and Country Clubs”); or aquariums and zoos—712130 (“Zoos and Botanical Gardens”).

(b) *SBA review of a Pool Loan prior to pool formation.* SBA has the right to review any Pool Loan before a Loan Interest in it is added to a Pool, and SBA may prohibit the Pool’s formation as proposed based on SBA’s review in SBA’s sole discretion. In the event SBA decides to review Pool Loan documents related to a Loan Interest prior to the requested Pool formation, that Loan Interest may not be added to the Pool until SBA reviews and approves the Pool Loan for such purpose. Copies of Pool Loan documents related to underwriting and origination, and any other Pool Loan-related documents SBA may, in its sole discretion, request to review in writing, must be sent to SBA’s Sacramento Pool Loan Processing Center. The Pool Originator must identify and SBA must review Pool Loan documents before a Loan Interest is added to a Pool if:

(1) The Pool Loan is to a business within NAICS code 713940 covering Fitness and Recreational Sports Centers;