

## Small Business Administration

## § 107.1130

(i) You must certify in writing that at least 50 percent of the aggregate dollar amount of your Financings extended after September 30, 1996 will be provided to Smaller Enterprises (as defined in § 107.710(a)); and

(ii) You must demonstrate to SBA's satisfaction that the approval of Leverage will not create or contribute to an unreasonable risk of default or loss to the United States government, based on such measurements of profitability and financial viability as SBA deems appropriate.

(d) For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of \$150 million, certify that none of the Licensees has a condition of Capital Impairment. *See also* § 107.1150(b).

(e) For any Leverage request pursuant to § 107.1150(d)(2)(i), certify that at least 50 percent (in dollars) of your Financings made on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(f) For any Leverage request pursuant to § 107.1150(d)(2)(ii), certify that at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(g) Certify in writing that you are in compliance with the requirement to finance Smaller Enterprises in § 107.710(b).

(h) Show, to the satisfaction of SBA, that your management is qualified and has the knowledge, experience, and capability necessary for investing in the types of businesses contemplated by the Act, the regulations in this part and your business plan.

(i) Be in compliance with the regulations in this part.

(j) If required by SBA, have your Control Person(s) assume, in writing, personal responsibility for your Leverage, effective only if such Control Person(s) participate (directly or indirectly) in a transfer of Control not approved by SBA.

(k) If you are an Early Stage SBIC, certify in writing that in accordance with § 107.1810(f)(11), at least 50 percent

of the aggregate dollar amount of your Financings will be provided to "early stage" companies as defined under the definition of Early Stage SBIC in § 107.50 of this part.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998; 64 FR 70996, Dec. 20, 1999; 74 FR 33916, July 14, 2009; 77 FR 25053, Apr. 27, 2012; 79 FR 62824, Oct. 21, 2014]

### **§ 107.1130 Leverage fees and additional charges payable by Licensee.**

(a) *Leverage fee.* You must pay a leverage fee to SBA for each issuance of a Debenture or Participating Security. The fee is 3 percent of the face amount of the Leverage issued.

(b) *Payment of leverage fee.* (1) If you issue a Debenture or Participating Security to repay or redeem existing Leverage, you must pay the leverage fee before SBA will guarantee or purchase the new Leverage security.

(2) If you issue a Debenture or Participating Security that is not used to repay or redeem existing Leverage, SBA will deduct the leverage fee from the proceeds remitted to you, unless you prepaid the fee under § 107.1210.

(c) *Refundability.* The leverage fee is not refundable under any circumstances.

(d) *Additional charge for Leverage—(1) Debentures.* You must pay to SBA a Charge, not to exceed 1.38 percent per annum, on the outstanding amount of your Debentures issued on or after October 1, 1996, payable under the same terms and conditions as the interest on the Debentures. This Charge does not apply to Debentures issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

(2) *Participating Securities.* You must pay to SBA a Charge, not to exceed 1.46 percent per annum, on the outstanding amount of your Participating Securities issued on or after October 1, 1996, payable under the same terms and conditions as the Prioritized Payments on the Participating Securities. This Charge does not apply to Participating Securities issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

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(e) *Other Leverage fees.* SBA may establish a fee structure for services performed by the CRA. SBA will not collect any fee for its guarantee of TCs.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998; 77 FR 25053, Apr. 27, 2012]

### § 107.1140 Licensee's acceptance of SBA remedies under §§ 107.1800 through 107.1820.

If you issue Leverage after April 25, 1994, you automatically agree to the terms and conditions in §§ 107.1800 through 107.1820 as they exist at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

#### MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A LICENSEE IS ELIGIBLE

### § 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

A Section 301(c) Licensee, other than an Early Stage SBIC, may have maximum outstanding Leverage as set forth in paragraphs (a), (b), (d), and (e) of this section. An Early Stage SBIC may have maximum outstanding Leverage as set forth in paragraph (c) of this section. In general, SBA will approve Leverage commitment requests in excess of 200 percent of Regulatory Capital and draw requests in excess of 200 percent of Leverageable Capital only after a Licensee has demonstrated consistent, sustainable profitability based on a conservative investment strategy that limits downside risk. Any such Leverage request must be supported by an up-to-date business plan that reflects continuation of the Licensee's successful investment strategy and demonstrates the Licensee's ability to pay all SBA obligations in accordance with their terms.

(a) *Individual Licensee.* Subject to SBA's credit policies, if you are a Section 301(c) Licensee, the maximum amount of Leverage you may have outstanding at any time is the lesser of:

(1) 300 percent of your Leverageable Capital, or

(2) \$150 million.

(b) *Multiple Licensees under Common Control.* Subject to SBA's credit policies, two or more Licenses under Com-

mon Control may have maximum aggregate outstanding Leverage of \$350 million. However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed \$150 million, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. See also § 107.1120(d).

(c) *Early Stage SBICs.* Subject to SBA's credit policies, if you are an Early Stage SBIC:

(1) The total amount of any and all Leverage commitments you receive from SBA shall not exceed 100 percent of your highest Regulatory Capital or \$50 million, whichever is less;

(2) On a cumulative basis, the total amount of Leverage you have issued shall not exceed the total amount of capital paid in by your investors; and

(3) The maximum amount of Leverage you may have outstanding at any time is the lesser of:

(i) 100 percent of your Leverageable Capital, or

(ii) \$50 million.

(d) *Additional Leverage based on investment in low-income geographic areas.* Subject to SBA's credit policies, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (d). If you were licensed before October 1, 2009, you may seek additional Leverage under paragraph (d)(1) only. If you were licensed on or after October 1, 2009, you may seek additional Leverage under paragraph (d)(1) or (2), but not both. In this paragraph (d), "low income geographic areas" are as defined in § 108.50 of this chapter. Any investment that you use as a basis to seek additional leverage under this paragraph (d) cannot also be used to seek additional leverage under paragraph (e) of this section.

(1) *Investment in Smaller Enterprises located in low-income geographic areas.* To determine whether you may request a draw that would cause you to have outstanding Leverage in excess of the amount determined under paragraph (a) of this section:

(i) Determine the cost basis, as reported on your most recent filing of SBA Form 468, of any investments in