

## § 107.1140

## 13 CFR Ch. I (1–1–23 Edition)

(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

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the Equity Securities of a Smaller Enterprise located in a low-income geographic area.

(ii) Calculate the amount that equals 50 percent of your Leverageable Capital.

(iii) Subtract from your outstanding Leverage the lesser of paragraph (d)(1)(i) or (ii).

(iv) If the amount calculated in paragraph (d)(1)(iii) is less than the maximum leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

(2) *Investment in Small Businesses located in low-income geographic areas.* This paragraph (d)(2) applies only to Licensees licensed on or after October 1, 2009. You may substitute a maximum Leverage amount of \$175,000,000 for the \$150,000,000 set forth in paragraph (a)(2) of this section, and a maximum Leverage amount of \$250,000,000 for the \$225,000,000 set forth in paragraph (b) of this section, if you satisfy the following conditions:

(i) At least 50 percent (in dollars) of your Financings preceding the date of such request must have been invested in Small Businesses located in low-income geographic areas. In addition, you must certify that at least 50 percent (in dollars) of your Financings on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(ii) If you are requesting a draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of \$225,000,000, at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control preceding the date of such request must have been invested in Small Businesses located in low-income geographic areas. In addition, each such Licensee must certify that at least 50 percent (in dollars) of its Financings on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(e) *Additional Leverage based on Energy Saving Qualified Investments in Smaller Enterprises.* (1) Subject to SBA's credit policies, if you were licensed on or after October 1, 2008, you may have outstanding Leverage in excess of the

amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (e). Any investment that you use as a basis to seek additional Leverage under this paragraph (e) cannot also be used to seek additional Leverage under paragraph (d) of this section.

(2) 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 Energy Saving Qualified Investments in a Smaller Enterprise that individually do not exceed 20% of your Regulatory Capital.

(ii) Calculate the amount that equals 33% of your Leverageable Capital.

(iii) Subtract from your outstanding Leverage the lesser of paragraph (e)(2)(i) or (ii).

(iv) If the amount calculated in paragraph (e)(2)(iii) is less than the maximum Leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

[74 FR 33916, July 14, 2009, as amended at 77 FR 23380, Apr. 19, 2012; 77 FR 25053, Apr. 27, 2012; 79 FR 62824, Oct. 21, 2014; 82 FR 39341, Aug. 18, 2017]

### § 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.

This section applies to Leverage issued by a Section 301(d) Licensee on or before September 30, 1996. Effective October 1, 1996, a Section 301(d) Licensee may apply to issue new Leverage, or refinance existing Leverage, only on the same terms permitted under § 107.1150.

(a) *Maximum amount of subsidized Leverage.* (1) "Subsidized Leverage" means Debentures with a reduced interest rate and Preferred Securities. If you are a Section 301(d) Licensee:

(i) The maximum amount of subsidized Leverage you may have outstanding at any time is the lesser of 400 percent of your Leverageable Capital, or \$35,000,000. The same limit applies to a group of Section 301(d) Licensees under Common Control.