

## § 107.1182

(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 requirement associated with that Debenture shall be correspondingly eliminated.

(c) Your limited partnership agreement must incorporate the reserve requirement in paragraph (a) of this section.

[77 FR 25053, Apr. 27, 2012]

### **§ 107.1182 Valuation requirements for Early Stage SBICs based on Capital Impairment Percentage.**

(a) If you are an Early Stage SBIC, you must compute your Capital Impairment Percentage and determine whether you have a condition of Capital Impairment in accordance with §§107.1830 and 107.1840 of this part.

(b) You must promptly notify SBA in writing if your Capital Impairment Percentage is at least 50 percent, even if your maximum permitted Capital Impairment Percentage is higher.

(c) Upon receipt of your notification under paragraph (b) of this section, or upon making its own determination that your Capital Impairment Percentage is at least 50 percent, SBA has the right to require you to engage, at your expense, an independent third party, acceptable to SBA, to prepare valuations of some or all of your Loans and Investments, as designated by SBA.

[77 FR 25053, Apr. 27, 2012]

## 13 CFR Ch. I (1–1–23 Edition)

### **CONDITIONAL COMMITMENTS BY SBA TO RESERVE LEVERAGE FOR A LICENSEE**

#### **§ 107.1200 SBA’s Leverage commitment to a Licensee—application procedure, amount, and term.**

(a) *General.* Under the provisions in §§107.1200 through 107.1240, you may apply for SBA’s conditional commitment to reserve a specific amount and type of Leverage for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* SBA will notify you when it is accepting requests for Leverage commitments. Upon receipt of your request, SBA will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of \$5,000.

(d) *Term of Leverage commitment.* SBA’s Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998]

#### **§ 107.1210 Payment of leverage fee upon receipt of commitment.**

(a) *Partial prepayment of leverage fee.* As a condition of SBA’s Leverage commitment, and before you draw any Leverage under such commitment, you must pay to SBA a non-refundable fee equal to 1 percent of the face amount of the Debentures or Participating Securities reserved under the commitment. This amount represents a partial prepayment of the 3 percent leverage fee established under §107.1130(a).

(b) *Automatic cancellation of commitment.* Unless you pay the fee required under paragraph (a) of this section by 5:00 P.M. Eastern Time on the 30th calendar day following the issuance of SBA’s Leverage commitment, the commitment will be automatically canceled.

[63 FR 5868, Feb. 5, 1998]

#### **§ 107.1220 Requirement for Licensee to file quarterly financial statements.**

As long as any part of SBA’s Leverage commitment is outstanding, you must give SBA a Financial Statement

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on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under §107.630(a)). You must file this form within 30 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this §107.1220.

[64 FR 70996, Dec. 20, 1999]

### **§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.**

(a) *Licensee's authorization of SBA to purchase or guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture or Participating Security and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of \$5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on Licensee's eligibility for draws—(1) General rule.* You are eligible to make a draw against SBA's Leverage commitment only if you are in compliance with all applicable provisions of the Act and SBA regulations (i.e., no unresolved statutory or regulatory violations).

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) SBA determines that your outstanding violations are of non-substantive provisions of the Act or regulations and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with SBA on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also

§107.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with §107.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and SBA regulations (i.e., no unresolved regulatory or statutory violations), or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the Licensee;

(ii) An officer of a corporate general partner of the Licensee; or

(iii) An individual who is authorized to act as or for a general partner of the Licensee.

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. If required by SBA, the statement must include the name and address of each Small Business, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) If SBA required you to provide information concerning a specific planned Financing under paragraph (d)(3) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must give SBA a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. SBA may also determine that you are not in compliance with the terms of your Leverage under §§107.1810 or 107.1820.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998; 64 FR 70996, Dec. 20, 1999]