

**§ 107.1585**

**13 CFR Ch. I (1-1-24 Edition)**

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 refi-

nancing unless you demonstrate to SBA's satisfaction that you can pay the Debenture principal without relying on the proceeds of the Participating Securities.

(2) SBA, in its sole discretion, approves the exclusion.

(b) *Treatment of pre-existing portfolio if not excluded.* If you do not choose to exclude your Loans and Investments as of March 31, 1993, they will be Earmarked Assets for all purposes.

(c) *Requirements for Licensee's first issuance of Participating Securities.* When you apply for your first issuance of Participating Securities, you must comply with the following:

(1) For each of your Loans and Investments, you must submit:

(i) The most recent annual report (or fiscal year-end financial statements) and the most recent interim financial statements of the Small Business; and

(ii) Your valuation reports on the Small Business, prepared as of the end of each of your last three fiscal years. If you have applied for Participating Securities on the basis of interim financial statements, you must also submit a valuation report as of your interim financial statement date.

(2) If you have negative Undistributed Net Realized Earnings and/or a net Unrealized Loss on Securities Held, SBA may require you to undergo a quasi-reorganization in accordance with generally accepted accounting principles.

(3) If your financial statements accompanying the Participating Securities application are for an interim period, you must have your SBA-approved independent public accountant perform a limited-scope audit of the statements. For purposes of this paragraph (d)(3), "limited scope audit" means auditing procedures sufficient to enable the independent public accountant to express an opinion on the Statement of Financial Position and the accompanying Schedule of Loans and Investments.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5873, Feb. 5, 1998]