

§ 107.560

13 CFR Ch. I (1-1-23 Edition)

including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), “expansion of the scope of a security interest or lien” does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *Additional rule for secured lines of credit in existence on April 8, 1994.* If you have outstanding Leverage and you have a secured line of credit that was created on or before April 8, 1994, you must receive SBA’s written approval of the line before you increase the amounts outstanding thereunder.

(d) *Conditions for SBA approval.* As a condition of granting its approval under this § 107.550, SBA may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). SBA will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(e) *Thirty day approval.* Unless SBA notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

- (1) You are in regulatory compliance;
- (2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;
- (3) Your Leverage does not exceed 150 percent of your Leverageable Capital; and
- (4) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

§ 107.560 Subordination of SBA’s creditor position.

(a) *Debentures purchased or guaranteed on or before July 1, 1991.* Under the terms of any Debenture purchased or guaranteed by SBA on or before July 1, 1991, SBA’s unsecured claims against you, as a Debenture-holder or as subrogee, are subordinated in favor of all your other creditors, except to the extent that such claims may be subject to equitable subordination in SBA’s favor.

(b) *Debentures purchased or guaranteed after July 1, 1991, including refinancings of Debentures previously purchased or guaranteed.* (1) Under the terms of any Debenture purchased or guaranteed by SBA after July 1, 1991, SBA’s unsecured claims against you, as a Debenture-holder or as subrogee, are subordinated only in favor of non-Associate lenders; and, to the extent that your indebtedness to such lenders exceeds the lesser of \$10,000,000 or 200 percent of your Regulatory Capital (determined as of the date your Debentures were purchased or guaranteed), SBA’s unsecured claims enjoy parity with those of other unsecured creditors, except with respect to indebtedness created on or before July 1, 1991.

(2) In order to induce others to lend you money after your Debenture has been purchased or guaranteed, SBA may agree in writing on a case-by-case basis to subordinate its unsecured claims, on such terms as it may determine, in favor of one or more of your Associates, or in favor of other lenders in excess of the amounts mentioned in paragraph (b)(1) of this section.

(3) SBA reserves the authority to refuse to subordinate its claims if it determines, at the time you request your Debenture be purchased or guaranteed, that the exercise of reasonable investment prudence and your financial condition warrant such refusal.

§ 107.565 Restrictions on third-party debt of Early Stage SBICs.

If you are an Early Stage SBIC and you have outstanding Leverage or a Leverage commitment, you must get SBA’s prior written approval to have, incur, or refinance any third-party