

## § 107.565

## 13 CFR Ch. I (1–1–24 Edition)

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 debt other than accounts payable from routine business operations.

[77 FR 25052, Apr. 27, 2012]

### § 107.570 [Reserved]

#### DISTRIBUTIONS AND REDUCTIONS IN REGULATORY CAPITAL

### § 107.585 Distributions and reductions in Regulatory Capital.

(a) *Non-leveraged Licensees.* If you are a Non-leveraged Licensee, you may make distributions to your private investors without SBA prior approval. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and in §107.210, unless such amounts are in accordance with your SBA approved Wind-down Plan (see §107.590). You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate (see §107.300).

(b) *Non-Accrual Leveraged Licensees.* If you are a Standard Debenture Leveraged Licensee that is also an Early Stage SBIC, you are subject to the distributions identified in §107.1180. If you are a Standard Debenture Leveraged Licensee, you may distribute READ to your private investors without SBA approval only after considering any material adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. Such approved reduction amount may, for a period of five years after the reduction, be included in the sum determined under

§107.740(a). In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of §107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and §107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate (see §107.300).

(c) *Accrual SBICs and Reinvestor SBICs.* If you are an Accrual SBIC or Reinvestor SBIC, unless you receive prior approval from SBA for the purposes of covering a tax distribution you may only distribute as follows:

(1) *Payment of Annual Charges and Accrued Interest.* Prior to any distributions to your private investors, you must pay to SBA any Annual Charges and all accrued interest on outstanding Leverage at the next available repayment window but no later than six months following a distribution to your private investors. Within six months of any non-tax distribution to your private investors, you must pay any Annual Charges owed to SBA and all accrued interest on your outstanding Leverage.

(2) *Calculate SBA's share of distribution.* Within six months of any non-tax distribution to your private investors, you must make payments to SBA on a pro rata basis with any distributions to your private investors based on your SBA Total Intended Leverage Commitment relative to your Total Private Capital Commitments, inclusive of Qualified Non-Private Funds, determined within 12 months of Licensure calculated as follows: SBA's Share = Total Distributions × [Total Intended Leverage Commitment / (Total Intended Leverage Commitment + Total Private Capital Commitments)] where:

(i) Total Distributions means the total amount of distributions (whether profit or return of capital) you intend to make after paying all accrued interest and Annual Charges plus any prior tax distributions.

(ii) Total Intended Leverage Commitment is as defined in §107.300.

(iii) Total Private Capital Commitments is as defined in §107.300.

(3) *Apply SBA Share.* You must repay SBA outstanding Leverage in an amount no less than SBA's Share to the extent of Outstanding Leverage and report the SBA calculation to SBA. If SBA's Share is greater than Outstanding Leverage and you have unfunded Leverage commitments, you must submit a Leverage commitment cancellation equal to SBA's Share minus the SBA Leverage redemption up to the unfunded Leverage commitments.

(4) *Distribute to private investors.* You must report SBA's Share calculation to SBA prior to distributing READ to your private investors without SBA approval and only after considering any adverse changes to your portfolio. You must pay Annual Charges to SBA prior to distributing READ. After repaying all accrued interest, Annual Charges, and outstanding Leverage calculated as SBA's Share, you may distribute READ to your private investors without SBA approval only after considering any adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. Such approved reduction amount may, for a period of five years after the reduction, be included in the sum determined under §107.740(a). In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of §107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and §107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days. Prior to any reduction in Regulatory Capital, if you have made a tax distribution, you must make a distribution to SBA pursuant to the formula set forth in paragraph (c)(2) of this section, as if you had made a non-tax distribution.

(5) *Report distribution to SBA.* You must report to SBA the distribution, the calculations, and the amounts distributed to each party as part of your

annual and quarterly Form 468 (see §§107.630 and 107.1220).

*Example 1 to paragraph (c):* Your Total Intended Leverage Commitment is \$50 million, and your Total Private Capital Commitments are \$25 million. You currently have \$25 million in Outstanding Leverage, \$25 million in unfunded Leverage commitments, and \$15 million in Leverageable Capital. You owe \$1 million in accrued interest and Annual Charges. You have \$61 million to distribute.

*Step 1:* Payment of Annual Charges and all accrued interest. You would first pay the \$1 million in accrued interest and Annual Charges.

*Step 2:* Calculate SBA's Share of Distribution. SBA's share is calculated as: \$60 million × [\$50 million / (\$50 million + \$25 million)] = \$40 million.

*Step 3:* Apply SBA Share. You would repay \$25 million in Outstanding Leverage and cancel \$15 million of your unfunded Leverage commitments.

*Step 4:* Distribute to Private Investors. You would distribute \$35 million to Private Investors.

*Step 5:* Report Distribution to SBA. You would then report the distribution to SBA, detailing the amounts and calculations from steps 1 through 4 of this example 1.

[88 FR 46009, July 18, 2023]

#### REQUIREMENT TO CONDUCT ACTIVE INVESTMENT OPERATIONS

#### § 107.590 Licensee's requirement to maintain active operations.

(a) *Activity test.* You must conduct active operations, as determined under this §107.590, as a condition of your license. You will be considered active if:

(1) During the eighteen months preceding your most recent fiscal year end, you made Financings totaling at least 20 percent of your Regulatory Capital; or

(2) Your idle funds did not exceed 20 percent of your total assets (at cost) at your most recent fiscal year end.

(b) *Permitted exceptions to activity requirements.* You are considered active if your failure to meet the requirements in paragraph (a) of this section is the result of one or more of the following factors:

(1) Your excess idle funds are the result of the receipt, within the previous nine months, of realized gains, repayments, additional capital contributions, or Leverage.