

## Small Business Administration

## § 107.730

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

(d) *Project Financing*. You are not permitted to finance a business if:

(1) The assets of the business are to be reduced or consumed, generally without replacement, as the life of the business progresses, and the nature of the business requires that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Small Business. Examples include motion pictures and electric generating plants.

(e) *Farm land purchases*. You are not permitted to finance the acquisition of farm land. Farm land means land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest*. You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment*—(1) *General rule*. You are not permitted to finance a business if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Small Business are located outside the United States (unless you can show, to SBA's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception*. This paragraph (g) does not prohibit a Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States.

(h) *Associated supplier*. You are not permitted to finance a business that purchases, or will purchase, goods or services from a supplier who is your Associate, except under the following conditions:

(1) The amount of goods and services purchased (or to be purchased) from your Associate with the proceeds of the Financing, or with funds released as a result of the Financing, is less than 50 percent of the total amount of the Financing (75 percent for a Section 301(d) Licensee);

(2) The price of such goods and services is no higher than that charged other customers of your Associate; and

(3) The Small Business purchases no capital goods from your Associate.

(i) *Financing Licensees*. You are not permitted to provide funds, directly or indirectly, that the Small Business will use:

(1) To purchase stock in or provide capital to a Licensee; or

(2) To repay an indebtedness incurred for the purpose of investing in a Licensee.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5867, Feb. 5, 1998; 64 FR 70995, Dec. 20, 1999; 79 FR 62823, Oct. 21, 2014; 82 FR 39340, Aug. 18, 2017]

### § 107.730 Financings which constitute conflicts of interest.

(a) *General rule*. You must not self-deal to the prejudice of a Small Business, the Licensee, its shareholders or partners, or SBA. Unless you obtain a prior written exemption from SBA for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates, except for a Financing to an Associate that meets all of the following conditions:

(i) The Small Business that receives the Financing is your Associate, pursuant to paragraph (8)(ii) of the Associate definition in §107.50, only because an investment fund that is your Associate holds a 10% or greater equity interest in the Small Business.

(ii) You and the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions.

(iii) You and the Associate investment fund are providing follow-on financing to the Small Business at the same time, on the same terms and conditions, and in the same proportionate dollar amounts as your respective investments in the previous round(s) of financing (for example, if you invested \$2 million and your Associate invested \$1 million in the previous round, your respective follow-on investments would be in the same 2:1 ratio).

(2) Provide Financing to an Associate of another Licensee if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that Licensee or a third Licensee (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) A Small Business Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such business; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to a Small Business to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(5) Provide Financing to a Small Business for the purpose of purchasing property from your Associate, except as permitted under § 107.720(h).

(b) *Rules applicable to Associates.* Without SBA's prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from a Small Business any compensation in connection with Assistance you provide (except as permitted under §§ 107.825(c) and 107.900), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by any restrictions in Fed-

eral or State laws governing conflicts of interest and fiduciary obligations.

(d) *Financings with Associates—*(1) *Financings with Associates requiring prior approval.* Without SBA's prior written approval, you may not Finance any business in which your Associate has either a voting equity interest, or total equity interests (including potential interests), of at least five percent.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Small Business, either at the same time or at different times, you must be able to demonstrate to SBA's satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Small Business, and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Small Business on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are leveraged Licensees, and both have outstanding Participating Securities or neither has outstanding Participating Securities.

(iv) You have no outstanding Leverage and do not intend to issue Leverage in the future, and your Associate either is not a Licensee or has no outstanding Leverage and does not intend to issue Leverage in the future.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Small Business. You must identify any such Associate in your records available for SBA's review under § 107.600.

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## § 107.750

Without SBA's prior written approval, the Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, 5 percent of the Portfolio Concern's equity.

(2) Have served for more than 30 days as an officer, director or other participant in the management of the Portfolio Concern before you provided Financing.

(3) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this § 107.730, you need not obtain SBA's approval of the transaction. However, you must promptly notify SBA of the transaction and satisfy the public notice requirements in paragraph (g) of this section.

(g) *Public notice.* Before granting an exemption under this § 107.730, SBA will publish notice of the transaction in the FEDERAL REGISTER.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5867, Feb. 5, 1998; 64 FR 70996, Dec. 20, 1999; 77 FR 20294, Apr. 4, 2012]

### § 107.740 Portfolio diversification ("overline" limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or intend to issue Leverage in the future. Unless SBA approved your license application based upon a plan to issue less than two tiers of Leverage, you may provide Financing or a Commitment to a Small Business if the resulting amount of your aggregate Financings and Commitments to such Small Business and its Affiliates does not exceed 30 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any Distribution(s) you made under § 107.1570(b), during the five years preceding the date of the Financing or

Commitment, which reduced your Regulatory Capital; plus

(3) Any Distribution(s) you made under § 107.585, during the five years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital by no more than two percent or which SBA approves for inclusion in the sum determined in this paragraph (a).

(b) *Lower overline limit.* If SBA approved your license application based upon a plan to issue less than two tiers of Leverage, the applicable percentage of the amount computed in paragraphs (a)(1) through (a)(3) of this section will be:

(1) 20 percent if the plan contemplates one tier of Leverage.

(2) 25 percent if the plan contemplates 1.5 tiers of Leverage.

(c) *Outstanding Financings.* For the purposes of paragraphs (a) and (b) of this section, you must measure each outstanding Financing at its original cost (including any amount of the Financing that was previously written off).

[74 FR 33915, July 14, 2009]

### § 107.750 Conditions for financing a change of ownership of a Small Business.

You may finance a change of ownership of a Small Business only under the conditions set forth in this section.

(a) The Financing must:

(1) Promote the sound development or preserve the existence of the Small Business;

(2) Help create a Small Business as a result of a corporate divestiture; or

(3) Facilitate ownership in a Disadvantaged Business.

(b) The Resulting Concern (as defined in paragraph (c) of this section) must:

(1) Be a Small Business under § 107.700;

(2) Have 500 or fewer full-time equivalent employees; or meet one of the appropriate debt/equity ratio tests:

(i) If you have outstanding Leverage, the Resulting Concern's ratio of debt to equity must be no more than 5 to 1; or

(ii) If you have no outstanding Leverage, the Resulting Concern's ratio of debt to equity must be no more than 8 to 1.