

## § 107.760

## 13 CFR Ch. I (1–1–23 Edition)

(c) *Definitions.* (1) The “Resulting Concern” is determined by viewing the business as though the change of ownership had already occurred, giving effect to all contemplated financing, mergers, and acquisitions.

(2) For purposes of this section, “debt” means long-term debt, including contingent liabilities, but excluding accounts payable, operating leases, letters of credit, subordinated notes payable to the seller, any other liabilities approved for exclusion by SBA and short-term working capital loans (so long as the loans carry a zero balance for 30 consecutive days during the concern’s fiscal year).

(3) For purposes of this section, “equity” means common and preferred stock (corporation), contributed capital (partnership), or membership interests (limited liability company).

### **§ 107.760 How a change in size or activity of a Portfolio Concern affects the Licensee and the Portfolio Concern.**

(a) *Effect on Licensee of a change in size of a Portfolio Concern.* If a Portfolio Concern no longer qualifies as a Small Business you may keep your investment in the concern and:

(1) Subject to the overline limitations of § 107.740, you may provide additional Financing to the concern up to the time it makes a public offering of its securities.

(2) Even after the concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of Licensee’s initial Financing—(1) Retention of Investment.* Unless you receive SBA’s written approval, you may not keep your investment in a Portfolio Concern, small or otherwise, which becomes ineligible by reason of a change in its business activity within one year of your initial investment.

(2) *Request for SBA’s approval to retain investment.* If you request that SBA approve the retention of your investment, your request must include sufficient evidence to demonstrate that the

change in business activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If SBA approves your request to retain an investment under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 107.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment; and

(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 107.740.

### **STRUCTURING LICENSEE’S FINANCING OF ELIGIBLE SMALL BUSINESSES: TYPES OF FINANCING**

### **§ 107.800 Financings in the form of Equity Securities.**

(a) You may purchase the Equity Securities of a Small Business. You may not, inadvertently or otherwise:

(1) Become a general partner in any unincorporated business; or

(2) Become jointly or severally liable for any obligations of an unincorporated business.

(b) *Definition.* Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests. If the Financing agreement contains debt-type acceleration provisions or includes redemption provisions, other than those permitted under § 107.850, the security will be considered a Debt Security for purposes of § 107.855 and § 107.1150(c)(1).

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