

(vi) The Distribution does not cause you to have excess Leverage contrary to section 303 of the Act.

(2) *SBA's share of Distribution.* (i) If your Capital Impairment Percentage under § 107.1840 is zero, SBA's percentage share of any Distribution under this paragraph (b) equals:

$$\left[ \frac{\text{Leverage}}{\text{Leverage} + \text{Leverageable Capital}} \right] \times 100$$

In this formula, use Leverage and Leverageable Capital as of the date of the Distribution, after giving effect to any Distribution under § 107.1560 and paragraph (a) of this section.

(ii) If your Capital Impairment Percentage under § 107.1840 is greater than zero, you must modify the formula in paragraph (b)(2)(i) of this section by replacing Leverageable Capital with:

$$\text{Leverageable Capital} \times (100\% - \text{CIP})$$

where "CIP" is your Capital Impairment Percentage or 100 percent, whichever is less.

(3) *How SBA will apply Distributions.* Any amounts you distribute to SBA, or its designated agent or Trustee, under this paragraph (b) will be applied as a repayment or redemption of Leverage in the order set forth in § 107.1560 (g)(3) through (g)(5).

(4) *Effect of Distributions on Retained Earnings Available for Distribution.* Any amounts you distribute to non-SBA investors under this paragraph (b) must reduce your Retained Earnings Available for Distribution to zero before reducing your Private Capital.

(5) *Permitted exception to § 107.585.* You may make any Distribution permitted by this paragraph (b), even if the result is a reduction in your Regulatory Capital that would otherwise be prohibited under § 107.585.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5872, Feb. 5, 1998]

#### **§ 107.1575 Distributions on other than Payment Dates.**

(a) *Permitted Distributions on other than Payment Dates.* Notwithstanding any provisions to the contrary in §§ 107.1540 through 107.1570, you may make Distributions on dates other than Payment Dates as follows:

(1) Required annual Distributions under §§ 107.1540(a)(1), and any Distributions under §§ 107.1550 and 107.1560, must

be made no later than the second Payment Date following the end of your fiscal year;

(2) Required Distributions under § 107.1540(b) must be made no later than the first Payment Date following the end of the applicable fiscal quarter;

(3) Optional Distributions under § 107.1540(a)(2) and § 107.1570 may be made on any date.

(b) *Conditions for making Distribution.* All Distributions under this section are subject to the following conditions:

(1) You must obtain SBA's written approval before the distribution date;

(2) You must use the distribution date as the ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570;

(3) If your Distribution includes an amount which SBA will apply as a redemption of Participating Securities, the effective date of such redemption, for all purposes including future computations of Prioritized Payments, will be the next Payment Date following the distribution date.

[63 FR 5872, Feb. 5, 1998]

#### **§ 107.1580 Special rules for In-Kind Distributions by Licensees.**

(a) *In-Kind Distributions.* A Distribution under §§ 107.1540, 107.1560 or 107.1570 may consist of securities (an "In-Kind Distribution"). Such a Distribution must satisfy the conditions in this paragraph (a).

(1) You may distribute only securities that are Publicly Traded and Marketable at the time of the Distribution.

(2) You must distribute each security pro-rata to all investors and to SBA or its designated agent or Trustee, based on the amounts that each party would receive if the Distribution were in cash.

(3) You must impute a gain (loss) on each security being distributed as if it were being sold, using the value of the security as of the declaration date of the Distribution (if you are a Corporate Licensee) or the distribution date (if you are a Partnership Licensee).