

eight (48) months following your first issuance of Participating Securities, you will not have a condition of Capital Impairment if your Capital Impairment Percentage is below 85 percent.

(b) *Extended forbearance period for early stage investors.* If at least two-thirds of your Loans and Investments (at cost) are in Start-Up Financings, the forbearance period in paragraph (a) of this section is extended to 60 months.

(c) *Forbearance based on actions by Licensee.* The provisions of this paragraph (c) apply only during the fifth and sixth years following your first issuance of Participating Securities. If your Capital Impairment Percentage, as determined either by you or by SBA, exceeds the maximum permitted under § 107.1830(c) but is below 85 percent, you will not have a condition of Capital Impairment if you do either of the following within thirty (30) days of such determination:

(1) Increase your Regulatory Capital by a cash contribution placed in an escrow account or other account satisfactory to SBA, for its benefit. The contribution must equal, during the fifth year, 15 percent of your outstanding Leverage or, during the sixth year, 30 percent.

(2) Provide a guarantee, satisfactory to SBA and for its benefit, for the amount of the cash contribution required in paragraph (c)(1) of this section. SBA will credit any escrowed funds or guarantee received in the fifth year toward the requirements for the sixth year.

(d) *Conditions for forbearance under paragraph (c) of this section.* (1) You cannot count any funds placed in an escrow or other account under paragraph (c) of this section as Leverageable Capital.

(2) Any fee and/or any claim to repayment by the party making the capital contribution or by the guarantor must be deferred and subordinate to all outstanding Leverage plus any unpaid Earned Prioritized Payments and earned Adjustments.

(3) If there is an acceleration or mandatory redemption under § 107.1810 or § 107.1820, any funds in the escrow account and/or any guarantee received under paragraph (c) of this section will

be applied toward repaying any amounts due SBA.

(4) If you reduce your Capital Impairment Percentage to zero, SBA will release and return any escrowed funds and/or any guarantee received under paragraph (c) of this section.

Subpart K—Ending Operations as a Licensee

§ 107.1900 Surrender of license.

You may not surrender your license without SBA's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to SBA for the orderly liquidation of the Licensee.

Subpart L—Miscellaneous

§ 107.1910 Non-waiver of SBA's rights or terms of Leverage security.

SBA's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. SBA's failure to require you to perform any term or provision of your Leverage does not affect SBA's right to enforce such term or provision. Similarly, SBA's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in § 107.1810 or § 107.1820 does not constitute a waiver of any succeeding breach of such term or provision or condition.

§ 107.1920 Licensee's application for exemption from a regulation in this part 107.

You may file an application in writing with SBA to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. SBA may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act. Your application must be accompanied by supporting evidence which demonstrates to SBA's satisfaction that:

§ 107.1930

(a) The proposed action is fair and equitable; and

(b) The exemption requested is reasonably calculated to advance the best interests of the SBIC program in a manner consonant with the policy objectives of the Act and the regulations in this part.

§ 107.1930 Effect of changes in this part 107 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

- 112.1 Purpose.
- 112.2 Application of this part.
- 112.3 Discrimination prohibited.
- 112.4 Discrimination in employment.
- 112.5 Discrimination in providing financial assistance.
- 112.6 Discrimination in accommodations or services.
- 112.7 Illustrative applications.
- 112.8 Assurances required.
- 112.9 Compliance information.
- 112.10 Conduct of investigations.
- 112.11 Procedure for effecting compliance.
- 112.12 Effect on other regulations; forms and instructions.

APPENDIX A TO PART 112

AUTHORITY: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1).

SOURCE: 30 FR 298, Jan. 9, 1965, unless otherwise noted.

§ 112.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the *Act*) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be oth-

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erwise subjected to discrimination under any financial assistance activities of the Small Business Administration to which the Act applies.

§ 112.2 Application of this part.

(a) This part applies to all recipients of assistance under programs administered by the Small Business Administration. (See appendix A)

(b) The term *Federal financial assistance* includes: (1) Grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(c) This part does not apply to financial assistance extended by way of insurance or guarantee.

(d) The terms *applicant* and *recipient* mean, respectively, one who applies for and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section. The term *recipient* also shall be deemed to include *subrecipients* of SBA financial assistance, i.e., concerns which secondarily receive financial assistance from the primary recipients of such financial assistance.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973; 50 FR 1441 Jan. 11, 1985]

§ 112.3 Discrimination prohibited.

(a) *General.* To the extent that this part applies, no person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by any business or other activity.

(b) *Specific discriminatory actions prohibited.* (1) To the extent that this part applies, a business or other activity