

Operating Companies together, must follow the same rules set forth in this paragraph.

■ 3. Remove the first sentence of § 120.151 and add in its place two new sentences to read as follows:

**§ 120.151 What is the statutory limit for total loans to a Borrower?**

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in § 121.103 of this chapter, must not exceed a guaranty amount of \$1,000,000, except as otherwise authorized by statute for a specific program. The maximum loan amount for any one 7(a) loan is \$2,000,000. \* \* \*

■ 4. Revise the third and fourth sentences of § 120.210 to read as follows:

**§ 120.210 What percentage of a loan may SBA guarantee?**

\* \* \* Effective December 21, 2000, loans of \$150,000 or less may receive a maximum guaranty of 85 percent. Loans more than \$150,000 may receive a maximum guaranty of 75 percent, except as otherwise authorized by law.

■ 5. Amend § 120.220 by adding introductory text, revising paragraph (a), redesignating paragraphs (b) and (c) as (e) and (f), and adding new paragraphs (b), (c), and (d) to read as follows:

**§ 120.220 Fees that Lender pays SBA.**

A Lender must pay a guaranty fee to SBA for each loan it makes. If the guarantee fee is not paid, SBA may terminate the guarantee. Acceptance of the guaranty fee by SBA does not waive any right of SBA arising from a Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement, or the loan authorization.

(a) *Amount of guaranty fee.* For a loan with a maturity of twelve (12) months or less, the guaranty fee which the Lender must pay to SBA is one-quarter (1/4) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guaranty fee is:

(i) 2 percent of the guaranteed portion of the loan if the total amount of the loan is not more than \$150,000,

(ii) 3 percent of the guaranteed portion of a loan if the total amount is more than \$150,000 but not more than \$700,000, and

(iii) 3.5 percent of the guaranteed portion of a loan if the total amount is more than \$700,000.

(b) *When the guaranty fee is payable.* For a loan with a maturity of twelve (12) months or less, the Lender must pay the guaranty fee to SBA with its application

for a guaranty. The Lender may charge the Borrower for the fee when the loan is approved by SBA. For a loan with a maturity in excess of twelve (12) months, the Lender must pay the guaranty fee to SBA within 90 days after SBA gives its loan approval. The Lender may charge the Borrower the fee after the Lender has made the first disbursement of the loan. The Borrower may use the loan proceeds to pay the guaranty fee. However, the first disbursement must not be made solely or primarily to pay the guaranty fee.

(c) *Refund of guaranty fee.* For a loan with a maturity of twelve (12) months or less, SBA will refund the guaranty fee if the loan application is withdrawn prior to approval by SBA; if SBA declines to guarantee the loan; or if SBA substantially changes the Lender's loan terms and then approves the loan, but SBA's modified terms are unacceptable to the Lender. In the latter case, the Lender must request a refund in writing within 30 calendar days of SBA's approval. For a loan with a maturity of more than twelve (12) months, SBA will refund the guaranty fee if the Lender has not made any disbursement and the lender requests in writing the refund and cancellation of the SBA guaranty.

(d) *Lender's retention of portion of guaranty fee.* With respect to a loan with a maturity of more than twelve (12) months, where the total loan amount is no more than \$150,000 Lender may retain not more than 25 percent of the guaranty fee.

\* \* \* \* \*

■ 6. Add new § 120.223 to read as follows:

**§ 120.223 Subsidy recoupment fee payable to SBA by Borrower.**

(a) The subsidy recoupment fee is payable to SBA when:

(1) Loan has a maturity of 15 years or more.

(2) Borrower makes a voluntary prepayment (or several prepayments in the aggregate) during any one of the first three successive 12 month periods following the first disbursement of the loan. Prepayment is defined as a payment of principal in excess of the amount due according to the amortization schedule.

(3) The prepayment (or several prepayments in the aggregate) is more than 25 percent of the highest outstanding principal balance of the loan in any one of the first three successive 12 month periods following the first disbursement.

(b) When all the conditions above exist, the following subsidy recoupment fees apply:

(1) If the prepayment is made during the first 12 month period after first disbursement, the charge is 5 percent of the total amount of all prepayments made during such period;

(2) If the prepayment is made during the second 12 month period after first disbursement, the charge is 3 percent of the total amount of all prepayments made during that period; and

(3) If the prepayment is made during the third 12 month period after first disbursement, the charge is 1 percent of the total amount of all prepayments made during that period.

■ 7. Add a new § 120.540(f) to read as follows:

**§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans and physical disaster assistance loans, physical disaster business loans and economic injury disaster loans?**

\* \* \* \* \*

(f) *Notice.* If upon default in repayment, SBA acquires a Premier Certified Lenders Program (PCLP) loan and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, SBA must give prior notice to any Premier Certified Lenders ("Premier CDC") which has a contingent liability with respect to the PCLP loan. SBA must give the notice to the Premier CDC as soon as possible after the loan is identified for inclusion in such sale, but not less than 90 days before the date SBA first makes any records on such loan available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale.

■ 8. Revise § 120.613(b) to read as follows:

**§ 120.613 Secondary Participation Guarantee Agreement.**

\* \* \* \* \*

(b) Except for export working capital loans, disburse to the Borrower the full amount of the loan; and

\* \* \* \* \*

Dated: August 19, 2003.

**Hector V. Barreto,**  
Administrator.

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