

The proposed rule consolidates the current § 120.403-1 (statutory ceiling), § 120.403-5 (interest rates), and § 120.403-6(b)(fees) into §§ 120.151, 120.213, 120.214, 120.221 and 120.222 respectively. The proposed rule deletes the current § 120.403-3 (credit allocation) because it is no longer used.

The proposed rule deletes the current § 120.403-6(a), which limits the fees a PLP lender can charge if it sells the guaranteed portion of a loan within six months of disbursement, because SBA feels there is no need to retain a cap on this fee. It consolidates the current § 120.403-7(c) into § 120.430.

The current § 120.403-7 has been rewritten as the new § 120.452(a) specifying the requirements of PLP loan processing. The section specifying the percentage of a PLP loan that SBA will guarantee has been moved from the current § 120.403-2 to § 120.452(a)(3). In proposed § 120.452(b), SBA describes the new procedures for approving a PLP loan by submitting documents to the loan processing center, which issues an SBA loan number.

The proposed rule consolidates the current §§ 120.404-1 through 120.405-1 concerning servicing and liquidation into proposed § 120.453, and deletes current §§ 120.405-2 through 120.405-4 because they are redundant or adequately described in SBA's SOP.

In proposed § 120.451(f), SBA has added a new provision to allow a PLP Lender to submit a request to expand its territory to the SBA loan processing center.

(c) Small Business Lending Companies ("SBLC"). The proposed rule revises the SBLC regulations for clarity and to eliminate details of the program better suited to an SOP. The sections have been renumbered, reorganized in a more logical structure, and presented in a question and answer format.

Finally, a provision on SBA's authority to suspend or revoke an SBLC's license is proposed at § 120.475.

120 Subpart E—Loan Administration

New subpart E proposes general loan administration rules. Basically, these proposed rules reflect existing SBA policies. Any SBA field office can provide more detailed guidance concerning any aspect of these proposed rules.

Proposed §§ 120.510 and 120.511 describe the servicing responsibilities of the parties making loans. SBA services direct loans that it makes without the participation of a Lender, while Lenders service loans they make with the SBA guarantee. After SBA honors its guarantee, the Lender generally

continues to service the loan. Proposed § 120.512 describes this arrangement.

Proposed § 120.513 lists the servicing actions that require the concurrence of the Lender and the SBA because of their importance to the effective and efficient operation of SBA's loan program. The list includes the provisions contained in the participation agreement which a Lender executes with SBA to allow it to make 7(a) guaranteed loans, such as the alteration of terms and conditions of any loan instrument, the release of collateral with a value over 20 percent of the original amount of the loan, the acceleration of the maturity of a note, and the initiation of litigation.

SBA has the authority to purchase the guaranteed portion of a loan at any time, and proposed § 120.520 provides that a Lender may ask SBA to purchase the guaranteed portion when the Borrower has been continuously in default on its installment payments to the Lender for more than 60 days. If a Borrower cures a default (see § 120.523) before SBA purchases, the Lender's right to request purchase lapses. If SBA honors its guarantee, it does not waive any right it may have against the Lender because of the Lender's negligence, misconduct, or violation of the regulations, the guarantee agreement between the lender and SBA, or any of the loan instruments. SBA may sue to recover the amounts paid and may assert as a basis for recovery any of the grounds set forth in § 120.524.

A Borrower's obligation to pay principal and interest continues after SBA honors its guarantee. Proposed § 120.521 prescribes that the interest rate for which the Borrower is liable after the purchase continues to be the rate stated in the note if it is a fixed rate note. If a loan carries a fluctuating interest rate, the Borrower is obliged for the rate in effect at the time of the earliest uncured default (where there has been a default), or the rate in effect at the time when SBA purchases (where there has been no default). This means that no further fluctuations of interest can occur after SBA honors its guarantee.

Proposed § 120.522 provides that the interest rate for which SBA is liable when it purchases the guaranteed portion is the rate in the note if it is a fixed rate loan, or the rate in effect on the date of the earliest uncured default (if a default has occurred) or when SBA purchases (if there has been no default). The section provides that SBA pays a Lender no more than 120 days interest from the date of a Borrower's uncured default, plus any deferment period or time it takes for SBA to process a request to purchase. This cut-off period

encourages a Lender to make timely demand on SBA to purchase. Because extenuating circumstances may occur, the proposed section authorizes SBA to extend the 120 day time period for good cause.

Proposed § 120.523 defines "earliest uncured default" as the date on which a Borrower fails to pay a regular installment payment which remains unpaid for 60 days. If a Borrower makes a payment before a Lender requests SBA to honor its guarantee, the earliest uncured default date advances to the next unpaid installment date. This means that if a Borrower cures early defaults, the earliest uncured default date continues to move forward.

SBA does not have to honor its guarantee, under proposed § 120.524, if a Lender, amongst other things, fails to make, close, service, or liquidate an SBA guaranteed loan in a prudent fashion. The regulation contemplates that a Lender will comply with all the provisions of the regulations, the loan guarantee agreement it executed with SBA, the loan authorization (which is the document SBA issues to state that it is providing its guarantee for a specific loan request), and other loan documents. A Lender's failure to disclose material facts, a Lender's making material misrepresentations to SBA, or the Lender's failure to use SBA provided forms or exact computerized facsimile copies also justifies denial of liability under the guarantee. Other Lender actions which would support SBA's denial of liability on its guarantee include Lender's failure to pay the guarantee fee, Lender's late demand on SBA to purchase, or if the Borrower has paid the loan in full.

In order to assure the successful establishment and operation of a Borrower, proposed § 120.530 authorizes SBA to defer a Borrower's initial payments for a stated period of time. Under proposed § 120.531, SBA could extend the maturity of a loan for up to ten years beyond its stated maturity if the extension would aid in the orderly liquidation of the loan. Proposed § 120.532 defines "Moratorium" to be the period of time during which SBA assumes a Borrower's obligation to make installment payments on a guaranteed loan.

Under proposed § 120.533, SBA could grant a Moratorium if the business would become or remain insolvent without it; if the business would become or remain viable with a Moratorium; if a deferment is not available; if all the parties agree that SBA could stop making payments at any time; if the Borrower executes a demand