

note to repay SBA's Moratorium payments; and if SBA obtains security which it deems necessary. These conditions supporting a Moratorium ensure that the parties know that their obligations continue and that SBA expects to be reimbursed for its advances under this procedure.

Proposed § 120.534 allows SBA to continue a Moratorium for six months. SBA may extend a Moratorium for up to five years if a Borrower could demonstrate its eventual ability to repay the original note (and the demand note required for the Moratorium). Proposed § 120.535 lists the repayment terms for a Moratorium. Under this section, the interest rate on the demand note is the same as for the guaranteed loan; SBA will apply repayments first to accrued interest and then to principal; and SBA may demand payment in full under the demand note or accept a repayment schedule.

Proposed § 120.540 establishes SBA's policy concerning the liquidation of collateral. Ordinarily, SBA does not liquidate collateral if there is any reasonable prospect that the Borrower or guarantor (other than SBA) may repay the loan within a reasonable period of time. Without the Borrower's consent, SBA has the authority to sell a direct loan, convert a direct loan to a guaranteed or immediate participation loan, or convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender. Importantly, this authority enables SBA to take appropriate steps to resolve issues and problems concerning a loan. The proposed section also provides that SBA will generally use competitive bids or a negotiated sale to dispose of collateral. Under the proposed section, SBA and the Lender would share all loan payments and recoveries, all reasonable expenses, and any security or guarantee which the Lender or SBA may receive in connection with a loan. The proposed section provides that guarantors of financial assistance have no rights of contribution against SBA on a direct or guaranteed loan. The proposed section makes clear that SBA is not a co-guarantor with any other guarantor, and that SBA's guarantee is unique, distinctive, and of a totally different character than the guarantees offered by other parties.

Under applicable federal law, homestead protection for a farmer-Borrower covers a residence and a reasonable amount of adjoining real property ("the collateral") that are still occupied by the farmer-Borrower after being acquired by SBA as a result of foreclosure, a voluntary conveyance, or conveyance to the government by a

trustee in bankruptcy. The homestead protection provisions in the proposed rules cover SBA direct and guaranteed loans, as well as SBA disaster loans. Proposed § 120.550 specifies that a farmer-Borrower who defaults on an SBA loan would be allowed to lease the collateral from SBA. Under proposed § 120.551, SBA must notify the farmer-Borrower of the homestead protection rights within 30 days after SBA acquires the property. Under the proposed rule, the farmer-Borrower has to apply to the local SBA office for homestead protection within 90 days after SBA acquires the property, provide evidence that the farm produces farm income reasonable for the area and economic conditions, show that at least 60 percent of the farmer's gross annual income came from farm or ranch operations in at least 2 out of the last 6 years, that the farmer-Borrower has resided on the property during the preceding 6 years, and that the farmer is personally liable for the debt. This last point means that the SBA loan could have been made to any individual or entity, so long as the farmer-Borrower was personally liable for the debt.

Under proposed § 120.552, the farmer, under a lease with SBA, has to occupy the residence and pay a reasonable rent to SBA. The lease can be for a period of up to 5 years, and can be renewed for up to another 5 years. During the lease, or at its end, the lessee-farmer has the right of first refusal to reacquire the homestead property under terms and conditions no less favorable than those offered to any other purchaser. If the sale of the homestead property is an installment sale, the purchase agreement has to require a down payment of no less than 20 percent of the purchase price. The option price to the lessee-farmer must be the appraised fair market value determined by an independent appraisal. SBA cannot demand a payment for the homestead property that exceeds the appraised value.

Under proposed § 120.553, a farmer-Borrower can appeal denial of a homestead protection application to the AA/FA. Until a final decision is made, the farmer would be allowed to remain on the property. If a conflict exists between state law and the SBA homestead provisions, state law prevails.

120 Subpart F—Secondary Market

SBA has consolidated subparts F, G, and H of Part 120 into one new Subpart F, governing SBA's secondary market for SBA guaranteed portions of loans. Subpart F covers central registration requirements, the pooling and sale of

SBA guaranteed portions, and the sale of individual SBA guaranteed portions that do not comprise part of a Pool. Provisions currently found in separate subparts have been consolidated for ease of understanding. SBA has renumbered and reordered the resulting provisions, but there are no substantive or policy changes.

The following is a conversion chart explaining where the current sections of subparts F, G, and H of 120 will be placed:

New section	Old section
120.600	120.601, 120.700, 120.800.
120.601	120.602, 120.702, 120. 800, 120.802.
120.610	120.706 and 120.803.
120.611	120.707.
120.612	120.710 and 120.807.
120.613	120.301–2.
120.620	120.711 and 120.701.
120.621	120.801.
120.630	120.703.
120.631	120.704.
120.640	120.709 and 120.806.
120.641	120.713 and 120.809.
120.642	120.708.
120.643	120.805.
120.644	120.804.
120.645	120.605, 120.605–1.
120.650	120.603, 120.604, 120.604–1, and 120.604–2.
120.651	120.605–3.
120.652	120.712 and 120.808.
120.660	120.605–2, 120.705, and 120.810.

Proposed § 120.600 describes the secondary market. Section 120.601 contains definitions used in subpart F. Proposed § 120.610 provides that each Certificate representing either the entire individual guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans ("Certificate") must be in registered form only. This means that there are no bearer Certificates. The section also specifies payment terms for Certificates.

Proposed § 120.611 describes the Pools which back Pool Certificates, including Pool characteristics and Pool Certificate interest rates. In § 120.612, SBA specifies conditions which must be met for an SBA guaranteed portion of a loan to be eligible to back a Certificate. Among other things, a loan must be current.

Proposed § 120.613 describes a secondary participation guarantee agreement (SPGA). Before an SPGA may be executed, the Lender must disburse the full amount of the loan, pay SBA's guarantee fee, and give SBA copies of the SPGA and note.