

**Subpart D—Lenders****§ 120.400 Participation agreements.**

SBA may enter into participation agreements with Lenders to make deferred participation (guaranteed) loans. Participation agreements do not obligate SBA to participate in any specific proposed loan that a Lender may submit. The existence of a participation agreement does not limit SBA's rights to deny a specific loan or establish general policies.

**Participation Criteria****§ 120.410 Requirements for all participating Lenders.**

A Lender must:

- (a) Have a continuing ability to evaluate, process, close, disburse, and service small business loans;
- (b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);
- (c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140; and
- (d) Be supervised and examined by a State or Federal regulatory authority, satisfactory to SBA.

**§ 120.411 Preferences.**

No agreement to participate under the Act shall establish any Preferences in favor of the Lender.

**§ 120.412 Other services Lenders may provide Borrowers.**

Subject to the conflict of interest provision in subpart A of this part, Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Charges made cannot exceed those charged by established professional consultants providing similar services.

**§ 120.413 Advertisement of relationship with SBA.**

A Lender may refer in its advertising to its participation with SBA. The advertising may not:

- (a) State or imply that the Lender, or any of its Borrowers, has or will receive preferential treatment from SBA;
- (b) Be false or misleading; or
- (c) Make use of SBA's seal.

**Pledging Notes or Transferring Unguaranteed Portion****§ 120.420 Financings by Nondepository Lenders.**

(a) A Small Business Lending Company regulated by SBA or a Business and Industrial Development Company ("Nondepository Lender") may pledge the notes evidencing SBA guaranteed loans or sell the unguaranteed portions of such loans if SBA, in its sole discretion, gives its prior written consent. The Lender must be secure financially and have a history of compliance with SBA's regulations and any other applicable state or Federal statutory and regulatory requirements.

(b) The Nondepository Lender, SBA, and any third party involved in the transaction, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA acknowledging SBA's interest as guarantor of the subject loans and accepting that all relevant third parties agree to recognize and uphold those interests under the Act, this part, and the contractual provisions of SBA's blanket Guarantee Agreement. In any such agreement, the parties must agree to the following conditions:

(1) The Nondepository Lender, SBA, or a third party custodian agreeable to SBA, will hold all pertinent Loan Instruments, and the Nondepository Lender will continue to service the loans after the pledge or transfer is made;

(2) The Nondepository Lender must continue to retain an economic risk in and bear the ultimate risk of loss on the unguaranteed portions. The Nondepository Lender must demonstrate to SBA's satisfaction and in SBA's sole discretion the retention of economic risk by:

- (i) In the case of the sale of unguaranteed portions:
  - (A) Establishing a sufficient reserve fund at time of sale;
  - (B) Retaining a sufficient level of insurance; and/or
  - (C) Agreeing to reacquire the unguaranteed portion of a guaranteed loan or the note evidencing a guaranteed loan if the loan goes into default; or
- (ii) In the case of the pledge of notes, retaining all of the economic interest in the unguaranteed portion of any loans which the notes evidence.

(c) The Nondepository Lender may not use SBA guaranteed loans or the collateral supporting such loans as collateral for the borrowing of any related enterprise or for any other purpose inconsistent with this part.

**Miscellaneous Provisions****§ 120.430 SBA access to Lender files.**

A Lender must allow SBA's authorized representatives, during normal business hours, access to its files to review, inspect and copy all records and documents relating to SBA guaranteed loans.

**§ 120.431 Suspension and revocation of eligibility to participate.**

SBA may suspend or revoke the eligibility of a Lender to participate in the 7(a) program because of a violation of SBA regulations, a breach of any agreement with SBA, a change of circumstance resulting in the Lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. Proceedings for such purposes will be conducted in accordance with the provisions of part 134 of this chapter. A suspension or revocation will not invalidate a guarantee previously provided by SBA.

**Certified Lenders Program (CLP)****§ 120.440 What is the Certified Lenders Program?**

Under the Certified Lenders Program (CLP), designated Lenders process, close, and service, and may liquidate, SBA guaranteed loans. SBA gives priority to applications and servicing actions submitted by Lenders under this program. All other rules in this part 120 relating to the operations of Lenders apply to CLP Lenders.

**§ 120.441 How does a Lender become a CLP Lender?**

(a) An SBA field office may nominate a Lender or a Lender may request a field office to consider it for CLP status. SBA district directors may approve and renew a Lender's CLP status. The district director will consider whether the Lender:

- (1) Has the ability to process, close, service and liquidate loans; and
- (2) Has a satisfactory performance history with SBA, including the submission of complete and accurate loan guarantee application packages;
- (3) Has an acceptable SBA purchase rate; and
- (4) Has shown the ability to work well with the local SBA office.

(b) If the district director does not approve a request for CLP status, the Lender may appeal to the AA/FA, whose decision will be final. If SBA grants CLP status, it applies only in the field office that approved the CLP designation. A CLP Lender must execute a Supplemental Guarantee Agreement that will specify a term not to exceed two years.