

pursuant to procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

### **Sale of Certificates**

#### **§ 120.640 Administration of the Pool and individual guaranteed portions.**

(a) *FTA responsibility.* The FTA has the responsibility to administer each Pool or individual guaranteed portion. It shall maintain a registry of Registered Holders and other information as SBA requires.

(b) *Self-liquidating.* Each Pool or individual guaranteed portion in the Secondary Market is self-liquidating because of Borrower payments or prepayments, redemption by SBA, and/or payments by SBA or the Lender after default by the Borrower. There is no substitution of the guaranteed portions of existing loans for defaulted loans.

(c) *SBA's right to subrogation.* If SBA pays a claim under a guarantee with respect to a Certificate issued under this subpart, it must be subrogated fully to the rights satisfied by such payment.

(d) *SBA ownership rights not limited.* No Federal, State or local law can preclude or limit the exercise by SBA of its ownership rights in the portions of loans constituting the Pool against which the Certificates are issued.

#### **§ 120.641 Disclosure to purchasers.**

(a) *Information to purchaser.* Prior to any sale, the Pool Assembler, Registered Holder of a Certificate representing an individual guaranteed portion, or any subsequent seller must disclose to the purchaser, either orally or in writing, information on the terms, conditions, and yield as described in the SBA Secondary Market Program Guide.

(b) *Information on transfer document.* The seller must provide the same information described in paragraph (a) of this section in writing on the transfer document when the seller submits it to the FTA. After the sale of an individual Certificate, the FTA will provide the disclosure information in writing to the purchaser.

(c) *Information in prospectus.* If the Registered Holder is a trust, investment Pool, mutual fund or other security, it must disclose the information in (a) above to investors through a prospectus and other promotional material if a Certificate or Pool Certificate is placed into or used as the backing for the investment vehicle.

#### **§ 120.642 Requirements before the FTA issues Pool Certificates.**

Before the FTA issues any Pool Certificate, the Pool Assembler must deliver to it the following documents:

(a) A properly completed Pool application form;

(b) Either:

(1) Certificates evidencing the guaranteed portions comprising the Pool; or

(2) An executed SPGA and related documentation for the loans whose guaranteed portions are to be part of the Pool; and

(c) Any other documentation which SBA may require.

#### **§ 120.643 Requirements before the FTA issues the Certificate for an individual guaranteed portion.**

(a) *FTA issuance of initial Certificate.* Before the FTA can issue the initial Certificate for a particular guaranteed portion, the original seller must provide the following documents to the FTA:

(1) An executed SPGA;

(2) A copy of the note representing the guaranteed loan; and

(3) Any other documentation which SBA may require.

(b) *Review of documentation.* SBA may review or require the FTA to review any documentation before the FTA issues a Certificate.

#### **§ 120.644 Sale of individual SBA guaranteed portion.**

(a) *Amount of Certificate.* Each Certificate which represents the guaranteed portion of a single loan must be for the entire amount of the guaranteed portion.

(b) *General rule on transferability of Certificate.* Each such Certificate is transferable only on the books and records of the FTA or SBA.

(c) *Lender cannot purchase guaranteed portion of loan it made.* The Lender (or its Associate) that made the loan cannot purchase the guaranteed portion in the Secondary Market. If a Lender does purchase the guaranteed portion of one of its own loans, it shall not have the unconditional guarantee of SBA.

(d) *Prepayment or default.* The prepayment of the underlying loan or a default on such loan will trigger the redemption of the Certificate by FTA/SBA in accordance with the procedures prescribed in the SPGA.

#### **§ 120.645 Transfers of Certificates.**

(a) *General rule.* Certificates are transferable. Transfers in the Secondary Market must comply with Article 8 of the Uniform Commercial Code of the State of New York. The seller must use the detached form of assignment (SBA Form 1088), unless the seller and purchaser choose to use another form which the SBA approves. The FTA may refuse to issue a Certificate until it is

satisfied that the documents of transfer are complete.

(b) *Transfer on FTA records.* In order for the transfer of a Certificate to be effective the FTA or SBA must reflect it on their records.

(c) *Contents of letter of transmittal accompanying the transfer of Certificates.* (1) A letter of transmittal must accompany each Certificate which a Registered Holder submits to the FTA for transfer. The Registered Holder must supply the following information:

(i) Pool number, if applicable;

(ii) Certificate number;

(iii) Name of purchaser of Certificate;

(iv) Address and tax identification number of the purchaser;

(v) Name and telephone number of the person handling or facilitating the transfer;

(vi) Instructions for the delivery of the new Certificate.

(2) With this information, the seller of the Certificate must send the fee which the FTA charges for this service. The FTA will supply fee information to the seller.

### **Fiscal and Transfer Agent (FTA)**

#### **§ 120.650 Registration duties of FTA in Secondary Market.**

The FTA registers all Certificates. This means it issues, transfers title to, and redeems them. All financial transactions relating to a guaranteed portion of a loan flow through the FTA. The FTA must keep the central registry current, using the following information required for each registration:

(a) The Lender that made and sold the loan;

(b) The interest rate paid by the Borrower to the Lender (including whether the rate is fixed or variable);

(c) The Lender's servicing fee;

(d) The purchaser;

(e) The price paid by the purchaser;

(f) The interest rate paid on the Certificate or Pool Certificate;

(g) The fees which the FTA charges to register and issue Certificates; and

(h) Any other information which SBA requires.

#### **§ 120.651 Claim to FTA by Registered Holder to replace Certificate.**

(a) To replace a Certificate because of loss, theft, destruction, mutilation, or defacement, the Registered Holder must:

(1) Give the FTA information about the Certificate and the facts relating to the claim;

(2) File an indemnity bond acceptable to SBA and the FTA with a surety to protect the interests of SBA and the FTA;

(3) Pay the FTA its fee to replace a Certificate; and