

## § 120.604-2

Business Act (15 U.S.C. 634(h)), as amended by Pub. L. 98-352, approved July 9, 1984.

## § 120.602 Definitions.

(a) *Act* means the Small Business Act, 15 U.S.C. 631, *et seq.*

(b) *Certificate* means the document:

(1) Representing a beneficial fractional interest in a pool consisting of the SBA guaranteed portions of loans or

(2) Representing the guaranteed portion of an SBA loan which is not sold into a pool.

(c) *FTA* means the SBA's fiscal and transfer agent.

(d) *Secondary Market* means the process by which the SBA guaranteed portions of loans made by lending institutions are purchased and sold.

## § 120.603 Fiscal and transfer agent.

The FTA, as authorized by law, is SBA's agent in carrying out the central registration of (a) the SBA guaranteed portions of loans sold in the secondary market and (b) certificates representing fractional interests in pools composed solely of the SBA guaranteed portions of loans. The FTA also has the responsibility for issuing, on behalf of SBA, the certificates representing such interests.

## § 120.604 Registration.

## § 120.604-1 Applicability of registration function.

The rules and requirements in this subpart relating to registration shall apply to:

(a) Every Guaranteed portion of a loan sold in the secondary market commencing with the initial sale by the lender which made the loan; and

(b) Every certificate representing a fractional or undivided interest in a pool approved by the SBA and composed solely of the SBA guaranteed portions of loans.

## § 120.604-2 Central registration.

The FTA shall register each guaranteed portion and each pool certificate sold pursuant to section 5 (f) and (g) of the Act. Such registration shall in-

Subpart E—[Reserved]

Subpart F—Central Registration for  
Secondary Markets

§ 120.601 Statutory provisions.

The statutory authority for this Subpart F is section 5(h) of the Small

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clude, with respect to each sale the following:

- (a) Identity of the lender which made the loan and which sold the loan;
- (b) Interest rate paid by the borrower to the lender, and whether the rate is fixed or variable;
- (c) Lender's servicing fee;
- (d) Identity of the purchaser;
- (e) Price paid by the purchaser;
- (f) Interest rate paid on the guaranteed portion or the certificate, as applicable;
- (g) Fees which the FTA is charging for these registration duties and for the issuance of certificates to facilitate pooling; and
- (h) Such other information as SBA shall determine.

This information shall be available from the FTA upon request of the purchaser of a guaranteed portion or of a certificate.

(Approved by the Office of Management and Budget under control number 3245-0185)

## § 120.605 Certificates.

## § 120.605-1 Transferability.

Certificates issued by the FTA shall be freely transferable. Transfers shall be carried out pursuant to and in accordance with Article 8 of the Uniform Commercial Code of the State of New York. A form of assignment on the back of each certificate shall be used to transfer the certificate, unless the parties choose to use another form acceptable to FTA. The FTA may refuse to issue a certificate until the documents of transfer are correct and complete. Each certificate presented to the FTA for transfer must be accompanied by a letter of transmittal which shall include the following information: pool number, if applicable; certificate number; exact spelling of name in which new certificate is to be issued; complete address and tax identification number of the new holder; name and telephone number of person handling the transfer; complete instructions for the delivery of the new certificate. Together with such letter there shall be sent the appropriate fee which may be charged by the FTA.

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## § 120.605-2 Claim on account of loss, theft, destruction, mutilation or defacement of certificate.

(a) *General.* To obtain a replacement certificate on account of loss, theft, destruction, mutilation or defacement of a certificate, the holder must provide the FTA with complete identification of the certificate and the pertinent facts relating to the situation reported. In addition, the holder must file a bond of indemnity in such form and with such surety, sureties or security as may be required by the FTA to protect the interest of SBA and the FTA. Copies of the form of bond are available from the FTA. The FTA may charge a fee for each replacement certificate.

(1) *Loss or Theft.* Report of the loss or theft of a certificate must be made promptly to the FTA in the form of an affidavit of loss. Copies of the form of affidavit are available from the FTA. The report shall include:

(i) The name and address of the registered owner. If the report is made by any other person or entity, the capacity in which he/she or it represents the owner must be reported;

(ii) The identification of the certificate by pool number, if applicable; certificate number; original principal amount, and the exact form in which the certificate was registered and a full description of any assignment, endorsement or any other writing thereon;

(iii) A statement of the circumstances surrounding the theft or loss.

Upon receiving notification of loss or theft, the FTA will stop transfer of the certificate for up to 60 days to allow the registered holder to obtain the required bond of indemnity and any other documentation. The FTA will extend the stop for up to an additional 60 days if subsequently requested.

(b) *Destruction, Mutilation or Defacement.* If a certificate is destroyed, or becomes so mutilated or defaced as to impair its value to owner, a report as outlined in subsection (a)(1) of this section shall be made to the FTA. All available portions of the mutilated or defaced certificates also must be submitted. The FTA then will arrange for

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the preparation of a replacement certificate.

**Subpart G—Pooling of SBA  
Guaranteed Portion**

SOURCE: 50 FR 12232, Mar. 28, 1985, unless otherwise noted.

**§ 120.700 Statutory provisions.**

The statutory authority for this Subpart G is section 5(g) of the Small Business Act (15 U.S.C. 634(g)).

**§ 120.701 General.**

The SBA shall guarantee to registered holders, upon such terms and conditions as it may deem appropriate, the timely payment of principal of and interest on certificates which are based on and backed by a pool composed solely of the entire SBA guaranteed portions of loans which are made by private lenders. SBA's guaranty of the certificates is backed by the full faith and credit of the United States. Transactions involving the sale of interests in pools are governed by the specified terms and provisions of these regulations. SBA's Secondary Market Program Guide and contracts entered into by the parties. These transactions and those described in Subpart H of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at Subpart F of this part and § 120.301-2-3. Further information regarding the SBA Secondary Market may be obtained from the Small Business Administration, Room 800, 1441 L Street, N.W., Washington, D.C. 20416.

**§ 120.702 Definitions.**

(a) *Agency* or *SBA* means the Small Business Administration.

(b) *Certificate* means the document representing a beneficial interest in a pool consisting solely of the SBA guaranteed portions of loans.

(c) *Current status* means a loan repayment category in which no payments from borrower to lender on a loan are more than 29 days overdue as measured from the due date of the payment, and as evidenced on the records of the central registry maintained by the FTA.

(d) *FTA* means SBA's fiscal and transfer agent.

(e) *Payment date* means the date that checks are deposited in the U.S. mail by the FTA. Such date shall be the 25th of the month or the next business day thereafter if the 25th is not a business day, or such other date as may be chosen from time to time by SBA and published by notice in the FEDERAL REGISTER.

(f) *Pool Assembler* means a national or state bank or savings and loan association, life insurance company, broker-dealer, small business lending company, or similar institution, which meets the requirements set forth in § 120.703 of this subpart. This entity, whether or not it is the SBA participating lender which made the loan, arranges and organizes the pool by acquiring the guaranteed portions of loans that are in accordance with the requirements of subpart H and directs the FTA to issue the certificates.

(g) *Registered Holder or Holder* means the certificate owner whose identity is maintained on the books of the FTA.

(h) *Note Rate* means the stated rate of interest on the note SBA Form 147.

(i) *Net Rate* means the rate of interest on an individual guaranteed portion in a pool.

(j) *Pool Rate* means the stated rate of interest on a pool certificate.

[50 FR 12232, Mar. 28, 1985; 50 FR 49832, Dec. 5, 1985]

**§ 120.703 Eligible pool assemblers.**

(a) *File Application*. In order to qualify as a pool assembler, an entity must file an application with SBA (OMB Approval No. 3245/0123), along with an application fee, and certify that it:

(1) Is either (i) regulated by a state or federal financial regulatory agency, (ii) regulated by SBA, or (iii) is a member of the National Association of Securities Dealers (NASD);

(2) Has a net worth in accordance with the requirements of the appropriate regulatory authority;

(3) Has the financial capability to assemble acceptable and eligible guaranteed portions in sufficient quantity to

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support the required minimum issuances of pool certificates; and

(4) Is in good standing with SBA as determined by the SBA Associate Administrator for finance and investment and with any state or Federal regulatory body governing the entity's activities or with NASD, if it is a member.

(b) *Approval.* Only after its application has been approved by SBA may an entity submit pool applications to the FTA.

(c) *Conduct of Business.* An entity shall continue to qualify as an eligible pool assembler only so long as it (1) meets the eligibility standards of paragraph (a) of this section; (2) conducts its business operations in accordance with accepted securities or banking industry practices, ethics, and standards and applicable SBA regulations; and (3) maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines promulgated by the regulatory body governing its activities.

§ 120.704 Suspension or termination of eligibility of pool assembler.

(a) *Suspension.* If a pool assembler (including principals thereof) should fail to comply with any of the requirements prescribed in § 120.703 (a) and (c) of this subpart, or has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony or suffered an adverse final civil judgment that such pool assembler has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships, the Agency may suspend such entity's eligibility to participate as a pool assembler and decline to issue additional certificates for not more than twelve (12) months, which period may be extended for six (6) additional months as may be necessary. The Agency shall notify the entity by certified mail, return receipt requested, of its suspension and the reasons therefore. Upon receipt of the notice of suspension, the pool assembler may file a petition for review of such action in accordance with the procedures in Part 134 of these regulations.

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(b) *Termination.* If a pool assembler (including principals thereof) should fail to comply with any of the requirements prescribed in 120.703 (a) and (c) of this subpart, or has been convicted of a misdemeanor or felony or suffered an adverse final civil judgment that such pool assembler has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships, the Agency may terminate such entity's eligibility to participate as a pool assembler. Proceedings to terminate a pool assembler's right to participate in the secondary market shall be initiated by the issuance of an order to show cause why its participation in the secondary market should not be terminated. That order to show cause shall be issued and any administrative proceedings in connection therewith shall be conducted in accordance with the procedures in Part 134 of these regulations.

## § 120.705 Certificates.

(a) *General Certificate Characteristics.* All certificates to be issued pursuant to this subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate, the maturity date, and the date payments are to be made to the holders. The certificates may include call provisions and other characteristics depending on market conditions.

(b) *Pool Certificate Payment Characteristics.* Each certificate shall provide for payment on payment date of both principal installments and interest installments calculated on a fixed or variable rate of interest on the unpaid principal balance of the portion of the pool the certificate represents. These provisions shall be effective whether or not the payments on the loans which underlie the pool are collected. All prepayments on such loans will be passed through to the holder(s) as appropriate, on payment date. In the case of non-payment by the borrower on a loan in a pool backing the certificates, SBA through its FTA shall make advances to maintain the schedule of interest and principal payments to the registered holders

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until SBA purchases the guaranteed portion. Guarantee purchases are discussed in § 120.212 of this part and in SBA Form 1086, Secondary Participation Guaranty and Certification Agreement.

## § 120.706 Loan pools.

(a) *Pool Characteristics.* Every pool, at its outset, must include a minimum number of guaranteed portions of loans with a minimum aggregate principal balance outstanding of such guaranteed portions at the time of certificate issuance. Any individual guaranteed portion may not constitute more than a certain maximum percentage of the pool. The minimum number of guaranteed portions of loans in a pool, the aggregate principal balance and the percentage of pool make up all may be altered from time to time by SBA by publication of a notice in the FEDERAL REGISTER. The required characteristics will be based on an analysis of program experience and market conditions by SBA. After such analysis, SBA will make appropriate adjustments to pool characteristics.

(b) *Amount of Certificate.* The face amount of any certificate representing an interest in a pool cannot be less than specified minimum amount and, with the exception of one certificate per pool, must be in increments specified by SBA. These requirements may be altered by SBA by publication of a notice in the FEDERAL REGISTER after SBA has analyzed market conditions and program experience.

(c) *Transferability.* Each certificate shall be transferable, but only on the books and records of SBA or its FTA provided that a lender may not be a holder of any certificate in any pool containing guaranteed portions generated by that lender. The share of the proceeds collected on account of the pool may not be payable to more than one registered holder with respect to any certificate.

(d) *Period of Interest Guaranteed.* Interest on prepaid or defaulted loans shall accrue and be guaranteed by SBA only through the date of prepayment or payment on the guaranty.

(e) *Maximum Allowable Difference in Interest Rates.* From time to time

SBA may, by notice, publish in the FEDERAL REGISTER the maximum allowable difference between the highest note rate and the lowest note rate for all loans in a pool. The maximum allowable difference in interest rates will be determined by SBA based on program experience and an analysis of market conditions.

(f) *Maximum Allowable Difference in Terms to Maturity.* From time to time SBA may publish by notice in the FEDERAL REGISTER the maximum allowable difference between the remaining terms to maturity of all loans constituting the pool. The maximum allowable difference selected by SBA will be based on program experience and an analysis of market conditions.

(g) *Pool Rate.* The rate on a pool certificate must be equal to the lowest net rate on any individual guaranteed portion in the pool.

(h) *Redemption.* During the term of a certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

## § 120.707 Delivery requirements.

Before FTA issues any certificate, the pool assembler shall deliver to the FTA the following documents (OMB Approval No. 3245 0213):

(a) A properly completed pool application form;

(b) Either (1) certificates evidencing the guaranteed portions comprising the pool or (2) appropriate documentation evidencing ownership of the guaranteed interests, certification that each of the loans has been closed in conformity with the SBA authorization, and copies of the notes representing the loans whose guaranteed portions are to be part of the pool, and

(c) Such other documentation as may be required by SBA.

## § 120.708 Pool administration.

(a) *FTA Responsibility.* Administration of each pool shall be the responsibility of the FTA, which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating.* Each pool shall be self-liquidating as the result of borrower payments, redemption by SBA,

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prepayment by borrower, and/or payment by SBA or the lender because of default by borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this subpart, it shall be subrogated fully to the rights satisfied by such payment.

(d) *SBA Ownership Rights.* No State, local, or Federal law, shall preclude or limit the exercise by the SBA of its ownership right in the portions of loans constituting the pool against which the certificates are issued.

## § 120.709 Eligible loans for pools.

(a) Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(1) Be in a current status as of the date of pool formation;

(2) Be guaranteed under the Small Business Act, as amended (except that loans guaranteed under section 7(a)(13) of the Small Business Act (relating to development companies) are not eligible for this program);

(3) Have such characteristics as SBA shall from time to time determine to be necessary for the successful operation of the pooling program.

(b) With respect to any particular pool, the loans must meet only such standards as may be in effect at the time of issuance.

## § 120.710 Guaranty.

With respect to each pool certificate, SBA guarantees the timely payment on payment date, whether or not collected, of interest and principal installments, and any prepayments or other early recoveries of principal on the loans, as undertaken in the Agency's guaranty appearing on the face of the certificate.

## § 120.711 Fees.

The FTA is authorized to collect reasonable application fees, transfer fees and such other fees as the SBA and the FTA may negotiate under contract and which the Agency, from time to time, will publish in the FEDERAL REG-

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ISTER. In negotiating any changes in fees, the Agency will accept public comments on these notices and consider these comments in establishing these fees.

## § 120.712 Disclosure requirements.

Prior to any sale, the pool assembler or any subsequent seller of a certificate must disclose to the purchaser, either orally or in writing, information on the terms, conditions and yield as described in the Secondary Market Program Guide. In addition, such information must be provided in writing on the transfer document at the time it is submitted to the FTA. The FTA will, subsequent to the sale, provide such disclosure information in writing to the purchaser.

## Subpart H—Individual SBA Guaranteed Portion Sold in the Secondary Market

SOURCE: 50 FR 12234, Mar. 28, 1985, unless otherwise noted.

## § 120.800 Statutory provisions.

The statutory authority for this Subpart H is section 5(f) of the Small Business Act (15 U.S.C. 634(f)).

## § 120.801 General.

(a) SBA guarantees to purchase from the registered holder the guaranteed portion for an amount equal to the guaranteed percentage of unpaid principal and accrued interest due on the note as of the date of purchase by SBA, less deductions for the lender's and the FTA's servicing fees. SBA's guarantee to the registered holder shall become effective in the event: (1) The borrower defaults in making payments of principal or interest due on the note; or (2) the lender fails to remit to the FTA payments received from the borrower. SBA also guarantees to forward to the registered holder any such payments that the FTA fails to remit to the registered holder. SBA's guarantee to such holder is unconditional and is backed by the full faith and credit of the United States. (SBA does not guarantee timely payment on individual guaranteed portions. *cf.* § 120.701) Transac-

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tions involving the sale of individual guaranteed portions are governed by the specified terms and provisions of the contracts entered into by the parties, SBA's Secondary Market Program Guide, and these regulations.

(b) These transactions and those described in Subpart G of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at Subpart F of this part and § 120.301-2-3. Further information may be obtained from the Small Business Administration, Room 800, 1441 L Street, NW., Washington, D.C. 20416.

## § 120.802 Definitions.

The definitions of the terms "Agency or SBA," "Certificate," "FTA," "Payment Date" and "Registered Holder or Holder" have the same meaning in this subpart as they do in subpart G.

(a) *Certificate* means the document representing a beneficial interest in the guaranteed portion of a loan made by a lender and guaranteed by SBA.

(b) *Current status* means a loan repayment category in which no payments on a loan are more than 29 days overdue as measured from the due date of the payment, as evidenced on the records of the entity servicing such loan.

## § 120.803 Certificates.

(a) *Certificate Characteristics*. All certificates to be issued pursuant to this subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate and the maturity date.

(b) *Payment Characteristics for Certificates Representing Individual Guaranteed Loans*. Each certificate shall represent a holder's undivided interest in an entire SBA guaranteed portion of a loan providing for a pass through to the holder of payments received by the FTA from the lender or any entity servicing the loans.

## § 120.804 Individual sale.

(a) *Amount of Certificate*. Each certificate representing the guaranteed portion of a single loan shall be for

the entire amount of the guaranteed portion.

(b) *Transferability*. Each such certificate shall be transferable only on the books and records of SBA or its FTA, except that the lender (or its associate as defined in § 120.2-2) which made the loan shall not purchase the guaranteed portion in the secondary market. If a lender purchases the guaranteed portion of one of its own loans, it will have the same status for the particular loan as it is accorded in the Loan Guaranty Agreement, SBA Form 750.

(c) *Prepayment or Default*. The prepayment of the underlying loan or a default on such loan will cause the certificate to be redeemed in accordance with procedures prescribed in the SBA Form 1086.

## § 120.805 Delivery requirements.

(a) Before FTA issues the initial certificate for a particular guaranteed portion, the original seller shall provide the following documents:

(1) Appropriate documentation evidencing ownership of the guaranteed interest, including a certification by the lender that the loan has been closed in conformity with the SBA authorization;

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

(3) Such other documentation as may be required by SBA.

(b) SBA reserves the right to review or require its Agent to review such documentation prior to certificate issuance. However, SBA shall not review any materials previously approved if the lender has certified that the loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the SBA regulations.

## § 120.806 Secondary market administration.

(a) *FTA Responsibility*. Administration of each individual guaranteed portion shall be the responsibility of the FTA which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating*. Each individual guaranteed portion shall be self-liquidating.

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dating as the result of borrower payments, redemption by SBA, prepayment by borrower and/or payment by SBA because of the default by borrower.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this Subpart, it shall be subrogated fully to the rights satisfied by such payment.

## § 120.807 Eligible loans for the secondary market.

Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(a) Be in a current status at the time it is initially sold into the secondary market;

(b) Be guaranteed under the Small Business Act, as amended;

(c) Have such characteristics as SBA shall, from time to time, determine to be necessary for the successful operation of the secondary market.

## § 120.808 Fees.

The FTA is authorized to collect reasonable application fees, transfer fees and such other fees as the SBA and the FTA may negotiate under contract and which the Agency, from time to time, will publish in the *FEDERAL REGISTER*. In negotiating any changes in fees, the Agency will accept public comments on these notices and consider these comments in establishing these fees.

## § 120.809 Disclosure requirements.

Except for the entity which made the loan, every registered holder of the guaranteed portion must, prior to any sale, disclose to the purchaser either orally or in writing the terms and conditions and yield of such instrument as described in the *Secondary Market Program Guide*. In addition, such information must be provided in writing on the transfer document at the time it is submitted to the FTA. The FTA will, subsequent to sale, provide such disclosure information in writing to the purchaser.