

## Small Business Administration

## § 107.570

your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). SBA will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(e) *Thirty day approval.* Unless SBA notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

- (1) You are in regulatory compliance;
- (2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;
- (3) Your Leverage does not exceed 150 percent of your Leverageable Capital; and
- (4) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

### § 107.560 Subordination of SBA's creditor position.

(a) *Debentures purchased or guaranteed on or before July 1, 1991.* Under the terms of any Debenture purchased or guaranteed by SBA on or before July 1, 1991, SBA's unsecured claims against you, as a Debenture-holder or as subrogee, are subordinated in favor of all your other creditors, except to the extent that such claims may be subject to equitable subordination in SBA's favor.

(b) *Debentures purchased or guaranteed after July 1, 1991, including refinancings of Debentures previously purchased or guaranteed.* (1) Under the terms of any Debenture purchased or guaranteed by SBA after July 1, 1991, SBA's unsecured claims against you, as a Debenture-holder or as subrogee, are subordinated only in favor of non-Associate lenders; and, to the extent that your indebtedness to such lenders exceeds the lesser of \$10,000,000 or 200 percent of your Regulatory Capital (determined as of the date your Debentures were purchased

or guaranteed), SBA's unsecured claims enjoy parity with those of other unsecured creditors, except with respect to indebtedness created on or before July 1, 1991.

(2) In order to induce others to lend you money after your Debenture has been purchased or guaranteed, SBA may agree in writing on a case-by-case basis to subordinate its unsecured claims, on such terms as it may determine, in favor of one or more of your Associates, or in favor of other lenders in excess of the amounts mentioned in paragraph (b)(1) of this section.

(3) SBA reserves the authority to refuse to subordinate its claims if it determines, at the time you request your Debenture be purchased or guaranteed, that the exercise of reasonable investment prudence and your financial condition warrant such refusal.

### § 107.570 Restrictions on third-party debt of issuers of Participating Securities.

(a) *General.* Temporary Debt is the only debt (other than Leverage) that you are permitted to incur if you have applied to issue Participating Securities or if you have outstanding Participating Securities. For additional rules governing secured Temporary Debt, see § 107.550.

(b) *Definition of Temporary Debt.* Temporary Debt means your short-term borrowings if:

(1) Such borrowings are for the purpose of maintaining your operating liquidity or providing funds for a particular Financing of a Small Business;

(2) The funds are borrowed from a regulated financial institution or a regulated credit company (or, if approved by SBA on a case-by-case basis, from non-regulated lenders including shareholders or partners);

(3) Your total outstanding borrowings (not including Leverage) do not exceed 50 percent of your Leverageable Capital; and

(4) All such borrowings are fully paid off for at least 30 consecutive days during your fiscal year so that you have no outstanding third-party debt for 30 days.