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Such loans are subject to the same conditions as guaranteed loans made to Intermediaries by 7(a) Lenders.

(b) *Business structure.* An SBLC must be a corporation (profit or nonprofit) or a limited liability company or limited partnership, except for a Community Advantage SBLC, which must either be a nonprofit corporation or have been a Community Advantage Pilot Program participant.

(c) *Written agreement.* An SBLC must sign a written agreement with SBA.

(d) *Dual control.* An SBLC must maintain dual control over disbursement of funds and withdrawal of securities.

(1) An SBLC may disburse funds only by checks or wire transfers authorized by signatures of two or more officers covered by the SBLC's fidelity bond, except that checks in an amount of \$10,000 or less may be signed by one bonded officer, provided that such action is permitted under the SBLC's fidelity bond.

(2) There must be two or more bonded officers, or one bonded officer and a bonded employee to open safe deposit boxes or withdraw securities from safekeeping. The SBLC must furnish to each depository bank, custodian, or entity providing safe deposit boxes a certified copy of the resolution implementing control procedures.

(e) *Fidelity insurance.* An SBLC, except for a Community Advantage SBLC, must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of \$2,000,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 31 U.S.C. 9304–9308. SBA's Administrator, in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA), or their designee(s), at their discretion, will determine the appropriate bond coverage levels for Community Advantage SBLCs as published in Loan Program Requirements.

(f) *Common control.* (1) An SBLC must not control, be controlled by, or be under common control with another SBLC.

(2) In the case of a purchase of an SBLC by an organization that already

owns an SBLC, the purchasing entity will have six months to submit a plan to SBA for the divestiture of one of the SBLCs. All divestiture plans must be approved by SBA and SBA may withhold approval in its discretion. Divestiture of the SBLC must occur within one year of purchase date.

(3) Without prior written SBA approval, an Associate of one SBLC must not be an Associate of another SBLC or of any entity which directly or indirectly controls, or is under common control with, another SBLC.

(4) For purposes of paragraph (f) of this section, common control means a condition where two or more SBLCs, either through ownership, management, contract, or otherwise, are under the Control of one group or Person (as defined in §120.10 of this chapter). Two or more SBLCs are presumed to be under common control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners.

(5) "Affiliate" has the meaning set forth in §121.103 of this chapter.

(6) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an SBLC or other concern, whether through the ownership of voting securities, by contract, or otherwise. The common control presumption may be rebutted by evidence satisfactory to SBA.

(g) *Borrowed funds.* In general, an SBLC may not be capitalized with borrowed funds. Shareholders owning 10 percent or more of any class of its stock must not use personally-borrowed funds to purchase the stock unless the net worth of the shareholder is at least twice the amount borrowed or unless the shareholder receives SBA's prior written approval for a lower ratio.

[73 FR 75515, Dec. 11, 2008, as amended at 85 FR 78215, Dec. 4, 2020; 87 FR 38909, June 30, 2022; 88 FR 21899, Apr. 12, 2023]

§ 120.471 What are the minimum capital requirements for SBLCs?

(a) *Minimum capital requirements.* (1) Beginning on January 4, 2024, each SBLC that makes or acquires a 7(a) loan must maintain, at a minimum, unencumbered paid-in capital and paid-

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in surplus of at least \$5,000,000, or 10 percent of the aggregate of its share of all outstanding loans, whichever is greater.

(2) Any SBLC approved on or after January 4, 2021, including in the event of a change of ownership or control, must maintain the minimum capital requirement set forth in paragraph (a)(1) of this section.

(3) Unless subject to paragraph (a)(1) or (2) of this section, an SBLC must comply with the minimum capital requirements that were in effect on January 3, 2021.

(4) A Community Advantage SBLC must maintain a minimum amount of capital as determined at the discretion of the Administrator in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA), or their designee(s). The minimum capital amount as published in Loan Program Requirements will ensure sufficient risk protection for SBA and lenders while not burdening smaller lenders with large capital requirements.

(5) Community Advantage SBLCs must maintain a loan loss reserve account as determined at the discretion of the Administrator in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA), or their designee(s) as published in Loan Program Requirements.

(b) *Composition of capital.* For purposes of complying with paragraph (a) of this section, capital consists only of one or more of the following:

(1) Common stock;

(2) Preferred stock that is noncumulative as to dividends and does not have a maturity date;

(3) Unrestricted net assets (for non-profit corporations);

(4) Additional paid-in capital representing amounts paid for stock in excess of the par value;

(5) Retained earnings of the business; and/or

(6) For limited liability companies and limited partnerships, capital contributions must not be subject to repayment at any specific time, must not be subject to withdrawal and must have no cumulative priority return.

(c) *Voluntary capital reduction.* Without prior written SBA approval, an

SBLC must not voluntarily reduce its capital, or repurchase and hold more than 2 percent of any class or combination of classes of its stock.

(d) *Issuance of securities.* Without prior written SBA approval, an SBLC must not issue any securities (including stock options and debt securities) except stock dividends.

[73 FR 75516, Dec. 11, 2008, as amended at 85 FR 78215, Dec. 4, 2020; 88 FR 21899, Apr. 12, 2023]

§ 120.472 Higher individual minimum capital requirement.

The Associate Administrator for Capital Access (AA/CA) may require, under §120.473(d), an SBLC to maintain a higher level of capital, if the AA/CA determines, in his/her discretion, that the SBLC's level of capital is potentially inadequate to protect the SBA from loss due to the financial failure of the SBLC. The factors to be considered in the determination will vary in each case and may include, for example:

(a) Specific conditions or circumstances pertaining to the SBLC;

(b) Exigency of those circumstances or potential problems;

(c) Overall condition, management strength, and future prospects of the SBLC and, if applicable, its parent or affiliates;

(d) The SBLC's liquidity and existing capital level, and the performance of its SBA loan portfolio;

(e) The management views of the SBLC's directors and senior management; and

(f) Other risk-related factors, as determined by SBA.

[73 FR 75516, Dec. 11, 2008]

§ 120.473 Procedures for determining individual minimum capital requirement.

(a) *Notice.* When SBA determines that an individual minimum capital requirement above that set forth in this subpart or other legal authority is necessary or appropriate for a particular SBLC, SBA will notify the SBLC in writing of the proposed individual minimum capital requirement, the date by which it should be reached and will provide an explanation of why the requirement proposed is considered necessary or appropriate.