

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

#### Liquidation of Collateral and Sale of Commercial Loans

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Proposed rule.

**SUMMARY:** SBA proposes to amend its regulation regarding the liquidation and sale of loans. As part of a government-wide initiative, federal credit agencies are being directed by the Office of Management and Budget (OMB) to sell their loan portfolios. Initially, SBA intends to sell its portfolio of direct and purchased loans made under the authorities of the 7(a) and 501, 502, 503, and 504 programs. This will include both secured and unsecured loans in performing and non-performing status. The loans will be sold to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale. SBA also intends to sell its disaster home loans and disaster business loans, but will publish separate regulations regarding these sales.

**DATES:** Submit comments on or before July 29, 1999.

**ADDRESSES:** Comments should be mailed to Arnold S. Rosenthal, Assistant Administrator for Portfolio Management, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Richard Blewett, 202-205-4202.

**SUPPLEMENTARY INFORMATION:** 13 CFR 120.540 sets forth SBA's policy for the liquidation of collateral and the sale of commercial loans. SBA now proposes to amend and expand this rule to include the sale of direct and purchased loans in asset sales. Pub. L. 104-134, the "Debt Collection Improvement Act of 1996," enacted on April 26, 1996, provides that, "the head of an executive

agency may sell, subject to section 504(b) of the Federal Credit Reform Act of 1990 and using competitive procedures, any non-tax debt owed to the United States that is delinquent for more than 90 days." 31 U.S.C. 3711(i)(1). The Small Business Act, 15 U.S.C. 634(b)(2), provides in pertinent part that "(The Administrator may sell at public or private sale \* \* \* in (her) discretion \* \* \* any evidence of debt \* \* \* personal property, or security \* \* \*". It further provides in 15 U.S.C. 634(b)(7) that the Administrator may "take any and all actions \* \* \* when [she] determines such actions are necessary or desirable in \* \* \* liquidating or otherwise dealing with or realizing on loans \* \* \*". Pursuant to this statutory authority, SBA is establishing an Asset Sales Program to sell portions of its direct and participation loan portfolios.

#### Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule is not a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 2 of that Order.

#### List of Subjects in 13 CFR Part 120

Loan programs—business.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 120 as follows:

#### PART 120—[AMENDED]

1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634 (b)(6) and (h).

2. In § 120.540 revise the section heading, add paragraph (b)(4), and revise paragraph (d) to read as follows:

#### § 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans?

\* \* \* \* \*

(b) \* \* \*

(4) Sell direct and purchased 7(a) and 501, 502, 503 and 504 loans in asset sales. SBA will offer these loans for sale to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale.

\* \* \* \* \*

(d) *Recoveries and security interests shared.* SBA and the Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, including proceeds from asset sales, all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lienholders), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

\* \* \* \* \*

Dated: June 22, 1999.

**Aida Alvarez,**  
Administrator.

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