



SBA Information Notice

TO: All SBA Employees, 7(a) Lenders and Certified Development Companies **CONTROL NO.:** 5000-17008

SUBJECT: Issuance of SOP 50 10 5(J) **EFFECTIVE:** October 13, 2017

The purpose of this Notice is to announce the issuance of Standard Operating Procedure (SOP) 50 10 5(J), Lender and Development Company Loan Programs. This update to the SOP provides additional guidance and incorporates revisions to conform to changes in SBA regulations published in the Final Rule entitled “Miscellaneous Amendments to Business Loan Programs and Surety Bond Guarantee Program” (“Final Rule,” 82 FR 39491, August 21, 2017).

Background

SOP 50 10 5 (J) was revised to incorporate regulation changes and to provide better guidance to SBA staff and external stakeholders. The Final Rule amended SBA regulations to update, streamline and clarify rules for the 7(a) and 504 Loan Programs, among others. Additional improvements incorporated into this SOP update are a result of internal policy review and determinations, and recommendations and feedback received by SBA from SBA Lenders, NAGGL, NADCO and other industry participants.

The SOP 50 10 5 (J) will become effective January 1, 2018. Participants must continue to use SOP 50 10 5 (I) in the execution of SBA 7(a) and 504 lending through December 31, 2017.

General changes were made throughout for clarity with editorial changes that include updating form numbers/names, formatting, hyperlinks, etc. **Users are advised to fully read SOP 50 10 5(J) to ensure understanding of all changes.**

The significant changes to the SOP include the following:

Subpart A – SBA Lender and Certified Development Company Participation Requirements

In Chapter 1, 7(a) Lenders, SBA has:

1. Revised how a Non-Federally Regulated Lender (NFRL) applies for participation as a 7(a) Lender, including required contents and where to submit applications (Paragraph II.C).
2. Updated Lender’s responsibilities to include due diligence and prudent oversight of their third party vendors, including Lender Service Providers (LSPs) and other loan Agents. (Paragraph II.E)
3. Added guidance on record retention requirements for Lenders, including original documents, electronic storage of files and the standards required for using electronic signatures. (Paragraph II.E, see also new Appendix 11)

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SBA Form 1353.1 (12-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

4. Updated the guidance on fees charged for lender oversight activities to reflect changes in the Final Rule. (Paragraph III.C)
5. Added guidance on receiverships in enforcement actions against Non-Federally Regulated Lenders (NFRLs), defining the circumstances and scope of such receiverships. To align with the effective date of the SOP, SBA will deem a NFRL's consent to the receivership remedy to take effect on January 1, 2018. (Paragraph III.E)
6. Removed all references to the Certified Lender Program (CLP). (Paragraph IV.B)
7. Streamlined how a Lender requests delegated authority (Preferred Lenders Program (PLP), PLP-EWCP, SBA Express and Export Express) incorporating the criteria for all delegated authority in the beginning of the section. SBA revised the procedure for requesting delegated authority so Lenders submit the request directly to the D/OCRM at 7aDeleAuthNominations@sba.gov, instead of the SBA Field Office. (Paragraph IV.B-E)

In Chapter 2, Small Business Lending Company (SBLC), SBA has:

1. Updated SBLC's responsibilities to include due diligence and prudent oversight of their third party vendors, including Lender Service Providers (LSPs) and other loan Agents. (Paragraph I.B)
2. Relocated language prohibiting an SBLC from making a loan to an Applicant that has received assistance from an affiliated Small Business Investment Company to this chapter from Subpart B, Chapter 2, 7(a) Eligibility. (Paragraph I.D)
3. Revised the process for how to acquire a Small Business Lending Company (SBLC) (Paragraph II):
 - a. Added clarification that for transfer of an SBLC's lending authority, the buyer and seller are responsible for creation of a purchase and sale agreement subject to SBA's prior written approval.
 - b. Revised the list of individuals required to submit SBA Form 1081, Statement of Personal History, and fingerprint cards. (Paragraph II.E.)
 - c. Updated the comprehensive business plan requirements to include details on proposed loan, secondary market, and loan acquisition activities. (Paragraph II.E)
 - d. Revised the requirements for a written legal opinion of independent counsel, including that the opinion may not be provided by an Associate of the Lender, as defined under 13 CFR § 120.10.
4. Incorporated guidance on receiverships in enforcement actions against SBLCs, defining the circumstances and scope of such receiverships. In order to align with the effective date of the SOP, SBA will deem an SBLC's consent to the receivership remedy to take effect on January 1, 2018. (Paragraph II.I)

In Chapter 3, Certified Development Companies (CDCs), SBA has:

1. Reduced restriction of CDC Board members serving on the Boards of other non-CDC entities (Board overlap). (Paragraph II.A)
2. Clarified that CDC Board members voting on loan approval or servicing actions must live or work in the Area of Operations of the CDC. (Paragraph II.A)

3. Clarified that individuals serving on the Loan Committee of a CDC do not have to be members of the CDC, the CDC's Board of Directors, or shareholders (if any). Loan Committee Members must have a background in financial risk management, commercial lending, or legal issues related to commercial lending who are not associated with another CDC. (Paragraph II.A)
4. Revised the procedures for a rural CDC to petition SBA for a waiver of the requirement that a CDC directly employ full-time professional management, including clarifying the "same general area." (Paragraph II.A)
5. Streamlined the review process for professional services contracts. Contracts must be submitted directly to OFA electronically at 504Requests@sba.gov, rather than the SBA Field Office. Additionally, the professional service contract requirements were revised to eliminate certain unnecessary requirements. (Paragraph II.A)
6. Added language regarding the duty of CDCs to review potential participants for suspensions, debarments, or other exclusions. (Paragraph II.B)
7. Updated the requirements for submission of CDC annual reports so the annual reports are submitted separately from all other requests to cdcannualreports@sba.gov. The email address for requests for new ALPs, LEAs, multi-state applications and contract review is 504requests@sba.gov. (Paragraph II.B)
8. Clarified the requirement for the CDC Report on Compensation to include compensation paid for current and former officers, directors, and key employees even in cases where compensation is less than \$100,000. Reporting on compensation for current and former employees and independent contractors is required when total compensation exceeded \$100,000 during the reporting period. The report must include details of deferred compensation packages where applicable. (Paragraph II.B)
9. Added guidance on record retention requirements for CDCs, including specifications for retaining original documents and storage of electronic files, and incorporated the required standards for using electronic signatures (Paragraph II.B., see also new Appendix 11).
10. Clarified requirements for operational changes the CDC must report to SBA, including specifying which of those changes require prior written approval of SBA and updating instructions for submission/notification to SBA. (Paragraph II.C)
11. Revised SBA Form 1081 requirements to clarify that all CDC staff, including contractors, are required to submit SBA Form 1081 and fingerprint cards, and that SBA Form 1081 **and** fingerprint cards are required from all Board Members and Loan Committee members, regardless of the individual's answers to SBA Form 1081. (Paragraph III.A)
12. Clarified that new CDCs must either apply for permanent status or a single one-year extension of its Probationary period at least ninety days prior to the end of the probationary period. (Paragraph III.C)
13. Incorporated guidance on receiverships in enforcement actions against CDCs, defining the circumstances and scope of such receiverships. In order to align with the effective date of the SOP, SBA will deem a CDC's consent to the receivership remedy to take effect on January 1, 2018. (Paragraph IV.C)

14. Revised the CDC merger guidance with respect to a CDC's Area of Operations. (Paragraph IV.D)
15. Revised the guidance for designated attorneys to request hardship waivers of the professional malpractice insurance requirements. (Paragraph V.A)
16. Changed the office approving a CDC lending outside of its Area of Operation from the SBA field office to the Sacramento Loan Processing Center. (Paragraph VI.A)

Subpart B – Section 7(a) Business Loan Programs

In Chapter 2, Eligibility for 7(a) Guaranty Loan Programs, SBA has:

1. Removed “Summary of Eligibility Requirements” to eliminate duplicative language and incorporate all eligibility requirements into revised section, “Eligibility Requirements for all 7(a) Loan Applicants.” (Paragraph II)
2. Added guidance regarding affiliation based on management when the small business applicant is operating under a management agreement with a third party. (Paragraph II.D)
3. Revised procedures for Applicants with franchise, license, dealer, jobber, and similar agreements. *SBA is publishing a separate Notice simultaneously with this Notice that summarizes the changes to the franchise review process.* (Paragraph II.D)
4. Revised procedures for review of businesses engaged in promoting religion. (Paragraph III.A)
5. Incorporated recently revised procedures for businesses with an Associate of poor character/SBA Form 912 Review. (Paragraph III.A)
6. Eliminated consumer and marketing cooperatives from the types of businesses that are not eligible for SBA financial assistance. (Paragraph III.A)
7. Revised procedures for review of businesses providing prurient sexual material. (Paragraph III.A)
8. Added guidance that Lenders must inform Applicants that if the small business defaults and SBA suffers a loss, the names of the small business and the guarantors of the SBA-guaranteed loan will be referred for listing in the Credit Alert Verification Reporting System (CAIVRS) database which may affect their eligibility for further financial assistance. (Paragraph III.A)
9. Updated guidance regarding the eligibility of businesses owned by non-U.S. citizens. (Paragraph III.A)
10. Provided guidance for when SBA loan proceeds may be used to finance a change in ownership between existing owners of an Eligible Passive Concern (EPC). (Paragraph III.D)
11. Expanded guidance for loans where collateral may be included in the National Register of Historic Places (Historic Properties). (Paragraph III.E)
12. Increased the percentage of loan proceeds that may be used to purchase land from 20 percent to 33 percent for the Builder's CAPLine. (Paragraph IV.D)

13. Clarified the eligible uses of loan proceeds for farm enterprises. (Paragraph V.C)
14. Revised policies regarding debt refinancing for SBA Express, Export Express, and EWCP Lenders. (Paragraph V.E)
15. Added guidance to clarify that a borrower is prohibited from leasing space to any business engaged in any activity that is illegal under federal, state or local law. (Paragraph V.F)
16. Clarified the Loan Program Requirements for change of ownership loans involving Employee Stock Ownership Plans (ESOPs) or equivalent trusts. (V.H)
17. Updated eligible uses of proceeds for Export Express. (Paragraph V.J)

In Chapter 3, Loan Terms and Conditions, SBA has:

1. Clarified guidance regarding maximum guaranty amounts for combination of 7(a) and 504 loans. (Paragraph II.A)
2. Relocated guidance on “Changing a Guaranty Percentage After Loan Approval” to Subpart B, Chapter 7. (Paragraph I.E)
3. Relocated the guidance for determining the CAPLine loan amount to Chapter 4, Credit Standards, Collateral and Environmental Policies.
4. Relocated the guidance for increasing loan amounts to Chapter 7, Post-Approval Modifications, Loan Closing & Disbursement.
5. Revised the requirements for SBA Express Revolving loans to include a term-out period. (Paragraph III.D.)
6. Clarified EWCP maturities for Single Transaction-Specific loans. (Paragraph I.F, see also SBA Quick Reference Chart No. 3)
7. Clarified that the Note terms for variable interest rate loans must include the first adjustment date by either stating a specific date, or using the final disbursement date to determine the timing. (Paragraph IV.A)
8. Revised the guidance on how and when the guaranty fee must be paid for loans with short term maturities and the circumstances under which a refund will be provided to the Lender. (Paragraph V.B)
9. Consolidated and simplified the guidance on the fees a Lender may charge an Applicant to conform to regulatory changes made in the Final Rule. (Paragraph VI, Paragraph VII)
10. Clarified the guidance regarding allowable fees for packaging and other services. (Paragraph VI.A)
11. Updated the guidance concerning disclosure of fees and Lender expenses, including SBA Form 159(7(a)). (Paragraph VIII.B)
12. Updated guidance on Agents, including Lender Service Providers. (Paragraphs IX and X)

In Chapter 4, Credit Standards, Collateral and Environmental Policies, SBA has:

1. Reorganized the Processing and Delivery methods in the Creditworthiness/Credit Underwriting requirements in Chapter 4 for clarity. (Paragraph I)
2. Added minimum equity requirements for certain 7(a) loans (Paragraphs I.C):
 - a) Start-Up businesses:
 - i. At a minimum, SBA requires an equity injection (borrower contribution) of no less than ten (10) percent of the total project costs for a start-up business;
 - b) Changes of ownership:
 - i. Resulting in a new owner (complete change of ownership), SBA requires an equity injection of no less than 10 percent of total project costs. Seller debt may not be used to meet this requirement unless it is on full standby for the life of the SBA loan;
 - ii. Change of ownership between existing owners (“partner buyout”): The pro-forma equity position after the change of ownership must be at least 10 percent of the total assets. Otherwise, the remaining owner(s) must provide an additional equity injection that will result in no less than a 10 percent net worth of total assets.
3. Removed the requirement for 25% equity injection when intangibles exceed \$500,000 in change of ownership loans in order to process under a Lender’s delegated authority. Delegated Lenders may process any change of ownership under their delegated authority, and must comply with the minimum equity requirements as stated above. (Paragraph I.C)
4. Clarified that Lenders must consider seller debt as debt in all applications (including debt refinance and change of ownership) unless it is on full standby for as long as there is an outstanding SBA guaranty. (Paragraph I.C)
5. Expanded EWCP credit underwriting standards. (Paragraph I.C)
6. Provided direction that SBA and/or the Lender, for loans processed using delegated authority, may require a personal guaranty, regardless of ownership interest, if any, when deemed necessary for credit or other reasons. (Paragraph II.A)
7. Updated EWCP collateral requirements. (Paragraph II.E)
8. Updated environmental policy guidance to reflect current federal requirements and added guidance related to the release of rights to indemnification from SBA/Lender. (Paragraph V.I)

In Chapter 5, Loan Authorization, SBA has:

1. Relocated the general instruction on Insurance Requirements to Chapter 4 with other collateral requirements. (Paragraph III)
2. Relocated procedures on “Assignment of Lease and Landlord’s Waiver” to Chapter 4.

In Chapter 6, Submission of Application for Guaranty, SBA has:

1. Reorganized the contents of the Lender's application for guaranty to emphasize in **bold text** the documents that are required to be submitted to the Loan Guaranty Processing Center (LGPC) with the Lender's application and indicating in the non-bold text the documents that must be maintained in the Lender's file. (Paragraph I)
2. Changed standard for business financial statements to be dated within 120 days of submission to SBA. (Paragraph I)

In Chapter 7, Post-Approval Modifications, Loan Closing & Disbursement, SBA has:

1. Reorganized the guidance for Post-Approval/Pre-Disbursement requests for changes and included guidance on loan increases previously located in Chapter 3. (Paragraph I)
2. Expanded the list of actions that do not require prior approval by SBA. Lender may use E-Tran Servicing to notify SBA of those actions. (Paragraph I.C)
3. Added guidance that Lenders are required to report information to the appropriate credit reporting agencies whenever they extend credit through an SBA loan. (Paragraph IV.F)
4. Added guidance that SBA and the PLP-EWCP lender may determine certain requirements for foreign accounts receivable, including advance rates and/or use of control accounts for asset based EWCP loans.

In Chapter 8, Post-Disbursement Changes, Secondary Market, Securitization and Lender Reporting (SBA Form 1502), SBA has:

1. Added guidance on the process for selling loans in the Secondary Market. (Paragraph II.A)
2. Added the process for obtaining SBA's prior written consent on portfolio transfers and loan participations. (Paragraph IV)
3. Added the process for obtaining SBA's prior written consent to secured credit and SBA securitization transactions, including a description of the basic conditions that a Lender must meet in order to securitize and minimum elements that SBA requires for securitizations. (Paragraph VI)

SUBPART C – Section 504 Certified Development Company Loan program

In Chapter 1, General Provisions, SBA has:

1. Clarified the definition of a new business. (Paragraph III)
2. Added guidance advising CDCs that they are not to enter into an intercreditor agreement with the Third Party Lender other than the Third Party Lender Agreement (SBA Form 2287) without the prior written consent of SBA. (Paragraph IV.A)
3. Revised the list of examples of Limited or Special Purpose Properties. (Paragraph IV.C)
4. Revised the equity requirements for borrowers (including affiliates) with multiple Projects involving a Limited or Special Purpose Property. For each subsequent Project involving a Limited or Special Purpose Property, the borrower must contribute at least 20%. (Paragraph IV.C)

5. Added new guidance on financing involving Historical Rehabilitation Tax Credits. (Paragraph IV.E)

In Chapter 2, Eligibility, SBA has:

1. Removed “Summary of Eligibility Requirements” to eliminate duplicative language and incorporate all eligibility requirements into revised section, “Eligibility Requirements for all 504 Loan Applicants.” (Paragraph II)
2. Added guidance regarding affiliation based on management when the small business applicant is operating under a management agreement with a third party. (Paragraph II.D)
3. Revised procedures for Applicants with franchise, license, dealer, jobber, and similar agreements. *SBA is publishing a separate Notice simultaneously with this Notice that summarizes the changes to the franchise review process.* (Paragraph II.D)
4. Revised procedures for review of businesses engaged in promoting religion. (Paragraph III.A)
5. Incorporated recently revised procedures for businesses with an Associate of poor character/SBA Form 912 Review. (Paragraph III.A)
6. Eliminated consumer and marketing cooperatives from the types of businesses ineligible for SBA financial assistance (Paragraph III.A)
7. Revised procedures for review of businesses providing prurient sexual material. (Paragraph III.A)
8. Added guidance that CDCs must inform Applicants that if the small business defaults on the SBA-guaranteed loan and SBA suffers a loss, the names of the small business and the guarantors of the SBA-guaranteed loan will be referred for listing in the CAIVRS database, which may affect their eligibility for further financial assistance. (Paragraph III.A)
9. Updated guidance on the eligibility of businesses owned by non-U.S. citizens. (Paragraph III.B)
10. Added guidance for when SBA loan proceeds may be used to finance a change in ownership between existing owners of an Eligible Passive Concern (EPC). (Paragraph III.C)
11. Expanded guidance on special requirements for loans where collateral may be included in the National Register of Historic Places (Historic Properties). (Paragraph III.D)
12. Clarified remaining useful life on equipment collateral required for 10 and 20 year 504 equipment loans. (Paragraph IV.B)
13. Revised the guidance on 504 refinancing without expansion to remove the “Secured Debt” and “Business Operating Expenses” and for projects that include the financing of Eligible Business Expenses, limited the percentage of of Eligible Business Expenses to 20% of the value of the Eligible Fixed Asset(s) securing the Qualified Debt. (Paragraph V.I)

14. Added guidance to clarify that a borrower is prohibited from leasing space to any business engaged in any activity that is illegal under federal, state or local law. (Paragraph IV.J)

In Chapter 3, Collateral, Appraisals, and Environmental Policies, SBA has:

1. Provided direction that SBA or, for a loan processed on a delegated basis, the PCLP CDC, may require a personal guaranty, regardless of ownership interest, if any, when deemed necessary for credit or other reasons. (Paragraph I.E)
2. Updated environmental policy guidance to reflect current federal requirements and added guidance related to the release of rights to indemnification from SBA/CDC.
3. Added Equipment Appraisal guidance. (II.B)

In Chapter 4, Loan Application Procedures and Controls, SBA has:

1. Incorporated 504 E-Tran as submission method.

In Chapter 7, Debenture Pricing & Funding, SBA has:

1. Added guidance limiting the total number of Energy Public Policy Projects for a borrower (including affiliates) to 3. The Gross Debentures issued for a small business concern, including its affiliates, for Energy Public Policy Projects may not exceed \$16,500,000 in the aggregate.

Appendix 2 – Definitions – SBA has updated the following definitions: Environmental Questionnaire, Phase I Environmental Site Assessment (Phase I ESA), Records Search with Risk Assessment, Reliance Letter, and SBA Environmental Indemnification Agreement.

Appendix 3 – Reliance Letter - SBA has revised the language in the Reliance Letter to conform to the updates to the environmental policies made in Subparts B and C.

Appendix 4 – NAICS Codes of Environmentally Sensitive Industries

1. Updated the following NAICS codes: 316 – Leather & Allied Product Manufacturing, 326 – Plastics & Rubber Products Manufacturing, 332 – Fabricated Metal Product Manufacturing, and 8122 – Death Care Services, and 56171 – Exterminating & Pest Control.
2. Added the following NAICS Codes in numerical order: 484 - TRUCKING (*if service bays, truck washing, or fuel tanks present*) and “713990 OTHER RECREATIONAL INDUSTRIES (*indoor and outdoor shooting ranges only*).”

Appendix 5 – Requirements Pertaining to Gas Station Loans – SBA updated this appendix for clarity,

Appendix 9 – SBA Addendum to Franchise Agreement (SBA Form 2462) – SBA has added the instructions for completion of this form to the appendix.

Appendix 10 – Annual Franchisor Certification (SBA Form 2464) – SBA has added this new form and instructions for completing it to the SOP.

Appendix 11 – Requirements for Electronic Signatures in the 7(a) and 504 Loan Programs – SBA has incorporated the standards for SBA Lenders when implementing electronic signature technology for SBA Forms and other documents.

Questions

Questions and any comments concerning this Notice should be directed to the Lender Relations Specialist in the local SBA Field Office. The local Field office can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Questions or comments may also be submitted to 7aquestions@sba.gov or 504requests@sba.gov.

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