

SUBPART A
SBA LENDER AND CERTIFIED DEVELOPMENT COMPANY
PARTICIPATION REQUIREMENTS

PURPOSE OF THIS SUBPART

This subpart contains the requirements for lenders and Certified Development Companies (CDCs) to participate in SBA lending programs. This subpart also explains the different levels of delegated status SBA grants to lenders and CDCs, as well as how lenders and CDCs maintain their participating status with SBA. Finally, this subpart gives a brief overview of how SBA oversees its participating lenders and CDCs.

CHAPTER 1

7(a) Lenders

1. THE 7(A) LOAN PROGRAM

- a. The 7(a) Loan Program is authorized by section 7(a) of the Small Business Act and is governed by the regulations outlined in Part 120 of Title 13 of the Code of Federal Regulations (CFR) ([ADD LINK TO 13 CFR Part120](#)).
- b. This multi-purpose business loan program is administered as a deferred participation program where SBA guarantees a portion of the loan made by a Lender. The Lender initiates the loan to a small business and, if the SBA agrees to guaranty the loan, the Lender funds and services the loan. In the event of default, the lender conducts the work-out or the liquidation efforts and the Lender and SBA share in the loss, if any, in accordance with the percentage guaranteed by the SBA.
- c. Definitions applicable to this subpart can be found in 13 CFR 103.1, 105.201, 120.10, 120.420 and 120.802. [LINK TO REGS](#)

2. BECOMING A 7(A) LENDER

- a. The following lenders may apply to participate with SBA as a 7(a) lender:
 - (1) Federally Regulated Lenders;
 - (2) Non-Federally Regulated Lenders;
 - (i) State regulated lenders without federal deposit or share insurance protection;
 - (ii) Farm Credit Administration system lenders; and
 - (3) SBA Regulated Lenders (Small Business Lending Companies).
- b. The following lenders may **not** apply to participate with SBA as a 7(a) lender:

- (1) SBA-licensed Small Business Investment Companies (SBICs); and
- (2) Certified Development Companies ([see 13 CFR 120.852 ADD LINK](#)).

c. Process to Become a 7(a) Participating Lender

(1) Federally Regulated Lenders

(i) An institution that has federal deposit or share insurance protection and is a State or National bank, a State or Federally-chartered thrift institution or a State or Federally-chartered credit union contacts, in writing, the SBA field office serving the geographic area where the lender's principal office is located to request to be a participating lender. With the exception of State-chartered credit unions, these institutions automatically comply with the Agency's examination and supervision requirements.

(ii) When a State-chartered credit union applies to become a participating lender:

- (a) the SBA field office must contact the Office of Credit Risk Management (OCRM) and ask for a written determination by OCRM regarding the State's level of regulatory supervision and examination.
- (b) The District Counsel must review the application to determine that the credit union has the authority to apply for participation with SBA and, specifically, that the person who submitted the application has the authority to act on behalf of the credit union. Applications submitted on behalf of a credit union by a Credit Union Service Organization (CUSO) or Lender Service Provider (LSP) are unacceptable.

(iii) The lender's written request to participate must include a statement that it is in good standing with its primary regulator and the Lender must disclose any formal or informal enforcement actions or agreements within the past 2 years. SBA will determine if the enforcement actions or agreements will render the lender unacceptable for 7(a) participation. If there are any enforcement actions or agreements the application must be forwarded to the Office of Capital Access (OCA).

(iii) The SBA field office must determine whether the lender meets the requirements of [13 CFR 120.410 \(LINK TO REG\)](#) to be a 7(a) participant. If the field office determines that the lender meets these requirements, it may enter into a Loan Guaranty Agreement with the lender. Both parties will execute a Loan Guaranty Agreement (Deferred Participation), SBA Form 750, ([ADD LINK TO FORM](#)) and/or a Loan Guaranty Agreement (Deferred Participation) for Short-Term Loans, SBA Form 750B ([ADD LINK TO FORM](#)).

(2) Non-Federally Regulated Lenders

(i) Non-Federally Regulated Lenders (NFRLs), including State regulated lenders without federal deposit or share insurance protection (such as Business and

Industrial Development Companies (BIDCOs)) and Farm Credit Administration system lenders (such as the Federal Land Bank and Production Credit Associations) must file an application (in duplicate) containing the information and documents specified below with the SBA field office serving the geographic area where the lender's principal office is located.

(ii) The lender's application must include:

- (a) Lender's name, address, telephone number and email address;
- (b) A copy of lender's Articles of Incorporation and by-laws certified by an appropriate officer;
- (c) Amount of the lender's capital and additional paid-in capital;
- (d) The lender's proposed geographical area of operations;
- (e) A list of officers, directors, associates and holders of 10% or more of any class of the lender's capital stock. "Associates" are defined in [13 CFR 120.10](#).
[ADD LINK](#)
- (f) A copy of the most recent audited financial statements on any entity, other than natural persons, holding 10% or more of any class of the lender's stock.
- (g) An organizational chart showing the relationship of the lender to any Associates.
- (h) A copy of "Statement of Personal History," [SBA Form 1081](#) [ADD LINK TO FORM](#), for each person listed under above item (e).
- (i) An explanation of the lender's policies and procedures, including loan origination, servicing, and liquidation.
- (j) A certification that the lender will not be engaged primarily in financing the operations of an Affiliate, as defined in [13 CFR §121.103](#) [ADD LINK](#).
- (k) A copy of the State or Federal statute or regulations governing the lender's operations, including those pertaining to audit, examination and supervision of the lender. Each lender bears the burden of demonstrating that it is subject to continuing supervision by a State or Federal regulatory authority satisfactory to SBA.
- (l) A copy of the latest report covering the examination of the lender, if such report can be released to SBA. If the report cannot be released or the lender is newly formed and has not been examined by its primary regulator include a statement to that effect.

- (m) A copy of the most recent audited financial statements of the lender.
- (n) A copy of the license, if any, issued to the lender by a regulatory authority.
- (o) A certified copy of a Resolution of the Board of Directors designating the person(s) authorized to submit the application on behalf of the lender.
- (p) A copy of a satisfactory opinion of independent counsel that the lender complies with applicable Federal, State, and local laws in the formation and organization of the company, and with appropriate Federal and/or State security laws; and is chartered to conduct its business in the proposed operating area. (“Independent Counsel” is counsel that is not an “Associate” of the lender under 13 CFR 120.10.)

(iii) Once submitted to the SBA Field Office, SBA must perform the following steps in evaluating the lender’s application:

- (a) Review and comment on the sufficiency of all of the requested items in the application.
- (b) Comment on the qualifications of the lender, including SBA’s participation requirements in [13 CFR 120.410](#); and
- (c) Make a recommendation to approve or decline the lender’s application.

(iv) The SBA Field Office must keep a copy of the application and submit the original of the application along with its recommendation to the D/FA.

(v) The D/FA or designee, in consultation with the D/OCRM, makes the final determination on the application and notifies the SBA Field Office. If the application is approved, the SBA Field Office executes an SBA Form 750 and/or SBA Form 750B, with the lender and sends a copy of the executed agreement to the D/FA. The D/FA or designee will create the electronic record of the lender.

(3) SBA Regulated Lenders (Small Business Lending Companies)

A Small Business Lending Company (SBLC) is a business concern authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency. See Chapter 2 for guidance on becoming an SBLC.

d. Loan Guaranty Agreement – SBA Form 750 and SBA Form 750B

The Loan Guaranty Agreement provides a basic framework for the responsibilities and duties of the lender and SBA when making, closing, and administering any individual

SBA-guaranteed loan. [ADD LINK TO 13 CFR 120.400](#). This agreement is subject to SBA's rules and regulations as amended from time to time.

SBA Form 750 governs loans with a maturity of 12 months or greater. A lender must execute this agreement prior to submitting any applications for guaranty to SBA. SBA Form 750B governs loans with a maturity of less than 12 months. If the lender intends to approve loans with a maturity of less than 12 months, it must also execute SBA Form 750B.

e. Responsibilities of 7(a) lenders

(1) In making SBA-guaranteed loans, 7(a) lenders:

- (i) Submit applications for guaranty with all required forms, documentation and credit analyses, to the designated SBA processing center for review.
- (ii) Execute the Authorization, which is prepared by SBA.
- (iii) Close the loan in accordance with the Authorization, all policy and regulations.
- (iv) Maintain complete loan files.
- (v) Service the loan in accordance with SOP 50 50 and regulations.
- (vi) Liquidate the loan in accordance with SOP 50 51 and regulations.
- (vii) Comply with SBA Loan Program Requirements for the 7(a) program, as such requirements are revised from time to time. ([ADD LINK to definition of SBA Loan Program Requirements in 13 CFR 120.10.](#)) SBA Loan Program Requirements in effect at the time that a Lender takes an action in connection with a particular loan govern that specific action. For example, although loan closing requirements in effect when a lender closes a loan will govern closing actions, a lender's liquidation actions on the same loan are subject to the liquidation requirements in effect at the time that a liquidation action is taken. [ADD LINK to 13 CFR 120.180](#).

SBA Loan Program Requirements, center contacts and other information can be found at <http://www.sba.gov/aboutsba/sbaprograms/elending/index.html>.

(2) To participate in the CAPLines Program:

- (i) Lenders must complete the Lender Qualification Survey Form (LQS-2) and be approved by the district office. The district office must review the LQS-2 to determine if the lender is qualified to participate in asset based lending.

(ii) The district office serving the territory where the lender maintains its headquarters is responsible for approving a lender operating in multiple jurisdictions. If a lender is approved for participation, the district office shall maintain the original LQS-2 and forward a copy to the Loan Programs Division, Office of Financial Assistance (OFA) within 15 days of the lender's approval.

(3) Preferences

- (i) A lender may not take any action in connection with an SBA-guaranteed loan that establishes a preference in favor of the lender. [ADD LINK TO 13 CFR, §120.411.](#)
- (ii) A lender must not:
 - (a) take any side collateral or guaranty that would secure only its own interest in a loan;
 - (b) require a borrower to purchase certificates of deposit;
 - (c) maintain a compensating balance not under the control of the borrower; or
 - (d) take a side loan which would have the effect of ensuring a risk-free or limited-risk investment on the participant's share.
- (iii) Under the following circumstances, a lender may make a side loan to purchase stock of the participant (as may be required by certain lenders such as Farm Credit Administration entities):
 - (a) The enabling authority of the lender requires the purchase as a condition for making the loan.
 - (b) The lender makes a separate side loan not guaranteed by SBA for the borrower to buy the stock or debentures. The side loan must be subordinated to the SBA loan, but the lender may hold a first lien on any stock collateralizing the side loan.
 - (c) The interest to be charged on the side loan must not exceed the maximum rate of interest acceptable for SBA-guaranteed loans, and the maturity of the side loan must not be less than that of the SBA-guaranteed loan.
 - (d) In the event of default, either on the side loan or the SBA-guaranteed loan, the lender may not take any action to collect or liquidate the side loan, except canceling or retiring the stock securing the side loan, until the SBA loan has been fully liquidated.

(4) Ethical Requirements Placed On A Lender

SBA lenders must act ethically and exhibit good character. ([ADD LINK TO 13 CFR 120.140](#)) Conduct of a lender's Associates and staff will be attributed directly to the lender. Lenders are required to notify SBA immediately upon becoming aware of any unethical behavior by its staff or its Associates. Examples of unethical behavior are found at 13 CFR 120.140.

(i) Conflicts of Interest

A lender or its Associates may not have a real or apparent conflict of interest with a small business or SBA. ([ADD LINK to 13 CFR 120.140 and Part 105](#))

(a) Factors that may indicate a conflict of interest

Lender must exercise care and judgment in determining whether a conflict of interest exists and document the file in detail. SBA will not guarantee a loan if the lender, its Associates, partner or a close relative:

1. Has a direct or indirect financial or other interest in the Small Business Applicant; or
2. Had such interest within 6 months prior to the date of application.

If the lender, its Associates, partner or a close relative acquires such an interest at any time during the term of the loan, SBA will void its guaranty.

(b) Conflict of Interest Determinations

1. If one of the following individuals has a financial interest in the Small Business Applicant, the conflict of interest determination must be made by the Standards of Conduct Committee at SBA Headquarters:
 - (A) An SBA employee or their close relative (whether or not a member of their household) ([ADD LINK TO 13 CFR 105.204](#));
 - (B) A former SBA employee, separated from SBA less than 1 year;
 - (C) Individuals currently involved in the Small Business Development Company (SBDC) Program (coordinator, instructor, student, director, etc.) or members of their household;
 - (D) A member of Congress or a member of his/her household when the financial interest is 10% or more ([ADD LINK to 13 CFR 105.301\(b\)](#));

- (E) An appointed official or an employee of the legislative or judicial branch of the Federal Government, a member of a Small Business Advisory Council, a Service Corps of Retired Executives (SCORE) or Active Corps of Executives (ACE) volunteer, or a close relative when the financial interest is 10% or more ([ADD LINK 13 CFR 120.301\(c\) and 120.105.302\(a\)](#)); or
- (F) Employees, not officers or directors, of community organizations such as certified development companies and microlenders or members of their household.

2. The application may be processed by the appropriate processing center and, if appropriate, may be conditionally approved. The application then will be sent to the Standards of Conduct Committee at SBA Headquarters for the conflict of interest determination. The Standards of Conduct Committee will notify the processing center of its decision and the processing center will notify the lender.

3. Other Government Employees

An applicant must submit a statement of no objection from the pertinent department or military service if an associate or a member of an associate's household is an employee of another Federal Government department and is a GS-13, (or its equivalent) or higher, or holds the rank of Major or Lieutenant Commander (or their equivalent) or higher. [ADD LINK to 13 CFR 105.301.](#)

(5) Forward Commitments

A forward commitment exists when a lender issues a commitment to a builder or developer to finance future sales of real estate. The SBA will not guarantee loans made by the lender to small businesses to purchase such real estate. This is a potential conflict of interest for the lender because of its predisposition to make SBA loans in order to honor their prior agreement with the builder or developer. Such loans are ineligible for SBA's guarantee regardless of whether the lender gets a fee for issuing the commitment.

(6) Advertising of Relationship with SBA [ADD LINK TO 13 CFR 120.413](#)

(i) Lenders may advertise their relationship with SBA, including identifying themselves as SBA participating lenders by placing the appropriate decal on the window of their lending institution. Lenders also may make factual statements concerning their participation and/or status with SBA such as “SBA Preferred Lender.”

(ii) With the exception of displaying a window/building decal as noted above, lenders may not use the SBA logo in any manner in their advertisements, nor may they state or imply that the lender, or its borrowers, will receive any preferential treatment by SBA.

3. HOW SBA OVERSEES 7(A) LENDERS

SBA oversees 7(a) lenders through:

a. Loan and Lender Monitoring System (L/LMS)

- (1) L/LMS is an internal SBA data system that includes the use of predictive small business credit scoring. All SBA 7(a) loans with an outstanding balance are credit-scored quarterly. These data are aggregated, analyzed and evaluated to assess the credit quality of each individual SBA lender’s portfolio of SBA-guaranteed loans. SBA uses this information to monitor the performance of 7(a) lenders individually and in comparison to their peers.
- (2) Using SBA’s L/LMS system, SBA assigns all 7(a) lenders a composite rating. The composite rating reflects SBA’s assessment of the potential risk to the government of that 7(a) lender’s SBA portfolio. The specific performance factors which comprise the composite rating are published from time to time by SBA’s Office of Credit Risk Management (OCRM). In general, these factors reflect both historical 7(a) lender performance and projected future performance. SBA performs quarterly calculations on the common factors for each 7(a) lender, so 7(a) lenders’ composite risk ratings are updated on a quarterly basis.
- (3) SBA has established peer groups to minimize the differences that could result from changes in loan performance for portfolios of different sizes. The peer groups are based upon outstanding SBA dollars, and for 7(a) lenders they are:
 - (i) \$100,000,000 or more
 - (ii) \$10,000,000 - \$99,999,999
 - (iii) \$4,000,000 - \$9,999,999
 - (iv) \$1,000,000 - \$3,999,999
 - (v) \$0 - \$999,999 (with at least one loan disbursed in past 12 months)
 - (vi) \$0 - \$999,999 (with no loans disbursed within the past 12 months)
- (4) SBA assigns a composite rating of 1 to 5 to each 7(a) lender based upon its portfolio performance, as reported in L/LMS. A rating of 1 indicates strong

portfolio performance, the least risk, and requires the lowest degree of SBA management oversight (relative to other 7(a) lenders in its peer group). A 5 rating indicates weak portfolio performance, the highest risk, and requires the highest degree of SBA management oversight. ([ADD LINK TO 72 FR 27611, May 16, 2007](#))

b. Lender Portal

- (1) SBA communicates lender performance to individual 7(a) lenders through the use of SBA's Lender Portal (Portal). The Portal allows a 7(a) lender to view its own quarterly performance data, including its current historical composite risk rating, peer and portfolio averages. Portal data includes both summary performance and credit quality data. Summary performance data is largely derived from data that 7(a) lenders provide to SBA through SBA Form 1502 and 172 Reports, therefore, 7(a) lenders bear much of the responsibility for ensuring data accuracy. If a 7(a) lender reviews its performance components and finds a discrepancy with its records, the 7(a) lender should contact OCRM.
- (2) SBA 7(a) lenders with at least 1 outstanding SBA loan may apply for the Portal access. Currently SBA issues only one Portal user account per 7(a) lender. Submission of initial requests for a Portal user account must be submitted to SBA's OCRM, and must include the following information:
 - (i) Request must be made by a senior officer with proper authority of the 7(a) lender (Senior Vice President or higher);
 - (ii) Request must be sent via regular or overnight mail to the SBA's OCRM at 409 Third Street, SW, Washington DC 20416, ATTN: Director, Office of Credit Risk Management;
 - (iii) Request must be made using the 7(a) lender's stationery;
 - (iv) Request must include the user's business card;
 - (v) The stationery and business card should include the 7(a) lender's name and address;
 - (vi) The request should include the following data:
 - (a) SBA FIRS ID Number(s);
 - (b) Account user's name and title;
 - (c) Account user's mailing address, telephone number and email address at the 7(a) lender;
 - (d) Requesting officer's name and title; and
 - (e) Requesting officer's mailing address, telephone number and email address at the 7(a) lender.

- (vi) Once SBA receives and approves the user's request, SBA will forward the approval to SBA's Portal contractor for issuance of a user account name and password. The Portal contractor will email the user his or her user name and password within approximately two weeks of account approval. The user can then access its data by logging into the SBA Lender Portal web page. Before accessing the Portal, lenders must agree to the terms of a Confidentiality Agreement which is found on the SBA Lender Portal web page.
- (vii) Lenders are responsible for complying with and maintaining the Portal user accounts and passwords as set forth in the Confidentiality Agreement on the Portal web page, and as published by SBA from time to time. Lenders are also responsible for timely informing SBA to terminate or transfer an account if the person to whom it was issued no longer holds that responsibility for the 7(a) lender. Lenders must take full responsibility for protecting the confidentiality of the user password and the 7(a) lender risk rating information and for ensuring the security of the data. ([ADD LINK 72 FR 27611, May 16, 2007](#))

c. Off-site monitoring and on-site reviews.

- (1) L/LMS provides performance information that allows SBA to monitor and conduct off-site reviews of all lenders. Off-site monitoring serves as the primary means of reviewing lenders with less than \$10 million in SBA dollars outstanding although SBA may determine in its discretion to conduct on-site reviews of these lenders. SBA will contact the lender if the review detects performance issues or trends requiring further discussion.
 - (i) For lenders with more than \$10 million in SBA dollars outstanding L/LMS details historical and projected performance data:
 - (a) for use in planning and conducting on-site reviews or examinations;
 - (b) to assist in prioritizing on-site reviews or examinations; and
 - (c) as a system to monitor lenders between on-site reviews or examinations. Additional information regarding on-site reviews and examinations can be found in SBA's SOP 51 00. [ADD LINK TO SOP](#)
 - (ii) Additionally, in accordance with [13 CFR 120.414 ADD LINK TO REG](#), a lender must allow SBA's authorized representatives access to its SBA files to review, inspect and/or copy all records and documents relating to SBA guaranteed loans.
 - (iii) Lender oversight fees. Lenders are required to pay SBA fees to cover the costs of examinations and reviews and, if assessed by SBA, other lender oversight activities.

- (a) The fees may cover:
 - 1. the cost of conducting on-site safety and soundness examinations of an SBA Supervised Lender (SBLCs and NFRLs);
 - 2. the cost of conducting an on-site review of a 7(a) lender;
 - 3. the cost of conducting off-site reviews/monitoring of a 7(a) lender including the SBA-assessed charge based on the size of the lender's SBA-guaranteed portfolio; and
 - 4. any additional expenses that SBA incurs in carrying out lender oversight activities.
- (b) For the on-site examinations or reviews conducted under 1 and 2 above, SBA will invoice each lender for the amount owed following completion of the examination or review.
- (c) For the off-site reviews/monitoring conducted under 3 above, and other lender oversight expenses incurred under 4 above, SBA will invoice each lender on an annual basis.
 - 1. The invoice will state the charges, the date by which payment is due and the approved payment method(s).
 - 2. The payment due date will be no less than 30 calendar days from the invoice date.
- (d) SBA may waive the assessment of the fee under 3 for those lenders owing less than a threshold amount below which SBA determines that it is not cost effective to collect the fee.
- (e) Payments that are not received by the due date shall be considered delinquent, and SBA will charge interest, and other applicable charges and penalties as authorized by 31 U.S.C. 3717. A lender's failure to pay any of the fee components described above, or to pay interest, charges and penalties that have been charged, may result in a decision to suspend, limit or revoke a lender's status as a participant. ([ADD LINK TO 72 FR 25194, May 4, 2007](#))

d. Supervision and enforcement

An integral part of overseeing the 7(a) loan program is SBA's authority to supervise and take enforcement actions as necessary.

The D/FA has responsibility for the day-to-day management of lenders with an SBA risk rating of 1, 2 or 3. With the exception of servicing actions on individual loans which will be reviewed by OFA, the Director, Office of Credit Risk Management (D/OCRM) is responsible for day-to-day management, including approving delegations of program authority, of lenders with an SBA risk rating of 4 or 5. ([ADD LINK to 70 FR 21262, April 25, 2005](#))

e. Suspension or revocation

- (1) SBA may suspend or revoke the authority of a lender to conduct 7(a) program activities, in accordance with [13 CFR 120.415 ADD LINK TO REG.](#)

Circumstances that may result in suspension or revocation include:

- (i) adverse changes in management;
- (ii) continuous or substantial failure to meet SBA Loan Program Requirements in management of the lender's SBA portfolio of loans;
- (iii) consistent failure to properly report on loan disbursements and status; or
- (iv) other circumstances as defined by SBA.

- (2) SBA will notify the lender of a proposed suspension or revocation as set forth in [13 CFR Part 134 \(ADD LINK TO REG\)](#). The lender will be provided an opportunity to respond prior to final action.

4. TYPES OF 7(A) LENDERS

a. Certified Lenders Program [13 CFR 120.440 ADD LINK](#)

More experienced SBA lenders are granted a higher level of authority under the Certified Lenders Program (CLP) and receive expedited processing of loan applications. These lenders are designated as "CLP Lenders."

(1) Qualifications of a CLP Lender

A CLP Lender must have:

- (i) the ability to effectively process, close, service and liquidate loans; and
- (ii) a satisfactory performance history with SBA, including the submission of complete and accurate loan guaranty application packages;
 - (a) Packages demonstrate strong knowledge of SBA forms and procedures; and
 - (b) Credit analyses demonstrate solid working knowledge of SBA's eligibility and credit criteria.

- (2) Process to become a CLP Lender or to renew CLP status [13 CFR 120.441 ADD LINK](#)

A lender may request CLP status or a field office may nominate a lender. The lender may send a written request to its local SBA field office. The local SBA District Director will consider whether the lender meets the qualifications identified above in approving or renewing a lender's CLP status.

(3) Supplemental Guaranty Agreement

- (i) When CLP status is approved or renewed, the field office notifies the lender that it has been approved or renewed as a CLP Lender and sends a “Supplemental Guaranty Agreement, Certified Lenders Program (CLP), SBA Form 1186” signed by the District Director. The lender must sign and return the SBA Form 1186 to the field office before the lender’s CLP status is effective. When the signed SBA Form 1186 is received by the field office, it will notify the Loan Guaranty Processing Center (LGPC) of the approval or renewal of the lender’s CLP status. The term of CLP status may not exceed 2 years.
- (ii) If the District Director declines a request for initial CLP status or renewal, the lender may appeal to the D/FA, whose decision will be final. The D/FA will consult with the D/OCRM on each appeal.

(4) Authority and Responsibilities

The SBA’s business loan eligibility requirements, credit policy, and procedures contained in this SOP apply to all CLP loans. A CLP Lender must stay informed of and apply all of SBA Loan Program Requirements.

(i) Eligibility Requirements for CLP Processing

In addition to SBA’s general business loan eligibility standards, the following additional restrictions apply to CLP loans:

(a) Loans not eligible for CLP processing:

1. Any pilot program unless SBA specifically authorizes use of CLP for the pilot.
2. Agricultural Enterprises;
3. Disabled Assistance Loan program (DAL);
4. Energy Conservation;
5. International Trade Loans;
6. Qualified Employee Trusts (ESOP);
7. Pollution Control program;
8. CAPLines program; and
9. Export Working Capital program (EWCP).

(b) Additional Restrictions Specific to CLP

1. Existing SBA loan. If an applicant business already has an SBA loan, the lender may make the CLP loan only if the existing SBA loan is current.
2. Reconsiderations of declined loan applications must not be submitted under CLP procedures, but may be submitted under Standard 7(a) procedures.

(ii) Credit Analysis

The lender must perform a thorough and accurate credit analysis of the applicant and include its analysis in its credit memorandum which shall be retained in the loan file. The lender's conclusions must be thoroughly supported in the file.

(iii) Application Procedure

The CLP loan packages include the same forms and information as regular 7(a) loan packages. A CLP Lender must ensure that all required forms and submissions are complete and must prepare a draft of the SBA Authorization to include with the package. The loan package should be clearly marked "CLP" on the SBA 4-I and on the mailing envelope, fax cover or email subject line.

(iv) SBA Processing Procedure

The SBA reviewer relies heavily on the information the lender provides. For CLP loans, SBA still makes both credit and eligibility decisions about whether to guarantee the loan. If the lender's presentation is not adequate for CLP processing, the LGPC may convert the application from CLP to regular processing.

(v) Post Approval Responsibilities

(a) Lender will notify SBA of the first disbursement by entry on SBA Form 1502 (1502).

(b) The CLP Lender's servicing and liquidating responsibilities for CLP loans are set forth in SOPs 50 50 and 50 51.

(5) Affiliation Issues/Change of Lender Status

(i) If a CLP Lender makes a major change in its structure or organization, it must tell the SBA field office in writing. Major changes include:

- (a) Acquisition by another entity;
- (b) Merge into another legal entity;
- (c) A change of name;
- (d) Substantial changes in management;
- (e) Substantial changes in how the lender handles SBA loans; or
- (f) Take over or closure of the lender by a regulatory agency.

If a CLP Lender continues as the legal entity that signed the CLP agreement	Then . . .
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<p>and . . .</p> <p>(1) The CLP Lender changes its name.</p> <p>(2) The CLP Lender is acquired by another entity. The CLP lender survives as a separate legal entity.</p> <p>(3) The CLP Lender acquires another lender. The acquired lender does not continue as a separate legal entity.</p> <p>(4) The CLP Lender acquires another lender. The acquired lender continues as a separate legal entity.</p> <p>(5) The lender is closed or taken over by a regulatory authority.</p> <p>(6) The lender changes its operations so that it cannot process SBA loans as required by the CLP Program.</p>	<p>SBA records the name change. The lender's CLP status is not changed. A new CLP agreement is not needed.</p> <p>SBA records the holding company name. The lender's CLP status is not changed. A new CLP agreement is not needed.</p> <p>The acquired lender may make CLP loans as part of the CLP Lender.</p> <p>The acquired lender may not make CLP loans. The acquired lender may request CLP status.</p> <p>The lender's CLP status terminates automatically.</p> <p>The SBA will suspend or revoke the lender's CLP status.</p>
<p>If a CLP Lender does not continue as the legal entity that executed the CLP agreement and . . .</p> <p>(1) The CLP Lender is merged into a non-CLP Lender. The original CLP Lender's SBA operations are unchanged.</p> <p>(2) The CLP Lender is merged into another CLP Lender.</p> <p>(3) The CLP Lender is dissolved.</p>	<p>Then . . .</p> <p>The original lender's CLP agreement is no longer valid. The surviving lender must ask SBA to sign new Form SBA 750 and CLP agreements.</p> <p>The CLP Lender's agreements with SBA for the merged lender are no longer valid. However, the merged lender can make SBA loans under the surviving CLP Lender's agreement.</p> <p>The lender's CLP status is terminated automatically.</p>

(6) Monitoring and reviews

See Paragraph 3a through c of this Chapter for further information on monitoring and reviews.

(7) Supervision and enforcement

See Paragraph 3d of this Chapter for further information on supervision and enforcement.

(8) Suspension and revocation

See Paragraph 3e of this Chapter for further information on suspension and revocation.

b. Preferred Lenders Program (PLP) [13 CFR 120.450](#) [ADD LINK](#)

The most experienced lenders are designated as PLP Lenders and delegated the authority to process, close, service, and liquidate most SBA guaranteed loans without prior SBA review.

(1) The PLP Lender

PLP Lenders are authorized to make SBA guaranteed loans, subject only to a brief eligibility review and assignment of a loan number by SBA. In addition, they are expected to handle servicing and liquidation of all of their SBA loans with limited involvement of SBA.

(2) Qualifications for PLP Consideration

In making its decision to grant PLP status, SBA considers whether the lender has:

- (i) the ability to effectively process, close, service and liquidate SBA-guaranteed loans;
- (ii) the ability to develop and analyze complete loan application packages; and
- (iii) a satisfactory performance history with SBA.

SBA also considers whether the lender shows a substantial commitment to SBA's mission and a spirit of cooperation with SBA.

(3) Process to obtain PLP status [13 CFR 120.450](#) [ADD LINK](#)

A lender submits its request for PLP status to its local SBA office. For multi-state lenders, the request will go to the District where the lender is headquartered.

(i) The lender's request should include:

- (a) Legal name and address of lender;
- (b) Legal name of any holding company of lender;
- (c) Name, title, address, phone number, e-mail address and fax number for contact person at lender for nomination process;
- (d) Lender's Lead SBA Field Office (the SBA field office serving the area in which the lender's headquarters is located);
- (e) A copy of the lender's SBA Form 750;

- (f) If lender is or ever was a CLP Lender, state how long the lender has been CLP;
 - (g) If lender was previously a PLP Lender, an explanation of why the lender left the Preferred Lenders Program;
 - (h) A description of the lender's history, organization, and management, including:
 - 1. When the lender was chartered;
 - 2. The location of any branch offices; and
 - 3. Any recent mergers or acquisitions;
 - (i) Personnel who will:
 - 1. be in charge of PLP loans for the lender and their experience with the lender, in the industry, and with SBA loans; and
 - 2. have PLP loan approval authority;
 - (j) Where and how PLP loans will be processed, closed, serviced and liquidated;
 - (k) A copy, if any, of the most recent written portfolio review of the lender;
 - (l) A letter from the lender:
 - 1. asserting that it is in good standing with its primary regulator; and
 - 2. disclosing any formal or informal enforcement actions or agreements within the past two years. SBA will determine if recent enforcement actions or agreements will render the lender unacceptable for PLP.
- (ii) Field Office's Nomination – will include:
- (a) Lender identification number (FIRS number);
 - (b) The most recent available SBA statistics on lender's loan volume, purchase charge off rates and trends, and currency rate for the last 5 years; and
 - (c) The field office's opinion of:
 - 1. The lender's rapport with the field office;
 - 2. The lender's commitment to SBA lending; and
 - 3. An analysis of any repair or denial of liability situations with the lender.
- (iii) The SBA field office sends the lender's request and the field office's recommendation to the SLPC.
- (iv) The SLPC's Role: The SLPC gathers the information relevant to a lender's participation request, including the field office's recommendation and the processing, servicing and liquidation centers' written opinions of the lender's ability to process, close, service, and liquidate SBA loans, as applicable. The SLPC performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies the SLPC. The SLPC then informs the lender of SBA's decision.
- (v) Upon approval, the SLPC notifies the lender and the SBA field office:

- (a) That the nomination is approved; and
 - (b) The length of the preferred status, not to exceed two years.
- (vi) The SLPC sends the lender a Supplemental Guaranty Agreement, Preferred Lenders Program ([SBA Form 1347](#)) [ADD LINK TO FORM \(NEED TO CONFIRM IF ON WEB\)](#) signed by the Center Director on behalf of the D/FA. The lender must sign and return the SBA Form 1347 to the SLPC before the lender's PLP status is effective.
- (viii) The SLPC sends the appropriate field offices copies of the signed SBA Form 1347. The SLPC will enter the effective term of the lender's PLP status on the Partner Information management System (PIMS). This is an essential step for lenders processing PLP loans.
- (ix) If a lender is approved as a PLP Lender, it will automatically be approved as a CLP Lender. The SLPC will send the SBA Form 1186 to the lender for execution along with the SBA Form 1347. Once approved, a lender's PLP and CLP status extends nationally (provided the lender complies with its lending charter).
- (x) Decline of PLP application:

If the PLP application is declined, the SLPC notifies the lender and SBA field office with the reason for decline. The lender may re-apply for PLP status when it has overcome the reason for decline. To do so, the lender must file a request with the SLPC and must show how it has overcome the reasons for decline. The SLPC will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. The SLPC will notify the lender in writing of SBA's final decision.

(4) Process for Renewal of PLP Status [ADD LINK TO 13 CFR 120.451\(e\)](#)

- (i) The SLPC automatically starts the renewal process just prior to the expiration of a lender's PLP status. The SLPC asks for comments from the lender's Lead SBA Field Office and the SBA's servicing and liquidation centers. The comments should pertain to the lender's most recent PLP term and must include:
- (a) Whether they recommend renewal;
 - (b) If they do not recommend renewal, why not;
 - (c) Whether the lender can process, close, service and liquidate SBA loans;
 - (d) Changes in lender's organization or management;

- (e) Any recurring denial of liability or repair situations with the lender;
 - (f) Reasons for any unfavorable loan volume or repurchase rate data;
 - (g) Identification of any areas of concern; and
 - (h) An explanation of any discussions with the lenders that may have impact the PLP decision.
- (ii) The SLPC contacts the lender to obtain a statement from the lender that it is in good standing with its primary regulator. The lender must disclose any formal or informal enforcement actions or agreements during the lender's most recent PLP term. SBA will determine if the enforcement actions or agreements will render the lender unacceptable for PLP.
- (iii) The SLPC gathers the information relevant to a lender's renewal. The SLPC performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies the SLPC. The SLPC then informs the lender of SBA's decision. SBA considers whether the lender:
- (a) Can effectively process, close, service, and liquidate SBA loans;
 - (b) Can analyze complete loan packages;
 - (c) Has a satisfactory performance history with SBA;
 - (d) Is in substantial compliance with SBA Loan Program Requirements;
 - (e) Is in substantial compliance with the terms of its PLP agreement; and
 - (f) Is an active PLP participant and has shown a commitment to SBA lending.

(iv) Notification of Renewal

The SLPC notifies the lender and Lead SBA Field Office that:

- (a) the renewal is approved; and
- (b) the term of the renewal.

The SLPC sends the lender a new SBA Form 1347 signed by the SLPC on behalf of the D/FA. The lender must sign and return the SBA Form 1347 to the SLPC before the lender's PLP renewal is effective.

(v) CLP Status for PLP Lenders

The SLPC renews the lender's CLP status to match the term of the lender's PLP renewal. The SLPC sends the lender a new SBA Form 1186 signed by the SLPC on behalf of the D/FA. The lender must sign and return the SBA Form 1186 to the SLPC before the lender's CLP renewal is effective. The SLPC sends copies of the renewed SBA Form 1186 to the LGPC.

(vi) If Renewal is Declined

The SLPC notifies the lender and Lead SBA Field Office of the reason(s) for decline of the PLP renewal. The lender may not make PLP loans after its PLP status expires. (If the lender's PLP renewal is declined, the lender's CLP status will not automatically terminate.) The lender may re-apply for PLP status when it has overcome the reason(s) for decline. To do so, the lender must file a request with the SLPC and must show how it has overcome the reason(s) for decline. The SLPC will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. The SLPC will notify the lender in writing of SBA's final decision.

(vii) Temporary Extension of PLP Status

If a lender's PLP status is expiring and SBA has not completed the renewal process, the SLPC may extend a lender's PLP status for a short, interim period as determined by the D/FA, in consultation with the D/OCRM.

(5) PLP/Export Working Capital Program Authority

- (i) Domestic lenders with an international lending unit may have concurrent approval to participate in SBA's Export Working Capital Program (EWCP). This program includes the opportunity for experienced international trade lenders to apply for PLP status with its EWCP unit. Lenders with PLP-EWCP status are delegated the same level of authority to process, close, service, and liquidate EWCP loans as is granted to domestic lenders with PLP authority.
- (ii) SBA offers PLP status on EWCP loans to PLP Lenders through a request filed by the lender's international unit for expansion of its domestic lending institution's PLP authority. Application requests include the following elements:
 - (a) Legal name and address of lender;
 - (b) Address, city and state where lender's international lending is performed;
 - (c) Name, title, telephone and fax numbers and e-mail address of the international lending unit's primary contact;
 - (d) A copy of the lender's SBA Form 750EX;
 - (e) Identification of the USEAC offices the lending unit works through on EWCP loans;

- (f) A description of the lending unit’s experience in international trade lending, including its level of EWCP lending over the last 2 years, Export-Import Bank (“Ex-Im”) lending activity over the same two year period, and identification of any form of delegated lender status with Ex-Im Bank or other trade finance agencies;
 - (g) Identification of personnel in charge of EWCP lending, their experience in export trade finance for small concerns, and
 - (h) Documentation supporting the bank’s delegation of authority to the contact person filing this PLP expansion request.
- (iii) Completed applications should be directed to the D/FA or its designee at SBA. Applications will be distributed to staff within the Office of International Trade (“OIT”) for processing. OIT staff will be responsible for collecting information from OCRM on the current regulatory status of the lender’s domestic lending unit and to solicit comments from USEAC personnel on the international lending unit’s capabilities as a EWCP participant. The application along with the written recommendations from OCRM and OIT are routed to the D/FA for final decision. Lenders are notified by written letter from the OIT along with the name and address of the USEAC staff member assigned to the lender.
- (iv) All PLP-EWCP expansion approvals will be for a period not to exceed the existing term of the domestic lender’s PLP authority. The succeeding PLP renewal of the domestic lending unit will include a section on the lender’s EWCP lending, with comment requests from the SLPC directed to the OIT in the same manner as requests for comment from SBA loan servicing or loan liquidation Centers.
- (6) Authority and Responsibilities
- (i) Eligibility Requirements: In addition to the SBA’s primary business loan eligibility standards set forth in Subpart B, Chapter 2 of this SOP, the following additional restrictions apply to PLP Loans.
 - (a) Lenders may use PLP only for 7(a) loans. Lenders may not use PLP for any pilot program unless SBA authorizes use of PLP for the pilot.
 - (b) Types of Loans Not Eligible under PLP – these types of loans are not eligible under PLP processing:
 1. Disabled Assistance Loans (DAL);
 2. Energy Conservation;
 3. Qualified Employee Trusts (ESOP);
 4. Pollution Control program; and
 5. CAPLines program.

Revolving credits are not eligible for PLP except under the Export Working Capital program (EWCP) and then only if the lender has special authority from SBA to make PLP EWCP loans.

(c) Types of Businesses Not Eligible for PLP

The types of businesses not eligible under standard 7(a) also are not eligible under PLP. See Subpart B, Chapter 2 of this SOP.

(ii) Additional Restrictions Specific to PLP ([ADD LINK TO 13 CFR §120.452](#)).

(a) Refinancing – See Subpart B, Chapter 2 of this SOP.

(b) Lender may not process a loan under PLP procedures when a portion of the proceeds will be used for a prohibited purpose by assigning a zero percent of guaranty to the portion which is not PLP eligible.

(c) Reconsiderations of declined loan applications. Reconsiderations of loans previously declined by SBA (regardless of the method by which they were originally processed) may not be processed under PLP, or any other processing method where the lender is given delegated approval authority.

(d) Previous loss to government. A loan may not be processed under PLP if:

1. The applicant business previously defaulted on a Federal loan or federally assisted financing that resulted in the Federal Government or any of its agencies or departments sustaining a loss in any of its programs; or
2. Any of the owners, or those that control the applicant business, or any of its associates, previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the federal government or any of its agencies or departments to sustain a loss in any of its programs. This includes any compromise agreement with any such agency/department.
3. This restriction applies whether or not SBA was involved in the previous loss.

(iii) PLP Lenders' Processing Responsibilities - [ADD LINK TO 13 CFR §120.452\(a\)](#)

SBA's business loan eligibility requirements, credit policy, and procedures apply to PLP loans. The PLP Lender must stay informed on and must apply all of SBA's Loan Program Requirements. A lender may not submit the same loan guaranty request under more than one processing method. A lender also may not knowingly submit a loan guaranty request under PLP after the applicant has already submitted a request from a different lender.

(a) Lender's Eligibility Review

1. The SBA does not delegate to a PLP Lender authority to determine SBA loan eligibility. However, a PLP Lender must analyze a PLP applicant's eligibility in the same way that SBA analyzes eligibility for a regular 7(a) loan applicant. The PLP Lender must keep in its loan file documentation supporting its eligibility analysis. For example, if a franchise is involved, the PLP Lender must review the Franchise Registry (www.franchiseregistry.com) to ensure the franchisor's agreement continues to meet the SBA's requirement that the franchisee's opportunity for profit and risk of loss is commensurate with ownership. If the franchisor's agreement does not appear on the Registry, the lender must review the agreement to ensure that it meets SBA's requirements as set forth in chapter 2 of this SOP.
2. For a PLP loan, size of the applicant is determined as of the date of the lender's approval of the loan. A PLP Lender may accept as true the size information provided by the applicant, unless credible evidence to the contrary is apparent.

(b) Credit Analysis

SBA has authorized PLP Lenders to make the credit decision without prior SBA review. The lender must perform a thorough and complete credit analysis of the applicant, establish that the loan is of such sound value as to reasonably assure repayment and document its analysis in the loan file. See Subpart B of this SOP for specific guidance on processing loan guaranty requests.

(c) The Authorization

PLP Lenders draft the Authorization without SBA review and execute it on behalf of SBA. The lender must make sure that all collateral and other requirements documented in the lender's credit analysis are in each Authorization. The lender also must include all SBA-required authorization provisions. See Subpart B, Chapter 5 of this SOP.

(d) Closing Requirements

SBA closing requirements are the same for PLP loans as for standard 7(a) loans. The same SBA forms are required. The lender must obtain all required collateral positions and must meet all other required conditions before loan disbursement. SBA delegates to the PLP Lender responsibility for all pre-disbursement Authorization requirements in

this SOP. The only actions that the lender may not take on a PLP loan are those specifically reserved to SBA. See Subpart B, chapter 5 of this SOP.

After closing the loan, the PLP Lender does not send SBA any documentation, including disbursement information, except through the required periodic loan status reports (SBA Form 1502).

(e) Servicing and Liquidation Responsibilities

See SOPS 50 50 and 50 51, and 13 CFR 120.453 and 120, Subpart E for guidance. [\(ADD LINKS\)](#)

(7) Change of Lender Status

(i) Holding Companies

A holding company may request an extension of PLP status from one of its lenders to another. The appropriate procedure depends on the legal structure of the lenders for which the holding company wants to have PLP status.

If the lender seeking PLP status will retain its own legal status and charter within the holding company, PLP status cannot be extended. The lender can request PLP status on its own following the procedures set out above.

If the lender seeking PLP status will be merged with another lender that already has PLP status, PLP status can be extended.

See the chart below.

(ii) Change of PLP Lender's Structure

If a PLP Lender changes its structure or organization in any of the following ways, it must inform the SLPC in writing:

- (a) The lender is acquired by another lender;
- (b) The lender is merged into another legal entity;
- (c) The lender changes its name;
- (d) The lender substantially changes the management of its SBA business;
- (e) The lender substantially changes how it handles SBA loans; or
- (f) A regulatory agency takes over or closes the lender.

An SBA field office that discovers any of the above circumstances also must immediately notify the SLPC in writing.

(iii) Requests for New SBA Guaranty Agreements

The lender may obtain:

- (a) a new SBA Form 750 from the SBA field office; and
- (b) new SBA Forms 1186 and 1347 from the SLPC.

<p>If a PLP Lender continues as the same legal entity that signed the SBA Forms 1347 (PLP) and 1186 (CLP) and . . .</p> <p>(1) The PLP Lender changes its name.</p> <p>(2) The PLP Lender is acquired by another entity. The PLP Lender continues as a separate legal entity.</p> <p>(3) The PLP Lender acquires another lender. The acquired lender does not continue as a separate legal entity.</p> <p>(4) The PLP Lender acquires another lender. The acquired lender continues as a separate legal entity.</p> <p>(5) The lender is closed or taken over by a regulatory authority.</p> <p>(6) The lender changes its operations so much that it cannot show that it handles SBA loans appropriately.</p>	<p>Then . . .</p> <p>The SLPC records the name change. The lender’s PLP and CLP status is not changed. A new SBA Form 1347 (PLP) or SBA Form 1186 (CLP) is not needed.</p> <p>The SLPC records the holding company name. The lender’s PLP and CLP status is not changed. A new SBA Form 1347 (PLP) or SBA Form 1186 (CLP) is not needed.</p> <p>The acquired lender may make PLP loans under the PLP authority of the acquiring entity.</p> <p>The acquired lender may not make PLP loans. The PLP Lender may request an extension of its PLP status to the acquired lender.</p> <p>The lender’s PLP and CLP statuses automatically terminate. The SLPC notifies the lender and SBA field office(s) the lender may not make any more PLP loans.</p> <p>SBA will suspend or revoke the lender’s PLP status.</p>
<p>If a PLP Lender does not continue as the legal entity that executed the SBA Forms 1347 (PLP) and 1186 (CLP) and . . .</p> <p>(1) The PLP Lender is merged into a non-PLP Lender. The original PLP Lender’s SBA operations are unchanged.</p> <p>(2) The PLP Lender is merged into another PLP Lender.</p> <p style="padding-left: 20px;">a. The surviving PLP Lender’s area does not coincide with the PLP area of the merged PLP.</p> <p>(3) The PLP Lender is dissolved. It does not merge into another lender.</p>	<p>Then . . .</p> <p>The original PLP Lender’s agreements with SBA are no longer valid. The surviving lender must ask SBA for new SBA Forms 750, 1186 and 1347.</p> <p>The original PLP Lender’s agreements with SBA are no longer valid. However, it can make SBA loans under the surviving PLP Lender’s agreements.</p> <p>The surviving PLP Lender must ask for an expansion in order to continue lending in the merged PLP’s area.</p> <p>Both PLP and CLP status terminate automatically. The SLPC notifies the lender and SBA field office(s) the lender may not make any more PLP loans.</p>

(8) Monitoring and reviews

See Paragraph 3a through c of this Chapter for further information on monitoring and reviews.

(9) Supervision and enforcement

See Paragraph 3d of this Chapter for further information on supervision and enforcement.

(10) Suspension and revocation

See Paragraph 3e of this Chapter for further information on suspension and revocation.

c. SBA Express Program

SBA Express was established as a permanent SBA program under P.L.108-447 signed into law on December 8, 2004. The program reduces the number of government mandated forms and procedures, streamlines the processing and reduces the cost of smaller, less complex SBA loans. The program allows lenders to utilize, to the maximum extent possible, their respective loan analyses, procedures, and documentation. In return for the expanded authority and autonomy provided by the program, lenders agree to accept a maximum SBA guaranty of 50 percent.

(1) The SBA Express Lender

SBA Express lenders can use their own application forms, internal credit memoranda, notes, collateral documents, servicing documentation, and liquidation documentation. In using their documents and procedures, lenders must follow their established and proven internal procedures used for their similarly sized non-SBA guaranteed commercial loans.

(2) Qualifications for SBA Express Lender Status

Lenders can find information about how to apply for SBA Express status on the SLPC's website at http://www.sba.gov/aboutsba/sbaprograms/elending/slpc/plp/sba_slpc_request_express_statu.html.

(i) Existing SBA Lenders

An existing SBA lender must demonstrate that it:

- (a) Can effectively process, close, service, and liquidate SBA loans and have a history of acceptable currency, default rates, and loss rates;
- (b) Is in compliance with applicable SBA Loan Program Requirements;
- (c) Has been reviewed by and received a satisfactory review/examination

- from OCRM and has no major objections from the D/OCRM;
 - (d) Has been current in filing SBA required 1502 reports and in remitting required guaranty and servicing fees;
 - (e) Has at least an 85% currency rate on its SBA 7(a) loan portfolio for the last 3 complete fiscal years plus the elapsed portion of the current fiscal year to be approved for a 1 year term or a 90% currency rate to be approved for up to a 2 year term;
 - (f) For lenders regulated by one of the federal/state oversight authorities, is in good standing with its primary regulator by submitting a statement to that effect and by disclosing any formal or informal enforcement actions or agreements within the past 2 years (SBA will determine whether an enforcement action or agreement renders the lender unacceptable for participation in this program);
 - (g) Is not subject to any SBA enforcement actions; and
 - (h) Has not received a major substantive objection from its Lead SBA Office.
- (ii) For SBA lenders with less than 3 years of SBA lending experience/data, the Agency may consider performance over the period of time the lender has been an SBA lender, but will limit the lender's initial term of participation to 1 year or less. Lenders that identify significant differences between the performance numbers developed by the lender and those developed by SBA (not related to a lack of accurate 1502 reporting) may contact the SLPC to resolve any differences.
- (iii) Lenders that do not currently participate with SBA

A lender that does not currently participate with SBA must demonstrate that it:

- (a) Is in good standing with its primary federal/state regulator by submitting a statement to that effect and by disclosing any formal or informal enforcement actions or agreements within the past 2 years (SBA will determine whether the enforcement action or agreement renders the lender unacceptable for participation in this program);
 - (b) Has at least 20 commercial or business loans for \$350,000 or less at their most recent fiscal year end;
 - (c) Has a history of acceptable currency, default rates, and loss rates on loans of \$350,000 or less;
 - (d) Ensures its primary SBA loan personnel have received appropriate training on SBA's policies and procedures (such training could include SBA District Office training and/or trade association training that adequately addresses SBA's regulations and Standard Operating Procedures, including SBA's loan processing, servicing, and liquidation requirements); and
 - (e) Has no major substantive objections from the D/OCRM.
- (3) Process to become an SBA Express Lender

- (i) A lender may send a written request to the Director, Sacramento Loan Processing Center, 501 I St., Suite 12-100, Sacramento, CA 95814-2322 or fax a request to (916) 930-2406 with an information copy to its Lead SBA Office.
 - (ii) As noted above, lenders not currently participating with the SBA must meet the Agency's lender requirements as set forth in Paragraph 2.c. of this chapter and must become an approved SBA lender before participating in SBA Express. (An application for SBA Express authority may be made simultaneously with the application for SBA lender authority.)
 - (iii) An SBA field office may nominate a lender for SBA Express status by sending a written nomination to the Director, SLPC. When an SBA field office nominates a lender for PLP status, it also may nominate the lender for SBA Express status.
 - (iv) The SLPC gathers the information relevant to a lender's participation request. The SLPC performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies the SLPC. The SLPC then informs the lender of SBA's decision.
 - (v) SBA may limit a new SBA lender to a yearly maximum of \$25 million of SBA Express in its first year of participation.
- (4) Supplemental Guaranty Agreement ([ADD LINK TO FORMS](#))
- (i) If the lender's request for SBA Express status is approved, the SLPC notifies the lender of the decision and sends the lender an SBA Express Supplemental Loan Guaranty Agreement to sign and return. The SLPC also sends the lender instructions for submitting SBA Express applications.
 - (ii) The lender must sign and return the agreement to the SLPC before the lender's SBA Express status is effective. (Agreements must be signed and returned to the Center within 60 days of receipt or a new application to the program will be required.)
 - (iii) If the lender is a PLP Lender, the term of its SBA Express status, when possible, will be tied to the lender's remaining PLP term.
 - (iv) Lenders not currently participating in SBA's loan programs that are approved for SBA Express will be limited to an initial SBA Express term of 1 year.

(5) Decline of SBA Express Status

If SBA declines a request or nomination for SBA Express status, the SLPC notifies the lender and Lead SBA Field Office of the reason(s) for decline of the request. The lender may re-apply for SBA Express status when it has overcome the reason(s) for decline. To do so, the lender must file a request with the SLPC and must show how

it has overcome the reason(s) for decline. The SLPC will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. The SLPC will notify the lender in writing of SBA's final decision.

(6) Renewals of SBA Express Status

- (i) The SLPC will automatically start the renewal process a few months prior to the expiration of a lender's SBA Express status. The SLPC will contact the lender and ask it for a statement that it is in good standing with its primary federal/state regulator and disclosure of any formal or informal enforcement actions or agreements within the past 2 years.
- (ii) The SLPC will also contact the lender's Lead SBA Office and the SBA's servicing and liquidation centers. The comments of those offices should pertain to the lender's most recent SBA Express term and must include:
 - (a) Whether they recommend renewal;
 - (b) If they do not recommend renewal, why not;
 - (c) Whether the lender can effectively process, close, service and liquidate SBA loans;
 - (d) Changes in lender's organization or management;
 - (e) Any recurring denial of liability or repair situations with the lender;
 - (f) Reasons for any unfavorable loan volume or repurchase rate data;
 - (g) Identification of any areas of concern; and
 - (h) An explanation of any discussions with the lenders that may have impact the SBA Express decision.
- (iii) The SLPC gathers the information relevant to a lender's renewal. The SLPC performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies the SLPC. The SLPC then informs the lender of SBA's decision.
- (iv) Lenders that have participated in SBA Express for 2 years or more may be renewed in the program for a term up to 2 years, but SBA may renew for less than 2 years if lender or program circumstances warrant. Lenders participating in SBA Express for less than 2 years may be renewed in SBA Express for an additional year and may be renewed for up to 2 years thereafter.

- (v) In renewing a lender and determining its renewal term for SBA Express, SBA will consider whether the lender:
 - (a) Can effectively process, close, service, and liquidate SBA loans and has a history of acceptable currency, default rates, and loss rates;
 - (b) Is in compliance with applicable SBA Loan Program Requirements (as defined in 13 CFR 120.10);
 - (c) Has been reviewed by and received a satisfactory review from OCRM and has no major objections from the D/OCRM;
 - (d) Has generally been current in filing SBA required 1502 reports and in remitting required guaranty and servicing fees;
 - (e) Has a satisfactory performance history with SBA, including acceptable currency, default, and loss rates, including at least an 85 percent currency rate on their SBA 7(a) portfolio for the last 3 complete fiscal years plus the elapsed portion of the current fiscal year (lenders achieving at least an 85 percent currency rate may be renewed for up to a 1 year term, while lenders achieving a 90 percent currency rate may be approved for up to a 2 year term.)
 - (f) Is in good standing with its federal or state financial regulator and, if the lender has disclosed any formal or informal enforcement actions or agreements, whether those actions or agreements make the lender ineligible for SBA Express status;
 - (g) Is not subject to any SBA enforcement actions; and
 - (h) Has received substantive objections from its Lead SBA Office.

- (vi) The SLPC notifies the lender of SBA's decision and, if the renewal is approved, the SLPC sends the lender a new SBA Express Supplemental Guaranty Agreement to sign.

- (vii) The lender must sign and return the agreement to the Center before the lender's SBA Express renewal is effective. (Agreements must be signed and returned to the Center within 60 days of receipt or a new application to the program will be required.)

- (viii) If the renewal is declined, the lender will be notified of the reason(s) for the decline, and it may not make SBA Express loans after its SBA Express status expires. The lender may re-apply when it has overcome the reason(s) for decline. To do so, the lender must file a request with the SLPC and must show how it has overcome the reason(s) for denial. The SLPC will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. The SLPC will notify the lender in writing of SBA's final decision.

- (7) Authority and Responsibilities
 - (i) SBA Express lenders may make SBA Express loans in any area of the country.
 - (ii) SBA Express lenders must apply and comply with all of SBA's Loan Program Requirements.

- (iii) Eligibility Requirements: In addition to the SBA's primary business loan eligibility standards set forth in Subpart B, Chapter 2 of this SOP, the following additional restrictions apply to SBA Express loans.
- (a) Lenders may not use SBA Express for any pilot program unless SBA authorizes use of SBA Express for the pilot.
 - (b) Types of Loans Not Eligible under SBA Express – these types of loans are not eligible under SBA Express processing:
 - 1. Disabled Assistance Loans (DAL);
 - 2. Energy Conservation;
 - 3. Qualified Employee Trusts (ESOP);
 - 4. Pollution Control program; and
 - 5. CAPLines program.
 - (c) Types of Businesses Not Eligible for SBA Express
The types of businesses not eligible under standard 7(a) also are not eligible under SBA Express. See Subpart B, Chapter 2 of this SOP.
 - (d) Additional Restrictions Specific to SBA Express
 - 1. Refinancing – See Subpart B, Chapter 2 of this SOP.
 - 2. Lender may not process a loan under SBA Express procedures when a portion of the proceeds will be used for a prohibited purpose by assigning a zero percent of guaranty to the portion which is not SBA Express eligible.
 - 3. Reconsiderations of declined loan applications. Reconsiderations of loans previously declined by SBA (regardless of the method by which they were originally processed) may not be processed under SBA Express.
 - 4. Previous Submissions. A loan is not eligible for SBA Express if the SBA Express lender is aware that the application was previously submitted to SBA under any SBA program, except that the SLPC Director may waive this prohibition if the application was preliminary or incomplete when previously submitted or it has changed materially since the previous submission.
 - 5. Previous loss to government. A loan may not be processed under SBA Express if:
 - (A) The applicant business previously defaulted on a Federal loan or federally assisted financing that resulted in the Federal

Government or any of its agencies or departments sustaining a loss in any of its programs; or

- (B) Any of the owners, or those that control the applicant business, or any of its associates, previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the federal government or any of its agencies or departments to sustain a loss in any of its programs. This includes any compromise agreement with any such agency/department.
- (C) This restriction applies whether or not SBA was involved in the previous loss.

(iv) SBA Express Lender's Processing Responsibilities

(a) Lender's Eligibility Review

1. SBA Express is a streamlined program, so complex or ambiguous eligibility issues should be processed using standard 7(a) procedures rather than through SBA Express. SBA grants SBA Express lenders increased responsibility for screening applicants and loans for SBA eligibility. SBA Express lenders must be fully familiar with SBA's eligibility requirements as set forth in the SBA Loan Program Requirements and must screen all SBA Express applicants and loans to ensure they meet those requirements.
2. Lenders may rely, in many instances, on certifications provided by the Small Business Applicant, several of which are included in the SBA Express application documents. In the case of size, the lender may rely on information provided by the applicant at the date of application, unless the lender has credible evidence to the contrary.
3. Certain eligibility issues require additional lender review and/or verification. If, for example, a franchise is involved, the SBA Express lender must review The Franchise Registry (www.franchiseregistry.com) to ensure the agreement continues to meet SBA's requirements. (See Subpart B, Chapter 2 of this SOP for further guidance on franchise eligibility.) Lenders must follow all standard 7(a) eligibility requirements and maintain appropriate documentation supporting their eligibility screening in the loan file. The lender also must ensure all required forms/information are obtained, complete and properly executed.
4. SBA may authorize qualified lenders to analyze and fully determine an applicant's eligibility for an SBA Express loan without submitting the Eligibility Checklist to SBA for its review and approval ("Eligibility Authorized Lenders").

(A) Eligibility Authorized Lenders

SBA Express lenders that want to become Eligibility Authorized Lenders must have:

- (I) Processed at least 25 SBA loans in SBA's most recent fiscal year;
- (II) Received a positive recommendation for eligibility authority from the SLPC and the appropriate CLSC;
- (III) Been reviewed by OCRM and have received an acceptable rating from the D/OCRM in its most recent review;
- (IV) Received no major substantive objection from the D/OCRM; and
- (V) No outstanding substantive SBA enforcement actions.

(B) **Lenders with eligibility authority must use that authority to process all their SBA Express loans.** Lenders may consult with SBA regarding a loan's eligibility prior to submitting the request for an SBA loan number by e-mail to the SLPC at SBAExpress_Eligibility_Questions@sba.gov or to SBA's franchise mailbox at franchise@sba.gov. As noted above, complex eligibility issues should not be processed through SBA Express.

(C) Eligibility Authorized Lenders must certify in their request for an SBA loan number that the applicant and the loan meet the Agency's eligibility requirements. In making that certification, the lender acknowledges complete liability for the loan if it later comes to the attention of SBA or the lender that the applicant or loan was ineligible.

(D) Eligibility Authorized Lenders have the option to use SBA's Eligibility Checklist ([SBA Form 1920SX, Part C ADD LINK TO FORM](#)), which would be maintained in the lender's loan file but not sent to SBA. If the lender does not use SBA Form 1920SX, Part C the lender must maintain appropriate documentation supporting its eligibility determination in its loan file.

(E) Application for eligibility Authority.

(I) To apply for eligibility authorization, a lender may send a written request to the Director, Sacramento Loan Processing Center with an information copy to its Lead SBA Office. The SLPC will contact the lender's Lead SBA Office and the appropriate SBA CLSC for information on the lender's proficiency in making eligibility determinations. The SLPC performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies

the SLPC. The SLPC then informs the lender of SBA's decision.

(II) The lender's initial authorization to make eligibility determinations will extend until its next SBA Express renewal date and will coincide with that date thereafter. Eligibility authorization will be conferred for the term of participation in the SBA Express program, although the D/FA or designee may confer that authority for a shorter period.

(III) Lender must execute a separate Supplemental Guaranty Agreement (SBA Express) for Eligibility Authorized Lenders. [\(ADD LINK TO FORM\)](#)

(F) Renewal of eligibility authority.

(I) Renewal of eligibility authority will be based on the lender's:

1. Proficiency in making SBA eligibility determinations;
2. Receiving a positive recommendation for eligibility authority from their Lead SBA Office;
3. Having been reviewed by D/OCRM and receiving an acceptable rating from the D/OCRM in its most recent review;
4. Having received no major substantive objection from the D/OCRM; and
5. Having no outstanding substantive enforcement actions.

(II) The SLPC will automatically start the renewal process a few months prior to the expiration of a lender's eligibility authority. The SLPC gathers the information relevant to a lender's eligibility authority renewal. The SLPC performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies the SLPC. The SLPC then informs the lender of SBA's decision.

(III) If the SLPC declines the lender's request for initial approval or renewal of eligibility authority, the lender will be notified of the reason(s) for the decline. If the lender's request for renewal of eligibility authority is declined, the lender must submit the Eligibility Checklist with each request for a loan number and can no longer certify to the applicant's or loan's eligibility. If the lender wants to apply for reconsideration of this decision, it must file a request for reconsideration with the SLPC and must show how it has overcome the reasons for decline. The SLPC will review the request for reconsideration, make a recommendation and send it to the appropriate SBA official for

a final Agency decision. The SLPC will notify the lender in writing of SBA's final decision.

5. Lenders Without Eligibility Authority

- (A) Lenders without eligibility authority must carefully review and screen SBA Express applicants and loans to ensure they meet SBA's eligibility requirements before transmitting to the SLPC the SBA Express guaranty request, eligibility checklist and supplemental information sheet.
- (B) Lenders without eligibility authority must ensure all required forms/information are obtained, complete, and properly executed. Appropriate documentation must be maintained, including adequate information to support the eligibility of the applicant and the loan, in the lender's loan file.

(b) Credit Analysis

1. SBA has authorized SBA Express lenders to make the credit decision without prior SBA review. The credit analysis must demonstrate that there is a reasonable assurance of repayment. The lender is required to use appropriate, prudent and generally accepted industry credit analysis processes and procedures (which may include credit scoring), and these procedures must generally be consistent with those used for its similarly sized non-SBA guaranteed commercial loans. Lenders that do not use credit scoring for their similarly sized non-SBA guaranteed commercial loans may not use credit scoring for SBA Express. Lenders must validate (and document) with appropriate statistical methodologies that their credit analysis procedures are predictive of loan performance, and they must provide that documentation to SBA upon request. In addition, the credit scoring results must be documented in each loan file and available for SBA review.
2. Lenders must not make a SBA Express loan which would be inconsistent with SBA's "credit not available elsewhere" standard (see Subpart B, Chapter 2 of this SOP), i.e., lenders must not make an SBA guaranteed loan that would be available on reasonable terms from either the lender itself or another source without an SBA guaranty.
3. The credit decision, including how much to factor in a past bankruptcy or whether to require an equity injection, is left to the business judgment of the lender. Also, if the lender requires an equity injection and, as part of its standard processes for non-SBA guaranteed loans verifies the equity injection, it must do so for SBA Express loans. (Lenders must adhere to the requirement that owners of 20% or more must inject equity into the

business above certain thresholds. See Subpart B, Chapter 2 of this SOP, regarding the Utilization of Personal Resources.) While the credit decision is left to the business judgment of the lender, early loan defaults will be reviewed by SBA pursuant to SOP 50-51.

(c) Application Documents and Authorization

1. The SBA Express lender is responsible for ensuring all required forms/information are obtained, complete, and properly executed. After the loan is closed, the lender must continue to apprise SBA of certain critical performance data as well as changes in certain basic borrower information, such as trade name and address. See Subpart B, Chapter 6 of this SOP.
2. The lender completes the SBA Express Authorization without SBA review and signs it on behalf of SBA. SBA does not require that this form be provided to the borrower. See Subpart B, Chapter 5 of this SOP.

(v) Closing, Servicing and Liquidation

The SBA Express lender must close, service, and liquidate its SBA Express loans using the same reasonable and prudent practices and procedures that the lender uses for its non-SBA guaranteed commercial loans.

(vi) Affiliation issues/Change of Lender Status

When a holding company with a PLP subsidiary requests an extension of PLP status to a non-PLP subsidiary, it may also request SBA Express status for the non-PLP subsidiary. The nomination or request must include documentation that the lender has met the SBA Express participation requirements set forth above.

(8) Monitoring and reviews

SBA uses the L/LMS system to assess SBA Express lenders quarterly through the composite risk rating. In addition, those SBA Express lenders with outstanding SBA balances of \$10 million or more are also reviewed on-site, in accordance with SOP 51 00. See Paragraph 3a through c of this Chapter for further information on monitoring and reviews.

(9) Supervision and enforcement

See Paragraph 3d of this Chapter for further information on supervision and enforcement.

(10) Suspension or revocation

See Paragraph 3e of this Chapter for further information on suspension and revocation.

d. Pilot Loan Programs

(1) The Patriot Express Pilot Loan Initiative

SBA developed the Patriot Express Pilot Loan Initiative to support the entrepreneur segment of the Nation's military community (including spouses). This initiative uses streamlined documentation and processing features similar to SBA Express. The specific features of the program, including but not limited to applicant eligibility, maximum loan amounts and guaranty percentages, are set forth in Subpart B of this SOP.

(i) Becoming a Patriot Express Lender

(a) Existing SBA Lenders

1. Lenders that currently participate in the SBA Express or PLP programs are automatically eligible to make Patriot Express loans after they have executed the Patriot Express Supplemental Guaranty Agreement.
2. Lenders that do not currently participate in the SBA Express or PLP programs may request Patriot Express/SBA Express authority. An existing SBA lender must demonstrate that it meets the criteria to participate in SBA Express set forth in Paragraph 4.c.(2) above.

3. How To Request Patriot Express Status

- (A) An SBA lender (or field office on behalf of an SBA lender) may send a request to participate in writing to the Director, Sacramento Loan Processing Center 501 I St. Suite 12-100, Sacramento, CA 95814-2322 or fax a request to (916) 930-2406 with an information copy to its Lead SBA Office.
- (B) When a lender (or field office on behalf of an SBA lender) requests or extends SBA Express and/or PLP status, it also may request Patriot Express status.
- (C) When a holding company with a PLP subsidiary requests an extension of PLP status to a non-PLP subsidiary, it also may request Patriot Express status for the non-PLP subsidiary. The nomination or request must include documentation that the lender has met the Patriot Express participation requirements.
- (D) If the lender's request is approved, the SLPC will send the lender a Patriot Express Supplemental Loan Guaranty Agreement to be signed by the lender. The Supplemental Guaranty Agreement is found at [\(ADD LINK TO FORMS\)](#).

(E) Agreements must be signed and returned to the SLPC before the lender's Patriot Express status is effective. (Agreements must be returned within 60 days of receipt or a new application to the initiative will be required.)

(b) Lenders Not Currently Participating In SBA's Loan Programs

1. Lenders not currently participating with the SBA must meet the Agency's lender requirements as set forth in Paragraph 2 of this Chapter and must become an approved SBA Express or PLP lender before participating in Patriot Express. (An application for PLP/SBA Express/Patriot Express authority may be made simultaneously with the application for SBA lender authority. See paragraph 2 of this Chapter.) In order to become an approved SBA Express or PLP lender, the lender must demonstrate that it meets the criteria set forth in Paragraph 4c(2) (SBA Express) or Paragraph 4b(2) (PLP) of this Chapter.

2. How To Request Patriot Express Status

- (A) The process is the same as stated above for existing SBA lenders.
- (B) Lenders not currently participating in SBA's loan programs that are approved for Patriot Express will be limited to an initial Patriot Express term of 1 year, after which SBA will review their performance.
- (C) SBA may limit a new SBA lender to a yearly maximum of \$25 million of Patriot Express authority in its initial year of participation.

(ii) Renewing Patriot Express Lender Status

- (a) The SLPC will automatically start the renewal process a few months prior to the expiration of a lender's Patriot Express status. The SLPC will contact the lender and ask for a statement that it is in good standing with its primary federal/state financial regulator and disclosure of any formal or informal enforcement actions or agreements during its previous Patriot Express term. The SLPC will also contact the lender's Lead SBA Office and the SBA's Servicing and Purchase Centers for information on the lender's proficiency; its currency, loss, etc. rates; its adherence to SBA policies and procedures; and other information. The SLPC gathers the information relevant to a lender's renewal, analyzes it, and sends it with a recommendation to the appropriate SBA official, who reviews the renewal, makes a final decision, and forwards that decision to the SLPC.
- (b) Lenders that have participated in Patriot Express for 2 years or more may be renewed in the initiative for a term up to 2 years, but SBA may renew for less than 2 years if lender or program circumstances warrant. Lenders participating in Patriot Express for less than 2 years may be renewed in

Patriot Express for an additional year and may be renewed for up to 2 years thereafter.

- (c) In renewing a lender and determining its renewal term for Patriot Express, SBA will consider whether the lender meets the criteria set out in Paragraph 4c(6) of this Chapter.
- (d) The SLPC notifies the lender of the SBA's decision and, if the renewal is approved, the SLPC sends the lender a new Patriot Express Supplemental Guaranty Agreement to sign. The lender must sign and return the agreement to the SLPC before the lender's Patriot Express renewal is effective. (Agreements must be signed and returned to the SLPC within 60 days of receipt or a new application to the initiative will be required.) If the renewal is not approved, the lender will be notified as to the reason(s), and it may not make Patriot Express loans after its Patriot Express status ends.
- (e) The lender may re-apply for Patriot Express status when it has overcome the reason(s) for decline. To do so, the lender must file a request with the SLPC and must show how it has overcome the reason(s) for decline. The SLPC will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. The SLPC will notify the lender in writing of SBA's final decision.

(iii) Authority and Responsibilities

Patriot Express lenders have all of the same authority and responsibilities set forth in Paragraph 4c(7) of this Chapter.

(iv) Monitoring and Enforcement

SBA uses the L/LMS system to assess Patriot Express lenders quarterly through the composite risk rating. In addition, those lenders with outstanding SBA balances of \$10 million or more are also reviewed on-site, in accordance with SOP 51 00. See Paragraph 3a through c of this Chapter for further information on monitoring and reviews.

(v) Supervision and enforcement

See Paragraph 3d of this Chapter for further information on supervision and enforcement.

(vi) Suspension or revocation

See Paragraph 3e of this Chapter for further information on suspension and revocation.

(2) Export Express Pilot Loan Program

The Export Express Pilot Loan Program is designed to help SBA meet the export financing needs of small businesses too small to be effectively met by existing SBA export loan guaranty programs. It is generally subject to the same loan processing, making, closing, servicing, and liquidation requirements as well as the same maturity terms, interest rates, and applicable fees as the SBA Express Loan Program. Any differences between the Export Express requirements are set forth in the appropriate section of this SOP. (For example, certain uses of loan proceeds are allowed under Export Express that are not allowed under SBA's other lending programs. See Subpart B, Chapter 2.)

(i) Becoming an Export Express Lender

(a) Lenders provided SBA Express authority may also make SBA Export Express loans.

(b) To retain or renew Export Express authority, SBA Express lenders must:

1. Effectively process, make, close, service, and liquidate Export Express loans;
2. Maintain satisfactory performance history with respect to Export Express loans, including acceptable default and currency rates;
3. Remain in substantial compliance with applicable SBA Loan Program Requirements;
4. Have received no major substantive objections regarding renewal from the field office(s) covering the territory where the lender generates significant numbers of Export Express loans; and
5. Received acceptable review results on the Export Express portion of any SBA administered lender reviews.

(ii) SBA will generally grant lenders Export Express loan authority for a term that coincides with the lender's SBA Express term, unless the D/FA or designee determines a shorter term is appropriate.

(iii) Monitoring and reviews

SBA uses the L/LMS system to assess Export Express lenders quarterly through the composite risk rating. In addition, those lenders with outstanding SBA balances of \$10 million or more are also reviewed on-site, in accordance with SOP 51 00. See Paragraph 3a through c of this Chapter for further information on monitoring and reviews.

(iv) Supervision and enforcement

See Paragraph 3d of this Chapter for further information on supervision and enforcement.

- (v) Suspension or revocation

See Paragraph 3e of this Chapter for further information on suspension and revocation.

- (3) CommunityExpress Pilot Loan Program

[RESERVED]

CHAPTER 2

SMALL BUSINESS LENDING COMPANIES

1. A SMALL BUSINESS LENDING COMPANY (“SBLC”) IS: [13 CFR 120.470](#) [ADD LINK](#)
 - a. authorized by the Administrator to make loans pursuant to section 7(a);
 - b. regulated, supervised and examined solely by SBA;
 - c. subject to additional SBA regulations specific to SBLCs regarding the formation, capitalization, and enforcement actions; and
 - d. subject to all other 7(a) regulations specific to loan processing, servicing and liquidation.

2. PROCESS FOR APPLYING TO BECOME AN SBLC
 - a. SBA regulations restrict the issuance of the SBA lending authority to operate as an SBLC to 14 entities. To become an SBLC, an entity must purchase one of the existing lending authorities from a current SBLC.
 - b. The private parties negotiate a purchase and sale agreement which includes the terms and conditions related to the sale.
 - c. A written request by the selling SBLC to the D/FA for approval of a transfer of ownership and control by the entity transferring the SBA lending authority becomes notice to SBA of the intent to transfer. The written request should include:
 - (1) the name and address of the acquiring concern; and
 - (2) the name of the acquiring concern’s primary contact.
 - d. The acquiring concern must file a request for transfer in duplicate with the D/FA addressing each of the following elements:
 - (1) The Legal name, address, telephone, facsimile and email address of the acquiring concern;
 - (2) Identification of the form of organization of the proposed SBLC along with stamp-filed copies of the concerns articles of incorporation or limited liability company operating agreement;
 - (3) Identification of the proposed SBLC’s capitalization including the form of ownership, the identification of all classes of equity capital and proposed funding amounts, rights and preferences accorded to each class of stock or members interest (including voting rights, redemption rights, and rights of convertibility) and conditions for transfer, sale or assignment of these interests;
 - (4) The proposed SBLC’s geographic area of operation;
 - (5) Identification of all officers, directors, limited partners, members and all other parties that propose to hold an equity interest of at least 10% of the economic interest in any class of stock, limited partnership interest or members interest in the concern.

- (6) An organization chart showing the relationship of the proposed SBLC with all related associates and affiliates within the organization.
 - (7) A copy of the SBA Form 1081, Statement of Personal History for each individual and entity identified in (5) above.
 - (8) Proof of fidelity insurance coverage as detailed in [13 CFR 120.470\(a\)\(10\)](#).
[ADD LINK](#).
 - (9) A comprehensive business plan that details:
 - (i) the nature of proposed operations, including the organizational units involved in sourcing, evaluating, underwriting, closing, disbursing servicing and liquidating small business loans in the organization;
 - (ii) the level of prospective lending activity for the first three years of operation;
 - (iii) the identification of all sources of capital used to finance lending operations; and
 - (iv) a projected balance sheet, income statement and statements of cash flows three years forward, along with the related interest rate, default and prepayment assumptions. The plan projections should be assembled under three different operating scenarios: normalized activity, activity assuming a 30% reduction in projected lending, and activity based on a 50% reduction in projected lending.
 - (9) All documents associated with any type of external financing expected to be undertaken by the proposed SBLC;
 - (10) A written statement from an authorized official of the acquiring concern certifying that the SBLC will not be primarily engaged in the financing the operations of an affiliate as defined in 13 C.F.R. 121.103. ([Link to 13CFR121.103](#))
 - (11) The most recent audited financial statements of the acquiring concern if it has been in operation for more than one year, or the audited financial statements of the acquiring concern's parent company.
 - (12) A certified copy of a board, limited partners, or members resolution specifying the individual(s) or officials granted the authority by the organization to submit this SBLC application;
 - (13) A written opinion of independent counsel that addresses:
 - (i) whether the acquiring concern is duly formed and organized and in good standing;
 - (ii) whether the acquiring concern is qualified to enter into this transaction; and
 - (iii) the qualifications of the individual or official to submit the application.
 - (14) A certification by the acquiring concern that it is in full compliance with all federal, state, and local laws.
- e. The D/FA will provide written notification to the acquiring concern that SBA will not object to the transfer of the lending authority. Included with this letter will be all applicable SBA Form 750 agreement(s) for execution

and return to OFA. Note: Lender participation in specific SBA programs such as PLP and SBA Express will be considered separately.

CHAPTER 3

CERTIFIED DEVELOPMENT COMPANIES

1. THE 504 LOAN PROGRAM

- a. The SBA 504 Loan Program is an economic development program offering a financing package that stimulates private sector investment in long-term fixed assets to increase productivity, create new jobs, and increase the local tax base. The stimulus is provided by making long-term, low down payment, reasonably priced fixed-rate financing to healthy and expanding businesses which have the highest probability of successfully creating new jobs and competing in the world marketplace.
- b. Certified Development Companies (CDCs) are non-profit corporations certified and regulated by the Small Business Administration to package, process, close, and service 504 loans. 504 loans are issued through a partnership with Certified Development Companies (CDC) and private sector, third party lenders. There are a small number of for-profit CDCs that have been grandfathered into the current 504 program. All provisions of this SOP apply both to the non-profit and for-profit CDCs.
- c. Terms and definitions specific to the 504 program can be found at [ADD LINK TO 13 CFR 120.802](#)

2. BECOMING A CDC

- a. A CDC must provide evidence of the following in its application ([LINK TO 13 CFR 120.810](#)):
 - (1) Non-Profit Status ([LINK TO 13 CFR 120.820](#)) - A CDC must be a non-profit corporation and must:
 - (i) Be in good standing in the State in which the CDC is incorporated;
 - (ii) Be in compliance with all laws, including taxation requirements, in the State in which the CDC is incorporated and any other State in which the CDC conducts business;
and
 - (iii) Provide a copy of their IRS tax exempt status.
 - (2) Area of Operations ([LINK TO 13 CFR 120.821](#))–
The Area of Operations is the state of the CDC's incorporation.
 - (3) CDC Membership ([LINK TO 13 CFR 120.822](#))– A CDC must have at least 25 members who actively support economic development in their area of operations. Members are responsible for electing the Board of Directors of the CDC. The Members must represent the following 4 Membership groups:
 - (i) Government organizations;
 - (ii) Financial institutions (lenders);
 - (iii) Community organizations such as chambers of commerce, foundations, trade associations, colleges, universities, or small business development centers; and

- (iv) Businesses in the Area of Operations.
- (4) Other Membership requirements are:
 - (i) CDC membership must meet annually.
 - (ii) Membership meetings require a quorum to transact business. A quorum must be present for the duration of the meeting. SBA defines a quorum as the presence of at least 51% (in person or by proxy) of the Members entitled to vote.
 - (iii) No person or entity can own or control more than 10% of the CDC's voting membership.
 - (iv) No employee or staff of the CDC can qualify as a member of the CDC for the purpose of meeting the membership requirements.
- (5) CDC Board of Directors ([LINK TO 13 CFR 120.823](#))- The CDC must have a Board of Directors chosen from the membership by the members. In addition:
 - (i) There must be at least 3 of the 4 membership groups represented on the Board.
 - (ii) No single membership group shall control the Board.
 - (iii) No person who is a member of a CDC's staff may be a voting member of the Board except for the CDC manager.
 - (iv) At least 1 member other than the CDC manager must possess commercial lending experience.
 - (v) The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions.
 - (vi) A quorum shall require at least 5 Directors authorized to vote. The Board meetings require a quorum to transact business. A quorum must be present for the duration of the meeting.
 - (vii) SBA allows interim vacancies on the Board of Directors to be filled by a majority of the remaining Board members. Any person filling an interim vacancy must stand for election at the next Annual or Special meeting of the members, whichever comes first.
 - (viii) If a new Board position is created, it must be filled by a vote of the members at the next Annual or Special meeting of the members.
 - (ix) When the Board votes on SBA loan approval or servicing actions, at least 1 Board Member with commercial loan experience acceptable to SBA, other than the CDC manager, must be present and vote.
 - (x) There must be no actual or apparent conflict of interest with respect to any actions of the Board.
 - (xi) The CDC Board of Directors may delegate management functions to an Executive Committee. The Executive Committee must meet the same requirements as the Board of Directors.
- (6) Committees ([LINK TO 13 CFR 120.823\(a\)](#))–
The Board may establish a Loan Committee comprised of members of the CDC who are not on the Board. The Loan Committee reports to the Board, and members must include:
 - (i) At least 1 member with commercial lending experience acceptable to SBA;
 - (ii) All members of the Loan Committee must live or work in the Area of Operations of the State where the 504 project they are voting on is located;
 - (iii) No CDC staff may serve on a Loan Committee;

- (iv) A quorum must have at least 5 committee members authorized to vote;
- (v) The CDC's Board must ratify the actions of any Loan Committee; and
- (vi) There must be no actual or apparent conflict of interest with respect to any actions of the Loan Committee.
- (vii) For multi-state CDCs there must be a Loan Committee for each state.

(7) CDC Staff ([LINK TO 13 CFR 120.824](#)) - A CDC must have:

- (i) A full-time professional management, including an Executive Director (or the equivalent) managing daily operations.
- (ii) A qualified full-time professional staff to market the 504 program, package and process, close and service loans.
- (iii) CDCs may obtain, under written contract, professional services, but the CDC must have:
 - (a) At least one full-time, salaried professional employee to manage the CDC that is employed directly. A CDC may petition SBA to waive the requirement of the manager being employed directly if:
 - 1. Another non-profit with the same Area of Operations as the CDC and with economic development as one of its principal activities will contribute the management of the CDC.
 - 2. The petitioning CDC is rural and has insufficient loan volume to justify having management employed directly by the CDC.
 - (b) SBA must pre-approve professional service contracts with the exception of accounting and legal services. ([LINK TO 13 CFR 120.824\(b\)-\(f\).](#))
 - (c) The contract must:
 - 1. demonstrate that the CDC is not a shell for another entity as a result of the contract;
 - 2. not diminish the responsibility of the Board of Directors for the operations of the CDC;
 - 3. state that the CDC's Board of Directors specifically acknowledges and retains the ultimate responsibility for all loan approvals and loan servicing actions, ([LINK to 13 CFR §120.823](#)), and that such responsibility must be carried out independently of any control by the Contractor;
 - 4. state that no contractor or associate of the contractor may be a voting or non-voting member of the CDC's Board of Director;
 - 5. clearly state the:
 - (A) contract is for services performed;
 - (B) description of services that the contractor will perform;
 - (C) payment is for services actually rendered;
 - (D) compensation must be broken down by individual if more than one person is being compensated under the contract;

- (E) a description of each individual who is providing services under the contract, whether the individuals are specifically named in the contract;
 - (F) sources of compensation for services;
 - (G) rate of compensation for all parts of the contract except servicing must be stated at an hourly rate. The servicing portion may be based on a percentage not to exceed the amount authorized by the regulations. ([LINK TO 13 CFR 120.971\(a\)\(3\).](#))
 - (H) basis for its determination that the fees are customary and reasonable for similar services in the area ;
 - (I) additional compensation from CDC fee income such as multipliers or bonuses are not permitted; and
 - (J) contract payments for professional services should not exceed 75% of the CDC's 504 processing and servicing income;
6. include a provision that allows the CDC to terminate the contract with written notice (usually a 30 to 60 day notice) without penalty at anytime prior to the expiration date of the contract;
 7. state the term of the contract and cannot be open-ended;
 8. state that all compensation paid to the contractor will be paid by the CDC and that the contractor cannot charge the borrower for the same services;
 9. state that the contractor is prohibited from requiring a 503/504 applicant or borrower to purchase other services from the contractor as a condition of the contractor's performing CDC staff or management functions;
- (d) A Board of Director's Resolution **must accompany the contract and contain a statement:**
1. that the contract is in compliance with [LINK TO 13 CFR 120.824 and 120.825](#) and SBA Loan Program Requirements;
 2. of understanding that the contract is subject to pre-approval and yearly review by SBA; and
 3. of understanding that submission of the contract with the Annual Report is required.
- (iv) Financial Ability to Operate ([LINK TO 13 CFR 120.825](#))

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors). Any funds generated from 504 loan activity by a CDC remaining after payment of staff and overhead expenses must be retained by the CDC as a reserve for future operations or for investment in other local economic development activity in its Area of Operations.

(v) Basic Operating and Ethical Requirements

- (a) A CDC must operate in accordance with all SBA Loan Program Requirements. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain all records and submit all reports required by SBA. [\(LINK TO\) 13 CFR 120.826 and 13 CFR 120.830](#)
1. Audited financial statements must be prepared by an independent CPA or independent accountant in accordance with Generally Accepted Accounting Principles (GAAP) for CDCs with 504 loan portfolio balances of \$20 million or more; or at a minimum a review by an independent CPA or independent accountant in accordance with GAAP for CDCs with 504 loan portfolio balances of less than \$20 million.
 2. For further guidance on the preparation of the annual report, refer to the Operational Review Guide for the Annual Report and the Operational Review Example Format.
<http://www.sba.gov/aboutsba/sbaprograms/elending/programguides/index.html>
- (b) Regulations regarding the ethical requirements for CDCs may be found at [13 CFR 120.140 and 13 CFR 120.851. \(Add Link\)](#)
- (c) Restrictions regarding CDC participation in SBIC and 7(a) programs may be found at [13 CFR 120.852. \(ADD LINK\)](#)

(vi) Other CDC Services [\(LINK TO 13 CFR 120.827\)](#)

A CDC may provide a small business with assistance unrelated to the 504 loan program as long as the CDC does not make such assistance a condition of the application for a 504 loan. A CDC is subject to [\(LINK TO\) 13 CFR Part 103](#) when providing such assistance.

(vii) Minimum Level of Activity and Restrictions on Portfolio Concentrations [\(LINK TO 13 CFR 120.828\)](#)

A CDC must have at least 4 approvals during 2 consecutive fiscal years, and the portfolio must be diversified as to type of business.

(viii) Job Opportunity Average [\(LINK TO 13 CFR 120.829\)](#)

- (a) A CDC must maintain the required average of one Job Opportunity per an amount of 504 loan funding as specified by SBA from time to time in the Federal Register and must indicate in its annual report the Job Opportunities actually or estimated to be provided by each Project.
- (b) A CDC is permitted two years from its certification date to meet this average. If a CDC does not maintain the required average, it may retain its certification if it

justifies to SBA's satisfaction its failure to do so in its annual report and shows how it intends to attain the required average

3. THE PROCESS OF APPLYING TO BECOME A CDC

a. The Application ([ADD LINK TO 13 CFR 120.810](#))

The Application for Certification as a Certified Development Company, ([SBA Form 1246](#)) ([LINK to Forms](#)), outlines the requirements for an application. The following documents must accompany the application:

- (1) Membership list of persons/entities organized by membership groups;
- (2) Board of Directors List organized by membership groups and accompanied by SBA Form 1081, Statement of Personal History, for each Board Member (any Board member that answers “yes” to questions numbers 9, 10a, 10b, or 10c on SBA Form 1081 must also submit fingerprint cards);
- (3) Plan of Operation - a narrative describing the applicant’s ability to package, process, close and service the loans. In addition, the plan should identify the applicant’s financial and legal capacity and identify how it plans to market the 504 program and the geographic area it plans to serve;
- (4) Organizational Chart;
- (5) List of all officers and paid employees of the CDC (including all contracted staff and contractors performing loan packaging, processing, closing and servicing for the CDC) accompanied by a completed SBA Form 1081 for each officer and paid employee and fingerprint cards for paid employees and contractors (any officer that answers “yes” to questions numbers 9, 10a, 10b, or 10c on SBA Form 1081 must also submit fingerprint cards);
- (6) Certificate of Incorporation;
- (7) Articles of Incorporation;
- (8) By-Laws, which must include the regulatory requirements regarding Membership and the Board of Directors;
- (9) Board Resolution authoring the CDC’s creation;
- (10) Financial statements and projections demonstrating the CDC’s financial ability to operate.

b. Where to Apply

- (1) The CDC submits an original and one copy of the application to the SBA field office serving the proposed Area of Operations. If there is more than one field office serving the proposed Area of Operations, the CDC submits its application to the field office where the CDC will be headquartered. The field office will review the application and forward all SBA Forms 1081 and fingerprint cards to OIG. If the application is complete and eligible, the field office will forward to the appropriate SBA official for a final decision:
 - (i) the application;
 - (ii) copies of SBA Forms 1081 with attachments;

- (iii) a notation that the SBA Forms 1081 and fingerprint cards have been forwarded to OIG; and
- (iv) its recommendation.

(b) **Decline at the Field Office:** If the field office declines a CDC application, it will notify the CDC in writing outlining the reasons for decline and the CDC's rights of appeal, with a copy to the appropriate SBA official. The CDC applicant has 60 days to send an appeal to the field office for action by the next higher authority.

(c) **Final Decision –** SBA will send a letter to the CDC applicant notifying it of the decision with a copy to the appropriate SBA district director.

c. Probationary Period for a New CDC ([LINK TO 13 CFR 120.812](#))

(1) Newly certified CDCs will be on probation for a period of two years. Shortly before the end of the probationary period, to apply for permanent status the CDC must provide the field office with:

- (i) A current Membership List;
- (ii) A current Board of Directors List;
- (iii) A list of all members of all committees;
- (iv) Current By-Laws, including any amendments; and
- (v) Current Articles of Incorporation, including any amendments.

(2) The field office must obtain comments from the SBA processing and servicing centers as to the quality of the CDC's processing and servicing. The field office must include the centers' comments and its own comments on the CDC's closing in its recommendation to the appropriate SBA official.

(3) SBA will consider failure to apply for permanent status before the end of the probationary period as a withdrawal from the 504 program. If the CDC withdraws, it must transfer all funded and/or approved loans to another CDC approved by SBA.

(4) The CDC must have appropriate personnel attend industry training in credit analysis, 504 packaging, closing and servicing within 1 year of certification.

4. SBA OVERSIGHT OF CDCS

a. CDCs must submit to SBA the reports listed in ([LINK TO 13 CFR 120.853](#)).

b. SBA oversees CDCs through:

(1) Loan and Lender Monitoring System (L/LMS):

- (i) L/LMS is an internal SBA data system that includes use of predictive small business credit scoring. All SBA 504 loans with an outstanding balance are credit-scored quarterly. These data are aggregated, analyzed and evaluated to

assess the credit quality of each individual SBA lender's portfolio of SBA loans. SBA uses this information to monitor the performance of CDCs individually and in comparison to their peers.

- (ii) Using SBA's L/LMS system, SBA assigns all CDCs a composite rating. The composite rating reflects SBA's assessment of the potential risk to the government of that CDC's SBA portfolio performance. The specific performance factors which comprise the composite rating are published from time to time by SBA's Office of Credit Risk Management (OCRM). In general, these factors reflect both historical CDC performance and projected future performance. SBA performs quarterly calculations on the common factors for each CDC, so CDCs' composite risk ratings are updated on a quarterly basis.
- (iii) SBA established peer groups to minimize the differences that could result from changes in loan performance for portfolios of different sizes. The peer groups are based upon outstanding SBA dollars, and for CDCs they are:
 - (a) \$100,000,000 or more
 - (b) \$30,000,000 - \$99,999,999
 - (c) \$10,000,000 - \$29,999,999
 - (d) \$5,000,000 - \$9,999,999
 - (e) \$0 - \$4,999,999
- (iv) SBA assigns a composite rating of 1 to 5 to each CDC based upon its portfolio performance, as reported in L/LMS. A rating of 1 indicates strong portfolio performance, the least risk, and requires the lowest degree of SBA management oversight (relative to other CDCs in its peer group). A 5 rating indicates weak portfolio performance, the highest risk, and requires the highest degree of SBA management oversight. ([ADD LINK TO 72 FR 27611, May 16, 2007](#))

(2) Lender Portal

- (i) SBA communicates CDC performance to individual CDCs through the use of SBA's Lender Portal (Portal). The Portal allows a CDC to view its own quarterly performance data, including its current historical composite risk rating, peer and portfolio averages. Portal data includes both summary performance and credit quality data. Summary performance data is largely derived from data that is provided to SBA through the Central Servicing Agent. If a CDC reviews its performance components and finds a discrepancy with its records, the CDC should contact OCRM.
- (ii) CDCs with at least 1 outstanding SBA loan may apply for the Portal access. Currently SBA issues only 1 Portal user account per CDC. Submission of initial requests for a Portal user account must be submitted to SBA's OCRM, and must include the following information:
 - (a) Request must be made by a senior officer of the CDC with proper authority (Senior Vice President or higher);

- (b) Request must be sent via regular or overnight mail to the SBA's OCRM at 409 Third Street, SW, Washington DC 20416, ATTN: Director, Office of Credit Risk Management;
- (c) Request must be made using the CDC's stationery;
- (d) Request must include the user's business card;
- (e) The stationery and business card should include the CDC's name and address;
- (f) The request should include the following data:
 - 1. SBA FIRS ID Number(s);
 - 2. Account user's name and title;
 - 3. Account user's mailing address, telephone number and email address at the CDC;
 - 4. Requesting officer's name and title; and
 - 5. Requesting officer's mailing address, telephone number and email address at the CDC.
- (g) Once SBA receives and approves the user's request, SBA will forward the approval to SBA's Portal contractor for issuance of a user account name and password. The Portal contractor will email the user his or her user name and password within approximately two weeks of account approval. The user can then access its data by logging into the SBA Lender Portal web page. Before accessing the Portal, lenders must agree to the terms of a Confidentiality Agreement, which is found on the SBA Lender Portal web page.
- (h) CDCs are responsible for complying with and maintaining the Portal user accounts and passwords as set forth in the Confidentiality Agreement on the Portal web page, and as published by SBA from time to time. CDCs are also responsible for timely informing SBA to terminate or transfer an account if the person to whom it was issued no longer holds that responsibility for the CDC. CDCs must take full responsibility for protecting the confidentiality of the user password and the CDC risk rating information and for ensuring the security of the data. ([ADD LINK TO 72 FR 27611, May 16, 2007](#))

(3) Off-site monitoring and on-site reviews.

- (i) L/LMS provides performance information that allows SBA to monitor and conduct off-site reviews of all CDCs. Off-site monitoring serves as the primary means of reviewing CDCs with less than \$30 million in SBA dollars outstanding although SBA may determine at its discretion to conduct on-site reviews of these CDCs. SBA will contact the CDC if the review detects performance issues or trends requiring further discussion.
 - (a) For CDCs with \$30 million or more in SBA dollars outstanding L/LMS details historical and projected performance data:
 - 1. for use in planning and conducting on-site reviews or examinations;
 - 2. to assist in prioritizing on-site reviews or examinations, and

3. as a system to monitor CDCs between on-site reviews or examinations. Additional information regarding on-site reviews and examinations can be found in SBA's SOP 51 00. [ADD LINK TO SOP](#).

- (b) Additionally, in accordance with [13 CFR 120.414 ADD LINK TO REG](#), a CDC must allow SBA's authorized representatives access to its SBA files to review, inspect and/or copy all records and documents relating to SBA guaranteed loans.

c. Supervision and Enforcement

An integral part of overseeing the CDC program is SBA's authority to supervise and take enforcement actions as necessary.

The D/FA has responsibility for day-to-day management of CDCs with an SBA risk rating of 1, 2, or 3. With the exception of servicing actions on individual loans which will be reviewed by OFA, the D/OCRM is responsible for day-to-day management including approving delegations of program authority of CDCs with an SBA risk rating of 4 or 5. ([ADD LINK TO 70 FR 21262, April 25, 2005](#))

d. Oversight and enforcement actions ([LINK TO 13 CFR 120.854](#))

- (1) SBA may take enforcement actions against a CDC if the CDC:
 - (i) fails to receive approval for at least 4 loans during 2 consecutive years;
 - (ii) fails to comply with SBA Loan Program Requirements;
 - (iii) makes a material false statement or fails to disclose a material fact to SBA;
 - (iv) Performs actions with respect to the 504 loans in a commercially imprudent or unreasonable manner;
 - (v) fails to correct a deficiency after receiving notice of same from SBA; or
 - (vi) exercises poor behavior or takes actions undermining SBA's management of the 504 program.
- (2) SBA may take enforcement actions against an ALP or PCLP CDC if the CDC:
 - (i) does not continue to meet the requirements for eligibility;
 - (ii) fails to follow SBA Loan Program Requirements; or
 - (iii) fails to maintain a LLRF (PCLP only).
- (3) SBA identifies the types of enforcement actions in [13 CFR §120. 855](#). ([ADD LINK](#)) SBA, in its sole discretion, may require:
 - (i) immediate suspension may be issued upon written notice when SBA determines that such action is necessary to prevent significant loss to SBA or significant impairment of program integrity;
 - (ii) suspension or termination of the CDC's authority to:

- (a) Participate in the 504 program or any pilot or other program within the 504 program; or
 - (b) Perform any function under the program (processing, closing, servicing, liquidation or litigation).
 - (iii) transfer of some or all of the CDC's portfolio to another CDC;
 - (iv) instruct the Central Servicing Agent (CSA) to withhold payments to CDC; or
 - (v) for ALP or PCLP CDCs, suspension or termination of the CDCs authority to participate as an ALP or PCLP CDC.
 - (vi) The term of any suspension will be determined by SBA in its sole discretion.
- (4) Enforcement Procedures ([ADD Link to 13 CFR §120. 856](#))
- (i) For all enforcement actions other than immediate suspension, SBA will issue a written notice to the CDC:
 - (a) identifying the proposed action;
 - (b) outlining the reasons for the action; and
 - (c) stating the term of the any suspension proposed.
 - (ii) For immediate suspension, the written notice will contain the:
 - (a) reasons for the action; and, if from a third party, the
 - 1. name of the third party, and
 - 2. documentation received from that party; or
 - 3. if there are compelling reasons not to release that information, a summary of same.
 - (b) term and scope of the suspension.
 - (iii) A CDC proposing an objection to the action must file a written objection to the D/FA or other person identified in the notice within 30 calendar days of its receipt of the notice from SBA as provided in 13 CFR § 120.856.
 - (iv) Upon CDC's request, SBA, in its sole discretion may extend the time to object.
 - (v) If CDC timely files a written objection, SBA will
 - (a) issue a written notice of decision to the CDC; and
 - (b) for immediate suspension, .the notice must be issued within 90 days of receiving the objection advising if SBA is continuing with the suspension.
 - (vi) SBA, in its sole discretion, may:
 - (a) seek additional information; or
 - (b) consider an untimely objection.
 - (vii) SBA may then issue a notice of final agency decision.
 - (viii) CDC may appeal the final agency decision in accordance with [13 CFR Part 134. \(ADD LINK\)](#)
- (5) Voluntary Transfer and Surrender of CDC Certification

SBA regulations at [13 CFR 120.857 \(ADD LINK\)](#) discuss the circumstances under which a CDC can voluntarily transfer and surrender its certification.

5. TYPES OF CDCs

In order for a CDC to apply for a change in status, the CDC must be in compliance with SBA Loan Program Requirements.

a. Priority CDCs ([ADD LINK TO 13 CFR 120.802](#)):

Priority CDC status provides for expedited 504 loan closing. To request this status, the CDC must use the services of a Designated Attorney.

(1) To become a priority CDC, a CDC must have:

- (i) At least one 504 closing attorney, designated as provided below;
- (ii) Adequate experience and expertise in 504 loan closings;
- (iii) A history of presenting complete and accurate closing packages;
- (iv) A qualified and knowledgeable staff;
- (v) A satisfactory working relationship with its Lead SBA Office; and
- (vi) Directors and officers' liability insurance in form and substance satisfactory to SBA with:
 - (a) an endorsement covering CDC committees and staff engaged in the closing process;
 - (b) limits of at least \$1,000,000/\$1,000,000;
 - (c) a deductible not more than \$10,000; and
 - (d) a declaration that SBA will receive at least 20 days prior notice of any lapse of coverage, failure to renew, or cancellation.
 - (e) The CDC must submit to SBA annually a certificate from its insurance carrier confirming this coverage.

(2) Application Process

(i) Application by the CDC

- (a) The CDC submits a written application to the Lead SBA Office. The application must address each of the items in the previous paragraph and must include a copy of the CDC's insurance policy or a certificate of insurance or declarations page showing:

- 1. the amount of coverage;
- 2. the amount of the deductible;
- 3. the premium; and
- 4. a declaration from the insurance company that SBA will receive the required 20-day notice of cancellation.

- (b) The Lead SBA Office forwards the application to the D/LPD with the recommendations of the district director, district counsel and other field offices, if applicable.

(ii) Nomination by the Lead SBA Office

(a) The Lead SBA Office sends a nomination to the D/LPD with a copy to the CDC. The nomination must be signed by the district counsel and the district director. The nomination should address all of the conditions above and include evidence of the required insurance coverage and the name of the Designated Attorney.

(b) If the application contains both a request for Designated Attorney and a request for priority status, the Lead SBA Office should send the complete package to the D/LPD, who will forward the attorney information to Office of General Counsel (OGC).

(iii) Notification to the CDC

The D/LPD will notify the CDC in writing of its approval and the attorney will receive a separate acceptance letter from OGC.

(3) Designated Attorney is defined at [13 CFR 120.802 \(ADD LINK TO REG\)](#). To become a Designated Attorney, an attorney must submit evidence of:

- (i) A degree from a recognized law school;
- (ii) Membership in the bar of the state in which the attorney's 504 closing practice is or will be primarily located;
- (iii) Professional malpractice insurance coverage:
 - (a) with limits of at least \$1,000,000/\$1,000,000; and
 - (b) a deductible not to exceed \$20,000 for individuals and firms with fewer than 3 attorneys, \$50,000 for law firms with more than 3 attorneys or \$100,000 for large law firms with more than 25 attorneys.
 - (c) Applicants may request a hardship exemption from the General Counsel with respect to the policy limits or the deductible. Policy limit reductions to \$500,000/\$1,000,000 will only be granted to sole practitioners and small firms of three or less attorneys, while deductible requirement waivers will only be granted to larger firms with a demonstrated, strong financial history.
 - (d) Sole practitioners seeking a hardship waiver must state what their present annual premium is and what it would cost to get \$1,000,000 with \$20,000 deductible and \$500,000/\$1,000,000 with \$20,000 deductible. All other relevant financial information should also be provided.
 - (e) The attorney must deliver annually to the Office of General Counsel on or before July 1, a certificate from its insurance carrier confirming the existence of this coverage.

- (iv) Attendance of an SBA-approved 504 loan closing training course. Attorneys may fulfill this requirement at any time prior to designation or within 6 months after designation; and
- (v) Adequate expertise in 504 loan closings.

(4) Process to request Designated Attorney status

(i) The CDC nominates the attorney by submitting an application to the SBA field office in which the attorney's practice is primarily located. An application must include:

- (a) A submission on the attorney's letterhead addressing each of the conditions in the previous paragraph;
- (b) A copy of the attorney's malpractice insurance policy, or a certificate of insurance or declarations page showing the:
 - 1. amount of coverage and deductible;
 - 2. premium; and
 - 3. name of the attorney insured.

(c) If the attorney requests a hardship exemption with respect to the insurance policy limits or a waiver of the amount of the deductible, the attorney must include the request with the application, supported by appropriate information including:

- 1. The amount of the policy limits or deductible; and
- 2. The current premium;
- 3. The quote obtained for the increased premium;
- 4. The size of the firm;
- 5. The firm's arrangement for covering the deductible, such as a loss reserve or escrow; and
- 6. Evidence of the firm's history and financial strength.

(ii) Other Restrictions/Requirements

- (a) A designated attorney cannot be:
 - 1. an employee of the CDC or of an associate of the CDC.
 - 2. on the board of the CDC, participate in its lending decisions, or otherwise be too closely associated with the CDC.
- (b) An attorney may be a member of the CDC, but not an officer, provided SBA Counsel determines the attorney is not too closely associated with the CDC. SBA Counsel must consider the attorney's relationship with the CDC including:
 - 1. The degree of control exerted by the attorney on the CDC's decision-making;
 - 2. Any benefits accruing to the attorney through the attorney's association with the CDC; and
 - 3. Any appearance of conflict of interest.

(iii) The SBA field office forwards the application to the Office of General Counsel (OGC) with the recommendations of the district director, district counsel and other field offices, if applicable.

(iv) OGC will notify the attorney that he/she has been accepted as a designated 504 closing attorney.

b. Accredited Lenders Program (ALP)

SBA may designate a CDC as an Accredited Lender. ALP-CDCs are accountable for thorough credit and eligibility analysis on loan applications and on servicing actions. The Agency relies on the ALP-CDC's credit analysis in making the decision to guarantee the debenture and complete the documentation in a reduced timeframe.

(1) Application for ALP status

(i) A CDC may apply in writing to its Lead SBA Office providing all applicable information addressed in subparagraph (2) below.

(ii) To be eligible for ALP status, a CDC must have permanent CDC status. SBA will consider the following factors:

- (a) CDC staff experience;
- (b) Number of 504 loans approved and size of portfolio;
- (c) SBA-conducted oversight reviews must be current;
- (d) Record of compliance with SBA Loan Program Requirements;
- (e) Priority CDC status; and
- (f) Record of cooperation with all SBA offices, including field offices and SBA's loan processing and servicing centers.

(iii) See [13 CFR 120.840 and 120.841](#). (ADD LINK)

(2) Lead SBA Office Review

(i) The Lead SBA Office must review the ALP application and make a recommendation within 2 weeks of receipt of the CDC's letter. The Lead SBA Office's recommendation must include:

(a) An evaluation, in conjunction with the SLPC and the appropriate CLSC, of the:

1. quality of the CDC's loan packages;
2. CDC staff's knowledge of SBA policies and procedures;
3. CDC staff's credit analysis abilities;
4. CDC staff's capability and performance related to loan closing; and
5. CDC staff's servicing capability and performance.

(b) Evidence that the CDC is in compliance with 13CFR 120.840 & 120.841;

- (c) A certified copy of the CDC's Board of Directors' resolution authorizing the application for ALP status (this is only required for new ALP CDC applications not for renewals);
- (d) Comments from the CDC and the Lead SBA office on any outstanding issues on the CDC's most current CDC Management Report including:
 - 1. Any failed benchmarks;
 - 2. Any loans in the "90 day or more past due" category or in the "Catch-Up" category; and
 - 3. Any past due Annual Reports;
- (e) Verification that the CDC's employees are either hired directly by the CDC or are under a contract that has been approved by SBA;
- (f) A copy of the contract and the Board of Directors (BOD) resolution must be provided (if applicable);
- (g) Verification that the CDC is in compliance with [13 CFR 120.824](#), [120.825](#) and [120.826](#) [ADD LINK TO REGS](#);
- (h) A copy of and an evaluation of the CDC's current bylaws and articles of incorporation to insure that they are in compliance with the regulations;
- (i) Evidence of compliance with the requirements of a Priority CDC, including Board of Directors' liability insurance and Designated Attorney requirements (see paragraph 5.a. above); and
- (j) Current list of the CDC's Membership, Board of Directors, staff and any committees.

- (ii) The Lead SBA Office forwards the application and its recommendation to the appropriate SBA official for final determination.

(3) Term of designation

SBA will designate a CDC as an ALP-CDC for up to two years and may renew the designation for additional two year periods.

(4) Renewal of an ALP-CDC's designation

Ninety days prior to the end of the term, the CDC should apply in writing for renewal to the Lead SBA Office. The application for renewal must address all of the requirements found at [13 CFR 120.840](#) and [120.841](#) ([ADD LINK](#)) and submit the required items noted in paragraphs 4.b.(1) and (2) above.

The Lead SBA Office will review the CDC's application and Management Report and send its recommendation to the appropriate SBA official for final determination.

(5) Recognition of ALP Status Between SBA Offices

Once the CDC is approved as an ALP-CDC for a particular field office, it is an ALP-CDC for its entire Area of Operations.

(6) Oversight and Enforcement Actions

See Paragraph 4 of this chapter above.

c. Premier Certified Lenders Program (PCLP)

Under the PCLP, SBA designates qualified CDCs as PCLP CDCs and delegates to them increased authority to process, close, service and liquidate 504 loans. [13 CFR 120.848 \(ADD LINK\)](#) SBA also may give PCLP CDCs increased authority to litigate 504 loans. [13 CFR 120.845 \(ADD LINK TO REG\)](#) Loans processed under PCLP are subject to the same loan terms and conditions as other 504 loans, but SBA delegates to the PCLP CDC all loan approval decisions, except eligibility.

(1) Application for PCLP Status

A CDC may apply in writing to its Lead SBA Office providing all applicable information set forth in paragraph 4.b.(1) and (2) above and the following:

- (i) A certified copy of the Board of Directors' resolution authorizing the application for PCLP status (this is only required for new PCLP CDC applications not for renewals); and
- (ii) Evidence that the CDC:
 - (a) is in compliance with its Loan Loss Reserve Fund (LLRF) requirements;
 - (b) has established a PCLP processing goal of 50%; and
 - (c) has a demonstrated ability to process, close, service and liquidate 504 and/or PCLP loans.

(2) Lead SBA Office Review

- (i) The Lead SBA Office must review the PCLP application and make a recommendation within 2 weeks of receipt of the CDC's letter. The Lead SBA Office's recommendation must address the requirements and include the information stated in the previous paragraph.
- (ii) The Lead SBA Office sends the application and its recommendation to the SLPC. The SLPC reviews the materials and forwards the entire application including all supporting documentation with its recommendation to the appropriate SBA official for final determination.

(3) Notification of PCLP Status

SBA will notify the CDC in writing of an approval or decline of a PCLP application. If the application is declined SBA will notify the CDC of the reasons for the decline.

(4) Loan Guaranty Agreement Premier Certified Lenders Program (PCLP)

Upon approval as a PCLP CDC, the SLPC will send the CDC a Loan Guaranty Agreement Premier Certified Lenders Program (PCLP) ([SBA Form 2006 ADD LINK TO FORM](#)). The CDC must sign and return the agreement before it can begin processing PCLP loans.

(5) PCLP Term

SBA will confer PCLP status for a period of up to two years.

(6) Area of Operations

The PCLP CDC may exercise its PCLP authority in its entire Area of Operations.

(7) Loan Loss Reserve Fund (LLRF)

- (i) A PCLP CDC must establish and maintain a LLRF for its financings under this program. The LLRF will be used to reimburse the SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a PCLP debenture. The obligation extends to reimbursement for any loss to SBA on a loan funded by the issuance of a PCLP Debenture.
- (ii) The PCLP CDC must grant SBA a first priority perfected security interest in its LLRF. The security interest in the PCLP CDC's LLRF must be granted pursuant to a security agreement between the PCLP CDC and SBA. The security interest in the PCLP CDC's LLRF must be perfected pursuant to a control agreement between the PCLP CDC, SBA and the applicable depository institution.
- (iii) When establishing a LLRF, a PCLP CDC must coordinate with its Lead SBA Office to execute and deliver the required documentation. SBA created a Control Agreement ([SBA Form 2230 ADD LINK TO FORM](#)) and a Security Agreement ([SBA Form 2229 ADD LINK TO FORM](#)) that must be used in connection with the PCLP. If any changes to the agreements are required in order to meet local legal requirements, or if significant numbers of local lenders are adverse to executing the agreements, SBA field counsel must work with the OGC to make appropriate changes to the agreements. A fully executed original copy of the control and security agreements, as well as any applicable financing statements, must be provided to and retained by the lead SBA office.
- (iv) All documents must be satisfactory to SBA in both form and substance. SBA may require changes in, or supplements to, the documentation from time to time. If a depository institution will not enter into any agreement required by SBA or violates the terms of any such agreement, the PCLP CDC may not maintain an LLRF with that institution.

(v) For further guidance on the LLRF, see the table at the end of this chapter and [13 CFR 120.847 \(ADD LINK TO REG\)](#).

(8) Renewal of an PCLP-CDC's designation

Ninety days prior to the end of the term, the CDC should apply in writing for renewal to its Lead SBA Office. The application for renewal must address all of the requirements found at [13 CFR 120.846 \(ADD LINK\)](#) and submit the required items noted in paragraphs 4.c.(1) above.

d. Oversight and Enforcement Actions

See Paragraph 4 of this Chapter above.

<u>What Each PCLP CDC Must Do</u>	<u>Deadline For Activity</u>
Establish LLRFs	180 days after the effective date of this Notice
Contribute 50% of the required Loss Reserve for a PCLP Debenture	Within 5 business days after the PCLP Debenture is sold
Contribute an additional 25% of the required Loss Reserve for a PCLP Debenture	1 year after PCLP CDC issues PCLP Debenture
Contribute the final 25% of the required Loss Reserve for a PCLP Debenture	2 years after PCLP CDC issues PCLP Debenture
Pay SBA its Exposure on a PCLP Debenture in lieu of SBA's withdrawal of amounts from the Loss Reserves (optional)	10 days after the PCLP CDC and SBA determine the Exposure
Contribute to the Loss Reserve any difference between the required amount of Loss Reserves and actual Loss Reserves resulting from transfers, fees, or any other reason	30 days from the creation of the difference
Pay SBA any difference between the Exposure on a PCLP Debenture and the Loss Reserves after SBA makes withdrawals from the Loss Reserves	45 days after demand for payment by SBA
Report to and reconcile with the lead SBA office any discrepancies between the Quarterly PCLP List of Required LLRF Deposits and its records	45 days after the end of each quarter
Submit to lead SBA office the Quarterly PCLP Summary of LLRF Balances	45 days after the end of each quarter

<u>What Lead SBA Office Must Do</u>	<u>Deadline For Activity</u>
Notify Sacramento Loan Processing Center when a PCLP CDC meets LLRF initial establishment requirements	30 days after it verifies compliance
Process requests for interest earned on LLRF or excess funds in LLRF	15 days after request by PCLP CDC, unless there is disagreement on entitled amount
Transmit to each PCLP CDC the Quarterly PCLP List of Required LLRF Deposits	15 days after the end of the quarter
Work with PCLP CDCs to reconcile any differences in quarterly Loss Reserve calculations	Within 45 days of the end of the quarter
Review and approve the Quarterly PCLP List of Required LLRF Deposits	Within 60 days of the end of the quarter
Written notice to the PCLP CDC of SBA's intent to transfer funds from the LLRF	No less than 3 days before effecting the transfer

6. AREA OF OPERATIONS

There are 3 ways a CDC may process 504 loans outside its approved area of operation – they are:

- Case-by-case requests based on particular circumstances
- Expanding based on a Local Economic Area (LEA)
- Becoming a Multi-State CDC

a. Case-by-case, [13 CFR 120.839](#) (ADD LINK)

- (1) A CDC may apply to make a 504 loan for a Project outside its Area of Operations to the field office serving the area in which the Project will be located. The CDC must demonstrate that it can adequately fulfill its 504 program responsibilities for the 504 loan, including proper servicing.
- (2) The field office may approve the application if:
 - (i) The applicant CDC has previously assisted the business to obtain a 504 loan; or
 - (ii) The existing CDC or CDCs serving the area agree to permit the applicant CDC to make the 504 loan; or
 - (iii) There is no CDC within the Area of Operations.

b. Local Economic Area (LEA) Expansion [13 CFR 120.835](#) (ADD LINK)

- (1) A CDC may apply for expansion of its territory to include a Local Economic Area (LEA). An LEA is an area, as determined by SBA, that is:
 - (i) in a State other than the State in which an existing CDC, or an applicant applying to become a CDC, is incorporated,
 - (ii) is contiguous to the CDC's existing Area of Operations, or the applicant's proposed Area of Operations, of its State of incorporation, and
 - (iii) is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) of its State of incorporation.
- (2) Examples of a local trade area would include a city that is bisected by a State line or a metropolitan statistical area that is bisected by a State line.
- (3) A CDC that has been certified to participate in the 504 program may apply to expand its Area of Operations if it meets all requirements to be an Accredited Lender Program (ALP) CDC, as outlined elsewhere in this chapter, and demonstrates that it can competently fulfill its 504 program responsibilities in the proposed area.
- (4) Application Process
 - (i) The CDC must submit the items listed below to its Lead SBA Office (§120.802, Definitions).
 - (a) A list of the requested area(s) (e.g., a county, parish, incorporated city) in the contiguous state and information supporting how those area(s) meet the definition of a Local Economic Area (§120.802, Definitions).

(b) A certified copy of the resolution of the Board of Directors approving the proposed expansion; a copy of any changes to the articles of incorporation that are required; and a copy of any bylaw changes that are required (or a statement that no changes are necessary). CDCs are reminded that they may have to register as a “foreign corporation” in the state which contains the new territory.

(c) Documentation showing that the CDC currently meets the requirements of an ALP CDC. (This includes those CDCs that are ALP CDCs already.) (§120.841, Qualifications for the ALP and earlier in this chapter) In addition, the CDC’s attorney is to provide a written statement certifying that the CDC is operating in compliance with its articles and by-laws and is in good standing with its State of incorporation. A CDC’s attorney must review the CDC’s corporate documents and minutes of board and membership meetings before providing the certification.

(d) A summary of the qualifications and experience of any new professional staff who will be responsible for marketing, packaging, processing, closing, servicing, and if applicable, liquidating the loans in the expanded area as well as a complete 1081 and fingerprint card for each person. If the new employees will be provided under contract, submit a contract for their services that meets the regulations governing contracts. (§120.824) In addition, identify the CDC’s Designated 504 Closing Attorney who is licensed to practice in that jurisdiction.

(e) A copy of the CDC’s most recently published CDC Management Report demonstrating that: 1) the CDC’s portfolio passes at least 4 of the 5 SBA-established risk benchmarks; 2) all loan statuses (i.e. those items listed in the mid section of the report under status summary) are current or in compliance; 3) there are no loans listed under the “Loans 90 or More Days Past Due” category; and 4) there are no loans listed under “Loans in Catch-Up That Missed At Least 3 Consecutive Payments.” (If there are loans under Nos. 3 and 4, provide documentation for each such loan describing the actions taken to correct the deficiencies on those loans after the report was prepared and whether those efforts were successful for each of the relevant loans.)

(ii) The Lead SBA Office will review the request and submit to Headquarters the following in the analysis of the request for an LEA expansion:

(a) Comments on whether the CDC is in compliance with SBA’s regulations and policies;

(b) Comments on whether the Lead SBA Office agrees that the areas requested meet the definition of a Local Economic Area;

(c) Confirmation that the Lead SBA Office has reviewed any new contracts to determine if they meet the requirements set forth in §120.824 and a note that the contracts have been approved by SBA;

(d) Comments on the CDC’s ability to manage an increase in loan servicing activity resulting from the expansion; and

(e) Any other pertinent comments regarding the CDC’s application or operations.

1. The Lead SBA Office must solicit the comments of any other field office in which the CDC operates or proposes to operate as well as the comments of the processing and servicing centers.
2. The Lead SBA Office must determine that the CDC is in compliance with SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review by SBA of any management or staff contracts, and the timely submission of all annual reports.
3. In making its recommendation on the application, the Lead SBA Office may consider any information presented to it regarding the requesting CDC, the existing CDC, or CDCs that may be affected by the application, and the proposed Area of Operations.

(f) The Lead SBA Office will submit the application, recommendation, and supporting materials within 60 days of the receipt of a complete application from the CDC to the D/FA, who will make the final decision.

- (iii) If the Lead SBA Office determines that the CDC LEA application is incomplete, it should inform the CDC in writing, identifying the information missing from the application. The Lead SBA Office also has full authority to decline a CDC's expansion request. A letter outlining the reasons for decline and the CDC's rights of appeal must be sent to the CDC with a copy to the D/LPD. The CDC has 60 days to appeal the decline to the Lead SBA Office for action by the D/LPD.
- (iv) The D/FA may consider any information submitted or available related to the applicant and the application. SBA will notify the CDC of its decision in writing, and if the application is denied, the reasons for its decision.

c. Multi-State Expansion [13 CFR 120.835 \(ADD LINK\)](#)

A CDC can expand by applying to be a Multi-State CDC provided the State the CDC seeks to expand into is contiguous to the State of the CDC's incorporation; the CDC demonstrates that its membership meets the requirements in §120.822 separately for its State of incorporation and for each additional State in which it seeks to operate as a Multi-State CDC; and the CDC has a loan committee meeting the requirements of §120.823.

(1) Application Process

A CDC seeking to become a Multi-State CDC must apply to the Lead SBA Office where the CDC intends to locate its principal office for that State. The request must include:

- (i) Demonstration that the state that the CDC seeks to expand into is contiguous to the state of the CDC's incorporation. [§120.802, Definitions]
- (ii) A listing of the 25 new members that meets the requirements contained in §120.822 (a). [§120.835(c)(2)]

- (iii) A listing of the new members of the loan committee that meets the requirements contained in §120.823. [§120.835(c)(2)] For loan committee members, provide 1081s and if necessary fingerprint cards.
- (iv) The address where the CDC's principal office in the new state will be located and a copy of the lease if the space is to be leased [§120.835(c)].
- (v) A certified copy of the resolution of the Board of Directors (BOD) approving the expansion; a certified copy of any changes to the articles of incorporation that are required; and a certified copy of any bylaw changes that are required (or a statement that no changes are required).
- (vi) After the CDC's attorney has had an opportunity to review corporate documents and minutes of board and membership meetings, the CDC's attorney is to provide a written statement certifying that the CDC is operating in compliance with its articles and by-laws and is in good standing with its State of incorporation. If registration as a foreign corporation is required, provide a copy of the registration.
- (vii) Evidence that the CDC currently meets the requirements of an ALP CDC. (This includes those CDCs that are ALP CDCs already.) [§120.840 & §120.841, Qualifications for the ALP, and earlier in this chapter].
- (viii) A copy of the binder page of the Board of Directors' current liability insurance or a Certificate of Insurance reflecting at least \$1,000,000 Liability coverage and a deductible/retention of not more than \$10,000.
- (ix) The name of the designated attorney licensed to practice in the new state. Include proof that the designated status is current and provide a copy of the binder page of the attorney's current malpractice insurance or a Certificate of Insurance reflecting at least \$1,000,000 Liability coverage and a deductible/retention of not more than \$10,000. The certificate must either contain the name of the designated attorney or provide it in an attachment. [§120.841(e)]
- (x) A copy of the CDC's most recently published CDC Management Report demonstrating that:
 - (a) The CDC's portfolio performance passes 4 of the 5 the SBA established risk benchmarks.
 - (b) All statuses are current or in compliance;
 - (c) There are no loans listed under the "Loans 90 or More Days Past Due" category;
 - (d) There are no loans listed under "Loans in Catch-Up That Missed At Least 3 Consecutive Payments."
 - (e) If there are loans under Nos. 3 and 4, then the CDC should explain what action has been taken, such as a deferment or a request that SBA purchase the debenture.
 - (f) The CDC's Annual Report submission is current and the Annual Report is in compliance.
- (xi) Provide a summary of the qualifications and experience of those loan officers who will be responsible for marketing, packaging, processing and servicing the loans in the expanded area. If the loan officers are new employees, provide a complete 1081 and fingerprint card (as required) for each employee. If the new employees will be provided under contract, submit a contract for their services that meets the regulations governing contracts [§120.824].

(2) Analysis by the SBA Office [13 CFR 120.837 \(ADD LINK\)](#)

The Lead SBA Office conducts a review and comments on:

- (i) Any previous experience with the applicant, including comments on the CDC's ability to handle an increase in loan servicing activity including on-site servicing of an expanded geographic area.
- (ii) The CDC's compliance with SBA's regulations, policies, and performance benchmarks, including the timely submission of all annual reports.
- (iii) Compliance of any new contracts with SBA regulations [§120.824].
- (iv) Comments from other field offices that have dealings with the applicant, including Servicing Centers.
- (v) Any other pertinent comments regarding the CDC's operations.

If the Lead SBA Office's analysis determines that the CDC is in compliance with SBA's regulations and policies governing CDCs, the district will, within 60 days of receipt of a complete request, forward the CDC's application along with the Lead SBA Office's analysis and recommendation to the D/LPD.

If the Lead SBA Office's analysis determines that the CDC is not in compliance with SBA's regulations and policies governing CDCs, return the application to the CDC identifying the outstanding issues to give the CDC an opportunity to come into compliance.

(3) The Decision

- (i) The D/FA may consider any information submitted or available related to the applicant and the application and will make the final decision. SBA will notify the CDC of its decision in writing, and if the application is denied, the reasons for its decision.
- (ii) Multi-State CDCs must maintain a separate accounting for each State of all 504 fee income and expenses and provide, upon SBA's request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activities in each State in which they operate. [\(13 CFR 120.825 ADD LINK\)](#)
- (iii) If a CDC is approved to operate as a Multi-State CDC, the CDC's ALP, PCLP, or Priority CDC authority will carry over into every additional State in which it is approved to operate as a Multi-State CDC.

SUBPART B
SECTION 7(a) BUSINESS LOAN PROGRAMS

THE PURPOSE OF THIS SUBPART

This subpart contains the policies and procedures governing 7(a) business loan programs including standard 7(a), the Certified Lenders Program, the Preferred Lenders Program, SBAExpress and the Agency's Pilot Loan Programs.

CHAPTER ONE
GENERAL DESCRIPTION OF THE 7(a) LOAN PROGRAMS

SBA is an agency of the federal government that is authorized through the Small Business Act to guarantee loans made by lenders to eligible small businesses. [LINK TO 13 CFR Part 120](#)

1. The agency guarantees loans through various delivery methods including:
 - a. Standard 7(a) Loan Processing
 - b. Certified Lenders Program (CLP)
 - c. Preferred Lenders Program (PLP)
 - d. SBA Express
 - e. Pilot Loan Programs, which currently include:
 - (1) Patriot Express
 - (2) Export Express
 - (3) Community Express

2. SBA loan proceeds may be used to finance any of the following:
 - a. Working capital;
 - b. Furniture and fixtures;
 - c. Machinery and equipment;
 - d. Purchase of land and building including construction and renovations;
 - e. Business Acquisition, and
 - f. Refinancing of existing debt.

3. Summary of Delivery Methods and Pilot Loan Programs

The following charts summarize the various delivery methods for SBA's lending programs, including Pilot Loan Programs.

7(a) LOANS (except pilot loan programs): Standard 7(a), PLP, and SBAExpress			
Attribute	Standard 7(a)	Preferred Lenders Program (PLP)	SBA Express
Geographic Area	Nationwide	Nationwide	Nationwide
Borrower Portion of SBA Application	SBA Form 4 plus required attachments.	Same as Standard 7(a).	SBA Express forms (1919 and 1920 or 2238) require abbreviated information and no exhibits.
Lender Portion of SBA Application	Full credit analysis by lender on Form 4-I. Submitted to SBA for its review prior to SBA approval. Eligibility Questionnaire may be completed by lender but is not required.	Full credit analysis by lender using Form 4-I. but not submitted to SBA prior to approval. Eligibility checklist must be completed by lender and submitted to SBA.	Full credit analysis using lender's own form. but not submitted to SBA prior to approval. Lender is delegated the credit decision and completes an eligibility checklist which is submitted to SBA. Some lenders are delegated the eligibility determination as well.
Type of Loan	Short-term (12 months) or Long-term loan	Same as Standard 7(a)	Same as Standard 7(a) PLUS can be a Revolving Line of Credit
Loan Decision	SBA approves the loan for both credit and eligibility	Lender is delegated the credit decision and completes an abbreviated checklist for eligibility which SBA reviews.	Lender is delegated the credit decision and completes an abbreviated checklist for eligibility which SBA reviews unless the lender is "eligibility authorized."
Target Processing time	6 business days. 3 business day target processing time for CLP.	1 business day	1 business day
Centralized Processing	Yes. Standard 7(a) Loan Guaranty Processing Center - Sacramento, CA and Hazard, KY. Complete review of credit and eligibility by SBA loan officers	Yes. Sacramento, CA. Abbreviated review of eligibility checklist by SBA loan officers.	Yes. Sacramento, CA. Abbreviated review of eligibility checklist by SBA loan officers, unless lender is eligibility authorized.
E-tran Available	No, lender may submit by mail, fax and e-mail	Available.	Available.
Maximum loan amounts	General rule is gross loan amount limited to \$2,000,000 per loan. SBA guaranty amount limited to \$1,500,000 to one borrower (and any affiliates).	Same as Standard 7(a)	Limited To \$350,000 (gross) (including any outstanding SBAExpress, Community Express, Patriot Express, and Export Express loans.)
Percent of Guaranty	85% for loans of \$150,000 or less. 75% for loans over \$150,000	Same as Standard 7(a)	50%
Maximum Maturity	WC - 10 Years F&F, M&E - Useful life Real Estate - 25 years	Same as Standard 7(a)	Maximum 7 years for Revolving Lines of Credit including term out period. Otherwise, same as Standard 7(a).
Maximum Interest Rates	Prime + 2.25% for maturities under 7 years. Prime + 2.75% for 7 years or more. Rates can be higher by 2% for loans of \$25,000 or less; and 1% for loans between \$25,000 and \$50,000.	Same as Standard 7(a)	Loans \$50,000 or less: Prime + 6.5%. Over \$50,000: Prime +4.5%
Collateral Policy	Available collateral (liquidation value) up to loan amount.	Same as Standard 7(a)	\$25,000 or less, no collateral required. Over \$25,000, lenders may use their own collateral policies used for their non-SBA-guaranteed loans.
SBA Guaranty Fee (Multiply percentage times guaranteed amount, not gross amount.)	Maturity of 12 months or less = 0.25% <u>Maturities over 12 Months</u> Gross loan: \$150,000 or less = 2.0% Gross loan: \$150,001 - \$700,000 = 3.0% Gross loan: \$700,001 - 1,000,000 = 3.5% For amounts over \$1,000,000 = 3.75% On-going guaranty fee = 0.494% (FY 2008)	Same as Standard 7(a)	Same as Standard 7(a)
SBA Prepayment Penalty	Yes if term of loan is for 15 years or more and prepaid in first 3.	Same as Standard 7(a)	Same as Standard 7(a)
Lender Agreements with SBA	All lenders must execute Form 750.	Supplemental Agreement which must be renewed every 2 years.	Supplemental Agreement which must be renewed every 2 years.
Tech. Asst.	None required.	None required.	None required.

7(a) LOANS (pilot programs): Community Express, Export Express, and Patriot Express

Process Attributes	Community Express (est. 1999.) - RESERVED	Export Express (est. 1999)	Patriot Express (est. 2007)
Eligibility Restrictions	RESERVED	Applicant must demonstrate that loan proceeds will enable them to enter a new export market or expand an existing export market. In addition, applicant must have been in operation, though not necessarily in exporting, for at least 12 months.	Applicant must be owned and controlled (51 percent or more) by one or more of the following groups: veteran, active duty military participating in the military's Transition Assistance Program (TAP), reservist or national guard member or a spouse of any of these groups, or a widowed spouse of a service member or veteran who died of a service-connected disability.
Borrower Portion of SBA Application	Form requires abbreviated information and no exhibits.	Form requires abbreviated information and no exhibits.	Form requires abbreviated information and no exhibits.
Lender Portion of SBA Application	Form requires abbreviated information and no exhibits. No credit review by SBA.	Form requires abbreviated information and no exhibits. No credit review by SBA.	Form requires abbreviated information and no exhibits. No credit review by SBA.
Loan Decision	Lender is delegated the credit decision and completes an abbreviated checklist for eligibility which SBA reviews.	Lender is delegated the credit decision and completes an abbreviated checklist for eligibility which SBA reviews, unless the lender is eligibility authorized.	Lender is delegated the credit decision and completes an abbreviated checklist for eligibility which SBA reviews, unless lender is eligibility authorized.
Target Proc. time	1 business day	1 business day	1 business day
Cent. Processing	Yes. Sacramento, CA. Abbreviated review of eligibility checklist by SBA loan officers	Yes. Sacramento, CA. Abbreviated review of eligibility checklist by SBA loan officers, unless lender is eligibility authorized.	Yes. Sacramento, CA. Abbreviated review of eligibility checklist by SBA loan officers, unless lender is eligibility authorized.
E-tran Available	Available.	Available.	Available.
Maximum loan amounts	Limited to \$250,000 (gross) (including any outstanding SBAExpress, Community Express, Patriot Express and Export Express loans.)	Limited to \$250,000 (gross) (including any outstanding SBAExpress, Community Express, Patriot Express and Export Express loans.)	Limited to \$500,000 (gross) (including any outstanding SBAExpress, Community Express, Patriot Express and Export Express loans.)
Percent of Guaranty	85% for loans of \$150,000 or less. 75% for loans over \$150,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000
Maximum Maturity	Same as SBAExpress	Same as SBAExpress	Same as SBAExpress
Maximum Interest Rates	RESERVED	Same as SBAExpress.	Same as Standard 7(a)
Collateral Policy	Same as SBAExpress	Same as SBAExpress	Same as SBAExpress up to \$350,000. Over \$350,000, the lender must secure the loan with all available collateral.
SBA Guaranty Fees (Multiply percentage times guaranteed amount, not gross amount.)	Same as Standard 7(a)	Same as Standard 7(a)	Same as Standard 7(a)
SBA Prepayment Penalty	Same as Standard 7(a).	Same as Standard 7(a).	Same as Standard 7(a).
Other Fees a Lender May Charge	RESERVED	Same as for SBAExpress	Same as for SBAExpress
Lender Supplemental Agreement	Community Express Supplemental Guaranty Agreement	SBAExpress lenders qualify for this program. No separate Export Express supplemental agreement is required.	Patriot Express Supplemental Guaranty Agreement
Technical Assistance	Lender must provide technical assistance.	Provided by the USEACs.	None required. However, SBA emphasized its existing technical assistance programs such as SCORE and the SBDCs as part of the overall Patriot Express initiative.

4. The following chart describes various specialized programs and their requirements.

Applications for these programs cannot be processed under CLP, PLP, SBAExpress or the Pilot Loan Programs.

Program	Use of Proceeds	Special Features	Maturity	Collateral	Who Qualifies
General Business Loan (See "C" below.)	Acquisition or construction of buildings (including land); machinery and equipment; furniture and fixtures; leasehold improvements; short or long-term working capital; refinancing.	Adaptable to a variety of loan structures for a variety of loan purposes. There are general (government) restrictions on what the proceeds can be used for and the types of businesses that can receive financial assistance from SBA.	See Chart No. 1	See Chart No. 1	Must meet SBA eligibility requirements including being a for-profit business that meets certain size standards; Must be creditworthy including reasonably demonstrate that the loan (along with all other obligations) can be repaid from the operations of the business in a timely manner.
International Trade Loan Program (See "B" below.)	Finances fixed assets including improvements that will be located in the U.S. and used to produce goods/services to be exported. No refinancing allowed	When made in conjunction with a working capital loan, the two loans together can have a SBA guaranteed share up to \$1,250,000	Based on the assets being financed. Generally between 10 and 25 years	Must be secured by a first lien on the assets acquired with the loan proceeds.	Same as General Business Loan PLUS applicant must be engaged (or preparing to be engaged) in international trade
Export Working Capital Program (EWCP) (See "B" below.)	Finances the short term working capital needs of a exporting business on either a revolving or non-revolving basis	Prequalification by SBA available prior to small business applying to lender. Only program with 90% Guaranty and provision for a Standby Letter of Credit to offset risk.	Maximum of 3 years	First on the assets being financed.	Same as General Business Loan PLUS the applicant must have a prior (12 month minimum) history of demonstrated export expertise
Seasonal CAPLines (See "A" below.)	Finance the seasonal working capital needs. New businesses ineligible.	Mandated zero balance at season's end prior to future season draws.	Maximum of 5 years	First on the assets being financed.	Same as General Business Loan PLUS business in operation for at least one year with a definite seasonal pattern to sales/expenses
Contract CAPLines (See "A" below.)	Finance the direct costs needed to perform on an assignable contract	Can provide loan funds prior to start of work.	Maximum of 5 years	Assignment of the proceeds from the contract(s) being performed.	Same as General Business Loan PLUS business must have demonstrated, historical experience in performing on same type contract.
Builders CAPLines (See "A" below.)	Finance the Contractors cost to build or renovate commercial or residential property to be resold to a third party upon completion	The only SBA program that allows a business to buy a building or home for the purpose of being resold.	Maximum of 5 years	First on the assets being financed.	Only available to businesses in the building and construction trades.
Small Asset Based CAPLines (See "A" below.)	Provides working capital based on eligible accounts receivable and inventory. Limit of \$200,000	Required review of a monthly borrowing base by lender to ensure that borrowing does not exceed qualified assets..	Maximum of 5 years	First on the assets being financed.	Same as General Business Loan PLUS designed for businesses who sell on credit and who have a need to obtain funds from existing receivables and inventory prior to receipt of funds from customers
Standard Asset Based CAPLines (See "A" below.)	Provides working capital based on eligible accounts receivable and inventory.	Borrowing base review by lender with each request for disbursement. No restriction on servicing fee charges by lender subject to full disclosure	Maximum of 5 years	First on the assets being financed	Same as Small Asset Based Caplines.
Employee Stock Ownership Plan (ESOP) Loans	Provides funds to ESOP to purchase or increase the ESOP's ownership in the business that employs its owners.	The loan is made to the trust, not the business.	Same as Standard 7(a)	Same as Standard 7(a) BUT the ESOP Trust is not required to guaranty.	A qualified Employee Trust organized under IRS or Department of Labor Requirements.

(See "A" below.)					
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SBA LOAN PROGRAMS REFERENCE GUIDE – Chart #2

A - Can be processed only under Standard 7(a).
 B – Can be processed under Standard 7(a) or PLP.
 C – Can be processed under all methods. (See Chart No. 1 for methods.)

5. Special Purpose Loans

Certain special purpose loan programs are subject to separate or special funding under SBA’s budget and these are:

- (a) Disabled Assistance Loan (DAL)
- (b) Loan Program for Low Income Individuals
- (c) The Veterans Loan Program (not to be confused with Patriot Express)
- (d) The 8(a) Participant Loan Program
- (e) Defense Economic Transition Loan Program
- (f) Defense Loan and Technical Assistance (DELTA)

Check with the local SBA field office, the Standard 7(a) Loan Guaranty Processing Center (LGPC) or the Sacramento Loan Processing Center (SLPC) to see if these programs have been funded and are available.

6. DEFINITIONS APPLICABLE TO THE 7(a) LOAN PROGRAMS

The definitions applicable to the 7(a) loan programs are set forth in [13 CFR 103.1 and 120.10](#).
[ADD LINKS](#)

CHAPTER 2

ELIGIBILITY FOR 7(A) GUARANTY LOAN PROGRAM

1. INTRODUCTION

This section discusses the steps necessary to determine if a Small Business Applicant is eligible for an SBA guaranteed loan. The eligibility issues that apply to the lender or the structure of the loan are discussed elsewhere. ([LINK TO 13 CFR 120.100, 101, 102, and 110](#))

Eligibility should be determined as early in the loan making process as possible. The small business must meet the eligibility requirements at the time of application and, with the exception of the size standard, must continue to meet these requirements through the closing and disbursement of the loan.

[LINK to Standard 7\(a\) Eligibility Checklist Form](#)

2. SUMMARY OF ELIGIBILITY REQUIREMENTS

- a. The Small Business Applicant must be:
 - (1) An [Operating Business](#)
 - (2) Organized [For Profit](#);
 - (3) [Located in the United States](#) (includes territories and possessions);
 - (4) [Small](#) (as defined by SBA)
 - (5) Demonstrate a need for the desired credit; ([LINK TO 13 CFR 120.100](#))
- b. Lender must certify that credit is not available elsewhere on reasonable terms; ([LINK TO 13 CFR 120.101](#))
- c. The Small Business Applicant must show that the funds are not available from alternative sources, including personal resources of the principals; ([LINK TO 13 CFR 120.102](#))
- d. The following businesses are not eligible:
 - (1) Non-profit businesses (for profit subsidiaries are eligible)
 - (2) Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);
 - (3) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies);
 - (4) Life insurance companies;
 - (5) Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify)

- (6) Pyramid sales distribution plans;
- (7) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;
- (8) Businesses engaged in any illegal activity;
- (9) Private clubs and businesses which limit the number of memberships for reasons other than capacity;
- (10) Government-owned entities (except for businesses owned or controlled by a Native American tribe);
- (11) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;
- (12) Consumer and marketing cooperatives (producer cooperatives are eligible);
- (13) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;
- (14) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;
- (15) Businesses in which the lender or any of its Associates owns an equity interest;
- (16) Businesses which present live performances of a prurient sexual nature; or derive directly or indirectly more than de minimus gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
- (17) A business or applicant involved in a business which defaulted on a Federal loan or Federally assisted financing resulting in a loss to the government. A compromise agreement shall also be considered a loss;
- (18) Businesses primarily engaged in political or lobbying activities; and
- (19) Speculative businesses (such as oil wildcatting). ([LINK TO 13 CFR 120.110](#))

3. ELIGIBILITY REQUIREMENTS

a. THE SMALL BUSINESS MUST BE ORGANIZED FOR PROFIT.

- (1) All small business applicants must be organized for profit. Non-profit businesses are not eligible for SBA business loan assistance.
- (2) For-profit businesses owned by a non-profit business are eligible if they meet SBA's other eligibility requirements. The non-profit affiliate must be included in the calculation of the size of the business. This may result in a determination that the for-profit entity is not considered small by SBA size standards and therefore not eligible. In addition, if the non-profit affiliate owns 20% or more of the for-profit business but cannot or will not guarantee the loan, the for-profit business is not eligible for SBA assistance. If the profits are used for the benefit of the non-profit rather than the for-profit business, the for-profit business is not eligible.
- (3) Documentation that may be reviewed to determine for-profit status:

- (i) Articles of Incorporation-- filed with Secretary of State or similar department in the state where the applicant is organized or conducts operations;
- (ii) Articles of Organization-- (for a Limited Liability Corporation (LLC)) filed with Secretary of State or similar department in the state where the applicant is organized or conducts operations;
- (iii) Corporate By-Laws and any amendments;
- (iv) Partnership Agreements;
- (v) Association By-laws; and
- (vi) Tax Returns.

b. THE APPLICANT MUST BE SMALL UNDER SBA SIZE REQUIREMENTS [LINK TO 13 CFR Part 121](#)

(1) For business loans, an applicant, combined with its affiliates if any, must not exceed the size standard for the industry in which the applicant is primarily engaged. ([LINK TO 13 CFR 121.103 and 121.107](#))

(2) The applicable size standards are increased by 25 percent when the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are designated by the Department of Labor.

(3) For most retail businesses, the applicant and its affiliates cannot exceed \$6.5 million in gross sales averaged over the last 3 fiscal years.

(4) For most wholesale businesses, the applicant and its affiliates cannot have more than 100 employees.

(5) For most manufacturing businesses, the applicant and its affiliates cannot have more than 500 employees.

(6) When size status of an applicant is determined:

- (i) The size of an applicant for SBA financial assistance is determined as of the date the application for such financial assistance is accepted for processing by SBA. Changes in the size of the business subsequent to the applicable date when size is determined will not disqualify an applicant for assistance, even if the financing resulted in the business becoming large.
- (ii) For the Preferred Lenders program and the SBA Express program, size is determined as of the date of approval of the loan by the lender.

(iii) Pilot Loan Programs (presently Community Express, Export Express and Patriot Express) size is determined as of the date of approval of the loan by the lender.

(7) Formal size determinations

(i) By signing the application, a small business applicant is deemed to have certified that it is small under the applicable size standard. SBA or lender may request additional information concerning the applicant's size based on information supplied in the application or any other source. A preferred lender or SBA Express lender may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

(ii) Prior to denial of eligibility based on size, a formal size or affiliation determination may be requested by a small business applicant, the SBA loan application processing office or a lender. The request must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. [LINK TO 13 CFR 121.303](#)

(8) Review of Franchise/License/Dealer Agreements

The discussion in this section applies to Franchise Agreements, License Agreements, and Dealer Agreements (with the exception of Dealer Agreements from new car manufacturers which are not reviewed for eligibility). A finding of eligibility under this section means that the agreement does not impose unacceptable control provisions on the Small Business Applicant which would result in affiliation. The fact that the agreement is eligible does not mean that the Small Business Applicant is eligible.

(i) Affiliation can exist through:

- (a) common ownership,
- (b) common management,
- (c) excessive restrictions upon the sale of the franchise interest, or
- (d) control by a franchisor either directly or through an affiliated entity or agent such that the Franchisee does not have the independent right to both profit from its efforts and bear the risk of loss commensurate with ownership. [LINK TO 13 CFR 121.103 \(i\)](#)

(ii) Review

SBA requires, in all cases, a determination as to whether affiliation exists when the applicant has or will have a Franchise/License/Dealer agreement.

(iii) Review and determination must be conducted by:

- (a) SBA--for all loans processed through the LGPC, including CLP.
- (b) Lender--for PLP, SBA Express, or any other expedited processing method.

(iv) Franchise Information Assistance

Lenders may contact SBA at franchise@sba.gov for assistance with franchise eligibility reviews.

(v) Registry of approved franchise/license/dealer agreements

To facilitate the review of these agreements, SBA has established a Franchise Registry (“Registry”) that lists approved franchise/license/dealer agreements. SBA has previously determined that the agreements listed on this Registry are acceptable. Lender must ensure that the documents with the loan application are the same as the documents listed on the Registry.

Lenders must follow the procedures set forth below to determine franchise program eligibility for a loan application.

- (a) Check www.franchiseregistry.com to determine if the agreement is listed.

1. Listed on Registry

If the Agreement is listed on the Registry (including any additional requirements listed in the footnotes), lender may rely upon the Registry to determine eligibility. The file must include one of the following forms:

(A) Certification of No Change or Non-Material Change – SBA Form 2086

If there have been no material changes to the documents in any way since the initial registration or last revision date on the Registry, the review process has been completed and the Loan File should be documented with the following:

- (I) Proof of FTC Registration
- (II) Executed Agreements
- (III) Executed Certification of No Change or Non-Material Change. ([Hyperlink to form](#))

(B) Certification of Material Change

If there has been a material change, the certification should be forwarded to the SBA loan processing center. Lender will be notified of the results of the review.

(C) Certification not provided

If a certification is not provided, a review of the Agreement and all related documents is required as if not listed on the Registry.

2. Not Listed on Registry

(A) If the Agreement is not listed on the Registry, a review must be made of the Agreement and all related documents

(B) Lenders should consult the Franchise Findings List (the List) posted on the SBA website ([hyperlink](#)) to see if the Agreement has been determined to be unacceptable. **This site does not purport to contain definitive eligibility rulings.** The list will provide useful information in making the eligibility determination as well as potential remedies to ineligible agreements.

(C) If an Agreement is on the List and the reason the Agreement is on the List cannot be resolved, the lender must determine that the applicant is ineligible.

(b) Affiliation Issues to Consider

The following are examples of common situations that should be examined to determine if affiliation exists.

1. Control

The provisions of the Agreement may not:

(A) Set the Applicant's net profit;

- (B) Require the payment of excessive Franchise/License/Dealer Fees;
- (C) Directly control the applicant's employees including hiring or terminating (unless under a short term step-in agreement);
- (D) Require the Applicant to deposit all receipts or revenues into an account which Franchisor/Licensor/Dealer controls, or from which withdrawals may be made only with Franchisor/Licensor/Dealer consent;
- (E) Include an option to purchase the applicant's personal property assets upon expiration or breach of the Agreement, where the Franchisor/Licensor/Dealer has the ability to control the price at the time of purchase;
- (F) Include a purchase option for real estate owned by the applicant (right of first refusal is allowed provided it is on commercially reasonable terms);
- (G) Allow the hiring of the applicant's employees by the Franchisor/Licensor/Dealer (in the temporary personnel industry, consider temporary employees hired by the franchisee to be employees of the franchisor); or
- (H) Require that the billing activities for the applicant be handled by the Franchisor/Licensor/Dealer for a fee.

2. Leasing from Franchisor/Licensor/Dealer

During the term of the SBA-guaranteed loan, Franchisor/Licensor/Dealer may not terminate any Real Estate Lease unless an uncured default has occurred under the terms of the Real Estate Lease or the Franchise Agreement.

3. Transfer

Any transfer provision which requires a Franchisor/Licensor/Dealer's consent must state "**Consent must not be unreasonably withheld or delayed**" or its equivalent.

4. Termination

A Franchisor/Licenser/Dealer's power to cancel without cause does not confer upon it power to control the applicant and is not an indicia of affiliation.

5. Independent Contractor

Franchisor/Licenser/Dealer and applicant must maintain an Independent Contractor Relationship.

Example: Insurance Agents who sell policies issued by one insurance company have been found to be independent contractors when the Agents performed their services at their own business locations and paid all of the expenses of maintaining their own offices.

6. Specific Industries

(A) Insurance Industry. Based on the Industry standard established by the Insurance Agency, it is common practice for the franchisor to own the Insurance Policies as well as receive the payments on the policy. This type of arrangement, by itself, does not create affiliation.

(B) Gasoline Industry. Most Dealer Agreements are for a term of three years with limited or no renewal terms. In situations where a gasoline supplier is leasing the real property to the dealer, the Petroleum Marketing Practices Act controls and contains detailed provisions on the authority and procedure for non renewal or termination. This type of lease arrangement, by itself, does not place inappropriate control in the oil company/dealer.

(9) The maximum amount that SBA may guarantee to a small business includes all loans to the small business and its affiliates.

c. THE SMALL BUSINESS APPLICANT MUST DEMONSTRATE A NEED FOR A GUARANTY ON THE LOAN.

(1) The Small Business Applicant's need for the loan is determined by applying the "Credit Elsewhere Test." The purpose of the Credit Elsewhere test is to determine if the Small Business Applicant along with its principals have the ability to obtain some or all of the requested loan funds from alternative sources without causing undue hardship.

[LINK TO 13 CFR 120.101](#)

- (2) The lender must determine that:
- (i) the Small Business Applicant is unable to obtain the loan on reasonable terms without a Federal government guaranty, and
 - (ii) some or all of the loan is not available from any of the following sources:
 - (a) The resources of the applicant business; or
 - (b) The personal resources of the principals of the applicant business.

If some or all of the loan applied for is otherwise available on reasonable terms from any of these sources, the loan application must be reduced or declined.

- (3) The lender must substantiate the factors that prevent the financing from being accomplished without SBA support and retain the explanation in the Small Business Applicant's file.
- (4) Acceptable factors that demonstrate an identifiable weakness in the credit or exceed policy limits of the lender include, among others:
- (i) The business needs a longer maturity than the lender's policy permits (for example, the business needs a loan that is not on a demand basis);
 - (ii) The requested loan exceeds either the lender's legal lending limit or policy limit regarding the amount that it can lend to one customer;
 - (iii) The lender's liquidity depends upon selling the guaranteed portion of the loan on the secondary market;
 - (iv) The collateral does not meet the lender's policy requirements;
 - (v) The lender's policy normally does not allow loans to new businesses or businesses in the applicant's industry; and/or
 - (vi) Any other factors relating to the credit that, in the lender's opinion, cannot be overcome except for the guaranty.
- (5) Unacceptable factors include:
- (i) To address the lender's Community Reinvestment Act (CRA) compliance; or
 - (ii) To refinance debt already on reasonable terms.

- (6) The lender must certify that credit is not otherwise available by signing the Lender Official block on the appropriate application form.
- (7) Utilization of personal resources -- As part of the credit elsewhere test, SBA requires the personal resources of any owner of 20 percent or more of the Small Business Applicant be reviewed. [LINK TO 13 CFR 120.102](#)
 - (i) The rule also applies to each person when the combined ownership of the spouses and dependent children is 20% or more.
 - (ii) The utilization of the personal resources rule does not apply to the business resources of an associate or affiliated business.
 - (iii) Once it is determined that an individual owner is subject to the utilization of personal resources rule, his or her percentage of ownership has no effect on the amount of the required injection.
- (8) Personal Resources of Spouses and Dependent Children
 - (i) The SBA's lending programs qualify as "Special-Purpose Credit Programs" under the Federal Reserve's Regulation B relating to the Equal Credit Opportunity Act (ECOA). This regulation stipulates that information pertaining to the applicant's marital status, sources of personal income, alimony, child support, and spouse's financial resources can be obtained and considered in determining program eligibility. Therefore, the lender has the right to obtain the signature of an applicant's spouse (whether an owner of the business or not) or other person on an application.
 - (ii) Unless there is a legal impediment to access the personal resources of the spouse, such as those held by an independent trustee of an irrevocable trust, the applicant is presumed to have access to the personal resources of his/her spouse and minor children. The personal resources of close relatives (excluding spouse and dependent children), including children above the age of majority, living in the household are not considered to be available to the applicant for injection into the business.
 - (iii) SBA or the lender can require injection of the available personal resources of the individual's minor children.
 - (iv) SBA or the lender cannot require the injection of the spouse's personal resources, but can determine that the applicant is ineligible because of access to personal resources.
- (9) Liquid Assets

- (i) Only liquid assets are subject to being injected into the project. Liquid assets include:
 - (a) cash;
 - (b) certificates of deposit;
 - (c) marketable securities and bonds;
 - (d) cash surrender value of life insurance; and
 - (e) similar assets. Lenders should consider carefully the transfer of assets or other actions of the applicant to avoid compliance with the intent of this provision. At a minimum, liquid assets transferred by applicants within 6 months of application for SBA assistance will not be exempt.

- (ii) Liquid assets do not include:
 - (a) Closely held non-marketable stocks or bonds;
 - (b) Individual retirement accounts (IRAs), 401(k), 403(b), 529 accounts, Keoghs, or other established retirement accounts subject to withdrawal restrictions or penalties; Health Savings Accounts, and other similar assets;
 - (c) Equity in real estate or other fixed assets; or
 - (d) Assets pledged as security on debt obtained over 6 months prior to the loan application. The dollar value of the pledged liquid assets that exceeds the amount of the debt being secured is considered a liquid asset.

(10) Utilization of Personal Resources Rule

- (i) The lender must determine the overall dollar value of the allowable exemption, which is defined as the amount of personal resources that do not have to be injected into the business. The allowable exemption is determined on the basis of the “total financing package.” The total financing package includes the SBA loan, together with any other loans, equity injection, or business funds used or arranged for at the same general time for the same project as the SBA loan.

- (ii) If the total financing package:
 - (a) Is \$250,000 or less, the exemption is two times the total financing package or \$100,000, whichever is greater;
 - (b) Is between \$250,001 and \$500,000, the exemption is one and one-half times the total financing package or \$500,000, whichever is greater; or

(c) Exceeds \$500,000, the exemption is one times the total financing package or \$750,000, whichever is greater.

- (iii) Once the exemption is determined, it is subtracted from the liquid assets. If the result is positive, that amount must be injected into the project.
- (iv) Liquid assets required to be injected into the business under the utilization of personal resources rule cannot be pledged as an alternative to injection.
- (v) SBA or the lender may require additional capitalization beyond that required by the utilization of personal resources rule.

(11) Determining the Amount of the Allowable Exemption

Lenders must use the following procedures to make, as of the date of the loan application, a written determination of the allowable exemption which must be kept in the file, available for SBA's review:

- (i) Carefully review the personal financial statements required from the owners of 20% or more of the equity of the business (including the resources of spouse and dependent children);
- (ii) Determine the value of the liquid assets subject to the rule for each individual; and
- (iii) Subtract the allowable exemption from the liquid assets of each individual subject to the rule (including their immediate family).

Note: A husband and wife and their dependent children are only entitled to one exemption.

(12) Reducing Ownership Interest

Any person subject to the utilization of personal resources rule 6 months prior to the date of the loan application would continue to be subject to the rule even if that person has changed his or her ownership interest to less than 20%.

The only exception to the 6-month rule is when that person completely divests his or her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Small Business Applicant (and any associated Eligible Passive Concern) in any capacity, including being an employee (paid or unpaid).

d. INELIGIBLE TYPES OF BUSINESSES

- (1) To determine if a business is eligible for SBA assistance, the lender must:

- (i) determine the primary business industry of the Small Business Applicant. [LINK TO 13 CFR 121.107](#)
 - (ii) determine whether the Small Business Applicant is one of the types of business listed as ineligible in SBA regulations. [LINK TO 13 CFR 120.110](#)
- (2) SBA may not guarantee a loan to a Small Business Applicant for the benefit of an ineligible affiliated business.
- (3) SBA cannot guarantee a loan to any of the following types of businesses:
- (i) Businesses organized as a non-profit (for-profit subsidiaries are eligible).
 - (ii) Businesses Engaged in Lending
 - (a) SBA cannot guarantee a loan that provides funds to businesses primarily engaged in lending or investment, or to an otherwise eligible business for the purpose of financing investment not related or essential to the business. This prohibits loans to:
 - 1. Banks;
 - 2. Life Insurance Companies (but not independent agents);
 - 3. Finance Companies;
 - 4. Factors;
 - 5. Investment Companies;
 - 6. Bail Bond Companies; and
 - 7. Other businesses whose stock in trade is money and which are engaged in financing.
 - (b) The following are exceptions to this regulation:
 - 1. A pawn shop that provides financing is eligible if more than 50 percent of its income for the previous year was from the sale of merchandise rather than from interest on loans.
 - 2. A business that provides financing in the regular course of its business (such as a business that finances credit sales) is eligible provided not more than 50% of its income is from financing its sales.
 - 3. A mortgage servicing company that disburses loans and sells them within 14 days of loan closing is eligible.

Mortgage companies are eligible when they are primarily engaged in the business of servicing loans. Mortgage companies that make loans and hold them in their portfolio are not eligible.

(iii) Passive Businesses

(a) Apartment buildings are not eligible.

(b) Mini-warehouses, office suites, shopping centers, flea markets, and mobile home parks, are eligible only if they provide sufficient services. Sufficient services shall be deemed to exist when at least 50% of the business's income for the prior year is derived from the services provided.

(c) An ineligible passive business cannot obtain an SBA loan for any purpose, including the purchase or construction of a building for its own use.

(iv) Life Insurance Companies

(a) Life insurance companies are not eligible.

(b) Even if a life insurance agent writes insurance for only one company, he or she may qualify as an eligible independent contractor if the business meets all of the following factors:

1. If the insurance agent is subject to the control or direction of another merely as to the result to be accomplished and not as to the means and methods for accomplishing the result;
2. If the insurance agent hires, supervises and pays employees he or she needs to help perform his or her services;
3. If the insurance agent performs his or her services at his or her own place of business rather than at the company's place of business;
4. If the insurance agent is paid by the job or on a commission basis, rather than by the hour, week or month;
5. If the insurance agent is responsible for paying his or her own business expenses;
6. If the insurance agent provides the significant amount of his or her tools, materials, and other equipment, even if the insurance company provides some forms, manuals, or other materials;
7. If the insurance agent invests in facilities that are used by him or her in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair market value from an unrelated party); and

8. If the insurance agent can realize a profit or incur a loss as a result of his or her services.
- (v) Business Located in a Foreign Country or Owned by Undocumented (Illegal) Aliens
- (a) Businesses are not eligible if the business is:
 1. located in a foreign country with no activities in the United States; or
 2. owned in whole or in part by undocumented (illegal) aliens.
 - (b) Businesses are eligible if the business:
 1. is located in the U.S.;
 2. operates primarily in the U.S.; and
 3. is authorized to operate in the state or territory where they seek SBA financial assistance; OR
 4. makes a significant contribution to the U.S. economy through the:
 - (A) payment of taxes to the U.S.; or
 - (B) use of American products, materials, and labor.
 - (c) The proceeds must be used exclusively for the benefit of the domestic operations. As a result the business and its employees are subject to U.S. and local taxes.
 - (d) Businesses involved in international trade are subject to U.S. trade restrictions.
 - (e) Businesses owned by legal permanent residents are eligible. See Paragraph 3.e. of this Chapter.
- (vi) Businesses Selling Through a Pyramid Plan
- Pyramid or multilevel sales distribution plans are not eligible for SBA assistance.
- (vii) Businesses Engaged in Gambling

- (a) Small businesses that obtain more than one-third of their annual gross income, including rental income, from legal gambling activities are not eligible.
- (b) Small businesses are eligible if they obtain one-third or less of their annual gross income, including rental income, from:
 1. commissions from official State lottery ticket sales under a State license; or
 2. gambling activities licensed and supervised by state authority in those states where the activities are legal.
- (c) If the purpose of the business is gambling, such as a pari-mutuel betting racetrack or a gambling casino, it is not eligible, regardless of the percentage of gross income derived from gambling.

(viii) **Businesses Engaged in any Illegal Activity**

SBA must not approve loans to borrowers that are engaged in illegal activity or who make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the borrower's intended market.

(ix) **Businesses Which Restrict Patronage**

Businesses that restrict patronage for any reason other than capacity are not eligible. For example, a men's only or women's only health club is not eligible.

(x) **Government-Owned Entities, Excluding Native American Tribes**

(a) Municipalities and other political subdivisions are not eligible.

(b) **Special Requirements Applicable to Native American Businesses**

A Native American tribe is a Governmental entity and is not eligible. A small business owned in whole or in part by a Native American tribe is eligible if:

1. it establishes that it is a separate legal entity from the tribe and submits the documents authorizing its existence; and

2. the tribe waives sovereign immunity with respect to the collateral for the loan and collection of the loan from the borrower, OR agrees to a "sue and be sued" clause specifically naming U.S. Federal courts as "courts of competent jurisdiction."

Lenders may seek the advice and assistance of the Bureau of Indian Affairs (BIA) personnel when dealing with loans collateralized by Indian lands held in trust.

(xi) Businesses Engaged in Promoting Religion

- (a) A Small Business Applicant is not eligible if it is principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting.
- (b) A Small Business Applicant is not ineligible merely because it offers religious books, music, ceremonial items and other religious articles for sale. The lender must consider the overall activities and business environment of the Small Business Applicant. SBA has a worksheet to assist with this process. [LINK TO THE Religious Eligibility Worksheet in SOP 70 50 3\)](#)

(xii) Cooperatives

- (a) Consumer and marketing cooperatives are not eligible.
- (b) Producer Cooperatives.

A producer cooperative is eligible if:

1. It is engaged in a business activity;
2. The purpose of the cooperative is to obtain financial benefit for itself as an entity AND its members in their capacity as businesses; and
3. Each member of the cooperative is small.

(xiii) Businesses Engaged in Loan Packaging

A Small Business Applicant that receives more than 1/3 of its gross annual revenue from packaging SBA loans is not eligible.

(xiv) Businesses Owned by Persons of Poor Character or on Probation or Parole

- (a) The SBA cannot provide financial assistance to persons with poor character or on probation or parole.

- (b) An application can be accepted for processing if the individual indicates an arrest record, but was acquitted or the indictment was dismissed and the individual is not incarcerated, on probation or on parole for any offense.
- (c) An individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an applicant is not eligible.
- (d) To determine eligibility under this section, the Agency requires that every proprietor, partner, officer, director, and owner of 20% or more of the Applicant (“Subject Individual”) must be of good character. The completion of an [SBA Form 912, Statement of Personal History \(“912”\), \(LINK TO FORM\)](#) by each Subject Individual is required as part of the character evaluation process. Every person completing a 912 must answer each question fully giving details about any “yes” response. *NOTE: A “yes” is required even when the applicant believes the record is sealed, expunged or otherwise unavailable. (This information must be kept private and confidential.)* **There are no exceptions to or waivers of this policy.**
1. If every Subject Individual answers questions 7, 8 and 9 as “no,” normal loan processing may proceed.
 2. If a Subject Individual answers “yes” to at least one of these three questions, then that individual must go through a background check and character determination unless the charge resulting in a “yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be submitted along with the SBA Form 912.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. Currently, SBA conducts two types of background checks: (1) a Name Check, which requires a search of available records based on a person’s name and social security number (SSN); and (2) a Fingerprint Check, which searches available records based on the person’s name and SSN plus a complete and legibly written FD-258 Fingerprint Card.
 3. If there is a “yes” response, the lender must take the following actions:

(A) The lender must obtain a complete understanding of the reason(s) for the “yes” response and when necessary for clarification, the lender must obtain additional written explanation from the Subject Individual to include the following:

(I) Date of the offense(s) including month, day and year. If the actual day is not known, include the month and year.

(II) City and state **or** the county and state where the offense(s) occurred.

(III) The specific charge(s) [DUI, assault, forgery, robbery etc.] **AND** the level of the charge; (either a misdemeanor or felony).

(IV) Disposition of the charge(s). This may include but is not limited to the following:

1. Any fines imposed;
2. Any class or workshop to be attended;
3. Any jail time served;
4. If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation);
or
5. Any other court conditions (such as registration as a sex offender).

(V) Assuming the court’s conditions have been met, the applicant should state that all conditions of the court have been satisfied in his explanation and provide court documents evidencing that these conditions were met.

(VI) The borrower’s dated signature on the explanation.

(B) When an applicant discloses a felony arrest a Fingerprint Check is required and a Fingerprint Card (FD 258) must be completed. Local law enforcement agencies will usually assist the individual with the fingerprinting. Lenders may obtain the FD 258 from their local District Office.

(C) When an applicant discloses a past offense(s) that was classified as a misdemeanor, the background check may either be a Name Check or a Fingerprint Check.

(D) Regardless of whether the past offense was a felony or a misdemeanor, the lender must submit the complete

912 package to the local field office before loan processing can proceed. Copies of the documents are to be submitted to the field office. The lender must retain the originals in its loan file. SBA recommends that the lender submit the 912 package as soon as possible.

(E) The field office will send the complete 912 package to the Office of Inspector General/Office of Security Operations (OIG/OSO) at SBA Headquarters. When a 912 with a “yes” response is forwarded to the OIG/OSO, lender personnel must not make any statement to anyone outside the SBA about action being taken regarding the 912 information submitted. Exceptions are only permitted when in compliance with the provisions of the Privacy Act. (See [SOP 40 04](#). [ADD LINK TO SOP](#))

4. Decisions Available to the SBA When Processing a 912 with a “yes” response:

- (A) Clear the 912 to permit processing, approval and disbursement;
- (I) SBA will clear a positive 912 for processing and waive the fingerprint requirement only when the reason for the “yes” response meets the following criteria:

A single minor (misdemeanor) offense or arrest;

OR

Up to three minor offenses (arrests and/or convictions at one time or separately), concluded more than 10 years prior to the date of the SBA application;

OR

A Prior Offense cleared by the Director, Office of Financial Assistance (D/FA) or designee on a previous application where no other offenses have occurred since the previous application was cleared by the D/FA or designee. **This clearance is only valid for six months from date of issuance.**

NOTE: *Only the D/FA or designee may authorize the processing center or lender to process and subsequently disburse a loan when the Form 912 is not cleared.*

(II) *The field office cannot clear felony arrests or convictions for loan processing.*

(III) When the field office receives the completed 912 package and decides to clear it for processing, it will submit the 912 package to the OIG/OSO for a Name Check.

(IV) When the field office clears the 912 and the Name Check corroborates the information on the 912, OIG/OSO will advise the field office. The field office will notify the lender that it can proceed with the loan.

(V) When the Name Check results contradict the disclosure on the 912, or the disclosed criminal history raises a question about the character of the individual, OIG/OSO will refer the matter to the D/FA. If the loan was already processed and approved, the lender shall be notified of the adverse change and directed to immediately cease further loan disbursements and seek immediate repayment of the loan proceeds from the borrower.

(VI) The D/FA or designee can overrule the clearance by the field office.

(VII) The lender is responsible for any funds that are uncollected in the event that the Name Check reveals additional undisclosed offenses or fraud.

(B) Place the processing of the application on hold for further investigation;

(I) The subject individual must submit a Form FD 258, SBA Fingerprint Card and a fingerprint check must be requested; or

(II) A character evaluation/name check must be required.

(III) If additional criminal activity is revealed, information pertaining to the additional criminal activity will be provided to the D/FA or designee who will notify the field office that an adverse condition exists. The processing of the application will remain on hold until the results of a Fingerprint Check are received at which time the application will either proceed or be declined.

(C) Decline the application because the information supplied on the Subject Individual demonstrates a lack of good character.

5. Expedited Processing of a 912 with a “yes” response.

Where an applicant discloses an offense(s) classified as a misdemeanor, the lender has the option of submitting a completed fingerprint card along with the 912, regardless of the type of offense disclosed. When OIG/OSO receives a 912 package that includes a fingerprint card, it will automatically request a Fingerprint Check from the fingerprint section of the Federal Bureau of Investigation (FBI) even if the offense(s) disclosed on the 912 is a misdemeanor. If OIG/OSO receives the 912 without a fingerprint card, OIG/OSO will request an FBI Name Check unless the offense indicated is a felony, in which case the Form 912 will be returned so that the fingerprint card can be completed. It is anticipated that a 912 submitted with a fingerprint card will produce a more expeditious character determination.

6. 912 Decision Appeals

SBA will consider a request submitted by an applicant for reconsideration of a determination of lack of good character. Factors that contribute to a favorable reconsideration include: (1) additional information provided by the applicant that satisfactorily explains the circumstances of the prior offense(s); and/or (2) the passage of time between the date of the prior offense(s) and the date of application, during which the applicant has not committed additional offenses and has generally led a responsible life and made a contribution to the community.

The applicant should send a written request for reconsideration through the lender to: **Director, Office of Financial Assistance, U.S. Small Business Administration, Office of Financial Assistance, 409 3rd Street, SW, Suite 8300, Washington, DC 20416.**

7. CLP and **PLP 912 Procedures.** If, in connection with a CLP or a PLP loan, a Subject Individual answers question 7, 8 or 9 with “yes,” then that individual must go through a background check and character determination unless the

charge resulting in a “yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be submitted along with the 912.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. The application may be processed using CLP or PLP procedures, as applicable, after the lender has requested and received written clearance of the character issue(s) from the district office.

To request clearance from the district office, the lender must submit a cover letter with the lender’s contact information, a brief description of the business along with SBA Form 912 and any required attachments.

8. SBA Express and Patriot Express 912 Procedures.

Generally, loans submitted under SBA Express and Patriot Express may be made only if questions 1, 2, and 3 on SBA Form 1919 are all answered “no.” If one or more of these questions is answered “Yes,” the lender may elect to process, submit, and disburse the loan under SBA Express and Patriot Express, only when the subject’s affirmative activity meets the criteria set forth above for SBA to clear an application for processing (a single minor offense, up to three minor offenses more than 10 years prior to the date of the application, or a prior offense that was cleared by the D/FA or designee on a previous application and no additional offenses have occurred since the date the prior application was cleared).

In using this authority, SBA Express and Patriot Express lenders must secure and submit a completed 912 to SBA using the following procedure:

- (A) The Subject Individual must complete and sign the 912. The lender must ensure that the following items are completed correctly, as incomplete Forms 912 will be returned to the lender:
 - (I) Block 2: Ensure that the correct date of birth is noted;
 - (II) Block 3: Social Security number;
 - (III) Block 7: Applicant must provide specific information about each charge including the date, city and state where charged;
 - (IV) Block 8: Applicant must be very specific on the disposition of each charge. For example, if probation was the disposition, specify for which

charge(s) and for how long;

(V) Signature Block: Must be signed and dated within 90 days of the submission to SBA;

- (B) Lender must insert the SBA Servicing Office that will service the loan after it is processed by the SLPC;
- (C) Include the lender's address, telephone number, and contact person in block 9;
- (D) Lender must check, sign, and date the "Fingerprints waived" box in block 10 and the "Clear For Processing" box in block 11;
- (E) Lender must submit one copy of the 912 to the SBA Clearance Official and retain the original copy of the 912 in the loan file.

NOTE: An SBA Express or Patriot Express lender choosing not to exercise its authority to clear a 912 with a "yes" response must submit a standard 7(a) loan application to the Standard 7(a) Loan Guaranty Processing Center to be processed under standard 7(a) loan procedures.

9. For all Form 912s submitted, SBA's OIG/OSO will request a "Name Check" (a/k/a background check) from the FBI. Note: Incomplete Form 912s cannot be processed and will be returned to the lender. The lender must submit a corrected 912 before processing can continue.

If the information from the FBI Name Check is consistent with the information provided on the 912, OIG/OSO will notify the appropriate SBA Servicing Office, and the SBA Servicing Office will document its file and notify the lender that the applicant is eligible on a character basis for an SBA loan. The lender must document its loan file with SBA's notification that the applicant is eligible.

If the information from the FBI Name Check contradicts the information provided on the SBA Form 912, OIG/OSO will notify OFA and the D/FA or designee will evaluate the discrepancy and determine if the discrepancy warrants a denial of the loan on the basis of character. If the loan warrants a denial, the D/FA or designee will notify the SBA Servicing Office and the SBA Servicing Office will notify the lender that the applicant is not eligible on a character basis. If the loan has been disbursed, the Agency will cancel its guaranty.

10. Reducing Ownership to Avoid Submitting Form 912

A Subject Individual may not reduce his or her ownership in a Small Business Applicant for the purpose of avoiding completion of Form 912. Anyone who would have been considered a Subject Individual within 6 months prior to the application must complete Form 912. The only exception to the 6-month rule is when a Subject Individual completely divests his or her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Small Business Applicant (and any associated Eligible Passive Concern) in any capacity, including being an employee (paid or unpaid).

(xv) Equity Interest by Lender or Associates in Applicant Concern

A lender or any of its associates may not obtain an equity position, either directly or indirectly, in the Small Business Applicant. The only exception is when the Associate of the lender is a Small Business Investment Company (SBIC), in which case the requirements of [13 CFR 120.104 \(ADD LINK\)](#) apply. See also [13 CFR 120.140 \(ADD LINK\)](#) for a list of ethical requirements that apply to lenders.

(xvi) Businesses Providing Prurient Sexual Material

A business is not eligible for SBA assistance if:

- (a) It presents live or recorded performances of a prurient sexual nature; or
- (b) It derives more than 5% of its gross revenue, directly or indirectly, through the sale of products, services or the presentation of any depictions or displays of a prurient sexual nature.

By law SBA must consider the public interest in granting or denying financial assistance. The SBA has determined that financing lawful activities of a prurient sexual nature is not in the public interest. The lender must consider whether the nature and extent of the sexual component causes it, in view of community standards, to be prurient.

(xvii) Prior Loss to the Government

- (a) Unless waived by SBA for good cause, SBA cannot provide assistance to a Small Business Applicant:

1. that has previously defaulted on a Federal loan or Federally assisted financing, resulting in a loss to the Federal government; or
 2. owned or controlled by a business or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which defaulted) and caused the Federal government to sustain a loss.
- (b) A compromise agreement shall also be considered a loss.
- (c) “Federal loan or Federally assisted financing” includes any loan made directly or guaranteed/insured by any Federal agency, any unreimbursed advance payments under 8(a) or similar programs operated by any Federal agency, federally-backed student loans and disaster loans (excluding any amount forgiven as a condition of the loan at the time of origination).
- (d) “Loss” means the dollar amount of any deficiency which has been incurred and recognized by a Federal agency after it has concluded its write-off and/or close-out procedures for the particular account.
- (e) The procedures for obtaining a waiver of this regulation.
1. The D/FA or designee has the authority to waive the application of this regulation when it can be shown that there is “good cause.” When there are compelling circumstances, the lender shall send a written request for a waiver to the SBA office processing the loan. The processing office will forward the request to SBA Headquarters for a final decision.
 2. The lender must explain:
 - (A) the circumstances surrounding the prior loss and the relationship of the applicant to the entity causing the loss; and
 - (B) the connection between the individuals associated with the prior loss and the individuals requesting the new assistance.
- (f) This rule applies to:
1. The Small Business Applicant;
 2. Any business in which a principal of the Small Business Applicant was also a principal in the entity that caused the loss; or

3. Any business controlled by the same person(s) who controlled the entity that caused the loss.
- (g) “Principal” means any person who has at least a 20% ownership interest in a business concern, whether direct or indirect.
 - (h) Unpaid/delinquent taxes are not covered under the prior loss rule.
 - (i) The loss which Federal Deposit Insurance Corporation (FDIC) incurs when they sell a loan off for a discount is not covered by the prior loss rule.
 - (j) If the debt is fully satisfied, the application can be processed without a waiver from the D/FA

(xviii) Businesses primarily engaged in political or lobbying activities

A Small Business Applicant that derives over 50 percent of its gross annual revenue from political or lobbying activities is not eligible.

(xix). Speculation

- (a) Speculative businesses are not eligible. This prohibits loans to a Small Business Applicant for:
 1. the sole purpose of purchasing and holding an item until the market price increases; or
 2. engaging in a risky business for the chance of an unusually large profit.
- (b) Speculative businesses include:
 1. Wildcatting in oil;
 2. Dealing in stocks, bonds, commodity futures, and other financial instruments;
 3. Mining gold or silver in other than established fields; and
 4. Building homes for future sale.

Note: Construction of homes for future sale with no sales contract in place (spec homes) is eligible under the Builder’s CAPLine program. [LINK TO 13 CFR120.391](#)

- (c) Non-speculative businesses which are eligible include:

1. A business, such as a grain elevator, that uses a commodity contract to lock in a price;
2. A farmer who uses a commodity contract to lock in the sale price of his or her harvest;
3. A business engaged in drilling for oil in established fields; and
4. A business engaged in building a home under contract with an identified purchaser.

e. **BUSINESSES OWNED BY NON-US CITIZENS**

SBA can provide financial assistance to businesses that are at least 51 % owned and controlled by persons who are not citizens of the US provided the persons are lawfully in the US. The processing procedures and the terms and conditions will vary, depending upon the status of the owners as assigned by the United States Citizenship and Immigration Services (USCIS).

- (1) Businesses owned by Naturalized Citizens are eligible and the naturalized citizens are not subject to any special restrictions or requirements. If an individual's SBA Form 912 reflects s/he is a U.S. Citizen no further verification of status is required.
- (2) Businesses owned by Legal Permanent Residents (LPRs) are eligible. Legal Permanent Residents (LPR) are persons who may live and work in the U.S. for life unless their status is revoked through an administrative hearing.
 - (i) The USCIS Form I-551 (551) is evidence of LPR status. USCIS has two versions of the 551:
 - (a) Resident Alien Card; and
 - (b) Permanent Resident Card. (This is the most recent version.)
 - (ii) USCIS requires replacement of the 551 every 10 years to update the photograph and security measures. Replacements may also be necessary if the 551 is lost, the individual changes name, etc. Replacement of the 551 may take more than a year. LPR status is not in jeopardy merely because the 551 document lapses.

Acceptable forms of evidence when the 551 has been submitted to USCIS for replacement or has an expired date include the following:

- (a) A temporary stamp by USCIS on the individual's passport that says, "Processed for I-551 – Temporary Evidence of Lawful Permanent Residence;"
 - (b) USCIS Form I-327, "Re-entry Permit," issued to LPRs in lieu of a visa, which is valid for only 2 years;
 - (c) USCIS Form I-797, "Notice of Action," a receipt issued to an alien when the 551 is lost or surrendered for renewal or changes (e.g., a name change because of marriage or divorce).
 - (d) SBA requires that the 551 or an acceptable substitute must be current at the time it is submitted with an application or it will be returned and not processed. PLP, SBAExpress and Pilot Loan Program lenders must have a copy of the current 551 or acceptable substitute prior to requesting a loan number.
- (3) Businesses owned by the following persons may be eligible:
- (i) Non-immigrant aliens residing in the US. Non-immigrant (documented) aliens are persons who are admitted to the U.S. for a specific purpose(s) and for a temporary period of time with a current/valid USCIS document, such as a visa.
 - (a) They must have current/valid USCIS documentation permitting them to reside in the U.S. legally; and
 - (b) The documentation/status of each alien must be verified with USCIS.
 - (ii) Asylees and refugees (persons who receive temporary refuge in the United States) with LPR status.
- (4) Businesses owned by aliens who are subject to the Immigration Reform and Control Act of 1986 (IRCA) might be eligible under limited circumstances.
- (i) IRCA vests USCIS with the authority to grant illegal aliens lawful temporary resident status. IRCA prohibits financial assistance to businesses owned 20 percent or more by such individuals for a period of 5 years after USCIS grants lawful temporary resident status.
 - (ii) This disqualification does not apply to Cuban or Haitian entrants or alien entrants subject to IRCA who are aged, blind or disabled. The definition of blind or disabled is equivalent to SBA's criteria for determining eligibility for assistance to any small business owned by disabled individuals.

- (iii) All applicants self-certify that they are eligible under IRCA by signing SBA Form 4 or SBA Form 1919, which includes the “Statements Required by Law and Executive Orders.” This includes a certification that IRCA does not apply to them.
- (5) Documentation to evidence and verify an alien’s status.
 - (i) At time of application:
 - (a) SBA Form 912, “Statement of Personal History,” [ADD LINK TO FORM](#) requires that aliens provide their alien registration number.
 - (b) Lenders must obtain a copy of the individual’s USCIS documentation and maintain in the case file.
 - (c) The lender submits a USCIS Form G-845 (845), “Document Verification Request,” with supporting information to the nearest USCIS office. USCIS releases information about the status of an alien to lenders or other non-governmental entities ONLY when a signed and dated authorization from the alien is attached to and submitted with the 845 on that alien providing name, address and date of birth.
 - 1. USCIS accepts either of the following authorization statements:
 - (A) I authorize the U.S. Customs and Immigration Service to release information regarding my immigration status to [name of lender], because I am applying for a U.S. Small Business Administration loan.
 - (B) I authorize the U.S. Customs and Immigration Service to release alien verification information about me to [name of lender], because I am applying for a U.S. Small Business Administration loan.
 - 2. USCIS requires a “wet” signature on all Freedom of Information Act requests. Therefore, the Form G-845 and the statement authorizing USCIS to release the status information to the lender should never be faxed to an USCIS office.
 - 3. The authorization statement must not be on SBA or lender stationery.
 - (ii) Prior to disbursement, lenders must verify the USCIS status of each alien who is required to submit USCIS documents. The lender must document the findings in the loan file. This applies in all cases, regardless of the processing method or loan program.
- (6) Businesses owned by Foreign Nationals or Foreign Entities may be eligible.

Businesses listed in Appendix 1 of the SOP, “Restrictions on Foreign Controlled Enterprises,” that are owned and managed by Foreign Nationals, Foreign Entities

or Non-Immigrant Aliens are not eligible. If a business is not listed in Appendix 1 it may be eligible.

(7) Additional requirements for eligibility of businesses owned by non-citizens other than LPRs:

(a) The application must contain assurance that management is expected to continue in place indefinitely and have U.S. citizenship or verified LPR status.

1. Management must have operated the business for at least 1 year prior to the application date. (This requirement prevents financial assistance to “start-up” businesses owned by aliens who do not have LPR status.)

2. The personal guaranty of management must be considered as a loan condition and if not required, the decision must be explained in the loan file.

(b) The applicant must pledge collateral within the jurisdiction of the U.S. sufficient to pay the loan in full at any time during its life. If the small business applicant owned by foreign nationals, foreign entities or non-immigrant aliens residing in the US does not have sufficient collateral, the applicant is not eligible for a guaranteed loan.

f. THE ELIGIBLE PASSIVE COMPANY RULE

The Eligible Passive Company (EPC) rule is an exception to SBA regulations that prohibit financing assets which are held for their passive income. Because the EPC rule is an exception, it is interpreted strictly.

(1) Conditions necessary to qualify as an EPC. [LINK TO 13 CFR 120.111](#)

(i) Under SBA regulations, an EPC can take any legal form. A tenancy in common is a form of legal ownership and does not create a new or separate legal entity. If authorized by state law, legal entities can be a tenant in common with individuals.

(a) There may be several individuals or entities in a tenancy in common, but the tenancy in common is considered 1 EPC.

(b) The loan documents must be signed by all of the members of the tenancy in common, with authorized individuals signing for the entity members.

(ii) An EPC must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it

leases to one or more Operating Companies (OC) for conducting the OC's business.

- (2) Conditions that apply to all legal entities:
- (i) The OC must be an eligible small business; and
 - (ii) The proposed use of proceeds must be an eligible use as if the OC were obtaining the financing directly;
 - (iii) The EPC (with the exception of a trust) and the OCs each must be small under the appropriate size standard of 13 CFR Part 121.
 - (iv) The EPC must lease the project property directly to the OC and:
 - (a) The lease must be in writing;
 - (b) The lease must be subordinated to the SBA's mortgage, trust deed lien, or security interest on the property;
 - (c) The lease must have a term, including options to renew exercisable solely by the OC, at least equal to the term of the loan;
 - (d) The EPC (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease. An assignment of the lease is only required when necessary to perfect the assignment of rents or to enable lender to exercise the tenant's rights upon default;
 - (e) The rent or lease payments cannot exceed the amount necessary to make the loan payment to the lender, and an additional amount to cover the EPC's expenses of holding the property, such as maintenance, insurance and property taxes; and
 - (f) The OC must lease 100% of the property from the EPC, but it can sublease a portion of the property under the rules governing occupancy requirements with which all SBA borrowers must comply.
 - (v) The OC must be a guarantor or a co-borrower on the loan. The OC must be a co-borrower if it receives any loan proceeds as working capital or for the purchase of assets.
 - (vi) Each holder of an ownership interest constituting at least 20% of either the EPC or the OC must:

- (a) guarantee the loan (if the holder is a trust, then the Trustee shall execute the guarantee on behalf of the trust); and
 - (b) comply with the Utilization of Personal Resource Rule. See Paragraph 3.c.(7)-(11) of this Chapter.
- (3) Conditions that apply to trusts.
 - (i) The eligibility status of the Trustor will determine trust eligibility.
 - (ii) All donors to the trust will be deemed to have Trustor status for eligibility purpose.
 - (iii) The Trustee must warrant and certify that the trust will not be revoked or substantially amended for the term of the loan without the prior written consent of SBA.
 - (iv) The Trustor must guarantee the loan.
 - (a) If an Employee Stock Ownership Plan trust agreement prohibits it from being a guarantor or co-borrower, then it cannot use the EPC form of borrowing.
 - (b) Beneficiaries usually do not have any control over the actions of the trust and, therefore, do not have to meet the guaranty and personal resource requirements.
 - (v) The Trustee shall certify in writing to SBA that:
 - (a) The Trustee has authority to act;
 - (b) The trust has authority to borrow funds, pledge trust assets, and lease the property to the OC;
 - (c) The Trustee has provided accurate, pertinent language from the trust agreement confirming the above; and
 - (d) The Trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.
 - (vi) The trust itself does not have to be small by SBA size standards.
- (4) Size Determinations under the EPC rule
 - (i) If the EPC and the OC are affiliated the two companies are combined for determining size.

- (a) If there is only one OC, use the OC's code.
- (b) If there are multiple, unaffiliated OCs, use the NAICS code pertaining to the portion of the business that derives the most revenue.
- (c) If the multiple OCs are affiliated, then use the rules detailed in [13 CFR 121.107 \(ADD LINK\)](#) for determining the primary industry of affiliated businesses. The NAICS Code of the primary industry of the OC shall be the identifying NAICS Code.
- (ii) If the EPC and the OC are not affiliated, each entity must be small under the size requirement for its particular industry.
- (iii) The existence of a lease between the EPC and the OC does not, in and of itself, create an affiliation, even if the EPC and OC are co-borrowers.
- (iv) An EPC (including a trust) may engage in a business activity other than leasing the property to the OC.
- (5) Multiple OCs can be separately owned.
- (6) Multiple EPCs in one transaction are not permitted.
- (7) When sending data to SBA, use the same NAICS Code that was used to determine size for the Small Business Applicant.
- (8) Submission of Financial Statements by the EPC and the OC
 - (i) Both the EPC and each OC must submit Financial Statements. The OC's statements are subject to tax verification.
 - (ii) The regular requirement for an Aging of receivables and payables is waived for EPCs.
 - (iii) For a newly formed EPC, the lender must have in its file a balance sheet for the EPC. This will reflect the assets of the EPC, including those being leased to the OC, and the corresponding liabilities of the EPC, plus the equity. The owner's personal financial statement is not sufficient.

g. **SPECIAL REQUIREMENTS FOR LOANS WHERE COLLATERAL MAY BE INCLUDED IN THE NATIONAL REGISTER OF HISTORIC PLACES**

If a loan will in any way affect properties included or eligible to be included in the National Register of Historic Places, lender must consult with local SBA counsel for further guidance.

h. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR PILOT LOAN PROGRAMS

(1) Patriot Express Pilot Loan Program

- (i) Eligibility for Patriot Express will be limited to businesses that meet SBA's standard eligibility requirements discussed above **and** that are 51% or more owned and controlled by an individual or individuals in one or more of the following groups:
- (a) Veterans (other than dishonorably discharged);
 - (b) Service-Disabled Veterans;
 - (c) Active Duty Military service member participating in the military's Transition Assistance Program (TAP), which is applicable to potential retirees within 24 months of separation and to discharging Active Duty members within 12 months of discharge;
 - (d) Reservists and National Guard members;
 - (e) Current spouse of any Veteran, any Active Duty service member, or any Reservist or National Guard member; widowed spouse of a service member who died while in service; or widowed spouse of a veteran who died of a service-connected disability.

Eligibility for Reservists and National Guard members is limited to current members of the Reserve or Guard (and their current spouses). Former Reservists and National Guard members (and their spouses) are not eligible, unless they qualify from active duty as Veterans.

- (ii) Lenders must document in their loan file a borrower's eligibility for Patriot Express using the following DOD/DVA documentation, including the 51% ownership by the above, and must present copies of that documentation with any request to SBA to purchase:
- (a) **Veteran:** Certified copy of a DD Form 214, which is provided for other than dishonorably discharged veterans.
 - (b) **Service-Disabled Veteran:** Certified copy of the DD 214 or documentation from the DVA that the veteran has been determined as having a service-connected disability.
 - (c) **Service Member:** DOD photo card (Geneva Convention Identification Card) and Form DD 2648 (active duty service member) or Form 2648-1 (reserve component member).
 - (d) **Transitioning Active Duty Military Member:** DD Form 2, "U.S. Armed Forces Identification Card (Active)," or DD Form 2, "Armed Forces of the United States Geneva Conventions Identification Card (Active)" and, DD Form 2648 (Active Duty Military member) or DD Form 2648-1 (Reserve Component member).

- (e) **Reservists and National Guard:** DD Form 2, Armed Forces of the United States Identification Card (Reserve).
- (f) **Current Spouse of Veteran:** The veteran's Form DD 214 and evidence of status as a current spouse.
- (g) **Current Spouse of Transitioning Active Duty Military Member or Current Reservist/National Guard Member:** DD Form 1173, Department of Defense Guard Reserve Family Member Identification Card and evidence of status as the current spouse.
- (h) **Widow of Active Duty Service Member who died in service or Widowed Spouse of Veteran who died of a service connected disability:** Documentation from DOD or from DVA clearly showing this to be the case.

- (iii) Patriot Express is a streamlined loan initiative, so complex loans or unusual situations/issues are generally not eligible and should be processed through standard 7(a) loan processing.

(2) Export Express Pilot Loan Program

- (i) Eligibility for Export Express will be limited to businesses that meet SBA's standard eligibility requirements discussed above **and** that have been in operation, although not necessarily in exporting, for at least 12 full months.
- (ii) Small Business Applicants with operations, facilities or offices overseas, other than those strictly associated with the marketing and/or distribution of products/services exported from the U.S., are not eligible for Export Express, although they may be eligible for other SBA 7(a) financial assistance.

(3) Community Express Pilot Loan Program

[RESERVED]

i. ADDITIONAL ELIGIBILITY REQUIREMENT FOR SBLCs

An SBLC may not make a loan to a Small Business Applicant that has received assistance from an affiliated SBIC. [LINK TO 13 CFR 120.474](#)

j. ADDITIONAL ELIGIBILITY REQUIREMENT FOR EWCP

- (1) Eligibility for EWCP will be limited to businesses that meet SBA's standard eligibility requirements discussed above **and** that have a history of at least 12 full months of operations prior to filing an application.

- (2) The SBA Approving Official may waive the 12 month requirement, based upon demonstrated export expertise and previous business experience. The justification and recommendation for waiver must be included in the loan officer's report.
- (3) Export management companies (EMC) or export trading companies (ETC) may use this program only if the EMC or ETC takes title to the goods or services being exported. EMCs or ETCs which have any bank ownership are ineligible for the EWCP loan program.

k. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR CAPLINES

- (1) To be eligible for a Seasonal CAPLine, the applicant must qualify under standard 7(a) requirements and:
 - (i) Have been in operation for at least 12 calendar months; and
 - (ii) Be able to demonstrate a definite pattern of seasonal activity.
- (2) To be eligible for a Contractor's CAPLine, the applicant must qualify under standard 7(a) requirements and:
 - (i) be able to demonstrate an ability to operate profitably based upon the prior completion of similar contracts;
 - (ii) Possess the overall ability to bid, accurately project costs, and perform the specific type of work required by the contract(s); and
 - (iii) Have the financial capacity and technical expertise to complete the contract on time and at a profit.
- (3) To be eligible for a Builder's CAPLine (ADD LINK TO 13 CFR 120.391 THROUGH 120.394), the applicant must qualify under standard 7(a) requirements and:
 - (i) Be construction contractors or homebuilders under NAICS codes 236220 or 236116 with a demonstrated managerial and technical ability in profitable construction or renovation;
 - (ii) Must either perform the construction/renovation work or manage the job with at least one supervisory employee on the job site during the entire construction phase;
 - (iii) Renovations must be "prompt and significant." Construction must begin within a reasonable time after loan approval and the cost of renovation must equal or exceed one-third (1/3) of the purchase price of the property. The cost of renovation of buildings already owned by the applicant must equal or

exceed one-third (1/3) of the fair market value at the time of loan application;
and

- (iv) Have demonstrated a successful performance record in bidding and completing construction/renovation at a profit within the estimated construction period, are able to demonstrate prior prompt payments to suppliers and subcontractors, and the prior successful performance must have been of comparable type and size to the proposed project. (Prior experience in single family construction is not comparable to high-rise apartment construction);
- (4) To be eligible for a Standard Asset Based CAPLine, the applicant must qualify under standard 7(a) requirements and demonstrate the need for a short term revolving line of credit.
- (5) To be eligible for a Small Asset Based CAPLine, the applicant must qualify under standard 7(a) requirements and:
 - (i) demonstrate the need for a short term revolving line of credit; and
 - (ii) demonstrate the ability to repay the requested amount utilizing internally generated cash flow over no more than 7 years. If such repayment cannot be demonstrated, the monitoring and examination requirements of the Standard Asset Based CAPLines will apply, regardless of the dollar amount of the loan.

4. ELIGIBLE USES OF LOAN PROCEEDS

a. SBA guaranteed loan proceeds may be used to:

- (1) Acquire Land and/or purchase, construct or renovate buildings;
- (2) Improve a site (e.g. grading, streets, parking lots, landscaping), including up to 5 percent of the loan amount for community improvements such as curbs and sidewalks;
- (3) Acquire and install fixed assets.
- (4) Inventory;
- (5) Supplies;
- (6) Raw Materials;
- (7) Working Capital; or
- (8) Refinancing.

- b. Loan proceeds may not be used for any of the following purposes (including the replacement of funds used or borrowed for any such purpose):
- (1) Payments to an owner or Associate ([LINK to 13 CFR120.10 \(definition of Associate\) and to 120.130\(a\)](#)), except for compensation for services actually rendered at a fair and reasonable rate;
 - (2) Refinancing debt owed to an SBIC;
 - (3) Floorplan financing;
 - (4) Investments in real or personal property acquired and held primarily for sale, lease or investment.
 - (5) Payment of Delinquent Taxes.
 - (i) Loan proceeds must not be used to pay delinquent IRS withholding taxes, sales taxes or other funds payable for the benefit of others.
 - (ii) Payment of delinquent income taxes may be considered by SBA on a case-by-case basis the same as other delinquent accounts.
- c. Debt Refinancing
- (1) SBA guaranteed loan proceeds may not be used to refinance debt originally used to finance a loan purpose that is ineligible for SBA financing.
 - (2) SBA guaranteed loan proceeds may not be used to refinance debt that is on reasonable terms. Lender must certify that the debt refinanced is not on reasonable terms.
 - (3) SBA has determined the following credit terms are unreasonable:
 - (i) any debt structured with a demand note or balloon payment;
 - (ii) any debt where the loan payment exceeds the Small Business Applicant's ability to pay;
 - (iii) any debt with an interest rate that is significantly above the market rate;
 - (iv) credit card debt;
 - (v) interest only term debt (interest only lines of credit are not considered unreasonable);
 - (vi) debt that was overcollateralized at inception--(the SBA guaranteed loan must meet SBA collateral requirements)

- (4) When long term debt is refinanced, the new installment amount must be at least 20% less than the existing installment amount.
- (5) The lender's loan file must include documentation that addresses the following issues when refinancing debt:
 - (i) Why was the debt incurred?
 - (ii) Has over-obligated or imprudent borrowing necessitated a major restructuring of the debt?
 - (iii) Is the present debt already on reasonable terms?
 - (iv) How will the new loan improve the financial condition of the Small Business Applicant?
 - (v) Does the refinancing include payments to creditors in a position to sustain a loss due to either an inadequate collateral position or low or deficit net worth?
 - (vi) Would the lender/SBA be likely to sustain part or all of the same loss by refinancing the debt or will additional collateral or altered terms protect the interest of the taxpayer?
 - (vii) What portion of the total loan does the refinancing constitute?
 - (viii) If credit card debt, for what business purpose was the credit card debt incurred?
- (6) Refinancing Same Institution Debt
 - (i) When a lender seeks to use SBA guaranteed loan proceeds to refinance its own debt, it must include a transcript in the loan file and certify in writing, on the 4-I or otherwise, that the debt to be refinanced is, and has been, current for the last 36 months.
 - (a) Current means that a required payment has not remained unpaid for more than 29 days. A loan which includes a payment unpaid for 30 days, subsequently deferred, was not current on that 30th day and is not eligible for refinancing.
 - (b) A loan that has matured and not been paid within 29 days of the maturity date is not current and is not eligible for refinancing.
 - (c) If a lender wants to refinance debt that has not always been current, approval of the D/FA or designee is required.
 - (ii) Applications that include the refinancing of same institution debt may not be processed using PLP procedures.
- (7) Refinancing an SBA-Guaranteed Loan

Refinancing an existing SBA debt is permissible provided the conditions of the previous two paragraphs and those below are satisfied:

- (i) Procedure to refinance an SBA-guaranteed loan:
 - (a) Contact the lender holding the existing SBA-guaranteed loan and verify that the lender has declined to approve a second loan and the lender is either unwilling or unable to modify the current payment schedule.
 - (b) Document the conversation in the case file, recording the date, time and person with whom you spoke, along with a short summary of the conversation.

- (ii) Procedure to refinance a same institution SBA-guaranteed loan:
 - (a) A lender may refinance one of its own SBA-guaranteed loans only if it is unable to modify the terms of the existing loan because a secondary market investor will not agree to modified terms.
 - (b) These applications may not be processed PLP, they must be processed in the Standard 7(a) Loan Processing Center.

- (iii) Refinancing under SBA Express
 - (a) A lender may refinance an existing non-SBA guaranteed loan or borrower debt from another lender if:
 - (II) The existing loan no longer meets the needs of the applicant (for example if the current loan is a term loan and a revolver is needed); and
 - (III) The new loan meets the SBA's 20% increase in cash flow requirement, as applicable (see Paragraph c.(3) above).
 - (b) Under SBA Express, a lender may refinance its own debt to the applicant if:
 - (1) items (a)(1) and (a)(2) above are met;
 - (2) the debt has been current (no payment beyond 29 days past due) for at least the last 36 months; and
 - (3) the lender's exposure to the applicant will not be reduced.
 - (c) Lenders must avoid any circumstances that could create a possible conflict of interest. Also, in refinancing debt, particularly credit card debt, lenders must take reasonable steps to ensure applicants are aware and certify (SBA Form 1919, Borrower's Information Form, includes such a certification) that refinancing comprises only business related debt.

(d) Existing SBA-guaranteed loans may not be refinanced under SBA Express. The only exception is if the transaction is the purchase of an existing business that has an existing SBA loan that is not with the requesting SBA Express lender.

(iv) Refinancing Under Patriot Express

The lender may not make a Patriot Express loan which reduces its existing credit exposure for any borrower, except in cases where an interim loan(s) has been made for other than real estate construction purposes to the borrower which was approved by the lender within 90 days of receipt of the issuance of a subsequent SBA loan number.

(v) Refinancing Under CAPLines

(a) CAPLines may refinance existing short term notes as long as:

- (1) The refinanced portion does not include any term debt or permanent working capital; and
- (2) It does not put SBA in a position to sustain a loss which the existing lender is presently facing.

(b) Additional documentation required:

- (1) A copy of the note(s) being refinanced; and
- (2) A copy of the transcript of account.

(c) If the debt to be refinanced was not being repaid in accordance with the terms of the note, the debt should be refinanced on a term, rather than revolving basis.

(8) Paying off seller debt to effect a change of ownership is not a refinancing

- (i) Paying off seller debt to effect a change of ownership is considered to be for the purchase of a business, not the refinancing of any existing debts.
- (ii) If the existing debt is SBA guaranteed, PLP loan processing procedures may not be used. These applications must be processed in the Standard 7(a) Loan Processing Center. The option to assume the existing SBA debt should be offered to the buyer.

(9) Other conditions that apply to debt refinancing

- (i) A 7(a) loan may not be used to refinance a debt owed to an SBIC.
- (ii) The third party financing for an existing 504 project cannot be refinanced with a 7(a) loan without the approval of the D/FA.

- (iii) The SBA loan proceeds may be used to reimburse interim advances (such advances are made at the lender's own risk) made by a lender or an affiliate of the lender as long as the interim advances reasonably comply with the terms of the SBA Authorization. The lender does not have to notify SBA of an interim loan.
- (iv) The payment of trade payables is not considered to be debt repayment.
- (v) The Authorization must include:
 - (a) an itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid \$10,000 or more; and/or
 - (b) the loan number and dollar amount of any existing SBA debt refinancing.
- d. Leasing part of a building acquired with loan proceeds [LINK TO 13 CFR 120.131](#)
- (1) Amount of rentable property that can be leased:
 - (i) For an existing building, a small business must occupy 51% of the rentable property and may lease up to 49%; and
 - (ii) For new construction, a small business must occupy 60% of the rentable property, may permanently lease up to 20% and temporarily lease an additional 20% with the intention of using some of the additional 20% within three years and all of it within 10 years.
 - (iii) An EPC must lease 100% of the rentable property to an OC. The OC must follow items (i) and (ii) above.
 - (iv) Circumstances may justify allowing the SBC a period of time after closing of the SBA loan to comply with the above occupancy requirements. For example, a pre-existing lease may have a few more months to run. In no case may the small business have more than 1 year to meet occupancy requirements.
- (2) "Rentable Property" is the total square footage of all buildings or facilities used for business operations ([LINK TO 13 CFR 120.10](#)) excluding vertical penetrations (stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors), and including common areas (lobbies, passageways, vestibules, and bathrooms). Rentable property excludes all outside areas.
- (3) Only the D/FA or designee can classify outside areas as usable square footage or common area. All exceptions to this policy must be referred to the Director, Loan Programs Division (D/LPD) for preparation of the analysis and recommendation to the D/FA.
- (4) Loan proceeds may be used for the purchase of an existing building(s) or construction of a new building(s) that includes residential space provided:

- (i) such residential space is 49% or less of the total property; and
- (ii) the owner or the business manager resides in the same building because of the nature or location of the business.

If the projected rental income is included in the repayment analysis, it must be independently substantiated.

e. Change of ownership

(1) *Purchase of a selling owner's interest by the remaining owners.* [LINK TO 13 CFR 120.202](#)

- (i) A Small Business Applicant may use loan proceeds for a change of ownership in the following circumstances:
 - (a) when the Small Business Applicant is purchasing 100% of the ownership interest (either an asset purchase or a stock purchase); or
 - (b) when one (or more) existing owner(s) (the Small Business Applicant) purchases the stock of a selling owner (or owners) resulting in 100% ownership by the owners that are purchasing the stock.
 - (ii) The Small Business Applicant is not eligible if the seller proposes to remain as an officer, director, stockholder or employee of the business. The small business may contract with the seller as a consultant for a transitional period of up to 12 months.
 - (iii) The business must be either the borrower or the co-borrower.
- (2) For a complete change of ownership, the lender must meet the requirements for IRS verification identified in Chapter 5, Paragraph 1.c. of this Subpart.
- (3) If there is business real estate as part of the change of ownership, the real estate cannot be financed separately by a non-SBA guaranteed loan unless the SBA loan receives a shared lien position (*pari passu*) on the real estate with the non-SBA guaranteed loan.
- (4) The following changes of ownership are not eligible:
- (i) a non-owner who is purchasing a portion of the ownership of the business from a selling owner; or
 - (ii) an existing owner who is purchasing the ownership of another existing owner that will not result in 100 percent ownership by the purchaser.

- (5) SBA considers a change of ownership to be a “new” business because it will result in new, unproven ownership/management and increased debt unrelated to business operations.
- (i) The lender’s loan documentation must include:
- (a) a business valuation (not to include any real estate) by the lender or an independent third party hired by the lender with proven experience in business valuations.
1. The valuation must be based on a generally accepted valuation method used for the industry in which the business operates. Valuation methods include the gross revenue multiplier; adjusted book value; discounted future earnings; capitalized adjusted earnings; and cash flow valuation.
2. The lender may refer to any business valuation supplied by the seller or any Agent of the seller or buyer but may not use such valuation to support the purchase price. The purpose of the independent valuation is to ensure that the buyer is not overpaying for the business which would result in overburdening the business with new debt that cannot be supported.
- (b) a site visit of the assets being acquired. The lender must document in its loan file the date of the site visit as well as comments.
- (c) a real estate appraisal for commercial real estate that meets SBA’s requirement. (See Chapter 4 of this Subpart for SBA’s appraisal requirements.)
- (d) an analysis as to how the change of ownership will benefit the business (not the seller or the buyer). If the analysis cannot support that the change of ownership will be in the best interests of the business and its continued, successful operations, then the loan request must not be submitted to SBA for its guaranty.

f. Eligible Use of Proceeds for SBAExpress

SBAExpress loan proceeds must be used exclusively for business-related purposes.

g. Eligible Use of Proceeds for Pilot Loan Programs

(1) Patriot Express

Patriot Express loan proceeds must be used exclusively for business-related purposes.

(2) Export Express

- (i) Export Express loans must be used to develop or expand the small business's export markets. Loan proceeds may be used to:
 - (a) Finance standby letters of credit used for either bid or performance bonds;
 - (b) Finance export development activities such as export marketing and promotional activities, participation in foreign trade shows, translation of product literature for foreign markets, and other activities designed to initiate or expand the applicant's export of its products/services from the US;
 - (c) Provide transaction-specific financing for overseas orders;
 - (d) Provide revolving lines of credit for export purposes, the term of which must not exceed 7 years. (SBA recognizes that in some instances, as a normal course of business, the borrower may use portions of those revolvers for domestic purposes, but SBA expects that no less than 70% of the revolver will be used for export related purposes);
 - (e) Provide term loans and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets; and
 - (f) Acquire, construct, renovate, modernize, improve or expand production facilities or equipment to be used in the US in the production of goods or services to be exported from the US.
- (ii) Loan proceeds may not be used to:
 - (a) Finance overseas operations, except for the marketing and/or distribution of products/services exported from the US; or
 - (b) Refinance existing SBA-guaranteed loans.
- (iii) When an Export Express loan finances specific export transactions, the lender must determine if US companies are authorized to conduct business with the proposed country. Lenders must check Ex-Im Bank's Country Limitation Schedules, which can be found on Ex-Im Bank's website at www.exim.gov/country/cntlimit.html or is available from SBA's Office of International Trade.

(3) CommunityExpress

CommunityExpress loan proceeds must be used exclusively for business-related purposes.

h. Eligible Use of Proceeds for EWCP

- (1) EWCP loan proceeds may be used to:
 - (i) acquire inventory for export or to be used to manufacture goods for export;
 - (ii) pay the manufacturing costs of goods for export;
 - (iii) purchase goods or services for export;
 - (iv) support Standby Letters of Credit related to export transactions;
 - (v) for working capital directly related to export orders;
 - (vi) for foreign accounts receivable and inventory financing; and
 - (vii) support an indirect export. The term “indirect export” applies to situations where, although the Borrower’s direct customer is located in the United States, that customer will be exporting the items/services it purchased from the Borrower to a foreign Buyer. In such cases, the Borrower must provide certification of the indirect export from the actual exporter (typically in the form of a letter, invoice, order or contract) to the Lender. The country to which the items/services will be shipped must be one with which SBA is not legally prohibited from doing business, pursuant to the Ex-Im Bank Country Limitation Schedule.
- (2) Lender fees and charges are an eligible use of proceeds as well as any packaging fee paid.
- (3) EWCP loan proceeds may not be used to:
 - (i) support the Borrower’s domestic sales, except in the case of an indirect sale:
 - (ii) acquire fixed assets or capital goods for use in the Borrower’s business;
 - (iii) acquire, equip, or rent commercial space overseas; or
 - (iv) finance professional export marketing advice or services, foreign business travel, participation in trade shows or support staff in overseas offices, except to the extent it relates directly to the transaction being financed.

i. Eligible Uses of Proceeds for CAPLines

(1) Seasonal CAPLines

Borrowers must use the loan proceeds solely to finance the seasonal increases of accounts receivable and inventory (or in some cases associated increased labor

costs). Funds must not be used to maintain activity during the slow periods of the business's cycle.

(2) Contractor's CAPLines

The contractor must use loan proceeds solely to finance the labor and material costs of the specific contract(s) being financed. Proceeds cannot be used to cover overhead or general and administrative expenses.

(3) Builder's CAPLines

- (i) Borrowers must use the loan proceeds solely for direct expenses related to the construction and/or "significant" renovation costs of a specific eligible project (residential or commercial buildings for resale), including labor, supplies, materials, equipment rental, direct fees (building permits, interim disbursement inspection fees, etc.), utility connections (above or below ground), construction of septic tanks, and landscaping. ("Significant" means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of application.)
- (ii) Proceeds paid to a subcontractor can include the subcontractor's profit. The cost of land is eligible if the land cost does not exceed 20 percent of the project cost. Up to 5 percent of the project cost can be allocated for improvements that benefit all properties in a subdivision, such as streets, curbs, sidewalks, or open spaces.
- (iii) The borrower must not use loan proceeds to purchase vacant land for possible future construction or to operate or hold rental property for future rehabilitation.

(4) Standard Asset Based CAPLines

Borrowers must use the loan proceeds for short term working capital/ operating needs. Proceeds must not be used to pay delinquent withholding taxes or similar trust funds (state sales taxes, etc.), acquisition of fixed assets or floor planning.

(5) Small Asset Based CAPLines

Borrowers must use the loan proceeds for short term working capital/ operating needs. Proceeds must not be used to pay delinquent withholding taxes or similar trust funds (state sales taxes, etc.), acquisition of fixed assets or floor planning.

**CHAPTER 3
LOAN TERMS & CONDITIONS**

1. **MAXIMUM LOAN AMOUNTS**

The maximum loan amount allowed under SBA’s loan program varies by product but generally cannot exceed \$2 million. With the exception of international trade loans, loans greater than this amount cannot be approved under the 7(a) program. Please see the Quick Reference Chart below for more information.

SBA QUICK REFERENCE CHART No. 1

Loan Program/Product	Maximum Loan Amount
Standard 7(a) Loans	\$2,000,000
CLP Loans	\$2,000,000
PLP Loans	\$2,000,000
SBAExpress Loans	\$350,000
Export Express	\$250,000
Community Express Loans	[Reserved]
Patriot Express Loans	\$500,000
CAPLines or Lines of Credit	\$2,000,000 (Except Small Asset-Based Line which has a max amount of \$200,000)
Export Working Capital Loans (EWCP)	\$2,000,000
International Trade Loans (IT)	\$2,333,000
Community Adjustment & Investment Program (CAIP)	\$2,000,000
Pollution Control Loans	\$1,000,000
Energy Conservation Loans	\$2,000,000
ESOP Loans	\$2,000,000

a. Maximum Loan Amount - 90 Day Rule

If two SBA guaranteed loans are approved within 90 days of each other, the maximum gross loan amount of all the loans made in that time frame to any one business (including affiliates) cannot exceed \$2,000,000. Please note that the maximum SBA guaranty amount outstanding of all loans to any one business (including affiliates) regardless of when the loans were approved cannot exceed \$1,500,000 except IT loans and EWCP loans - see Chart No. 2 below.

b. Loans To Businesses with Affiliates

Lenders must determine whether affiliation exists and document the results in their credit analysis. (See Chapter 2 of this Subpart for a discussion of affiliation.) If affiliation exists, SBA's loan maximums apply to the affiliated group as if it were a single business.

c. Establishing the CAPLine Loan Amount

(1) Seasonal CAPLine: The loan amount is based on the cash flow projections. The amount should correlate to the costs of the seasonal buildup of inventory and/or receivables.

(2) Contractor's CAPLine:

(i) A single Contract CAPLine may be utilized to fund a single or multiple contracts. Once the overall line amount has been approved by SBA, the lender may advance against additional contracts without SBA approval, providing the borrower and lender are in compliance with all terms of the Authorization.

(ii) For single contract financing, the loan amount is based on the cash flow projection provided by the applicant and should be equal to the amount that is necessary to finance the direct labor and material costs associated with a specific contract.

(iii) For multiple contract financing, the master note amount is based on the cash flow projection provided by the applicant for ALL work to be performed by the borrower (not just a specific contract). The amount of a sub-note (for each specific contract) is determined in the same manner as discussed above for single contract financing.

(3) Builder's CAPLine:

(i) A single line may be utilized to fund multiple projects. Once the overall line amount has been approved by SBA, the lender may advance against additional projects without SBA approval, providing the borrower and lender are in compliance with all terms of the loan Authorization.

(ii) SBA may allow the finished property to be rented pending sale only in cases where the rental will enhance the ability to sell the property.

(iii) The final sale of the property must be an arms length transaction with legal transfer to an unaffiliated third party.

(iv) For a non-revolving loan, the loan amount is based on the written proposal of costs (not anticipated selling price) provided by the applicant for a single project.

(v) For a revolving loan, the master note amount is based on the cash flow projection provided by the applicant for ALL work to be performed by the SBC (not just a specific project). The amount of a sub-note (for each specific project) is based on the written proposal of costs (not anticipated selling price) provided by the applicant for that particular project.

(4) Standard Asset Based CAPLine:

(i) The formula for determining a Standard Asset Based loan amount is:

Net Sales Last Fiscal Year	\$ _____
Minus Net Profit (or Plus Loss)	\$ _____
Minus Depreciation/Amortization	\$ _____
Equals Net Annual Cash Expenditure	\$ _____
Divided by 365 Equals Net Daily	
Cash Expenditure	\$ _____
Times Cash Cycle in Days	_____
Equals Basic Working Capital Needs	\$ _____

(ii) The basic working capital needs of the business may be adjusted by the lender to reflect anticipated increases or decreases in sales, cost of goods sold, or other factors affecting the cost of sales. If an adjustment is made, the justification should be thoroughly discussed in the lender's credit memorandum.

(5) Small Asset Based CAPLine:

(i) The maximum loan amount is \$200,000.

(ii) The formula for determining a Small Asset Based loan amount is the same as the formula for determining a Standard Asset Based loan amount.

d. Loan Increases

(1) Increases to 7(a) loans, regardless of the disbursement status, are subject to statutory, administrative, and program maximums.

(2) Standard 7(a), CLP and PLP term loans: Increases can only be made up to 20 percent over the original loan amount and must be approved by SBA within a maximum of 18 months after the approval date of the original loan.

- (3) For CAPLines and EWCP loans that have a revolving feature: Increases are limited to a one-time increase that does not exceed 33.3 percent.
- (4) For SBA Express and Pilot Loan Programs: Loans with a revolving feature may be increased at any time during the life of the loan, but must be within 7 years of the date of loan approval. The dollar limit is the limit for the program at the time the loan was originally approved. (The program limit for SBA Express and Pilot Loan Programs includes any other outstanding loans under these programs.)
- (5) PLP, SBA Express and Pilot Loan Program Increases: Lenders must follow their established and proven internal credit review and analysis procedures used for their non-SBA guaranteed commercial loans to determine whether the increase is appropriate.
- (6) SBA Express and Pilot Loan Program revolving line of credit loans may be increased based on the needs of the small business and its credit situation, but the increase must not make the loan exceed the program limits. While the amount of the increase is left to the discretion of the lender, it is expected that increases above 33 percent of the original loan amount will include an analysis of appropriate credit and risk factors consistent with the procedures the lender uses for its similarly sized non-SBA guaranteed commercial loans.
- (7) See Chapter 7, Paragraph 1 of this SOP for the procedures and the appropriate form to use when requesting an increase in the loan amount.

2. MAXIMUM GUARANTY AMOUNTS

The maximum dollar amount outstanding of SBA’s guaranty to any one business (including affiliates) shall not exceed \$1,500,000, except when the loan is approved under a program which specifically permits higher amounts. Please refer to the SBA Quick Reference Chart below. The SBA’s guaranty is also known as the “SBA share” or “guaranteed portion”.

SBA QUICK REFERENCE CHART No. 2

Loan Program/Product	Maximum Guaranty Amount	Percentage
Standard 7(a) Loans—See Note 1	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000
CLP Loans	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000
PLP Loans	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over

		\$150,000
SBA Express Loans	\$1,500,000--See Note 2	50%
Export Express	\$1,500,000--See Note 2	85% for loans of \$150,000 or less. 75% for loans over \$150,000
Community Express Loans	\$1,500,000—See Note 2	85% for loans of \$150,000 or less. 75% for loans over \$150,000
Patriot Express Loans	\$1,500,000--See Note 2	85% for loans of \$150,000 or less. 75% for loans over \$150,000
CAPLines	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000
EWCP Loans	\$1,500,000	90%
International Trade Loans	\$1,750,000--See Note 3	85% for loans of \$150,000 or less. 75% for loans over \$150,000
CAIP Loans	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000
Pollution Control Loans	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000
Energy Loans	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000
ESOP Loans	\$1,500,000	85% for loans of \$150,000 or less. 75% for loans over \$150,000

Note 1: The amount of any loan received by an Eligible Passive Company applies to the loan limit of both the Eligible Passive Company and the Operating Company.

Note 2: Multiple loans allowed up to program maximum listed in Quick Reference Chart 1. The guaranteed amount of these loans counts toward the \$1.5 million maximum guaranty that may be outstanding at any one time.

Note 3: Exception for IT Loans. When there is an IT loan, the maximum SBA guaranty can be up to \$1,750,000 as long as the SBA guaranty on supplies, working capital or a companion

EWCP financing does not exceed \$1,250,000.

a. Multiple Loans from Different Programs with Different Maximums

When an applicant applies for any combination of 7(a) and 504 loans, including DELTA loans, the order in which the loans are funded determines the maximum loan and guaranty amount available. Please ensure that the SBA center processing the application knows there is a companion application so that it can fund the loan with the lower maximum guaranty first.

b. Maximum Guaranty Percentage for Multiple 7(a) Loans

The maximum guaranty percentage for 7(a) loans of \$150,000 or less is 85 percent, unless the percentage is being computed on a subsequent 7(a) loan to the same borrower (or its affiliates) and the subsequent loan application is submitted within 90 days (see Paragraph 1 a of this Chapter) of the receipt or approval date of the first loan. In this case the gross dollar amounts of the loans are combined. If the combined gross amount exceeds \$150,000, then the percentage of guaranty on the combined loans shall not be more than 75 percent (subject to the \$1,500,000 limit).

For example, if a business receives an 85% guaranty on a loan of \$140,000, and submits a second application for \$50,000 within 90 days of the first loan's approval, the percentage of guaranty on the second loan must be reduced accordingly so that the combined guaranty is no more than 75%.

c. Maximum Guaranty Percentage for Multiple 7a and 504 Loans

The 90-day rule is only for those situations where a borrower is approved for multiple 7(a) loans within a 90-day period. It does NOT apply if the borrower is receiving a 7(a) loan and a 504 loan.

d. Zero Percent Guaranty Cannot be Provided For Ineligible Purposes

The percentage of guaranty which SBA provides its participants is the same for every part or purpose of that loan. A 7(a) loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business. An ineligible purpose cannot be included as part of any loan SBA guaranteed loan and no part of an SBA loan may be guaranteed at zero percent.

e. Changing a Guaranty Percentage After Loan Approval

- (1) On undisbursed loans, lenders may change the guaranty percentage upon written approval by the appropriate Commercial Loan Servicing Center (CLSC).
- (2) On disbursed loans, lenders may only request a decrease to the guaranty percentage. Such requests should be made to the appropriate CLSC.

- (3) Any changes must comply with SBA policy and program constraints.
- (4) Requests may be e-mailed to FSC.servicing@sba.gov for the Fresno CLSC or LRSC.servicing@sba.gov for the Little Rock CLSC. The form to be used is SBA Form 2237 ([Link to CLSC web sites and to Form 2237](#))

3. LOAN MATURITIES

The loan term must be appropriate for the borrower's ability to repay and the use of proceeds. In general, working capital loans should not exceed 7 years, equipment loans should not exceed 10 years (or the useful life of the equipment), and real estate loans must not exceed 25 years unless a portion of the loan is used for construction or renovation. If the use of proceeds of a real estate loan includes construction or renovation, the construction or renovation period may be added to the 25 year maximum maturity.

SBA QUICK REFERENCE CHART No. 3

Program/Use of Proceeds	Maximum Maturity See Note 1 below	Additional Considerations
7(a)--Inventory or Working Capital	Up to 7 years	Terms for a working capital or inventory loan should be appropriate to the borrower's ability to repay up to 7 years.
7(a)--Equipment, Fixtures, or Furniture	10 years except when the useful life of the asset exceeds 10 years	When maturity exceeds 10 years, lender must document the loan file that the reasonable economic life of the asset(s) acquired is greater than 10 years and final maturity must not exceed the useful economic life or 25 years, whichever is less.
7(a)--Real Estate— including Acquisition, rehabilitation, renovation or construction	Up to 25 years (See Note 2)	The maximum maturity for these loans is 25 years plus any additional period reasonably necessary to complete the construction or improvements.
7(a)--Mixed Purposes	Up to the maximum for the asset class comprising the largest percentage of the use of proceeds.	When loan proceeds are used for multiple purposes (land & building, working capital, and machinery & equipment), the maturity may be up to the maximum for the asset class comprising the largest percentage of the use of proceeds.
International	Same as 7(a)	

Trade Loans		
Export Working Capital Program	Based on Transaction Cycle but not to Exceed 18 months (Two 12-month renewals authorized)	For single transactions , maturity should correspond to the length of the transaction cycle, usually not to exceed 18 months. Maturities greater than 18 months may be approved, if justification and recommendation for a longer maturity is included in the loan officer's report. For revolving lines of credit , the maturity is typically 12 months. The lender may request re-issuance of a line (new loan & loan number) no earlier than 45 days prior to maturity of the existing line.
CAPLines	Cannot exceed 5 years	Seasonal, Contract, or Builder loans which finance a single transaction should have a maturity tied to the seasonal cycle, contract completion date, or project completion date. All CAPLines must have an exit strategy. Final disbursement should occur far enough in advance of maturity so that a sufficient amount of time is available for the assets acquired with proceeds to be converted back to cash and final payment.
SBA Express	Term loans--same as 7(a). Lines of Credit up to 7 years.	SBA Express LOCs may consist of a revolving period and maturity extensions of any length, as long as the combined term does not exceed 7 years.
Pilots Programs: (Patriot Express, Export Express, Community Express)	Term loans--same as 7(a). Lines of Credit up to 7 years.	Pilot program LOCs may consist of a revolving period and maturity extensions of any length, as long as the combined term does not exceed 7 years. (Community Express – reserved.)

NOTE 1: Loan maturity must not exceed the period of the guaranty. This prohibits such structures as a working capital loan with a 15-year maturity and an SBA guaranty limited to 10 years.

NOTE 2: The 25-year maximum maturity is not applicable for loans processed under the Builders Loan Program [Link 13CFR120.391](#).

a. Establishing the Repayment Period

When lenders establish a repayment schedule and loan maturity, they must consider the following: 1) the borrower's ability to repay, 2) use of loan proceeds, and 3) useful life of the assets being financed. [Link 120.212](#). SBA has instructed the fiscal and transfer agent to stop the sale into the secondary market of a loan when the maturity exceeds the regulatory limits.

b. Establishing The Maturity Date

The maturity date for a 7(a) loan is set in terms of the number of months from either the date of Note or the date of initial disbursement to the date when final payment is due.

c. Maturity When Refinancing Existing Assets

The maximum maturity for a loan used to refinance a loan secured by either real estate or fixed assets shall not exceed the remaining useful life of the asset(s). The lender's loan analysis must document and justify that the asset(s) being refinanced has a useful life at least as long as the maturity provided.

d. SBA Express and Pilot Loan Program Maximum Maturities and Demand Notes

- (1) SBA Express and Pilot Loan Program loans must have a stated maturity and maturities are the same as for any other 7(a) loan, except that revolving loans are limited to a maximum maturity of 7 years, including any "term-out" period.
- (2) Demand notes and "demand" payment schedules are allowed under SBA Express and the Pilot Loan Programs under the following conditions:
 - (i) Payment on demand must be for substantive cause and the borrower must be advised of the cause(s) in writing at loan closing;
 - (ii) The terms must be consistent with those for the lender's other similarly-sized non-SBA guaranteed commercial loans; and
 - (iii) There must be a maturity date established. For example, a line of credit loan could state that it is payable upon demand under certain conditions, but in no case later than a certain date. SBA loans must have a stated maturity date so that it can be ascertained from the note that the maturity date does not exceed SBA maximum requirements.
- (3) Revolving loans may be established as renewable each year, provided they do not exceed the maximum 7 year term.
- (4) The term of a loan may not exceed the period of the SBA guaranty commitment.

e. Maturity of CAPLines

The maximum maturity on a CAPLine is 5 years. Any CAPLine with a maturity of less than 5 years can be renewed as long as the total revolving repayment period does not exceed 60 months. The renewal is an extension of maturity (not a new loan). Thus, the loan number remains the same. If the original maturity was for 12 months or less, and the new maturity exceeds 12 months, an additional guaranty fee will be due. See paragraph 5.g. of this Chapter.

4. INTEREST RATES

a. General Policy

- (1) The maximum interest rate that may be established for any 7(a) loan is governed by SBA's regulations on interest rates, [Link 13CFR120.213-215](#) which preempts any provisions of a state's constitution or law. The lender negotiates the interest rate with the Small Business Applicant, subject to SBA's maximum rates.
- (2) The interest rate is established as of the date of receipt of the application by SBA or, if the lender is using E-tran, the date of submission by the lender. The rate must not exceed SBA's maximum interest rate. The basis for the SBA maximum interest rate, regardless of whether the loan is amortized on a fixed or variable rate basis, is an acceptable base rate plus allowable spread. A lender must not increase the rate of interest (fixed) or spread (variable) on an SBA guaranteed loan as long as the guaranty is in effect.
- (3) Default interest rates are not permitted except as described below for SBAExpress and the Pilot Loan Programs.
- (4) A loan may have a fixed or variable interest rate. For loans with a variable interest rate, the following terms must be defined:

(i) Base Rate:

(a) For standard 7(a), CLP and PLP loans, there are two acceptable base rates:

- 1. the Prime Rate published in the Wall Street Journal, or
- 2. the SBA Optional Peg Rate published quarterly in the Federal Register.

(b) For SBA Express and the Pilot Loan Programs, in addition to the above rates a lender may use the same base rate of interest it uses on its similar non-SBA loans with one exception. If the loan is sold in the secondary market, only the base rates identified in the above paragraph are permitted.

(ii) Frequency of change;

(iii) Range of fluctuation; and

(iv) Ceiling and floor (if any).

(5) Reference Chart on Interest Rates

SBA QUICK REFERENCE CHART No. 4		
Maximum Interest Rates Allowed		
Product	Interest Rate	Limitations
Standard 7(a) Loans \$25,000 or less (Maturity less than 7 years)	Cannot exceed Prime + 4.25%	See Notes 1 and 2 below

Standard 7(a) Loans \$25,000 or less (Maturity 7 years or more)	Cannot exceed Prime + 4.75%	See Notes 1 and 2 below
Standard 7(a) Loans more than \$25,000 up to \$50,000 (Maturity less than 7 Years)	Cannot exceed Prime + 3.25%	See Notes 1 and 2 below
Standard 7(a) Loans more than \$25,000 up to \$50,000 (Maturity 7 Years or more)	Cannot exceed Prime + 3.75%	See Notes 1 and 2 below
Standard 7(a) Loans greater than \$50,000 (Maturity less than 7 years)	Cannot exceed Prime + 2.25%	See Notes 1 and 2 below
Standard 7(a) Loans greater than \$50,000 (Maturity 7 years or more)	Cannot exceed Prime + 2.75%	See Notes 1 and 2 below
SBAExpress and Export Express Loans - \$50,000 or less (All maturities)	Cannot exceed Prime + 6.5%	See Note 3 below
SBAExpress and Export Express - More than \$50,000 (All maturities)	Cannot exceed Prime + 4.5%	See note 3 below
Patriot Express	Same as Standard 7(a)	
Community Express	RESERVED	
Export Working Capital Loans	No SBA Maximum.	See note 4 below
CAPLines	Same as Standard 7(a) loans	

NOTE 1: Variable rate loans may be pegged to either the lowest WSJ prime rate or the SBA optional peg rate.

NOTE 2: The optional peg rate is a weighted average of rates the federal government pays for loans with maturities similar to the average SBA loan. It is calculated quarterly and published in the Federal Register. The lender and the borrower negotiate the amount of the spread which will be added to the base rate. An adjustment period is selected which will identify the frequency at which the note rate will change. It must be no more often than monthly and must be consistent, (e.g., monthly, quarterly, semiannually, annually or any other defined, consistent period).

NOTE 3: SBAExpress Loan Program and Pilot Loan Programs (except Patriot Express). For these programs, lenders are authorized to establish their own base rate for variable rate loans, so long as their overall effective rate for these loans does not exceed the Wall Street Journal Prime rate by 6.5 percent for loans of \$50,000 or less and by 4.5 percent for loans over \$50,000 up to \$350,000, regardless of the maturity of the loan. (However, the amount of interest SBA will pay to a lender following default is capped at the maximum interest

rate for the standard 7(a) loan program.) Lenders may also adjust their interest rates on variable rate loans at their discretion, which could be more frequently than monthly, but the adjustments must be consistent with the frequency of their adjustments for similar non-SBA guaranteed loans. Loans with interest rate adjustments more frequently than monthly, with base rates other than the prime rate (as published in the WSJ) or using SBA's Optional Peg Rate cannot be sold on the secondary market.

NOTE 4: SBA does not prescribe interest rates for the EWCP but does monitor the rates charged for reasonableness. [ADD LINK TO 13 CFR 120.344\(c\)](#).

b. Base Rate, Allowable Spread, and Allowable Variance for Small Loans

- (1) A loan may have a variable interest rate. The base rate may be either the Wall Street Journal Prime Rate or the "SBA Optional Peg" rate [Link 13CFR120.214](#)
- (2) The allowable spread is based on the maturity of the loan. For loans with an original maturity less than 7 years, the maximum allowable rate cannot exceed 2.25 percentage points over the prime rate. For loans with an original maturity of 7 years or longer, the maximum allowable rate cannot exceed 2.75 percentage points over the prime rate. The spread may not be changed during the life of the loan.
- (3) Lenders are permitted to add an additional 1 percentage point to the maximum interest rate listed above for those loans greater than \$25,000 but not more than \$50,000.
- (4) Lenders are permitted to add an additional 2 percentage points to the maximum interest rate listed above for those loans of \$25,000 or less.
- (5) The lender must designate on its application for guaranty the amount of the percentage spread to be added to the base rate at each adjustment date.

c. Determining the Date SBA Receives an Application

A fixed interest rate or the base rate for a variable rate loan is established on the date that a complete application is received by SBA in a processing center or via E-Tran. This date must be contained in the introductory sentence of each Authorization.

d. Policy On Variable Interest Rates

(1) Standard Policy

SBA's maximum allowable interest rate applies only to the initial Note rate on a variable rate loan. Subsequent increases due to a change in the base rate are not subject to the maximum rate at the time of loan application.

(2) Frequency of Interest Rate Adjustment

(i) The first adjustment may occur on the first calendar day of the month following initial disbursement, using the base rate in effect on the first business day of the month. Lenders may delay the initial adjustment period. For example, lenders have used periods as long as 5 years in order to provide the borrower with a fixed interest rate for the first 5 years of the loan. After that time, the variable interest rate stated in the Authorization will take effect.

(ii) The lender must specify in the application the frequency at which the interest rate adjustment will occur. This adjustment period may not be changed. Subsequent adjustments may occur no more frequently than monthly. All subsequent adjustments will set the interest rate on the first calendar day of the adjustment period using the base rate as published on the first business day of the adjustment period. Many lenders use the calendar quarter as the adjustment period, especially those that sell the guaranteed portion in the Secondary Market.

For example, an SBA guaranteed loan was approved to provide permanent financing for a building where construction began after the SBA loan was approved. Since the loan was approved, there have been changes to the prime rate. SBA does not permit a lender to alter the initial interest rate between the time an application is received and the first calendar day of the first adjustment period after initial disbursement. After the interest rate begins fluctuating, the loan can be re-amortized. Typically, loans are re-amortized every time the interest rate is adjusted to ensure full amortization by the maturity date.

The rate of interest will change on the first calendar day of the adjustment period even though the rate may not be known until the second business day of that period. For example, if the first of the month is a Sunday, the base rate is the prime rate in effect on Monday. This rate will be reported in the Wall Street Journal on Tuesday, the third calendar day and second business day of the month.

(3) Interest Rate Ceilings and Floors

SBA will permit a lender to limit the upward and downward adjustments by establishing a floor and ceiling provided that (1) both the floor and ceiling are stated in the Note; and (2) the difference between the stated rate in the Note and the floor is equal to or greater than the difference between the stated rate in the Note and the ceiling. For example, if the Note rate is 10% and the ceiling is 12%, the floor must be 8% or lower.

(4) When the Base Rate is Published as a Range

When the base rate is published as a range, e.g., 6 ½% to 6 ¾%, the spread will be added to the lower rate.

(5) Amortization

Lender should use an amortization schedule that is appropriate for the type of loan. A fixed interest rate loan must use a payment that will fully amortize the loan by the maturity date. Typically, variable rate loans are reamortized every time the interest rate is adjusted to ensure full amortization by the maturity date. The amortization schedule may be adjusted to meet the cash flow needs of the business.

e. Fixed and Variable Rate Combinations

The lender may use a fixed rate on either the guaranteed or unguaranteed portion and a variable rate on the other portion of the loan. SBA allows such combinations as long as each rate does not exceed the SBA maximum interest rate. A lender may use this structure to make a loan that permits it to retain a variable interest rate on the unguaranteed portion and sell a fixed rate guaranteed portion on the Secondary Market. This reduces the volatility of the borrower's interest rate.

f. Interest Rate Requirements For An SBA Note

- a. Fixed rate loans—the lender must specifically state the interest rate in the Note.
- b. Variable rate loans—the lender must include the following information in the Note:
 - i. Identification of the rate being used as the base rate;
 - ii. The publication in which the designated base rate appears regularly (e.g. Wall Street Journal or the Federal Register if using the SBA Optional Peg Rate);
 - iii. The permanent percentage spread to be added to the base rate;
 - iv. The initial interest rate of the loan (from disbursement to first adjustment);
 - v. The date of the first rate adjustment; and
 - vi. The frequency of rate adjustment.

g. SBA Express Interest Rate Policy

(1) A lender may charge up to 4.5% over the prime rate on loans over \$50,000 and up to \$350,000 and up to 6.5% over the prime rate for loans of \$50,000 or less, regardless of the maturity of the loan.

(2) For variable rate loans, an SBA Express lender is not required to use the base rate identified in the Federal Register. It may use the same base rate of interest it uses on its similarly-sized non-SBA guaranteed commercial loans, as well as its established change intervals, payment accruals, etc. However, the interest rate throughout the term of the loan may not exceed the maximum allowable SBA Express interest rate and the loan may be sold on the Secondary Market only if the base rate is the prime rate as published each business day in a national financial newspaper or is SBA's Optional Peg Rate.

(3) A lender may charge default interest if it does so for its similarly-sized non-SBA guaranteed commercial loans, as long as the interest rate does not exceed the amounts stated in this paragraph. (Default interest is a change (increase) in interest rate charged

the borrower as a result of a failure to meet certain conditions clearly specified in the loan agreement, typically timely payments.)

(4) The amount of interest SBA will pay to a lender following default of an SBA Express loan is capped at the maximum interest rates for the standard 7(a) loan program.

h. Pilot Loan Programs Interest Rate Policy

(1) Patriot Express—

- (a) For Patriot Express Loans, the standard 7(a) interest rate restrictions apply: a lender may charge up to 2.25% over the prime rate for maturities under 7 years and 2.75% over prime for maturities of 7 years or longer. The rates can be 2% higher for loans of \$25,000 or less and 1% higher for loans between \$25,000 and \$50,000.
- (b) A lender may charge default interest if it does so for its similarly-sized non-SBA guaranteed commercial loans, as long as the interest rate does not exceed the amounts stated in this paragraph. (Default interest is a change (increase) in interest rate charged the borrower as a result of a failure to meet certain conditions clearly specified in the loan agreement, typically timely payments.)
- (c) For variable rate loans, a Patriot Express lender is not required to use the base rate identified in the Federal Register. It may use the same base rate of interest it uses on its similarly-sized non-SBA guaranteed commercial loans as well as its established change intervals (including intervals more frequently than monthly), payment accruals, etc. However, the interest rate throughout the term of the loan may not exceed the maximum allowable Patriot Express interest rate and the loan may be sold on the Secondary Market only if the base rate is the prime rate as published each business day in a national financial newspaper or is SBA's Optional Peg Rate.

(2) Export Express –

- (a) A lender may charge up to 4.5% over the prime rate on loans over \$50,000 and up to \$350,000 and up to 6.5% over the prime rate for loans of \$50,000 or less, regardless of the maturity of the loan.
- (b) For variable rate loans, an Export Express lender is not required to use the base rate identified in the Federal Register. It may use the same base rate of interest it uses on its similarly-sized non-SBA guaranteed commercial loans, as well as its established change intervals, payment accruals, etc. However, the interest rate throughout the term of the loan may not exceed the maximum allowable Export Express interest rate and the loan may be sold on the Secondary Market only if the base rate is the prime rate as published each business day in a national financial newspaper or is SBA's Optional Peg Rate.
- (c) A lender may charge default interest if it does so for its similarly-sized non-SBA guaranteed commercial loans, as long as the interest rate does not exceed the amounts stated in this paragraph. (Default interest is a

change (increase) in interest rate charged the borrower as a result of a failure to meet certain conditions clearly specified in the loan agreement, typically timely payments.)

- (d) The amount of interest SBA will pay to a lender following default of an Export Express loan is capped at the maximum interest rates for the standard 7(a) loan program.

- (3) Community Express –

[Reserved]

5. SBA GUARANTY FEES

a. Standard Policy

A lender must pay a fee to SBA for each loan guaranteed under the 7(a) program. (LINK 13 CFR 120.220) This fee is known as the “SBA Guaranty Fee”. The total loan amount determines the percentage that is used to calculate this fee. (See the “Fees” column in Chart 5 below.) The guaranty fee is based on the guaranteed portion of the loan and not the total loan amount. The chart below describes the applicable fees.

The Agency automatically calculates the guaranty fee for each individual loan. This calculation does not include changes to the fee that are necessary due to other loans approved within the past 90 days. When two or more loans are approved within 90 days, the guaranty fee must be calculated manually. Short term loans are not included in this calculation. For more information, see subparagraph 5.i. below or contact the processing center or local SBA office.

Note: If there is a conflict between the fees stated in the Authorization and the statutory amount authorized at the time the loan is approved, then the statutory amount governs.

SBA QUICK REFERENCE CHART No. 5

Gross Loan Size	FEES	NOTES
Loans of \$150,000 or less (See Note 1)	2% of guaranteed portion	Lender is authorized to retain 25% of the fee.
\$150,001 to \$700,000	3% of guaranteed portion	
\$700,001 to \$2,000,000 (See Note 2)	3.5% of guaranteed portion up to \$1,000,000 PLUS 3.75% of the guaranteed portion over \$1,000,000	
Short Term Loans – up to \$2 million	0.25% of the guaranteed portion	Maturities of 12 months or less

NOTE 1: For example, the guaranty fee on a \$100,000 loan with an 85% guaranty would be 2% of \$85,000 or \$1,700, of which the lender would retain \$425.

NOTE 2: For example, the guaranty fee on a \$2,000,000 loan with a 75% guaranty (\$1.5 million guaranteed portion) would be 3.5% of \$1,000,000 (\$35,000) PLUS 3.75% of \$500,000 (\$18,750), which totals \$53,750.

b. When the Guaranty Fee Must be Paid

(1) The lender must pay the guaranty fee to SBA as follows:

(i) On loans with maturities in excess of 12 months, the lender must pay the guaranty fee to SBA within 90 days of the date of loan approval.

(ii) On short term loans (maturities of 12 months or less), the lender must submit the guaranty fee to SBA with the application for guaranty. The application will not be processed without the fee.

(iii) Short Term PLP Loans -- Because SBA does not approve or decline the credit for PLP loans, the lender does not send the guaranty fee for short term PLP loans to the processing center with the request for a loan number. When a loan number is assigned, the processing center notifies the lender that the guaranty fee must be sent directly to the SBA Denver Finance Center (DFC) at U.S. Small Business Administration, Denver, Colorado 80259-0001. The lender must pay the guaranty fee within 10 business days from the date the loan number is assigned and before the lender signs the Authorization for SBA. Lenders are strongly encouraged to use www.pay.gov (see paragraph (c) 1 below. If the DFC does not receive the fee within 10 business days after the processing center issues the loan number, SBA cancels the guaranty.

(iv) Short Term SBAExpress Loans – the lender does not send the fee to the processing center with the request for loan number. When a loan number is assigned, the processing center notifies the lender that the guaranty fee must be sent directly to the SBA DFC. The lender must pay the guaranty fee within 10 business days from the date the loan number is assigned and before the lender signs the Authorization for SBA. Lenders are strongly encouraged to use www.pay.gov (see paragraph (c) 1 below. If the DFC does not receive the fee within 10 business days after the processing center issues the loan number, SBA cancels the guaranty.

(v) Short Term Pilot Program Loans –For Patriot Express, Export Express and CommunityExpress loans with a maturity of 12 months or less, the lender does not send the fee to the processing center with the request for loan number. When a loan number is assigned for a short term loan, the processing center notifies the lender that the guaranty fee must be sent directly to the SBA DFC. The lender must pay the guaranty fee within 10 business days from the date the loan number is assigned

and before the lender signs the Authorization for SBA. Lenders are strongly encouraged to use www.pay.gov (see paragraph (c) 1 below. If the DFC does not receive the fee within 10 business days after the processing center issues the loan number, SBA cancels the guaranty.

(vi) THE DUE DATE FOR GUARANTY FEE PAYMENT MAY NOT BE WAIVED OR EXTENDED (even if the disbursement period is extended).

- (2) The lender may charge the guaranty fee to the borrower after the loan is approved for short term loans or after initial disbursement for loans with maturities in excess of 12 months. However, the first disbursement may not be made primarily for the purpose of paying the guaranty fee. The Borrower may use loan proceeds to pay the guaranty fee. If the borrower plans to use the loan proceeds to pay the guaranty fee, the Authorization must include a Use of Proceeds category for either payment of the guaranty fee or general working capital. Note: When an escrow closing is used, the lender may charge the borrower the guaranty fee only when all loan funds have been disbursed to the borrower from the escrow account.

c. Method of Guaranty Fee Payment

- (1) Lenders must submit the guaranty fee either electronically or by check to SBA DFC. SBA strongly encourages lenders to submit all guaranty fees electronically, including payment through www.pay.gov (Link www.pay.gov). Select “form type 1544” and select “guaranty.”
- (2) In the following circumstances, the lender must submit payment of the fee with the application or request for action to the appropriate processing or servicing center:
 - (i) Short term loans;
 - (ii) Loans where the SBA share is being increased;
 - (iii) Loans being renewed where the maturity changes from 12 months or less to over 12 months;
 - (iv) Loans where the guaranty is being reinstated because it was previously cancelled due to non-payment of the fee.

In these cases, if the fee does not accompany the application or request for action, SBA will not process the action

d. If the Fee is Not Paid

If the guaranty fee is not paid within 90 days, the guaranty will be cancelled, and the funds reserved for that loan will be returned to the general account to become available to fund other loans.

- (1) Notification of Fee Requirement

The Authorization is the lender's notification that a guaranty fee is due and payable within 90 days of approval. SBA may, but is not required to inform the lender when the guaranty fee has not been received by SBA within the required time frame. Neither the issuance of any notice of non-payment by SBA nor the receipt of any notice of non-payment by the lender waives the lender's obligation to pay the fee within 90 days of approval. In addition, the obligation to pay the guaranty fee to SBA is not contingent upon the Borrower having paid the fee to the lender.

(2) Notice of Cancellation of Guaranty

If DFC has not received the full guaranty fee by the due date, on the 91st day after loan approval SBA will issue a "Notice of Overdue Guaranty Fee." IF DFC has not received the full guaranty fee by the 120th day after loan approval, on the 121st day SBA will cancel the guaranty and issue a "Notice of Cancellation of Guaranty."

- (3) When reviewing a lender's continued participation in any of SBA's loan programs, SBA will consider a lender's failure to remit required guaranty fees in a timely manner.

e. Reinstatement of Guaranty After Cancellation

If SBA cancelled its guaranty because the lender did not pay the guaranty fee, the lender may request that SBA consider reinstating its guaranty. The lender must submit a written request to the appropriate SBA Commercial Loan Servicing Center and must include the following (see SOP 50 50 4, Chapter 10):

- (1) the SBA Loan No. and the SBA Loan Name;
- (2) A remittance of the full guaranty fee owed with the SBA Loan No. and the SBA Loan Name written on the remittance;
- (3) A certification that there has been no un-remedied adverse change in the financial condition, organization, operations, or fixed assets of the Borrower or Operating Company since the date of application for guaranty;
- (4) If the loan has been disbursed in whole or in part, a certification that the loan is current, the lender has been reporting the loan on all 1502 monthly reports since the loan was disbursed, and the lender has been paying the SBA on-going guaranty fee in a timely manner on this loan; and
- (5) A complete written explanation as to why the lender failed to pay the guaranty fee and what the lender has done to correct any deficiencies in its procedures.

Note: A history of failure to pay required guaranty fees will impact a lender's participation in SBA programs with delegated authority such as PLP or SBAExpress.

f. Additional Guaranty Fee for Loan Increases

When a 7(a) loan is increased, additional appropriations are committed, and an additional Guaranty fee is due. The additional fee is based on the rules in effect at the time the loan was originally approved. Therefore, the amount of the additional guaranty fee due for an increase will equal what the guaranty fee would have been if the increase was part of the original loan amount, less the amount of the original fee (if already remitted).

The additional guaranty fee associated with the increase must be submitted to and received by the SBA center processing the request for increase. Without the additional fee, the request will not be processed.

g. Additional Guaranty Fee for Renewals of Short Term Loans

When a short term 7(a) loan is renewed, no additional guaranty fee is due, unless the renewal also extends the maturity beyond 12 months. If the maturity extends beyond 12 months, the lender must recompute the guaranty fee. (Lenders may contact the appropriate SBA CLSC for assistance.) The additional fee must accompany the request to extend the maturity past 12 months. The lender may charge the additional fee to the borrower after the lender has received notice from SBA that the maturity renewal has been approved.

No additional guaranty fees will be charged for loans:

- (1) Extended beyond their original maturity date to effect collection where no new funds are disbursed, regardless of the original maturity; or
- (2) Renewed beyond their original maturity date to permit additional disbursements and repayment if the maturity was already more than 12 months.

h. Guaranty Fee Refunds

- (1) Short term loans--the guaranty fee will be refunded only if:
 - (i) the loan application is withdrawn prior to approval by SBA;
 - (ii) SBA declines to guarantee the loan; or
 - (iii) SBA approves the loan but substantially changes the loan terms and the modified terms are unacceptable to the lender. In this case, the lender must request a refund in writing within 30 calendar days of SBA's approval.
- (2) Loans with a maturity in excess of 12 months:
 - (i) Full refund--the guaranty fee for a loan with a maturity in excess of 12 months may be refunded only when the loan has not been disbursed and the lender submits a written request to SBA to cancel the loan. Once a loan with a maturity exceeding 12 months has been initially disbursed, no refund is permitted.

- (ii) Partial refund—if a portion of the loan is cancelled prior to initial disbursement, SBA will adjust the guaranty fee to reflect the new loan amount or refund the excess amount if the fee has already been paid. If any amount of the loan has been disbursed, there will be no refund.

i. Guaranty Fee For Multiple Loans

Whenever one borrower, including its affiliates, receives more than one loan within 90 days, each with a maturity exceeding 12 months, all the loans will be treated as if they were one loan for purposes of determining the percentage of guaranty and for determining the amount of the guaranty fees.

Because the guaranty fee is based on the amount of the SBA share, the lender must calculate the fee based on the combined SBA shares of all SBA business loans to one borrower, including affiliates, approved within 90 days of each other. Loans with a maturity of 12 months or less are not included in this calculation.

When two loans are approved within 90 days of each other, the applicable fee for the second loan will equal the amount of the fee that would have been charged had the two loans been combined, less the amount of the fee on the first loan.

When the applicant receives both a short and long term 7(a) loan, the percentage of guaranty is calculated as if the loans are combined, but the guaranty fee is based solely on the maturity of each loan.

If a short term loan that was made within 90 days of a long term loan is renewed and the maturity is extended beyond 12 months, the guaranty fee calculated at the time of renewal would equal the fee that would have been charged if both loans were originally long term. The amount owed SBA at the time of renewal would equal the recalculated guaranty fee less the amount paid at the time of original approval.

6. OTHER FEES

SBA QUICK REFERENCE CHART No. 6

TYPE OF FEE	AMOUNT	NOTES
On-Going Guaranty Fee	A percentage of the outstanding balance of the guaranteed portion. The fee is set at time of approval.	Paid by lender and cannot be passed on to the Borrower. (See a below)
Servicing & Packaging Fee	Amount deemed reasonable and customary by the local SBA office for the market area	Can be paid by lender or borrower and can included in the loan amount. (See b below)
Extraordinary	Not to exceed 2%, except under the EWCP and Standard Asset-	Primarily for construction servicing needs, field inspections,

Servicing Fee	Based CAPLines .	title reports and asset-based lending costs. (See c below)
Out-of-Pocket Expenses	All direct costs associated with collateral instrument recordation, appraisals, environmental reports or other closing costs	Necessary expenses must be a result of a requirement of SBA policy. (See d below)
Late Payment Fee	Not to exceed 5% of the regular loan payment	Must be delinquent more than 10 days. (See e below)
Subsidy Recoupment Fee	5%, 3% or 1% of the amount of the prepayment	Fee paid to SBA on loans with a maturity of 15 years or more when the borrower prepays 25% or more of its loan in any one year during the first three (3) years of the loan term. (See f below)
Assumption Fee	Not to exceed 1% of the principal balance outstanding at time of assumption	Fee may be paid by the seller or assumptor. (See g below)

a. On-Going Guaranty Fee

The lender shall pay SBA an annual on-going guaranty fee equal to an amount set at the time of loan approval and based on the outstanding balance of the guaranteed portion of each loan. SBA specifies the amount of the fee each fiscal year for all loans approved during that year. This fee cannot be charged to the borrower. SBA may charge the lender a late fee if the on-going guaranty fee is not paid timely.

Note: The fee will be listed in the Authorization and, unless SBA drafts and executes the Authorization, it is the lender's responsibility to ensure that the Authorization includes the correct fee.

b. Loan Servicing and Packaging Fees

The lender may charge a Small Business Applicant reasonable fees for loan servicing and packaging that are customary for similar lenders in the geographic area where the loan is being made. The lender must advise the Small Business Applicant in writing that the applicant is not required to obtain or pay for unwanted services. SBA may review these fees at any time. Lender must refund any such fee considered unreasonable by SBA.

c. Extraordinary Servicing Fee

A lender may charge the borrower a servicing fee not to exceed 2% per year on the outstanding balance of the part requiring special servicing. Examples of extraordinary servicing fees include amounts to service construction loans or monitor accounts receivable and inventory collateral in asset-based lending. Under no circumstances may the fee exceed 2 percent of the loan amount EXCEPT under the EWCP or CAPLine - Standard Asset Based Loan programs. In these programs, the fee must be reasonable and prudent based on the level of extraordinary effort required.

Lender must obtain SBA's prior written approval for these fees. The request for SBA approval of such fees should be sent to the SBA loan processing center with the application. SBA has delegated to PLP and SBAExpress lenders the authority to charge such fees without SBA's prior review. These fees will be reviewed by SBA at the time of guaranty purchase.

Participating lenders are prohibited from collecting extraordinary servicing fees under the following conditions:

- (1) Changing the installment amount to avoid circumstances where the required payment amount will not be sufficient to pay the loan in full by the maturity date;
- (2) Changing the installment amount after a deferment;
- (3) Providing the release or exchange of collateral (standard out-of-pocket expenses such as recordation fees are permitted); or
- (4) Any modification to the repayment terms of the note.

Note: SBA does not permit a lender to charge a default interest rate or a separate servicing fee for past due financial statements. Lenders should make note in their loan files as to the attempts it has made (following prudent lending standards) to obtain the required financial statements. At some point the borrower usually requires some kind of servicing action by the lender. At that time the lender can require the past due financial statements.

d. Out-of-Pocket Lender Expenses

Lenders may be reimbursed by the borrower for all direct costs including filing or recording fees, photocopying, delivery charges, collateral appraisals and environmental impact reports that are obtained in compliance with SBA policy, and other direct charges related to loan closing. Fees to recover the costs of software used to prepare SBA loan documents are not permitted.

e. Late Payment Fee

Lenders may charge the borrower a late payment fee not to exceed 5 percent of the regular loan payment when the borrower is more than 10 days delinquent on its regularly scheduled payment. The fee is the property of the lender and is not shared with the investor if the loan is sold into the Secondary Market. SBA's guaranty does not extend to late fees and, at time of guaranty purchase, SBA will not pay any portion of such fees.

f. Subsidy Recoupment Fee

For loans with a maturity of 15 years or longer, the borrower must pay to SBA a Subsidy Recoupment Fee when the borrower prepays 25% or more of its loan in any one year during the first 3 years after first disbursement. The fee is 5% of the prepayment amount during the first year, 3% the second year, and 1% in the third year.

g. Assumption Fee

In the case of an assumption, SBA does not require a new guaranty fee, and lien positions are often maintained eliminating the need for recording fees. As an incentive for a lender to retain an existing loan, SBA allows a lender to charge an assumption fee that is consistent with its assumption fee charged on its non-SBA guaranteed loans. The fee must be reasonable in relation to services provide and cannot exceed 1% of the principal balance outstanding at time of assumption.

This fee may be paid by the seller or the assumptor. Lenders should review SBA's SOP 50 50, Loan Servicing, for procedures to process an assumption request.

h. SBAExpress Fee Policy

The SBA guaranty and on-going servicing fees are the same for SBAExpress as standard 7(a) loans. The lender may charge the same fees for SBAExpress loans as it charges for its similarly-sized non-SBA guaranteed commercial loans. This could include reasonable transaction fees such as cash advance fees, late fees, returned check charges, currency conversion fees, over limit fees (assuming the borrower did not exceed SBA's approved loan amount), and organizational change fees, but referral fees are not allowed. It could also include fees for unusual servicing situations, such as for lines of credit. SBA reserves the right to disallow fees that are not customary and/or which do not bear a relationship to the service provided. Also, if the lender requests that SBA honor its guaranty on an SBAExpress loan, the Agency will not purchase any portion of the loan balance that consists of fees charged to the borrower.

i. Pilot Loan Programs Fee Policies

(1) Patriot Express

The SBA guaranty and on-going servicing fees are the same for Patriot Express as for standard 7(a) loans. The lender may charge the same fees for Patriot Express loans as it charges for its similarly-sized non-SBA guaranteed commercial loans. This could include reasonable transaction fees such as cash advance fees, late fees, returned check charges, currency conversion fees, over limit fees (assuming the borrower did not exceed SBA's approved loan amount), and organizational change fees, but referral fees are not allowed. It could also include fees for unusual servicing situations, such as for lines of

credit. SBA reserves the right to disallow fees that are not customary or which do not bear a relationship to the service provided. Also, if the lender requests SBA to honor its guaranty on a Patriot Express loan, the Agency will not purchase any portion of the loan balance that consists of fees charged to the borrower.

A packaging fee is allowable for a Patriot Express loan, even if such a fee is not charged on the lender's non-SBA products, provided the fee is reasonable and is charged as a sum certain, not as a percentage of the loan amount.

(2) Export Express

The SBA guaranty and on-going servicing fees are the same for Export Express as standard 7(a) loans. The lender may charge the same fees for Export Express loans as it charges for its similarly-sized non-SBA guaranteed commercial loans. This could include reasonable transaction fees such as cash advance fees, late fees, returned check charges, currency conversion fees, over limit fees (assuming the borrower did not exceed SBA's approved loan amount), and organizational change fees, but referral fees are not allowed. It could also include fees for unusual servicing situations, such as for lines of credit. SBA reserves the right to disallow fees that are not customary or which do not bear a relationship to the service provided. Also, if the lender requests that SBA honor its guaranty on an Export Express loan, the Agency will not purchase any portion of the loan balance that consists of fees charged to the borrower.

(3) CommunityExpress

[RESERVED]

7. PROHIBITED FEES

[LINK to 13 CFR 120.222](#)

The lender or its associate may not:

- a. require the applicant or borrower to pay the lender, a lender associate, or any party designated by either, any fees or charges for goods or services, including insurance, as a condition for obtaining an SBA guaranteed loan;
- b. charge the borrower any commitment, bonus, origination, broker, commission, referral or similar fees;
- c. charge points or add-on interest;
- d. share any premium received from the sale of an SBA-guaranteed loan in the Secondary Market with a Service Provider, packager, or other loan-referral source; or
- e. charge borrowers for legal services, unless they are hourly charges for requested services actually rendered. The lender or its associate may not pass on to the applicant/borrower any cost of legal services not calculated on an hourly basis for services provided in connection with the applicant/borrower's transaction.

8. DISCLOSURE OF FEES AND LENDER EXPENSES

a. Disclosure of Fees and Identification of Agents

Section 13 of the Small Business Act (15 U.S.C. §642) requires that a Small Business Applicant identify the names of persons engaged by or on behalf of the Small Business Applicant for the purpose of expediting the application and the fees paid or to be paid to any such person. SBA regulations at 13 CFR 103.5 require any agent to execute and provide to SBA a compensation agreement (“Agreement”). Each Agreement governs the compensation charged for services rendered or to be rendered to the Small Business Applicant or lender in any matter involving SBA assistance. “Agent” includes a lender, loan packager, referral agent, accountant, attorney, consultant or any other party that receives compensation from representing an applicant for an SBA loan. [LINK TO 13 CFR Part 103 and sections 120.221 and 120.222 AND TO SBA FORM 159.](#)

b. SBA Form 159(7a) “Fee Disclosure Form and Compensation Agreement”

The Small Business Applicant or the lender, depending on who paid or will pay the Agent, must use SBA Form 159(7a), “Fee Disclosure Form and Compensation Agreement,” to document the fees. The Small Business Applicant, the Agent and the lender must sign the SBA Form 159(7a). A separate SBA Form 159(7a) must be executed for each Agent.

Information on this form will be used to monitor the Agents, fees charged by Agents, and the relationship between Agents and lenders. Lenders must make sure that all of the appropriate data fields on SBA Form 159(7a) are completed.

The following are not considered Agents for purposes of this Agreement and, therefore, are not required to complete SBA Form 159(7a):

- (1) applicant’s accountant for the preparation of financial statements required by the Applicant in the normal course of business and not related to the loan application;
- (2) a state-certified or state-licensed appraiser employed by the lender to appraise collateral in connection with the SBA loan;
- (3) an environmental professional employed by the lender to conduct an environmental assessment of the collateral in connection with an SBA loan; and
- (4) any attorney in connection with the SBA loan closing.

The lender must inform the applicant that the applicant does not have to employ an Agent or representative in connection with a loan application. If an applicant employs an Agent or representative, the fee paid must bear a reasonable relationship to the services actually performed. The SBA does not allow contingency fees (fees paid only if the loan is approved) or charges for services which are not reasonably necessary in connection with an application.

If the total compensation exceeds \$2,500, the compensation must be itemized.

9. AGENTS

- a. SBA regulations at [13 CFR 103 \(LINK TO REG\)](#) govern the activities of Agents and the disclosure of fees.

- (1) Agent – [LINK to 13 CFR 103.1\(a\)](#)

SBA defines an “Agent” to mean an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an applicant, or participant by conducting business with SBA.

When an Agent is paid by either a Small Business Applicant or a lender, an SBA Form 159(7a) must be completed and signed by the Small Business Applicant and the lender. For each Agent paid by the Small Business Applicant to assist it in connection with its application, the Agent also must complete and sign the form. When an Agent is paid by the lender, the lender must identify the Agent on SBA Form 159(7a) and the lender and Small Business Applicant must sign the form.

The only situation where an Agent can receive compensation from the lender and the Small Business Applicant is when the Agent provides packaging services to the Small Business Applicant and receives a referral fee from the lender. [LINK to 13 CFR 103.4\(g\)](#).

The SBA does not allow contingency fees (fees paid only if the loan is approved) or charges for services which are not reasonably necessary in connection with an application.

- (2) Referral Agents – [LINK to 13 CFR 103.1\(f\)](#)

“Referral Agent” means a person or entity that identifies and refers an applicant to a lender or a lender to an applicant. The referral agent may be employed and compensated by either an applicant or a lender.

Each referral agent, including loan packagers, must disclose the name of its customer and all fees charged in connection with the SBA loan transaction on SBA Form 159(7a).

- (3) Lender Service Provider – [LINK TO 13 CFR 103.1\(d\)](#)

“Lender Service Provider” means an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender.

SBA determines whether or not an agent is a lender service provider on a loan-by-loan basis by reviewing the relationship it establishes with a lender and the services it provides. If an Agent qualifies as a “lender service provider,” a formal agreement between the Agent and lender is required and must be approved by SBA.

Non-bank lenders and Small Business Lending Companies (SBLCs) must submit each LSP agreement to the SBA Office of Financial Assistance for review and approval. All other lenders must submit each LSP agreement to the local SBA District Office for review and approval.

SBA will investigate any complaint by an applicant, Small Business Applicant, lender or any other participant in an SBA program, concerning the activity, services completed, or fees charged by any lender service provider.

(4) Packager - [LINK TO 13 CFR 103.1\(e\)](#)

“Packager” means an Agent who is employed and compensated by a Small Business Applicant or lender to prepare the Applicant’s application for financial assistance from SBA. The packager may be the lender.

For 7(a) loans, if a CDC employee performs packaging or loan referral services within the scope of their CDC employment, both the CDC and the employee are agents. If a CDC employee acts as a packager or referral agent outside the scope of his or her employment, the CDC is not considered an agent.

b. Agents and Privacy Act Considerations

Private information about a loan cannot be discussed with anyone who claims to be an Agent for an Applicant, Participant, or lender without evidence of representation. Proprietary information is protected by the Right to Financial Privacy Act and the Privacy Act. Without proper authorization, SBA and participating lenders may not discuss private information with even a spouse or other close relative of the Applicant.

c. Reporting Data on Agents through E-Tran

SBA is required to collect certain information regarding the involvement of Agents in applications for financial assistance from SBA. For each loan submitted through E-Tran, lenders must identify whether an Agent was involved in any way with the transaction, and, if so, provide the name, street address, city, state, zip code and phone number of the Agent.

d. Employment of Agent Initiated by Applicant

Lenders and agents must clearly inform any applicant that the SBA does not require the use of an Agent for packaging or referring a loan application. When a Small Business Applicant employs an Agent:

- (1) The Agent may bill and be paid by the applicant for providing packaging services.
- (2) The Agent who works for an applicant as a packager may also work as a loan referral agent for the applicant and receive a referral fee from the applicant.
- (3) The Agent may be a loan referral agent for a lender and a packager for an applicant, provided both the applicant and the lender are aware of both relationships, and the Agent does not receive a referral fee from the applicant or a packaging fee from the lender.

e. Employment of Agent by Lender

(1) When a lender has decided to approve a loan application and needs assistance with the preparation of the paperwork for the application to SBA, the lender may use an Agent to prepare the loan application package and use that Agent as a lender service provider on the same loan, provided that the employment was initiated after the loan was approved by the lender and the terms and conditions for the loan have already been established.

(2) The Agent must bill and be paid by the lender for all services and the lender may not pass these charges through to the Small Business Applicant under any circumstances.

(3) When the employment of an Agent is initiated by the lender at the request of the Small Business Applicant or the Small Business Applicant provides its voluntary acceptance of the lender's offer of service:

(a) The Agent may serve as a packager and lender service provider on the same loan, provided their employment was initiated after the loan was approved by the lender and the terms and conditions for the loan have already been established.

(b) If the Agent is engaged prior to loan approval and establishment of the terms and conditions by the lender, the agent may not serve as the lender service provider on the same loan.

(c) The Agent may charge either the lender or the Small Business Applicant for providing packaging services, but it cannot charge both for the same service.

10. WHO MAY CONDUCT BUSINESS WITH SBA [LINK TO 13 CFR 103.2](#)

- a. Any person or entity applying for SBA assistance does not need an Agent to conduct business with SBA. The term "conduct business with SBA" is defined at [LINK TO 13 CFR 103.1\(b\)](#).

Those Agents debarred under the SBA or Government-wide debarment regulations may not conduct business with SBA. SBA may require that an Agent supply written evidence of his or her authority to act on behalf of an applicant or lender as a condition of revealing any information about the applicant's or lender's current or prior dealings with the SBA. Lenders may consult the Excluded Parties List System (EPLS) to determine if an Agent has been debarred or suspended by SBA or another federal agency. (LINK to www.epls.gov.)

SBA may, for good cause, suspend or revoke the privilege of an Agent to conduct business with the government. The suspension or revocation remains in effect during any administrative proceedings under SBA regulations at [13 CFR Part 134 \(LINK TO REG\)](#). The meaning of "good cause" may be found at [13CFR103.4](#). [ADD LINK](#)

b. Illegal Activity of an Agent must be Reported

Lenders should report any illegal activity of Agents to the Office of the Inspector General, Attention: Assistant Inspector General for Investigations. Any substantiating evidence should be included when contacting the Office of the Inspector General.

c. Review of Agent Fees

Lenders must review the Agent's services and related fees to determine if the fees are necessary and reasonable when:

- (1) there is an indication from a third party that an Agent's fees might be excessive; or
- (2) when an Applicant complains about the fees charged by an Agent.

In cases where fees appear to be unreasonable, Lenders should contact the D/OCRM to report the fees.

If an SBA investigation determines an Agent fee is excessive, the Agent must reduce the fee to an amount SBA deems reasonable, refund any sum in excess of that amount to the Applicant, and refrain from charging or collecting from the Applicant any funds in excess of the amount SBA deems reasonable.

d. Lender Service Provider Agreements

A Lender Service Provider (LSP) Agreement is an agreement between a lender and an Agent which performs specified duties on behalf of the lender. SBA views LSP Agreements as a means of permitting a lender to acquire staff for a particular activity through a contract rather than employing those same people directly. LSP Agreements are not SBA forms but each agreement must include the following:

- (1) Services: The contract must specifically state what services will be performed by the LSP.

- (2) Lender's responsibility: There must be a statement that the lender has the full responsibility for all loan decisions regarding SBA applications including approvals, closings, disbursements, servicing actions and due diligence. The description of the services the LSP provides cannot include the term "underwriting." The lender is responsible for all underwriting, loan approval and due diligence related to each SBA loan. The LSP only provides assistance to the lender.
- (3) Compensation: The compensation must be specifically explained and must state that the fees are for services actually performed. Services related to loan packaging and processing must be charged on an hourly basis. These fees cannot be based on a percentage of the loan amount or on whether the loan is approved. Services related to loan servicing may be based on a percentage of the loan balance. In addition, the contract must state that all compensation paid to the LSP will be paid by the lender and that the LSP is prohibited from charging the Small Business Applicant for the same services.
- (4) Term: The full term of the contract including options must be stated in order for SBA to determine if it is reasonable. In addition, the contract must clearly identify terms and conditions satisfactory to SBA that permit the lender or the LSP to terminate the contract prior to its expiration date on a reasonable basis (usually 30 – 60 days).
- (5) There must be a statement that:
 - (i) the lender and the LSP will not engage in the sharing of any Secondary Market premium.
 - (ii) the LSP will not assume a portion of the risk of the un-guaranteed portion of any loan.
 - (iii) the agreement is binding on any affiliates and successors of the LSP and the lender.
 - (iv) discloses any prior or existing relationship other than the contractual one created by the agreement or that no such relationship exists.
 - (v) the agreement is subject to all applicable laws, regulations, and policies including all SBA Loan Program Requirements.
- (6) The contract must not evidence any actual or apparent conflict of interest or self-dealing on the part of any of the lender's officers, management or staff.

CHAPTER 4

CREDIT STANDARDS, COLLATERAL AND ENVIRONMENTAL POLICIES

1. CREDITWORTHINESS/CREDIT UNDERWRITING

a. Credit Standards

Lenders must analyze each application in a commercially reasonable manner, consistent with prudent lending standards.

On SBA-guaranteed loans, the cash flow of the Small Business Applicant is the primary source of repayment, not the liquidation of collateral. Thus, if the lender's financial analysis demonstrates that the Small Business Applicant lacks reasonable assurance of repayment in a timely manner from the cash flow of the business, the loan request must be declined, regardless of the collateral available.

- (1) The lender's analysis must include:
 - (i) A description of the history and nature of the business.
 - (ii) A description of and comments on the business plan including financial condition of the business, need for the business in the area (if new) and competition.
 - (iii) A discussion of the owners' and managers' relevant experience in the type of business, as well as their personal credit histories.
 - (iv) A financial analysis of the Small Business Applicant's current balance sheet before and after the loan to include any required adjustments such as any equity injection, including a discussion of its adequacy, or stand-by debt.
 - (v) A financial analysis of repayment ability based on historical income statements and/or tax returns (if an existing business) and projections, including the reasonableness of the supporting assumptions.
 - (vi) A ratio analysis of the financial statements including comments on any trends and a comparison with industry averages.
 - (vii) An analysis of collateral adequacy, including an evaluation of the collateral and lien positions offered as well as liquidation values. (For further guidance, please see SOP 50 51, Loan Liquidation and Acquired Property, Chapter 13, Paragraph 27. [ADD HYPERLINK](#))
 - (viii) A discussion of lender's credit experience with the applicant and a review of business credit reports.
 - (ix) Other relevant information (for example, if the application involves a franchise, the success of the franchise).

- (2) For SBA's Small/Rural Lender Advantage Initiative, which will be tested for a limited period and in a limited geographic area, the lender's analysis must meet the requirements set forth below in place of the lender's analysis described in (1) above. After the testing period, SBA may extend this initiative to additional 7(a) lenders. If SBA extends the initiative to additional 7(a) lenders, all loan applications of \$350,000 or less that are submitted to SBA by such lenders for a final determination on credit and eligibility will have to meet the requirements set forth below. In addition, such lenders will have to use the application procedures and documentation set forth in Chapter 6, Paragraph 1.a. of this Subpart for such loans.

(i) Tier 1 Loans

(a) Defined as Loans up to \$50,000 EXCEPT for the following loans which require the lender to follow the procedures for Tier 3 loans:

1. New businesses (in business for 2 years or less – includes change of ownership) that have a Debt/Tangible Net Worth ratio, as defined by RMA Financial Ratio Benchmarks, below the second RMA quartile (RMA median) for businesses in the same industry;
2. Businesses where 3 or more of the following financial ratio benchmarks, as defined by RMA, are below the second RMA quartile for businesses in the same industry: Current Ratio, Net Sales/Net Working Capital, Debt/Tangible Net Worth, and Earnings Before Interest and Taxes/Interest; or
3. Businesses that have judgments or bankruptcy filings.

(b) The lender's Credit Memorandum for Tier 1 loans must meet reasonable and prudent industry standards, including, at a minimum:

1. Description of the history and nature of the business;
2. Description of and comments on the business plan including:
 - (A) management experience of principal(s), particularly in the industry;
 - (B) financial condition of the business; and
 - (C) nature of any competition;
3. Spread of Current Business Balance Sheet to include requested loan funds and any required equity injection (as of date of loan disbursement);
4. Ratio calculations (based on the Business Balance Sheet) for the following financial ratio benchmarks, as defined by RMA, and the RMA quartile comparisons for businesses in the same industry: Current Ratio, Net Sales/Net Working Capital, Debt/Tangible Net Worth, Earnings Before Interest and Taxes/Interest, appropriate Turnover Ratios (inventory, receivables, payables), and any appropriate additional financial ratios relevant to the particulars of the business/industry;
5. Collateral adequacy assessment (using liquidation values) to offset risk of default;
6. Explanation of and justification for the refinancing of any debt as a part of the loan request, particularly Same Institution Debt;

7. Discussion of credit analysis and recommendation by lender of credit decision;
and
8. Any additional information the lender considers relevant to the credit decision.

(ii) Tier 2 Loans:

- (a) Defined as Loans between \$50,001 and \$150,000 EXCEPT for loans to the following, which require Tier 3 procedures:
 1. New businesses (in business for 2 years or less – includes change of ownership) that have a Debt/Tangible Net Worth ratio, as defined by RMA Financial Ratio Benchmarks, below the second RMA quartile (RMA median) for businesses in the same industry;
 2. Businesses where 3 or more of the following financial ratio benchmarks, as defined by RMA, are below the second RMA quartile for businesses in the same industry: Current Ratio, Net Sales/Net Working Capital, Debt/Tangible Net Worth, and Earnings Before Interest and Taxes/Interest; or
 3. Businesses that have judgments or bankruptcy filings.
- (b) The lender's Credit Memorandum for Tier 2 loans must include (at a minimum) the items required for Tier 1 loans plus the following:
 1. Analysis/calculation of cash flow relative to debt service: Show how historical cash flow covers debt service (existing and any new debt service, including proposed loan) and how projected cash flow covers debt service. If historical cash flow does not cover all existing and new debt service at least 1:1, provide an analysis of the reasonableness of the assumptions supporting the projected cash flow.
 2. Discussion of any:
 - (A) seller financing;
 - (B) stand-by agreements;
 - (C) 90+day delinquencies; and/or
 - (D) trade disputes.

(iii) Tier 3 Loans:

- (a) Defined as Loans between \$150,001 and \$350,000 PLUS loans to the following:
 1. New businesses (in business for 2 years or less – includes change of ownership) that have a Debt/Tangible Net Worth ratio, as defined by RMA Financial Ratio Benchmarks, below the second RMA quartile (RMA median) for businesses in the same industry;
 2. Businesses where 3 or more of the following financial ratio benchmarks, as defined by RMA, are below the second RMA quartile for businesses in the same industry: Current Ratio, Net Sales/Net Working Capital, Debt/Tangible Net Worth, and Earnings Before Interest and Taxes/Interest; and

3. Businesses that have judgments or bankruptcy filings.
- (b) The lender's Credit Memorandum for Tier 3 loans must include (at a minimum) the items required for Tier 1 and Tier 2 loans plus the following:
1. Analysis of working capital adequacy to support projected sales growth in next 12 months;
 2. For a change of ownership, a business valuation that supports the purchase price based on generally accepted valuation methods used for the industry in which the business operates; and
 3. Discussion of any bankruptcy filings or trade disputes.
- (iv) If SBA extends the Small/Rural Lender Advantage Initiative to PLP lenders after the testing period, such lenders may use the analysis described in Paragraph (2) of this Chapter for PLP loans that are \$350,000 or less if the PLP lender uses a business credit scoring model described in Paragraph (4) below as part of its analysis. In that event, the PLP lender's credit memorandum must include the information discussed in Paragraph (2) of this Chapter. If the PLP lender does not use a business credit scoring model as part of its analysis, the PLP lender must process its PLP loans of \$350,000 or less using the same PLP procedures and documentation as it does for all PLP loans. (See Chapter 6 of this Subpart.) NOTE: PLP lenders may not refinance same institution debt through PLP procedures; these applications must be processed using standard 7(a) procedures. See Chapter 2, Paragraph 4.c. of this Subpart for further information on eligible PLP refinancing.

(3) SBA Express and Pilot Loan Programs Credit Standards

- (i) SBA has authorized SBA Express and Pilot Loan Program lenders to make the credit decision without prior SBA review. The credit analysis must demonstrate that there is a reasonable assurance of repayment. The lender is required to use appropriate, prudent and generally accepted industry credit analysis processes and procedures (which may include credit scoring), and these procedures must generally be consistent with those used for its similarly sized non-SBA guaranteed commercial loans. Lenders that do not use credit scoring for their similarly sized non-SBA guaranteed commercial loans may not use credit scoring for SBA Express. If lenders use credit scoring for their similarly-sized non-SBA guaranteed commercial loans, they must comply with Paragraph (4) below.
- (ii) Lenders must not make an SBA Express or Pilot Loan Program loan which would be inconsistent with SBA's "credit not available elsewhere" standard (see Subpart B, Chapter 2 of this SOP), i.e., lenders must not make an SBA guaranteed loan that would be available on reasonable terms from either the lender itself or another source without an SBA guaranty.
- (iii) The credit decision on SBA Express and Pilot Loan Program loans, including how

much to factor in a past bankruptcy or whether to require an equity injection, is left to the business judgment of the lender. Also, if the lender requires an equity injection and, as part of its standard processes for non-SBA guaranteed loans verifies the equity injection, it must do so for SBA Express loans. (Lenders must adhere to the requirement that owners of 20% or more must inject equity into the business above certain thresholds. See Subpart B, Chapter 2 of this SOP, regarding the Utilization of Personal Resources.) While the credit decision is left to the business judgment of the lender, early loan defaults will be reviewed by SBA pursuant to SOP 50-51.

(4) Credit Scoring

As noted above, the lender is required to use appropriate, prudent, and generally accepted industry credit analysis processes and procedures. This may include a business credit scoring model (not just consumer credit scores) as long as the lender is using the business credit scoring model for its similarly sized non-SBA guaranteed commercial loans. Lenders must validate (and document) with appropriate and accepted statistical methodologies that their business credit scoring model is predictive of loan performance, and they must provide that documentation to SBA upon request. In addition, the business credit scoring results must be documented in each loan file and available for SBA review.

(5) SBA Review of Lender's Credit Analysis

- (i) SBA's review of the lender's credit analysis must conclude that the lender identified through its credit underwriting that there is a reasonable expectation that the borrower will repay the loan in a timely manner and not default and that collateral meets SBA's collateral requirements.
- (ii) For Standard 7(a), SBA reviews the lender's credit analysis at time of loan processing and may ask for and receive additional information beyond the initial submission requirements. This is because SBA is making the final credit determination on these loans.
- (iii) SBA has authorized PLP, SBA Express, Export Express, Patriot Express and CommunityExpress lenders to make credit decisions without SBA review prior to loan approval. The PLP, SBA Express, Export Express, Patriot Express and CommunityExpress lender's analysis is subject to SBA's review and determination of adequacy, however, when the lender requests SBA to purchase its guaranty or when SBA is conducting a review of the lender.

b. Equity Requirements

(1) Amount of Equity

Adequate equity is important to ensure the long term survival of a business. The lender must determine if the equity and the pro forma debt-to-worth are acceptable based on the factors related to that type of business, experience of the management and the level of competition in the

market area. The lender must include in its credit analysis a detailed discussion of the required equity and its adequacy.

(2) Source of Equity Injection

(i) The following may be considered as Equity Injection:

(a) Cash that is not borrowed.

(b) Cash that is borrowed.

1. SBA considers funds borrowed through the use of personal credit for injection into the business as additional debt, not equity, with one exception.

If the Small Business Applicant can demonstrate repayment of this personal loan from sources other than the cash flow of the business, the cash injection may be considered equity. (Note: The salary of the business owner does not qualify.)

2. A lender must disclose any loan made to an individual for the purpose of providing an equity injection into the business. The lender's credit analysis must address the impact on the personal and business balance sheets and sources of repayment for such side loans. If the SBA participating lender is providing the personal loan, the lender must submit the application for guaranty through standard 7(a) processing.

(c) Assets other than Cash

Lenders must carefully evaluate the value of assets other than cash that are injected by owners or principals. Therefore, an appraisal or other valuation by an independent third party is recommended.

(d) Stand-by debt

Debt that is on full stand-by (no payments of principal or interest for the term of the SBA-guaranteed loan) may be considered acceptable equity for SBA's purposes. A debt that is on partial stand-by (interest payments only being made) may be considered equity when there is adequate historical cash flow available to make the payments.

(ii) The following may not be considered as Equity Injection:

(a) Value or cost of education; and

(b) Funds that are borrowed and do not meet the exception noted in subparagraph (i)(b) above.

(3) Documentation of Equity Injection

(i) Lenders are required to verify injections prior to disbursing loan proceeds and must maintain evidence of such verification in their loan files. Lenders are expected to use reasonable and prudent efforts to verify that equity is injected and used as intended, and failure to do so may warrant a repair or partial/full denial. Lenders must submit with each purchase request on a loan for which the loan authorization required an equity injection, documentation to show that they verified the equity injection. Verifying a cash injection requires documentation such as a copy of a check along with evidence that the check was processed (e.g., at least one bank account statement dated before, but close to, disbursement showing that the funds were available and deposited into the borrower's account), or a copy of an escrow settlement accompanied by a bank account statement showing the injection into the business prior to disbursement. A promissory note, "gift letter" or financial statement alone is generally not sufficient evidence of cash injection.

(ii) For further guidance on documenting an equity injection, including non-cash assets, see SOP 50 51, Loan Liquidation and Acquired Property, Chapter 13, Paragraph 24. [ADD LINK TO SOP.](#)

2. COLLATERAL

a. General Requirements

(1) Adequacy of Collateral

- (i) A loan request is not to be declined solely on the basis of inadequate collateral. In fact, one of the primary reasons lenders use the SBA-guaranteed program is for those Small Business Applicants that demonstrate repayment ability but lack adequate collateral to fully repay the loan if the loan defaults.
- (ii) SBA does not permit its guaranty to be used as a substitute for available collateral. SBA requires that the lender collateralize the loan to the maximum extent possible up to the loan amount. If business assets do not fully secure the loan, the lender must take available personal assets of the principals as collateral.
- (iii) When loan proceeds will be used to purchase assets, a first security interest in those assets must be obtained. When loan proceeds will be used to refinance existing debt, the loan must be secured with at least the same security as the debt that is being refinanced.
- (iv) SBA considers a loan as "fully secured" if the lender has taken security interests in all available assets with a combined "liquidation value" up to the loan amount. "Liquidation value" is the amount expected to be realized if the lender took possession after a loan default and sold the asset after conducting a reasonable search for a buyer and

after deducting the costs of taking possession, preserving and marketing the asset, less the value of any existing liens. Business operating and trading assets are to be excluded from the calculation of “fully secured” (even when liens are taken on these assets) since these assets are often needed to secure seasonal lines of credit for the business as it grows requiring the SBA loan to be subordinated to the new line of credit and because any assets in this category have negligible value in a liquidation.

- (v) Liens on secondary collateral, such as a personal residence, may be limited to 150% of the equity in the collateral, rather than the loan amount, if there are tax implications associated with the lien amount in the particular state where the lien is filed.

(2) Personal Residence as Collateral

SBA does not require a lender to collateralize a loan with a personal residence to meet the “fully secured” definition when the equity in the residence is less than 25 percent of the property’s fair market value.

(3) Secondary Collateral

Personally-held, publicly-traded stocks, bonds, mutual funds, and certificates of deposit not included in a retirement account may be pledged to meet SBA’s collateral requirements.

(4) Assets owned by the Small Business Applicant’s Spouse

When an individual alone or an individual and his or her spouse together own 20% or more of the Small Business Applicant, the lender must consider taking as collateral assets that are owned individually, as well as assets owned jointly. This is true even when the spouse has no ownership interest in the business. The only exception would be if there is a legal impediment to the owner’s ability to use the spouse’s individually-owned property to secure the loan.

b. Guaranties

- (1) Personal Guaranties: Individuals who own 20% or more of a Small Business Applicant must provide an unlimited full personal guaranty. Lenders may require other individuals to guarantee the loan as well. ([LINK TO 13 CFR 120.160\(a\)](#)) The guaranty by owners of less than 20% may be limited or full. If a limited guarantee is used, lender must choose one of the payment limitation options in SBA Form 148L (Unconditional Limited Guarantee) and specify the option in the Authorization.

- (i) Lender must obtain a personal financial statement from all individuals guaranteeing the loan.
- (ii) Guaranty may be secured or unsecured but must meet SBA’s collateral requirements. If the loan is not fully collateralized by business assets, available personal assets must be pledged to secure the guaranty.
- (iii) Guaranty of Spouse:
 - (a) When the combined ownership interest of spouses is 20% or more, both spouses must personally guarantee the loan in full.

- (b) For a non-owner spouse, lender must require the signature of the spouse on the appropriate collateral documents. The spouse's guaranty secured by jointly held collateral will be limited to the spouse's interest in the collateral.
- (2) Corporate/Other Guaranties: All entities that own 20% or more of a Small Business Applicant must provide an unlimited full guaranty. Financial statements are necessary to determine the assets available to support the guaranty.
- (3) Each loan must be guaranteed by at least one individual or entity: If no one individual or entity owns 20% or more of the Small Business Applicant, at least one of the owners must provide a full unconditional guaranty.
- (4) Employee Stock Ownership Plans (ESOPs) and 401(k) Accounts: When an ESOP or 401(k) owns 20% or more of a Small Business Applicant, SBA will not require the Plan or Account to guarantee the loan, however, the following conditions apply:
 - (i) The beneficiary(ies) of a 401(k) must provide his or her full unconditional personal guaranty regardless of the individual ownership interest in the applicant concern. This guaranty must be a secured guaranty if required by SBA's existing collateral policies.
 - (ii) The members of the ESOP are not required to personally guarantee the debt.
 - (iii) The borrower cannot be an eligible passive company (EPC). [LINK TO 13 CFR 120.111\(a\)\(6\)](#) (SBA regulations require all 20 percent or more owners of an EPC to guarantee the loan and the regulation does not provide for an exception.)

c. Appraisal Requirements

The regulations governing appraisal requirements are set forth at ([LINK TO REG 13 CFR § 120.160\(b\)](#)): http://www.access.gpo.gov/nara/cfr/waisidx_04/13cfr120_04.html)

(1) Commercial Real Estate

SBA requires a real estate appraisal if the SBA-guaranteed loan is greater than \$250,000 AND is collateralized by commercial real property.

A lender should follow its own regulator's requirements for real estate appraisals for loans of \$250,000 or less with the exception described below for a change of ownership.

- (i) The appraiser must be:
 - (a) independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and
 - (b) either State-licensed or State-certified with the following exception: when the commercial property's estimated value is over \$1,000,000, the appraiser must be State-certified.
- (ii) The appraisal report must be prepared in compliance with Uniform Standards of Professional Appraisal Practice (USPAP) and use one of the following options:
 - (a) a self-contained appraisal report; or
 - (b) a summary appraisal report.

Note: A restricted appraisal report is acceptable only when it is used to update a self-contained or summary appraisal that is no more than 12 months old and that meets SBA's requirements.

- (iii) Appraisals may either be "complete" which details three methods of valuation (cost, income, and comparable sales of similar property) or "limited" which does not use all three methods.

SBA, however, requires that at a minimum both the "cost" and "comparable sales" valuations are part of the appraisal and are the parts that are used to determine the fair market value of the property. If the appraisal also includes an "income" valuation, **this valuation is not to be used** either separately or as part of any averaging of the values when identifying the real estate value to support an SBA-guaranteed loan. SBA requires a "bricks and mortar" valuation on the commercial real estate. An income valuation describes the use of the property as an investment, landlord/tenant property.

An appraisal may include a liquidation valuation in addition to the "cost" and "comparable sales" valuations. Such a valuation may assist the lender in underwriting the loan by establishing the collateral risk as well as to what extent any additional available collateral will need to be pledged to secure a 7(a) loan.

- (iv) If the loan will finance new construction, the valuation must be an "as-built" appraisal, architect's certified cost estimate, or a contractor's contract based on completed plans and specifications with a final appraisal (or an "as-completed" certificate for an as-built appraisal) upon completion of construction that demonstrates that the pre-construction appraised value is equal to or less than the appraised value at time of completion.
- (v) In order for the appraiser to identify the scope of work appropriately, the appraisal report must be requested by and prepared for the lender. The cost may be passed on to the borrower.

(vi) An appraisal may be submitted as part of the loan application to assist with the underwriting or as part of the loan closing.

(a) If the lender is going to require the appraisal at closing, the loan application must include an estimate of the value of the real estate that is identified in the loan authorization with the requirement for an appraisal that supports the estimated value at time of closing.

(b) If at time of closing the appraisal:

1. comes in at 90 percent or more of the estimated value, the lender may close the loan but must include a written explanation as to why the appraisal is less than the estimated value in the loan file; or
2. comes in at less than 90 percent of estimated value, the lender may not close the loan without SBA's prior written permission (see exception below for PLP lenders). The lender's justification to SBA must provide a sufficient understanding of the reasons for the differences in values between the estimated and actual values as well as a recommendation as to a remedy to offset the difference in values such as additional equity or additional collateral. If additional collateral is being required, the lender must identify both the fair market and liquidation values of the additional collateral.

(c) Exception for PLP Lenders:

PLP lenders are permitted to close a loan when the appraisal is less than 90 percent of the estimated value but the lender must include a written justification as part of its file that may be reviewed by SBA at time of guaranty purchase or when SBA is reviewing the lender. The justification must include a thorough analysis by the lender of the reasons for the appraisal being low and an explanation as to what steps the lender took to offset the risk to SBA from the low appraisal such as additional equity or additional collateral.

(2) Non-commercial real estate or real estate securing a personal guaranty

SBA has no specific requirements for non-commercial real estate (such as a residence) or real estate (commercial or non-commercial) taken as collateral to secure a personal guaranty.

(3) Other Fixed Assets

If the valuation of fixed assets is greater than their depreciated value, an independent appraisal must be obtained to support the higher valuation.

(4) Change of Ownership – Additional Requirements

When the use of proceeds is for a complete change of ownership, this results in new, unproven ownership/management and new debt unrelated to business operations. SBA

considers such situations to fall into the category of a “new” business rather than an “existing” business.

Because a change of ownership may result in the buyer paying more for the business than the business’s cash flow can sustain, especially with the added liability of new ownership/management, a lender must meet additional SBA requirements for this type of use of proceeds when the loan amount is more than \$350,000.

(i) Business Valuation

(a) Determining the value of a business is the key component to the analysis of any loan application for a change of ownership. The need for an accurate valuation is true regardless of whether the financing is structured as an asset purchase or a business purchase.

1. For loans less than \$350,000, the lender may do its own valuation of the business being sold to identify whether the seller is requiring a price that is not supported by the business’s historical performance.
2. For loans of \$350,000 or more, the lender must obtain an independent business valuation from a qualified source.

(b) In addition, a lender should require as much seller-financing as possible with the seller-financing having a subordinate lien to the SBA-guaranteed loan on the business assets. A rule of thumb for the amount of seller-financing that should be required is the amount being borrowed by the buyer to finance the acquisition of intangible assets such as goodwill.

(ii) Appraisal of Business Real Estate

For businesses that have been transferred within 36 months prior to the date of the loan application where the real estate is valued at over \$100,000, SBA requires the following:

- (a) an appraisal of the business real estate; and
- (b) either a "review" of the first appraisal by another appraiser selected directly by the lender, or if the first appraisal was requested by the lender, a site visit by a senior member of the lender's staff. The lender must document the file and include the date of the visit and a description of the items reviewed on site.

d. CAPLine Collateral Requirements

- (1) Applicants must be able to provide the lender with a first lien position on their working assets (i.e. accounts receivable, inventory, or contracts). For Builder’s CAPLines:

(i) SBA will accept no less than a second lien position on the property being constructed or renovated if the purpose of the first lien was to acquire the property. If the property is part of a subdivision where the prime lender for the subdivision holds a first lien OR serves as partial collateral for a loan secured by more than one parcel of real estate, the first lienholder must provide a “release clause” for transfer of clear title to any eventual buyer of individual parcels upon receipt of a pre-established payment.

(ii) Do not take a second lien position if the first lienholder requires that the entire loan be paid in full before any property is released. Where Lender/SBA is in a second position, the total amount necessary to release the first and second liens may not exceed 80 percent of the fair market value (selling price) of the completed project.

- (2) All liens must be perfected and the lien position verified prior to the initial disbursement. For seasonal, contract or builder loans which revolve for more than one season, contract or construction/renovation project, liens must be perfected prior to the initial disbursement for each season, contract or project.
- (3) The requirements for personal guaranties are the same as for any other 7(a) program.

e. SBA Express Collateral Requirements

- (1) For loans of \$25,000 or less, lenders are not required to take collateral; and
- (2) For loans over \$25,000, the lender must follow the collateral policies and procedures that it has established and implemented for its similarly sized non-SBA guaranteed commercial loans.
- (3) Lender’s collateral policies must be commercially reasonable and prudent.
- (4) With respect to collateral taken, SBA Express lenders must use commercially reasonable and prudent practices to identify collateral items, which would include conformance with procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans.

f. Pilot Loan Program Collateral Requirements

- (1) Patriot Express:
 - (i) For loans of \$25,000 or less, lenders are not required to take collateral;
 - (ii) For loans greater than \$25,000 but less than \$350,000, the lender must follow the collateral policies and procedures that it has established and implemented for its similarly-sized non-SBA guaranteed commercial loans. (Lenders must substantiate their existing, applicable collateral policies in their loan file and will be required to certify their conformance with those policies for any purchase request.)
 - (iii) For loans of \$350,000 or more, lenders must take all available collateral.

- (iv) Lenders may not use Patriot Express to substitute for situations/loans where the lender's standard policy for non-SBA guaranteed commercial loans would be to take collateral.
 - (v) Lender's collateral policies must be commercially reasonable and prudent.
 - (vi) With respect to collateral taken, Patriot Express lenders must use commercially reasonable and prudent practices to identify collateral items, which would include conformance with procedures at least as thorough as those used for their non-SBA guaranteed commercial loans.
- (2) Export Express
- (i) For loans of \$25,000 or less, lenders are not required to take collateral; and
 - (ii) For loans over \$25,000, the lender must follow the collateral policies and procedures that it has established and implemented for its similarly sized non-SBA guaranteed commercial loans.
 - (iii) Lender's collateral policies must be commercially reasonable and prudent.
 - (iv) With respect to collateral taken, Export Express lenders must use commercially reasonable and prudent practices to identify collateral items, which would include conformance with procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans.
- (3) CommunityExpress
- (i) For loans of \$25,000 or less, lenders are not required to take collateral; and
 - (ii) For loans over \$25,000, the lender may either comply with SBA's general collateral policy or follow the collateral policies and procedures that it has established and implemented for its similarly sized non-SBA guaranteed commercial loans.
 - (iii) Lender's collateral policies must be commercially reasonable and prudent.
 - (iv) Technical assistance may be considered a collateral enhancement.

f. EWCP Collateral Requirements

- (1) EWCP loans shall be secured by no less than a first lien on all collateral associated with the transactions financed. This includes at least the export inventory and receivables, assignment of credit insurance, letters of credit proceeds, and contract proceeds as applicable.
- (2) In general, the inventory produced and the receivables generated by the export sales financed will be considered to provide adequate collateral coverage. SBA, however, may require additional collateral by placing a lien on other business assets.
- (3) Receivables generated from sales to foreign purchasers are not considered a foreign asset and may be taken as collateral.

- (4) Personal guarantee of all 20 percent or more owners is generally required, but may be waived by the D/FA.

3. ENVIRONMENTAL POLICIES AND PROCEDURES

These environmental policies and procedures apply to all lenders on all 7(a) loan programs, except where otherwise indicated. Failure to comply with the provisions of this paragraph may result in a denial of SBA's guaranty.

- a. Definitions

Terms that are capitalized in this paragraph are defined in the "Definitions" section in Appendix 2. Online users of this SOP may click on a defined term and be taken by hyperlink to the definition of that term.

- b. The Risks of Environmental Contamination include:

- (1) The costs of Remediation could impair the borrower's ability to repay the loan and/or continue to operate the business;
- (2) The value and marketability of the Property could be diminished. If the borrower defaults, lender or SBA might have to abandon the Property to avoid liability or accept a reduced price for the Property;
- (3) Lender or SBA could be liable for environmental clean-up costs and third-party damage claims arising from Contamination if title to contaminated Property is taken as a result of foreclosure proceedings and/or lender or SBA exercises operational control at the Property; and
- (4) If a Governmental Entity cleans a site, it may be able to file a lien for recovery of its costs which may be superior to SBA's lien.

- c. Environmental Investigations

SBA requires an Environmental Investigation of all commercial Property upon which a security interest such as a mortgage, deed or trust, or leasehold deed of trust is offered as security for a loan or debenture. The type and depth of an Environmental Investigation to be performed varies with the risks of Contamination. This paragraph provides minimum standards. Prudent lending practices may dictate additional Environmental Investigations or safeguards.

- d. Submission of Environmental Investigation Reports

Lender (except on PLP, SBA Express and Pilot Loan Program loans) must submit the Environmental Investigation Report to the SBA Center processing the application. All Transaction Screens, Phase I and Phase II ESAs **must** be performed by an Environmental Professional and be accompanied by the Reliance

Letter in Appendix 3.

e. The Steps of an Environmental Investigation

NAICS Codes. Lender must begin by determining the NAICS code(s) for the Property's *current and known prior uses* and comparing the NAICS code(s) to the list of environmentally sensitive industries in Appendix 4.

- (1) If there is a NAICS code match to an environmentally sensitive industry identified in Appendix 4, the Environmental Investigation must begin with a Phase I, regardless of the amount of the loan.

If the NAICS code begins with 447 (gas stations with or without convenience stores), lender must comply with “Requirements Pertaining to Gas Station Loans” in Appendix 5.

- (2) If there is not a NAICS code match to an environmentally sensitive industry, the lender must proceed as follows:

- (i) If the loan amount is **up to and including** \$50,000, the Environmental Investigation may begin with an Environmental Questionnaire.
- (ii) If the loan amount is **more than** \$50,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and Records Search with Risk Assessment.

Environmental Questionnaire Results. If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination on the site and that no further investigation is warranted, lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

If at any time an Environmental Questionnaire reveals that further investigation is warranted, lender must obtain, at a minimum, a Transaction Screen.

Environmental Questionnaire & Records Search with Risk Assessment Results

- (1) If the Environmental Questionnaire reveals that it is unlikely that there is environmental contamination on the site and that no further investigation is warranted, and the Records Search with Risk Assessment concludes that the Property is a “low risk” for Contamination, lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

- (2) If the Records Search with Risk Assessment concludes that the Property is a “high risk” for Contamination, lender must obtain a Phase I ESA.

Transaction Screen Results

- (1) If the Environmental Professional conducting the Transaction Screen concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA’s concurrence.
- (2) If the Environmental Professional conducting the Transaction Screen concludes that further investigation is warranted, the lender must obtain a Phase I ESA.

Phase I ESA Results

- (1) If the Environmental Professional conducting the Phase I ESA concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA’s concurrence.
- (2) If the Environmental Professional conducting the Phase I ESA concludes that further investigation is warranted (typically a Phase II), and the lender still wants to make the loan, the lender must proceed as recommended by the Environmental Professional, or in the alternative submit the results of the Environmental Investigation to the SBA with recommendations and seek SBA’s concurrence. In general, SBA will require compliance with all of an Environmental Professional’s recommendations (including “housekeeping measures,” such as secondary containment, decommissioning monitoring wells, sealing floor drains, etc.). In the rare instance where an exception may be warranted, lenders must provide a rationale for not wanting to follow the Environmental Professional’s recommendation.

Phase II ESA Results

- (1) If the Environmental Professional conducting the Phase II ESA concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA’s concurrence.
- (2) If the Phase II ESA reveals Contamination and the lender still wishes to make the loan, lender must ensure that the Environmental Professional has documented:

- (i) Whether the Contamination quantities exceed the reportable or actionable levels;
 - (ii) Whether Remediation is necessary;
 - (iii) An estimate of any Remediation costs (Environmental Professionals may use ASTM E2137-01 Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters); and
 - (iv) The projected completion date of any Remediation.
- (3) If the Environmental Investigation reveals Contamination, the lender should determine whether disbursement is appropriate under one or more of the factors identified in subparagraph “g.” “Approval and Disbursement of loans when there is Contamination or Remediation at the Property”.
- (4) If at any stage of the Environmental Investigation SBA concurs with a lender’s recommendation that **environmental risk has been sufficiently minimized** and that **no further investigation is required**, the loan may be disbursed.

f. Legal Responsibilities of SBA Field Counsel

SBA loan processing personnel must obtain field counsel’s opinion as to the adequacy of an Environmental Investigation and whether the risk of Contamination, if any, has been sufficiently minimized.

g. Approval and Disbursement of loans when there is Contamination or Remediation at the Property

Loans may not be approved or disbursed if there is Contamination or on-going Remediation at the Property unless the risks have been minimized to the satisfaction of SBA Loan Processing Center personnel after consulting with and obtaining the concurrence of SBA field counsel. Lenders seeking loan approval or disbursement authority despite Contamination or on-going Remediation at the Property must submit a recommendation to SBA that includes, at a minimum, a discussion of the following:

Nature and Extent of the Contamination including copies of the following documents pertaining to the Property:

- (1) All relevant Environmental Investigation Reports;
- (2) All Government Entity correspondence;

Remediation

- (1) Recommended method of Remediation;
- (2) Status of on-going Remediation, if any;

- (3) Environmental Professional's estimated cost of Remediation;
- (4) Environmental Professional's estimated completion date;
- (5) Government Entity's designation of responsible Person(s);
- (6) Person(s) paying for on-going Remediation;

Collateral Value

- (1) Proposed loan amount and proposed use of proceeds;
- (2) Appraised or the estimated value of the Property;
- (3) Institutional Controls and Engineering Controls, if any, and their impact on repayment ability, collateral value and marketability of the Property; and

Mitigating Factors

- (1) Indemnification. If the seller or any other Person, who possesses sufficient financial resources to cover the costs of completing Remediation and any potential third-party claims, executes the SBA Environmental Indemnification Agreement in Appendix 6, approval or disbursement may be considered.

Lender must conduct an analysis of the proposed indemnitor to ensure that it has sufficient assets to honor an indemnification agreement, and this analysis must include, at a minimum, a review of its financial statements.

The SBA Environmental Indemnification Agreement:

- (i) cannot be modified;
- (ii) must be executed by the Small Business Concern;
- (iii) must be executed by the seller, if the loan is to purchase the Property;
- (iv) must have a copy of the Environmental Investigation Report attached to it; and
- (v) must be properly recorded in the memorandum format in Exhibit C to Appendix 6.

All lenders (except for PLP, SBA Express and Pilot Loan Program lenders) must submit the finalized SBA Environmental Indemnification Agreement to SBA for review and approval prior to a request that SBA fund the loan.

- (2) Completed Remediation. If the Governmental Entity has affirmed in writing that active Remediation is complete but additional monitoring is required, approval or disbursement may be considered after the following occurs: (a) monitoring results for the first year are obtained; (b) an Environmental Professional concludes that the results show no unacceptable increase in Contamination since Remediation; and (c) Environmental Professional concludes that the owner/operator of the Property is in compliance with any continuing obligations, including activity and use limitations, Engineering and Institutional Controls, and post-Remedial monitoring required by the Governmental Entity.
- (3) “No Further Action”. If a lender obtains a “no further action letter,” “comfort letter,” “closure letter,” or other agreement from a Governmental Entity stipulating that the Property owner and future purchasers will not be liable for the known and identified Contamination at the Property, approval or disbursement may be considered. Lender should attempt to have lender and SBA included by name in the letter along with the Property owner and future purchasers.
- (4) “Minimal Remediation”. If the extent of Contamination and cost of Remediation is minimal in relation to the value of the Property and/or the resources of the Person responsible for Remediation, and the Remediation is projected to be completed within one year, approval or disbursement may be considered. The lender should identify the Environmental Professional that will supervise the Remediation and discuss: (a) the nature of the Contamination; (b) the reliability of the Remediation estimates; (c) the projected completion date; and (d) the duration of ongoing monitoring.
- (5) Clean-up Funds. If lender provides evidence from a Governmental Entity that the borrower or Property has been approved by a fund to pay for or reimburse Remediation costs, and the amount allocated is sufficient to cover the costs of Remediation, approval or disbursement may be considered. Lender must also address any conditions of Remediation that might preclude payment or reimbursement and the financial capability of the fund.
- (6) Escrow Account. If an escrow account is available which (a) equals a minimum of 150 percent of the total estimated cost of required Remediation and (b) is controlled by a 7(a) lender or first mortgage holder in a 504 loan as trustee, approval or disbursement may be considered. The Governmental Entity must concur with the Remediation’s scope. The Loan Authorization must ensure that escrow funds will only be used for Remediation costs. Depending upon the circumstances, an escrow account with more than 150 percent of the estimated costs of Remediation may be appropriate. Any remaining funds in the account may not be released until

the appropriate “closure letter” or “no further action letter” is received or, in the case of monitoring, when all monitoring wells related to the Property have been decommissioned.

Note: Lender’s role as trustee of the escrow account is solely to release funds upon the satisfactory completion of Remediation work – the lender must not control or manage the Property being Remediated.

- (7) Groundwater Contamination Originating from Another Site. If groundwater Contamination on the Property is shown to have come from another property, and lender can demonstrate that the Contamination has not caused significant damage to the collateral value and marketability of the Property, approval or disbursement may be considered if another Person with sufficient resources is performing Remediation pursuant to a Remediation action plan that has been approved by the appropriate Governmental Entity and:
 - (a) The state has laws or regulations that provide that an owner or operator of property will not be responsible for Contamination from another site; or
 - (b) The Governmental Entity provides satisfactory written assurance that it will not hold the Property owner liable for the Contamination.
- (8) Additional or Substitute Collateral. If additional or substitute collateral is being pledged, or an additional equity contribution is being made, sufficient to overcome the potential loss due to Contamination, then approval or disbursement may be considered.
- (9) “Other Factor(s)”. Lender and SBA may rely on factors other than or in addition to the eight referenced above when considering approval or disbursement. For example, the existence of adequate environmental insurance, bonds, agreements not to sue present and future property owners from the Governmental Entity, Engineering and Institutional Controls, etc. However, reliance solely upon “Other Factor(s)” requires clearance from the SBA Environmental Committee. This requirement extends to PLP, SBA Express and Pilot Loan Program lenders.

PLP, SBA Express and Pilot Loan Program lenders must follow these guidelines, but they do not have to submit documentation or obtain SBA’s concurrence prior to approval or disbursement of the loan, unless they are relying solely upon the “Other Factor(s)” in subparagraph g. (9), above.

h. Special Use Facilities

Prudent lending practices dictate that specific environmental assessments be performed for certain special use facilities. For example, Property constructed prior to 1978 that will be used for daycare or child care centers or nursery schools must undergo a lead risk assessment and the results of this assessment must be submitted to the SBA. Disbursement will not be authorized unless the risk of lead exposure to infants and small children has been sufficiently minimized.

i. Brownfields Sites

SBA encourages the redevelopment of brownfields, and SBA loan guarantees are available to small businesses interested in locating on revitalized brownfields. Typically this occurs through utilization of one or more of the 9 factors in subparagraph l. of this paragraph.

j. Questions on SBA's Environmental Policy, Requests for Reconsideration, and Appeals

Questions on SBA's Environmental Policy should be directed to local field counsel for the area where the Property is located.

Lenders who believe that the decision of field counsel is inconsistent with this SOP may appeal the decision by forwarding a copy of the decision, along with an explanation of how the determination is perceived to be inconsistent with this SOP to EnvironmentalAppeals@sba.gov. Environmental appeals will be reviewed by the SBA Environmental Committee comprised of OGC and field attorneys appointed by the Associate General Counsel for Litigation, who may consult with an environmental engineer. The Associate General Counsel for Litigation would retain the authority to overrule decisions rendered by the SBA Environmental Committee.

Chapter 5 Loan Authorization

AUTHORIZATION

The lender sets the terms and conditions for extending credit to the borrower. SBA establishes the terms and conditions for its loan guaranty. The Authorization is SBA's written agreement between the SBA and the lender providing the terms and conditions under which SBA will guarantee a business loan.

1. BASIC LOAN CONDITIONS:

120.160 Loan conditions. [LINK 13 CFR 120.160](#)

a. SBA establishes the wording for all standard 7(a), CLP and PLP Authorization conditions in the National Authorization Boilerplate (“the Boilerplate”). The conditions reflect the policies and procedures in effect at the time the Boilerplate is issued. The Boilerplate is incorporated by reference into this SOP. If there is any conflict between the Boilerplate and the SOP, the Boilerplate supercedes the SOP.

- (1) The [Boilerplate](#) contains the mandatory national standard language for all SBA authorizations. There are separate Boilerplates for the Export Working Capital Program (EWCP) and CAPLines. SBAExpress and the Pilot Loan Programs do not use the Boilerplate; rather, these programs use an abbreviated version created for each program.
- (2) The [Wizard](#) is a technical tool intended to make it easier for lenders to create Authorizations based on the Boilerplate.

b. The latest edition of each Boilerplate can be found at www.sba.gov/aboutsba/sbaprograms/elending (then click on “Authorizations”). The Authorization for standard 7(a), CLP and PLP loans must use the pre-approved conditions that are found in the Boilerplate. The Authorizations for loans made under SBAExpress and the Pilot Loan Programs must contain at least the paragraphs included in the form for that particular program.

c. The party responsible for drafting the Authorization is determined by the program the loan is processed under.

<u>Loan Program</u>	<u>Responsible Party</u>
Standard 7a, EWCP, CAPLines	SBA drafts and signs the Authorization
CLP	Lender drafts, SBA finalizes and signs
PLP, SBAExpress and Pilot Loan Programs (Patriot Express/Export Express/ CommunityExpress)	Lender drafts and signs on SBA’s behalf

d. Processing center counsel must review and approve any Authorization that proposes to deviate from the Boilerplate language with the following exception. PLP lenders may develop Authorization conditions that are not pre-approved in the Boilerplates and use them without prior SBA approval, provided they are only used one time. Whenever a PLP Lender develops and uses a non-standard condition, an explanation for its development must be in the loan file.

2. INSURANCE REQUIREMENTS

a. Hazard Insurance

[LINK TO 13 CFR 120.160\(c\)](#)

(1) SBA requires hazard insurance on all assets pledged as collateral.

(2) Real Estate:

(i) Coverage must be in the amount of the full replacement cost.

(ii) If full replacement cost insurance is not available, coverage must be for the maximum insurable value.

(iii) Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of the lender. This clause must provide that any action or failure to act by the mortgagor or owner of the insured property will not invalidate the interest of lender. The policy or endorsements must provide for at least 10 days prior written notice to lender of policy cancellation.

(3) Personal Property:

(i) Coverage must be in the amount of full replacement cost.

(ii) If full replacement cost insurance is not available, coverage must be for maximum insurable value.

(iii) Insurance coverage must contain a LENDER'S LOSS PAYABLE CLAUSE in favor of lender. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of lender. The policy or endorsements must provide for at least 10 days prior written notice to lender of policy cancellation.

(4) SBA Express and Pilot Loan Programs: If the lender does not require hazard insurance (for example, if it would impose an undue burden on a borrower given the small size of a loan), the lender must document the reason in its loan file.

b. Marine Insurance

(1) Coverage in the amount of the full insurable value on the vessel(s) with lender designated as "Mortgagee" must be obtained when the vessel is the collateral on the loan.

(2) The policy must contain a Mortgagee clause providing that the interest of lender will not be invalidated by any:

(i) act, omission, or negligence of the mortgagor, owner, master, agent or crew of the insured vessel;

- (ii) failure to comply with any warranty or condition out of mortgagee's control;
or
- (iii) change in title, ownership or management of the vessel.
- (3) The policy must include Protection and Indemnity, Breach of Warranty, and Pollution coverage.
- (4) The policy or endorsements must provide for at least 10 days prior written notice to lender of policy cancellation.

c. Flood Insurance

- (1) SBA flood insurance requirements are based on the Standard Flood Hazard Determination [FEMA Form 81-93](#).
- (2) If any portion of a building that is collateral for the loan is located in a special flood hazard area, lender must require Borrower to obtain flood insurance for the building under the National Flood Insurance Program (NFIP).
- (3) If any equipment, fixtures or inventory that is collateral for the loan ("Personal Property Collateral") is in a building any portion of which is located in a special flood hazard area and that building is collateral for the loan, lender must require Borrower to also obtain flood insurance for the Personal Property Collateral under the NFIP.
- (4) If any Personal Property Collateral is in a building any portion of which is located in a special flood hazard area and that building is not collateral for the loan, lender must require Borrower to obtain available flood insurance for the Personal Property Collateral. The lender may waive this requirement when the building is not collateral for the loan if it:
 - (i) uses prudent lending standards to determine that flood insurance is not economically feasible or not available; and
 - (ii) includes a written justification in the loan file that fully explains why flood insurance is not economically feasible or, if flood insurance is not available, the steps taken to determine that it is not available.
- (5) Insurance coverage must be in amounts equal to the lesser of the insurable value of the property or the maximum limit of coverage available.
- (6) Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of lender. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of lender.

d. Life Insurance

- (1) Lender must determine if the viability of the business is tied to an individual or small group of individuals. In these situations, the lender must require life insurance in an amount sufficient to repay the loan in the event of the death of key personnel.
- (2) For each policy required under this paragraph, lender must obtain a collateral assignment, identifying the lender as assignee, that is acknowledged by the Home Office of the Insurer. The lender must assure that the borrower pays the premiums on the policy.

- (3) Life insurance required must be consistent with the size and term of the loan.
- (4) The lender may accept the pledge of an existing life insurance policy. When a new policy is required, a decreasing term policy is most appropriate. Credit life insurance or whole life insurance should not be required.

e. Other Insurance

Lender must include any other insurance appropriate to the loan, including but not limited to:

- (1) Liability Insurance;
- (2) Product Liability Insurance;
- (3) Dram Shop/Host Liquor Liability Insurance;
- (4) Malpractice Insurance;
- (5) Disability Insurance;
- (6) Workers' Compensation Insurance; and
- (7) any State specific insurance requirements.

3. IRS TAX TRANSCRIPT/VERIFICATION OF FINANCIAL INFORMATION

a. SBA's Tax Verification process is to determine if:

- (1) the Small Business Applicant filed business tax returns; and
- (2) the Small Business Applicant's financial statements provided as part of the application agree with the business tax returns submitted to the IRS .

b. For a sole proprietorship, the lender must verify the Schedule C.

c. For a change of ownership, the lender must verify the seller's business tax returns or a sole proprietor's Schedule C. Where there is an acquisition of a division or a segment of an existing business, other forms of verification may be used in lieu of the 4506-T (e.g. Sales tax payment records).

d. Prior to any disbursement of Loan proceeds, lender must obtain:

(1) Verification of Financial Information—

(i) Lender must submit [IRS Form 4506 - T with SBA logo \(ADD LINK\)](#) to the Internal Revenue Service to obtain federal income tax information on Borrower, or the Operating Company if the Borrower is an EPC, for the last 3 years (unless Borrower or Operating Company is a start-up business).

(ii) If the business has been operating for less than 3 years, lender must obtain the information for all years in operation.

(iii) This requirement does not include tax information for the most recent fiscal year if the fiscal year-end is within 6 months of the date SBA received the application.

- (iv) Lender must compare the tax data received from the IRS with the financial data or tax returns submitted with the loan application.
 - (v) Borrower must resolve any significant differences to the satisfaction of lender and the appropriate SBA CLSC. Failure to resolve differences may result in cancellation of the loan.
 - (vi) For a change of ownership, lender must verify financial information provided by the seller of the business in the same manner as above.
 - (vii) If lender does not receive a response from the IRS or copy of the tax transcript within 10 business days, the lender:
 - (a) may proceed to close and disburse the loan;
 - (b) must follow-up with the IRS to obtain and verify the tax data by resubmitting a copy of the Form 4506-T to IRS with the notation "Second Request" in the top right hand side;
 - (c) must document its file with a dated copy of the second submission; and
 - (d) must perform the verification and resolve any significant differences discovered.
- (2) If the IRS advises that it has no record on the applicant or the lender is unable to reconcile the IRS information to the Small Business Applicant's financial information, the lender must report the issue to the appropriate SBA CLSC. If the loan has not been disbursed, either the loan must be cancelled or the closing must be postponed until the issue is resolved.
- (3) If a Small Business Applicant has not filed required federal tax returns, the applicant is not eligible for SBA financial assistance.
- (4) SBAExpress and Pilot Loan Programs (Patriot Express/Export Express/CommunityExpress):
- (i) If the lender uses business financial information to determine the creditworthiness of an SBA loan, the lender must follow the IRS tax verification process set out above. If the lender does not use business financial information to determine creditworthiness, such as with some credit scoring models, verification of tax transcripts is not required.
 - (ii) For SBAExpress and the Pilot Loan Programs, lenders are authorized to close and disburse a loan immediately if disbursement is requested by the borrower, however, the lenders must follow-up and verify the business financial data with IRS tax data and must document the loan file accordingly. If a material discrepancy appears or the IRS advises that it has no record on the applicant, the lender must report it immediately to the appropriate SBA CLSC and document the loan file of the action taken. The SBA will investigate the issue and may direct the lender to secure additional information, proceed with loan processing, rescind approval of the loan (if no disbursement has occurred), suspend further disbursement, call the loan, or initiate recovery of any disbursed amounts.

4. STANDBY AGREEMENTS

- a. SBA Form 155 - [Standby Agreement LINK](#) Lender may use SBA Form 155 or its own Standby Agreement Form.
- b. Standby Creditor must subordinate any lien rights in collateral securing the Loan to lender's rights in the collateral, and take no action against Borrower or any collateral securing the Standby Debt without lender's consent.
- c. For further discussion of standby agreements, see Chapter 4, Paragraph 1.b(2) of this Subpart.

5 ASSIGNMENT OF LEASE AND LANDLORD'S WAIVER

- a. When a substantial portion of the loan proceeds are to be used for leasehold improvements or a substantial portion of the collateral consists of leasehold improvements, fixtures, machinery, or equipment that is attached to leased real estate, the lender should obtain:
 - (1) an Assignment of Lease with
 - (i) a term including renewal options that equals or exceeds the term of the loan; and
 - (ii) a requirement that the lessor provide a 60-day written notice of default to the lender with option to cure the default; and
 - (2) a Landlord's Waiver.
- b. The Landlord's Waiver gives the lender access to the leased premises and facilitates the liquidation of the collateral on the borrower's premises and should be obtained for all SBA loans with tangible personal property as collateral.
- c. If the loan proceeds will finance improvements on a leasehold interest in land, the underlying ground lease must include, at a minimum, detailed clauses addressing the following:
 - (1) Tenant's right to encumber leasehold estate;
 - (2) No modification or cancellation of lease without lender's or assignee's approval;
 - (3) Lender's or assignee's right to:
 - (i) acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by lender or successors; lessor may not unreasonably withhold, condition or delay the reassignment;
 - (ii) sublease;
 - (iii) hazard insurance proceeds resulting from damage to improvements;
 - (iv) share in condemnation proceeds; and
 - (4) Lender's or assignee's rights upon default of the tenant or termination.
- d. For lease requirements concerning EPCs and OCs, see Chapter 2 of this Subpart.

- e. For loans collateralized by Indian lands held in trust, if the owner of the land cannot get approval for a lien on the property, you may consider requiring an Assignment of Lease. The Assignment of Lease also has to be approved by the Secretary of the Interior or his/her authorized representative.

6. CONSTRUCTION LOAN PROVISIONS

- a. In the construction of a new building or an addition to an existing building, lender must obtain:
 - (1) Evidence of compliance with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings" (NEHRP), or a building code that has substantially equivalent provisions. [ADD LINK TO 13 CFR 120.174.](#)
 - (i) The NEHRP provisions may be found in the American Society of Civil Engineers (ASCE) Standard 7 and the International Building Code.
 - (ii) Examples of evidence include a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that an occupancy permit is required and that the local building codes upon which the permit is based include the Seismic standards.
 - (2) Lender may charge Borrower a one-time fee not to exceed 2% of the portion of the Loan designated for construction. The actual fee must not exceed the cost of the extra service.
- b. If the construction financing has an SBA guaranty and is more than \$350,000:
 - (1) prior to the commencement of any construction, lender must obtain from Borrower:
 - (i) evidence that the contractor has furnished a 100% performance bond and labor and materials payment bond;
 - (a) Only a corporate surety approved by the Treasury Department using an American Institute of Architect's form or comparable coverage may issue these bonds.
 - (b) Only Borrower may be named as obligee on the bonds.
 - (ii) evidence that contractor carries appropriate Builder's Risk and Worker's Compensation Insurance;
 - (iii) evidence that Borrower has injected the required funds into the project prior to disbursement of the loan, if Borrower is injecting funds into the construction project;
 - (iv) a copy of the final plans and specifications; and
 - (v) a copy of a Construction Contract with:
 - (a) an acceptable contractor at a specified price; and

(b) an agreement that Borrower will not order or permit any material changes in the approved plans and specifications without prior written consent of lender and the surety providing the required bonds;

- (2) Lender also must:
- (i) obtain evidence of Borrower's ability to pay cost overruns or additional construction financing expenses prior to approving any contract modification. Lender and SBA are not obligated to increase the loan to cover cost overruns;
 - (ii) make interim and final inspections to determine that construction conforms to the plans and specifications;
 - (iii) obtain evidence that the building, when completed, will comply with all state and local building and zoning codes, and applicable licensing and permit requirements;
 - (iv) obtain a completed SBA Form 601, Applicant's Agreement of Compliance ([ADD LINK TO FORM](#)); and
 - (v) obtain lien waivers or releases from all materialmen, contractors, and subcontractors involved in the construction.

- c. If the construction financing has an SBA guaranty and the construction costs will exceed \$10,000, the lender must obtain a completed SBA Form 601, Applicant's Agreement of Compliance. ([PLACE FORM ON WEB AND THEN ADD LINK TO FORM](#))
- d. "Do-it-yourself" construction and/or installation of machinery and equipment, or situations where the borrower acts as its own contractor have proven to be generally unsatisfactory and can cause problems with lien waivers and mechanics liens, causing potential losses to lender and/or SBA.

"Do-it-yourself" construction and/or installation of machinery and equipment, or situations where the borrower acts as its own contractor may be permitted, if the lender can justify and document in the loan file that:

- (i) The borrower/contractor is experienced in the type of construction and has all appropriate licenses;
- (ii) The cost is the same as, or less than, what an unaffiliated contractor would charge as evidenced by 2 bids on the work; and
- (iii) The borrower/contractor will not earn a profit on the construction, it may be permitted.

7. SPECIAL PROVISIONS FOR FRANCHISES

When lending to a franchise, the lender should consider obtaining an agreement from the franchisor that:

- a. allows lender and SBA access to Franchisor's books and records relating to Borrower's billing, collections and receivables;
- b. upon loan payment default or deferment, defers payment of franchise fees, royalties, advertising, and other fees until Borrower brings loan payments current;

- c. gives lender 30 days notice of intent to terminate the Franchise Agreement; and/or
- d. gives lender an opportunity to cure any default under the franchise or lease agreement that is given the franchisee under the same agreements.

8. CERTIFICATION REGARDING CHILD SUPPORT

[LINK TO 13 CFR 120.171](#)

The lender must obtain certification from the borrower and any OC that no holder of 50% or more of the borrower or OC is more than 60 days delinquent on any obligation to pay child support.

9. SPECIAL PROVISION FOR CAPLINES

Zero Balance Period Requirement: There is no requirement that a zero balance be maintained for any specific time period on any CAPLines except for Seasonal CAPLines. A “clean up” period may be included in the Authorization at the lender’s option.

Chapter 6 Submission of Application for Guaranty

There are several different ways to submit an application for guaranty depending on which program the lender chooses and is authorized to use. Depending on which program is used, the maximum guaranty percentage, the maximum loan amount, the documentation and the turn-around time vary. This chapter describes the requirements for standard 7(a), CLP, PLP, SBA Express, the Pilot Loan Programs and the EWCP.

1. CONTENTS OF LENDER'S APPLICATION FOR GUARANTY:

a. Standard 7(a)

Centralized 7(a) Loan Submission Instructions and a checklist can be found at http://www.sba.gov/idc/groups/public/documents/sba_program_office/bank_7ainstructions.pdf. All forms, telephone numbers and fax numbers can be found at: www.sba.gov/aboutsba/sbaprograms/elending/lgpc.

For SBA's Small/Rural Lender Advantage Initiative, which will be tested for a limited period and in a limited geographic area, the procedures and required documentation will be based on the loan amount as set forth below. After the testing period, SBA may extend this initiative to additional 7(a) lenders. If SBA extends this initiative to additional 7(a) lenders, then those lenders will follow the procedures and documentation requirements set forth below, including the use of business credit scoring.

(1) All standard 7(a) loan applications, except for Small/Rural Lender Advantage Initiative loan applications of \$350,000 or less, must include the following:

(i) SBA Form 4, Application for Loan

(a) The following requirements imposed by laws and executive orders are included in SBA Form 4, Application for Business Loan, for standard 7(a), CLP and PLP.

1. Flood Plain and Wetlands Management

(A) [ADD LINK TO 13 CFR 120.172](#)

SBA has specific requirements for providing financial assistance to a small business located in a floodplain or a wetland. See 13 CFR 120.172 and Executive Orders 11990 and 11988 for guidance.

(B) [LINK TO Executive Orders 11990](#) - Executive Order 11990 requires the avoidance, to the extent possible, of adverse impacts through the destruction or modification of wetlands and the avoidance of direct or indirect support of new construction in wetlands wherever there is a practical alternative.

(C) [LINK TO Executive Order 11988](#) - Executive Order 11988 requires SBA to minimize the risk of flood loss and to preserve the beneficial values served by floodplains.

2. Lead Based Paint

[ADD LINK TO 13 CFR 120.173](#)

Refer to 13 CFR 120.173 for requirements related to the use of lead-based paint.

3. Earthquake Hazards

[ADD LINK TO Executive Order 12699](#), "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," applies to the Agency's loan programs. Its provisions must be followed even in areas which traditionally do not have earthquake activity. There are no exceptions. [ADD LINK TO 13 CFR 120.174.](#)

4. Coastal Barrier Protections

[ADD LINK TO 13 CFR 120.175](#)

Lender may not make any loan within the Coastal Barrier Resource System.

5. Compliance with Other Laws

(A) [ADD LINKS TO 13 CFR 120.176, 13 CFR Parts 112, 113 and 117](#)

All SBA loans are subject to all applicable laws, including laws prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age.

(B) For additional guidance see Chapter 2, Paragraph 3 of this Subpart concerning the Utilization of Personal Resources Rule and Chapter 4 of this Subpart concerning repayment ability, collateral and guaranties.

6. [Right to Financial Privacy Act](#)

All applicants are notified of their rights under the Financial Privacy Act of 1978 through the "Statements Required by Laws and Executive Orders." The lender must obtain the signature of each individual identified on the form.

(ii) SBA Form 4, Schedule A – Schedule of Collateral. Lenders may use SBA Form 4, Schedule A or they may use their own form to list collateral and label it “Exhibit A.”

(iii) SBA Form 912, Statement of Personal History – required of all principals, officers, directors and owners of 20% or more of the Small Business Applicant.

- (iv) 7(a) Eligibility Questionnaire
http://www.sba.gov/idc/groups/public/documents/sba_program_office/bank_eligibility_questionnaire.pdf
- (v) Personal Financial Statement, dated within 90 days of submission to SBA, on all owners (20% or more), officers and proposed guarantors, including spouses. SBA Form 413 is available, however, lenders may use their own form.
- (vi) Business financial statements, consisting of:
 - (a) Year End Balance Sheet for the last three years,
 - (b) Year End Profit & Loss Statements for the last three years,
 - (c) Reconciliation of Net Worth,
 - (d) Interim Balance Sheet dated within 90 days of application
 - (e) Interim Profit & Loss Statements dated within 90 days of application,
 - (f) Affiliate & Subsidiary financial statement requirements same as above, and
 - (g) Cash flow projection – month-by-month for one year if less than three fiscal years provided and for all loans with a term of 18 months or less.
- (vii) History of Business
- (viii) Resumé of Principals
- (ix) Copy of Lease, if applicable
- (x) Detailed listing of machinery and equipment to be purchased with loan proceeds and cost quotes
- (xi) Provide the following if real estate is to be purchased with loan proceeds:
 - (a) Appraisal;
 - (b) lender's environmental questionnaire;
 - (c) cost breakdown; and
 - (d) copy of purchase agreement.
- (xii) Provide the following if purchasing an existing business with loan proceeds:
 - (a) copy of buy-sell agreement;
 - (b) pro forma balance sheet for the business being purchased as of the date of transfer;
 - (c) copy of seller's financial statements for the last 3 complete fiscal years or for the number of years in business if less than 3 years; and
 - (d) interim statements no older than 90 days from receipt of application.
 - (e) If seller's financial statements are not available the seller must provide an alternate source of verifying revenues. Lender must discuss in its credit analysis:
 - 1. why financial statements are not available;
 - 2. how the lender determined the business purchase price was reasonable; and

3. how the lender verified business revenue.

(xiii) Equity Injection – explanation of type and source of applicant’s equity injection. For further information on equity injections, see Chapter 4, Paragraph 1.b. of this Subpart.

(xiv) Franchise – If listed on www.franchiseregistry.com a [certification of material change](http://www.franchiseregistry.com/Forms/CertificationofMaterialChanges.htm) (<http://www.franchiseregistry.com/Forms/CertificationofMaterialChanges.htm>) or [certification of no change or non-material change required](http://www.franchiseregistry.com/Forms/CertificationofNoChange.htm) (<http://www.franchiseregistry.com/Forms/CertificationofNoChange.htm>). If not listed on the Registry, a copy of the Franchise Agreement and Federal Trade Commission Disclosure Report of Franchisor must be submitted.

(xv) SBA Form 159 (7a), Fee Disclosure and Compensation Agreement, must be completed for each Agent compensated by the applicant or lender and RETAINED in lender’s loan file. See Chapter 3, Paragraphs 8-9 of this Subpart.

(xvi) IRS Form 4506-T, Request for Copy of Tax Return – See Chapter 5, Paragraph 1.c. of this Subpart. Identify the date IRS Form 4506-T was sent to IRS.

(xvii) INS Form G-845 ([ADD LINK TO FORM](#)), Document Verification Request – Submit a copy of INS response. See Chapter 2, Paragraph 3.e. of this Subpart.

(xviii) SBA Form 1624, Certification Regarding Debarment, must be signed and dated by applicant and RETAINED in lender’s loan file.

(xix) SBA Form 4-I, Lender’s Application for Guaranty – must be completed in its entirety, including pro forma balance sheet and submitted with the following:

- (a) Explanation of use of proceeds and benefits of the loan.
- (b) Lender’s internal credit memorandum.
- (c) Justification for new business, including change of ownership. For new businesses and change of ownership where historical repayment ability is not demonstrated, lender must provide a narrative addressing the business plan and cite any areas of concern and justification to overcome them.
- (d) Business Valuation Method must be supplied by lender for change of ownerships. In cases of close relationship between the buyer and seller, an independent third-party valuation must be provided.

(xx) SBA Form 1846, Statement Regarding Lobbying, must be signed and dated by lender.

(xxi) Authorization – latest version of the wizard program available at http://www.sba.gov/aboutsba/sbaprograms/elending/authorizations/bank_Auth_National_7a.html.

(2) For loan applications of \$350,000 or less:

- (i) Complete, signed and dated SBA Form 2301, Part A, Lender Advantage Initiative. Only 1 principal needs to complete, sign and date the entire form; all other principals and guarantors only need to complete, sign and date Section D.
- (ii) Complete, signed and dated SBA Form 2301, Part B, Lender's Application for Guaranty.
- (iii) Complete, signed and dated SBA Form 2301, Part C, Eligibility Questionnaire, including any additional information SBA requires due to any "false" responses indicated on the form. The lender and applicant must sign this form.
- (iv) Copy of the lender's credit memorandum addressing all of the requirements set forth in Chapter 4 of this Subpart.

b. CLP (Certified Lenders Program)

- (1) Lender must submit all forms and exhibits listed above for the standard 7(a) application. CLP Lenders also must submit a draft Authorization.
- (2) For loan applications greater than \$350,000, in addition to all of the standard 7(a) forms and exhibits, the lender must submit a copy of its written credit analysis and must discuss SBA eligibility issues.

c. PLP (Preferred Lenders Program)

- (1) All forms and exhibits listed above for the Standard 7(a) application are required to be completed and retained in lender's file.
- (2) If SBA extends the Small/Rural Lender Advantage Initiative to additional lenders after the testing period, for PLP loan applications of \$350,000 or less, PLP Lenders may follow the procedure and submit the documents set forth in Paragraph 1.a.(2) above, with the exception noted below concerning the eligibility information required. PLP Lenders may use the process described in Paragraph 1.a.(2) above if the PLP Lender uses a business credit scoring model described in Chapter 4, Paragraph (3) of this Subpart. If the PLP Lender does not use a business credit scoring model as part of its analysis, the PLP Lender must process its PLP loans of \$350,000 or less using the same PLP procedures and documentation as it does for all PLP loans.
- (3) Forms to be submitted:
 - (i) Copy of page 1 of SBA Form 2301, Part A, Lender Advantage Initiative or SBA Form 4, Application for Business Loan;

- (ii) Copy of front of page 2 of SBA Form 2301, Part B, Lender Advantage Initiative, Lender's Application for Guaranty or page 1 of SBA Form 4-I, Lender's Application for Guaranty or Participation (signed by two authorized officials of Lender);
- (iii) Copy of SBA Form 1920SX (Part B) "Supplemental Information for PLP/SBA Express Processing"; and
- (iv) Copy of "Eligibility Information Required for PLP Submission." For loan applications using Form 2301, PLP lenders may substitute the Eligibility Information Required for PLP Submission for SBA Form 2301, Part C.
- (v) If the PLP loan is to refinance debt (not same institution debt), a fully completed business indebtedness schedule must be attached. NOTE: PLP Lenders may not refinance same institution debt through PLP procedures; these applications must be processed using standard 7(a) procedures. See Chapter 2, Paragraph 4.c. of this Subpart for further information on eligible PLP refinancing.
- (vi) If the PLP loan is to finance change of ownership and a business valuation is performed by lender, a synopsis of the analysis must be submitted.

- (4) All PLP forms above can be found at:
http://www.sba.gov/aboutsba/sbaprograms/elending/programguides/BANK_LOAN_PROG_INFO_FORMS.html .

d. CAPLines

- (1) There are 5 subprograms under the CAPLine program. All require:
- (i) The Standard 7(a) application referenced above in 4.1.A.
 - (ii) Submission of guaranty fee at time of application for loans with maturities of 12 months or less.
- (2) Additionally, for each subprogram lender must:
- (i) Seasonal CAPLine:
 - (a) document the seasonal nature of the business; and
 - (b) obtain from applicant a month-to-month cash flow projection for the upcoming 12 months.
 - (ii) Contract CAPLine:

obtain from applicant two month-to-month cash flow projections. One should project the full contract period for the specific contract and the other should detail all the contract work to be performed by the applicant, including the contract being financed, for the same time period.

- (iii) Builders CAPLine:
 - (a) obtain month-to-month cash flow for all work to be performed by applicant;
 - (b) obtain a letter from:
 - (i) a mortgage lender indicating that permanent mortgage money is available to qualified purchasers to buy such properties;
 - (ii) a real estate broker indicating that a market exists for the proposed building and that it will be compatible with its neighborhood; and
 - (iii) an architect, appraiser or engineer agreeing to make inspections and certifications to support interim disbursements.
 - (c) A letter from a lender who has its own real estate lending department, staffed by personnel with appraisal and engineering experience may be substituted for one or more of the above-referenced letters.

- (iv) Standard Asset Based CAPLine:
 - (a) obtain month-to-month cash flow projection for 12 months;
 - (b) SBA Form AB-4 – completed and signed by applicant;
 - (c) SBA Form AB-4-I – completed by lender.
 - (d) SBA Form SAB-159B – Compensation Agreement for Actual Services Provided and Fees Charged in Connection with Basic Asset Based Subprogram Application and Loan Made in Participation with SBA.
 - (e) LQS-2 – Lender Qualification Survey form.

- (v) Small Asset Based CAPLine (Limited to \$200,000):
 - (a) obtain month-to-month cash flow projection for 12 months.
 - (b) SBA Form AB-4 – completed and signed by applicant.
 - (c) SBA Form AB-4-I – completed by lender.

- (3) All CAPLine forms above can be found in [Appendix 7 of this SOP](#).

- e. SBA Express Program and Pilot Loan Programs (Patriot Express/Export Express/CommunityExpress)
 - (1) SBA Express and Pilot Loan Program application packages must include the forms and information the lender requires in order to make an informed eligibility and credit decision. The lender's application must be certified by the applicant as true and complete.

(2) Required Form

- (i) Except as set forth below, the only documentation required by SBA from the applicant under SBA Express or the Pilot Loan Programs is SBA Form 1919, “SBA Express, CommunityExpress and Patriot Express Borrower Information Form.” SBA Form 1919 must be signed by the following:
- (a) for a sole proprietorship, the sole proprietor;
 - (b) for a partnership, all general partners and all limited partners owning 20 percent or more of the equity of the firm;
 - (c) for a corporation, each officer, director, and owner of 20% or more of the corporation;
 - (d) any other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business; and
 - (e) any person guaranteeing the loan, if that guaranty normally would have been required by SBA, as set forth in Chapter 4, Paragraph 2.b. of this Subpart.
- (ii) The Form 1919 includes the certifications and requirements previously set forth in SBA Forms 601, 912, 1261, and 1624. In addition, the requirements imposed by laws and executive orders discussed in paragraph 1.a.(1) of this Chapter are included in SBA Form 1919 for SBA Express and the Pilot Loan Programs.

(3) Additional Forms that may be necessary:

- (i) Form 159(7(a)): If the applicant or business did not pay anyone to assist in (a) preparing the loan application or any related materials and/or (b) referring the loan to the lender (for example, a packager, broker, accountant or lawyer), the applicant will so indicate on the Form 1919, and Form 159(7(a)) is not required to be completed by the applicant. If a packager or referral agent has been used or the lender has charged a fee associated with the application, the Form 159(7(a)) must be completed. If the lender has paid a referral fee in connection with an SBA Express loan, the lender must complete the Form 159(7(a)). The lender retains the Form 159(7(a)) in the loan file and does not send it to SBA. See Chapter 3, Paragraphs 8-9 of this Subpart for further guidance on the disclosure of fees.
- (ii) Form 601: If no construction above \$10,000 is involved, the applicant will so indicate on the Form 1919, and Form 601 is not required. If construction above \$10,000 is involved, the applicant and the contractor must complete the Form 601. The lender must keep the signed Form 601 in its loan file and does not send it to SBA.
- (iii) Form 912: If question 1, 2, or 3 of Form 1919 is answered negatively, Form 912 is not required. If question 1, 2, or 3 is answered

affirmatively, the lender may process the loan, but it must have the applicant complete Form 912 and follow the steps as outlined in Chapter 2, Paragraph 3.d.(3)(xiv)(d) of this Subpart.

- (iv) Form 1624: If the applicant has never been debarred, suspended, or otherwise excluded, the applicant must so indicate on Form 1919, and Form 1624 is not required. If the applicant answers affirmatively, the loan cannot be processed through SBAExpress but may be processed through Standard 7(a) procedures. Form 1624 will be required as part of a Standard 7(a) application.

- (4) Although lenders are expected to obtain sufficient borrower eligibility information, SBA does not require the lender to secure the signed SBA Form 1919 and/or other required documents before requesting a loan number from the SLPC. The lender must ensure that required SBA documents are properly executed by all required parties prior to closing or disbursing the loan. Lenders also must keep a copy of these signed documents in the loan file.

(5) Forms to be submitted to request an SBA Loan Number:

- (i) Eligibility Authorized Lender:

- (a) Copy of SBA Form 1920SX (Part A) “Express Guaranty Request”; and
- (b) Copy of SBA form 2238 “SBA Express Guaranty Request (Eligibility Authorized).”

- (ii) Lender without Eligibility Authorization:

- (a) Copy of SBA Form 1920SX (Part A);
- (b) Copy of SBA Form 1920SX (Part B) “Supplemental Information for PLP/SBA Express Processing”; and
- (c) Copy of SBA Form 1920SX (Part C) “Eligibility Information Required for Express Submission.”

(6) All SBA Express and Pilot Loan Program forms above can be found at:

http://www.sba.gov/aboutsba/sbaprograms/elending/programguides/BANK_LOAN_PROG_INFO_FORMS.html. NEED CORRECT LINK TO PATRIOT EXPRESS FORMS

f. EWCP

(1) EWCP applications must be submitted on EIB-SBA Form 84-1. This is a joint application form used by both the SBA and the U.S. Ex-Im Bank. This form eliminates the need for 912 submissions, except from any Subject Individual with a prior arrest or conviction.

(2) For applications to reissue an existing EWCP line of credit that is maturing, the lender must submit a new EIB-SBA Form 84-1. The lender will not have to re-submit all of the

historical information required with the Form 84-1 because the USEAC Representative handling the processing and servicing of the line of credit will have the historical information in the original loan file.

2. WHERE TO SUBMIT APPLICATION FOR GUARANTY

a. Standard 7(a), CLP, CAPLine and Small/Rural Lender Advantage Initiative

Applications may be sent through mail, website and/or email to the following:

(1) Mail – Standard 7(a) Loan Guaranty Processing Center
Sacramento Site
U. S. Small Business Administration
6501 Sylvan Road
Citrus Heights, CA 95610 or

or

Standard 7(a) Loan Guaranty Processing Center
Hazard Site
U.S. Small Business Administration
262 Black Gold Blvd.
Hazard, KY 41701

(2) Website: <http://www.sba.gov/aboutsba/sbaprograms/elending/lgpc/index.html>
click on “Submit 7(a) Document Here”

(3) Email – 7aloanprogram@sba.gov if attachments are under 5 megabytes in size.

b. PLP, SBA Express and Pilot Loan Programs (Patriot Express, Export Express and CommunityExpress)

Requests for a loan number may be sent through, mail, fax or E-Tran

(1) Mail to: Sacramento Loan Processing Center
Small Business Administration
501 I St. Suite 12-100
Sacramento, CA 95814-2322

(2) Fax: 916-930-2160

(3) E-Tran - Is a secure web site where lenders can enter loan information for a single loan or send multiple applications simultaneously via an XML (Extensible Markup Language) file transfer. Several software developers have E-Tran functionality built

into their SBA loan software. For E-Tran information go to:
<http://www.sba.gov/aboutsba/sbaprograms/elending/etran/index.html>.

c. EWCP

Applications may be submitted by mail, fax or email to the United States Export Assistance Center (USEAC) covering the territory where the business is located. The contact information for each USEAC may be found at:
<http://www.sba.gov/aboutsba/sbaprograms/internationaltrade/useac/index.html>.

d. Reconsideration of Declined Standard 7(a), CLP, CAPLine and Small/Rural Lender Advantage Initiative Applications

If a lender believes that the reasons for decline have been resolved, it may submit a request for reconsideration along with a detailed written explanation of how the Small Business Applicant has overcome the reason(s) for decline. [LINK TO 13 CFR 120.193](#) Lender must submit a request to the Center Director within 6 months of the date of decline. Any request submitted more than 90 days after the date of decline must include updated financial statements.

e. PLP, SBA Express and Pilot Loan Program Eligibility Issues

For PLP Lenders, SBA Express/Export Express/Patriot Express lenders not delegated eligibility authority, and CommunityExpress lenders:

- (1) If the SLPC notifies the lender that a proposed loan is not eligible and the lender disagrees, the lender may request reconsideration. The request must be in writing and must address and resolve the eligibility issue. The lender must send the request to the SLPC within 30 days of the date of decline.
- (2) If the SLPC declines the request for reconsideration, the lender may request further reconsideration. This request must be sent to the SLPC within 30 days after the last eligibility decision. It must specifically request reconsideration at the next higher level and say why SBA should reverse the eligibility decision. The SLPC will send the request to the D/FA or designee for review and final eligibility decision. The SLPC will inform the lender of the final decision.
- (3) Loans ineligible for PLP, SBA Express and the Pilot Loan Programs may, under some circumstances, be eligible for submission under standard 7(a). If the SLPC denies an SBA Express or Pilot Loan Program loan number and the lender resubmits the loan to SBA under another loan program, the lender must notify the Processing Center that the loan was denied an SBA Express or Pilot Loan Program number by sending a copy of the SLPC's denial letter.

Chapter 7

Post-Approval Modifications, Loan Closing & Disbursement

A thorough review of the Authorization is the first step in closing and disbursing an SBA-guaranteed loan. If any changes are necessary, the lender must follow the steps in paragraph 1 below. After the lender has determined that the loan conditions in the Authorization are appropriate for the terms of the credit, the lender must close the loan in accordance with the provisions of the Authorization, including any SBA-approved post-approval modifications.

1. POST APPROVAL/PRE-DISBURSEMENT REQUESTS FOR CHANGES

- a. For SBA loans that have not been closed or initially disbursed, lenders must submit requests for SBA approval of the following actions using [SBA Form 2237 \(ADD LINK\)](#):
 - (1) an increase or decrease in the loan amount; or
 - (2) an increase or decrease in the guaranty percentage.

- b. To inform SBA of the following actions, lenders must also submit SBA Form 2237 (SBA approval of these items is not necessary, and SBA will not respond in writing):
 - (1) cancellation of the entire loan;
 - (2) change in the maturity date;
 - (3) change in the legal name of the business;
 - (4) change in the trade name of the business; or
 - (5) change in the borrower's business address.

c. Standard 7(a) and CLP

Lenders must submit the completed SBA Form 2237 along with supporting financial statements and/or other documentation to the:

- (1) LGPC if within 7 days of approval; or
- (2) appropriate CLSC if after 7 days of approval.

The LGPC forwards files to the appropriate CLSC 7 days after approval, unless the file is being held for appraisal or environmental review. If the file is not being held, any change requests submitted after 7 days must be submitted to the appropriate CLSC.

d. PLP, SBA Express and Pilot Loan Programs (Patriot Express/Export Express/CommunityExpress)

- (1) By signing the SBA Form 2237, the lender certifies that the request complies with the requirements of this SOP.
- (2) For any change in loan amount or guaranty percentage, lender must attach a memo or e-mail message that explains the reason for the change.

- (3) Lenders must submit the completed SBA Form 2237 along with any supporting documentation to the appropriate CLSC.

2. PAYMENT OF GUARANTY FEE

The guaranty fee must be paid within the time frame stated within the Authorization. For further discussion, see Chapter 3, Paragraph 5 of this Subpart.

3. Loan Closing and Disbursement

a. Disbursement Period

- (1) The disbursement period must be stated in the loan authorization and must be tailored to meet the requirements of each individual loan. The loan must be fully disbursed within 48 months of approval or any remaining undisbursed balance will be cancelled by SBA.
- (2) Lenders may use an escrow account for not more than 5 business days to facilitate a loan closing. A lender must not report the loan on SBA Form 1502 as “disbursed” or charge the borrower the guaranty fee until all funds are disbursed from the escrow account.

b. Note Terms

(1) Maturity:

The lender may calculate the loan maturity date from either the date of the Note or the date of first disbursement. If there is a change in the use of proceeds between the date that the loan is approved and the date that the lender is ready to close the loan, the maturity date may have to be re-calculated and changes made to the Authorization.

(2) Repayment terms:

Lender must insert the repayment terms into the Note exactly as they are written in the Authorization. If there is a need for a specific term for a particular loan that is not in the Authorization, the lender must obtain written approval from SBA.

(i) State-specific language:

If the Borrower moved to another state subsequent to loan approval, lender must ensure that any necessary state-specific provisions that relate to the Borrower’s new state of residence are added to the Authorization and loan documents.

(ii) Prepayment Terms:

Every Authorization contains prepayment language that must be inserted into the Repayment Terms section of the Note. For further discussion, see Chapter 3, Paragraph 6 of this Subpart.

(iii) CAPLines

- (a) Interest only payments for any period exceeding the borrower's cash cycle, seasonal cycle, contract completion date, or project completion date are not permitted.
- (b) Master Notes and Sub-Notes: Each loan will have a Master Note (SBA Form 147) to cover the total loan amount and general repayment period. Lenders can also utilize a system of sub-notes to establish specific repayment periods for particular seasons, contract or construction /renovation project. When the CAPLine will be used to finance the creation of more than one asset (such as the completion of two contracts) sub-notes should be used. The conditions of the sub-notes must not conflict with the conditions of the master note, except for variances in repayment schedules.

c. Required SBA Forms

- (1) With the exception of the SBA Express and Pilot Loan Programs, lenders must use the SBA forms listed in Section D of the Authorization. Lenders may use computer-generated versions of mandatory SBA Forms, as long as they are exact reproductions.
- (2) SBA forms and instructions can be found at <http://www.sba.gov/tools/Forms/SBAPartnerforms/lenderforms/index.html>.
- (3) The required forms are:
 - (i) Note, SBA Form 147, version 4.1;
 - (ii) Guaranty, SBA Form 148;
 - (iii) Limited Guaranty, SBA Form 148L;
 - (iv) Settlement Sheet, SBA Form 1050;
 - (v) Fee Disclosure and Compensation Agreement, SBA Form 159(7a);
 - (vi) Agreement of Compliance, SBA Form 601
http://www.sba.gov/idc/groups/public/documents/sba_homepage/tools_sbic601.pdf;
 - (vii) Equal Employment Opportunity Poster, SBA Form 722 (This form can be found at
http://www.sba.gov/idc/groups/public/documents/sba_homepage/forms_mis772.pdf);
 - (viii) Tax Return Verification, SBA/IRS Form 4506T (This form can be found at
http://www.sba.gov/idc/groups/public/documents/sba_homepage/forms_irs45t.pdf).
- (4) Settlement Sheet, SBA Form 1050
 - (i) Lender must disburse the loan proceeds in accordance with the Authorization. Failure to do so may be a cause for SBA to deny liability under its guaranty.

(ii) Except under the SBA Express and Pilot Loan Programs, the lender must document all disbursements on SBA Form 1050. Lender and borrower must complete and sign SBA Form 1050 at the time of first disbursement. If there are subsequent disbursements, Lender must document each disbursement and attach the documentation to the original SBA Form 1050. The original SBA Form 1050 and any attachments must contain sufficient detail for SBA to determine:

- (a) the recipient of each disbursement;
- (b) the date and amount of each disbursement; and
- (c) the purpose of each disbursement.

(iii) The lender must obtain evidence to support disbursements, such as cancelled checks or paid receipts, to ensure that the borrower used loan proceeds for purposes stated in the Authorization. The following documentation is acceptable to verify disbursement in accordance with the Authorization:

- (a) joint payee checks, except for working capital and cash to reimburse borrowers for evidenced expenditures;
- (b) copies of receipts, invoices or other supporting documentation marked paid by the seller or vendor; or
- (c) evidence of an electronic funds transfer to a vendor along with a copy of the invoice.

(iv) The lender must retain in its loan file the signed SBA Form 1050 as well as all supporting documents.

(5) Fee Disclosure Form and Compensation Agreement, SBA Form 159(7a)

(i) When an Agent is paid by either a borrower or a lender an SBA Form 159(7a) must be completed and signed by the borrower and the lender. For each Agent paid by the borrower to assist it in connection with its application, the Agent also must complete and sign the form.

(ii) When an Agent is paid by the lender, the lender must identify the Agent that it pays on SBA Form 159(7a) and the lender and borrower must sign the form.

(iii) See Chapter 3, Paragraphs 8-9 of this Subpart for further discussion of compensation of Agents.

(6) SBA Form 722

This required form must be provided to the borrower in connection with every loan closed. The SBA Form 722 is an “Equal Employment Opportunity Poster.”

The poster notifies the Borrower’s employees as well as the public that they have the right under federal law not to be discriminated against. Therefore, federal law requires

the borrower to display this poster “where it is clearly visible to employees, applicants for employment, and the public.”

d. Borrower’s Certifications

- (1) As part of the terms and conditions of the Authorization, the lender must obtain certain certifications and agreements from the Borrower and the Operating Company prior to disbursement of loan proceeds. Borrower and OC must certify that:
 - (i) They received a copy of the Authorization;
 - (ii) That there has been no adverse change in Borrower’s (and Operating Company’s) financial condition, organization, operations or fixed assets since the date the Loan Application was signed.
 - (iii) No 50% or more owner of the borrower is more than 60 days delinquent on any obligation to pay child support;
 - (iv) They are current on all federal, state and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes and sales taxes;
 - (v) For any real estate pledged as collateral for the loan or where the borrower or OC is conducting business operations, they are in compliance with all local, state and federal environmental laws and regulations and will continue to comply with these laws and regulations. Furthermore, they are unaware of any other actual or potential environmental hazards related to the collateral or business premises. They agree to fully indemnify lender and SBA against all liabilities or losses arising from the contamination of the property before or during the term of the loan.
 - (vi) They will reimburse lender for expenses incurred in the making and administration of the loan;
 - (vii) They will maintain proper books and records, allow lender and SBA access to these records, and furnish financial statements or reports annually, or whenever requested by lender.
 - (viii) They will post SBA Form 722, Equal Opportunity Poster, where it is clearly visible to employees, applicants for employment and the general public;
 - (ix) To the extent practicable, they will purchase only American-made equipment and products with the proceeds of the loan; and
 - (x) They will pay all federal, state and local taxes, including income, payroll, real estate and sales taxes of the business when they come due.

- (3) Borrower and OC must certify that they will not, without the lender’s prior written consent:
 - (i) Make any distribution of company assets that will adversely affect the financial condition of Borrower and/or OC;
 - (ii) Change the ownership structure or interests in the business during the term of the loan; or
 - (iii) Sell, lease, pledge, encumber (except by purchase money liens on property acquired after the date of the Note), or otherwise dispose of any of the Borrower’s property or assets, except in the ordinary course of business.

- (4) Additional certifications from Borrower and Operating Company

The Authorization provides for additional certifications from Borrower and Operating Company regarding:

- (i) limitations on acquiring additional fixed assets;
- (ii) limitations on acquiring additional business location(s);
- (iii) salary limitations; and
- (iv) occupancy requirements.

(5) Sample Borrower's Certification

A sample Borrower's Certification is included in the Authorization as Appendix D. Lenders may use this form or create and use their own certification form.

(6) Separate Loan Agreement

SBA does not require a separate loan agreement to be signed by the borrower. If the lender requires a separate loan agreement on its non-SBA guaranteed loans, it may do so on its SBA-guaranteed loans. The lender may use its own form of loan agreement or it may use the sample Loan Agreement included in the Authorization as Appendix D.

e. PLP Program

- (1) SBA closing requirements are the same for PLP loans as for Standard 7(a) and CLP loans. The same SBA forms are required.
- (2) The lender must obtain all required collateral positions and must meet all other required conditions before loan disbursement.
- (3) After closing a PLP loan, the lender must send to the appropriate CLSC a copy of the executed Authorization. The lender should not send any other closing documentation to SBA after closing a PLP loan but should retain all documents in the lender's loan file.

f. SBA Express and Pilot Loan Programs

- (1) For SBA Express and Pilot Loan Program loans, a lender must use the same closing and disbursement procedures and documentation as it uses for its similarly sized non-SBA guaranteed commercial loans. There must be a promissory note that is legally enforceable and assignable, in the event that it would ever have to be assigned to SBA.
- (2) The lender must obtain all required collateral and must meet all other required conditions before loan disbursement, including obtaining valid and enforceable security interests in any loan collateral. These conditions include requirements identified in the loan write-up, such as standby agreements, appraisals, business licenses, and cash/equity injections.
- (3) Before disbursing an SBA Express or Pilot Loan Program loan, the lender must:
 - (i) use IRS tax transcripts to verify financial information used to support the loan credit analysis. See Chapter 5, Paragraph 3 of this Subpart for further guidance on IRS verification.

- (ii) obtain evidence of no unremedied adverse change since the date of the application (or since any of the preceding disbursements in the case of multiple disbursements), in the financial or any other condition of the borrower that would warrant withholding any disbursement. For revolving line of credit disbursements, lenders should essentially follow the same practices as they do for their non-SBA guaranteed commercial revolving lines of credit.
 - (iii) obtain required hazard insurance on all assets taken as collateral, as set forth in Chapter 5, Paragraph 2 of this Subpart.
 - (iv) make the required flood hazard determination and require flood insurance (when collateral is taken) pursuant to the flood insurance requirements in Chapter 5, Paragraph 2 of this Subpart.
 - (v) in the construction of a new building or an addition to a building, obtain the borrower's agreement that the construction will conform with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings" as discussed in Chapter 5, Paragraph 6 of this Subpart.
 - (vi) obtain the borrower's agreement that it will, to the extent feasible, purchase only American-made equipment and products with the proceeds of the SBA Express loan. This certification is included on the SBA Form 1919.
 - (vii) for any loan involving construction of more than \$10,000, as indicated on SBA Form 1919, require borrower and contractor to execute SBA Form 601, Applicant's Agreement of Compliance.
 - (viii) obtain a completed and signed SBA Form 159(7a), if applicable.
 - (ix) obtain borrower's certification that any 50% or more owner of the Small Business Applicant on SBA Form 1919, is not more than 60 days delinquent on any obligation to pay child support.
 - (x) require appropriate environmental reviews and compliance. SBA Express and Pilot Loan Program lenders must follow the environmental requirements in Chapter 4 of this Subpart. SBA Express and Pilot Loan Program lenders may not request an SBA Express loan number for a loan that will have primary collateral that will not meet SBA's environmental requirements or that will require use of a non-standard indemnification agreement.
- (4) The lender should not send any closing documentation to SBA after closing an SBA Express or Pilot Loan Program loan but should retain all documents in the loan file.

(5) Access to Funds: SBA Express and Pilot Loan Program funds may be accessed through a variety of methods consistent with the way the lender normally conducts business for its similarly-sized non-SBA guaranteed commercial loans. Access through a credit card, including for revolving lines of credit, is acceptable under SBA Express and Pilot Loan Programs. SBA has the right to deny a request to honor its guaranty for the misuse of credit cards involving fraud or misrepresentation or if the debtor exceeds his or her credit card limit for purchases on credit. In providing access through credit cards, lenders must ensure that these loans are documented by legally enforceable and assignable promissory notes and/or other equivalent debt instruments.

g. EWCP

- (1) All transactions financed by EWCP loans shall be payable in U.S. dollars unless SBA approves payment in a foreign currency. If payment is allowed in a foreign currency, the Authorization will require the borrower to hedge (purchase future contracts on the foreign currency) to mitigate the foreign exchange risk.
- (2) On a transaction-based revolving line of credit where draws are made against foreign purchase orders or contracts, the advance rate shall not exceed 90% of the purchase order/contract or the borrower's costs (including overhead), whichever is less. Receivables will be captured by the lender through the use of a controlled account, and each transaction will be paid off as the receivables proceeds are received. For example, if \$90,000 is disbursed against a purchase order of \$100,000, when the \$100,000 receivable comes in; \$90,000 will be applied to the loan balance.
- (3) On an asset-based revolving line of credit where advances are made against a borrowing base of foreign receivables and/or foreign inventory, the maximum advance rates are 90% on eligible foreign receivables and 75% on eligible foreign inventory located within the United States. Controlled accounts may be required at the discretion of the SBA Approving Official. At a minimum, the borrower will be required to complete a monthly borrowing base submitted to the lender along with an aging of receivables and listing of inventory, as appropriate. If the borrowing base shows the borrower is over-advanced, the lender must immediately require the borrower to make a payment to reduce the loan balance so it is within the borrowing base formula.
- (4) Advance rates on foreign purchase orders/contracts or foreign receivables when sold on open account (no credit insurance or letter of credit to mitigate the foreign risk) shall not exceed 80%.

h. CAPLines

(1) Seasonal CAPLines

- (i) Disbursement and Repayment:

(a) Disbursements from the loan are made continually during the seasonal build-up period when the cash requirement for labor, materials, and support of accounts receivables exceeds actual cash receipts. The final disbursement of any Seasonal loan should be made in time for the funds to be utilized in the business and converted to cash which can be used to pay off the loan balance at the commencement of a clean up period or maturity.

(b) Principal repayments on the loan must occur as soon as the cash from the seasonal sales has been received by the borrower. Interest should be paid monthly.

(ii) Borrowing Base Certificate and Advance Rate:

- (a) Borrowing Base Certificates should be submitted to the lender no less than monthly.
- (b) The Advance Rate should correlate to the borrower's direct costs and should not include profit.

(2) Contractor's CAPLines

(i) Prior to initial disbursement on any Contract CAPLine, the entity the borrower has entered into the contract with must be advised in writing by both the lender and borrower that an assignment of the contract proceeds is required. Such assignment must be in place before any disbursement for a particular contract is made and include a provision for the lender's right to receive all payments from the third party. The lender must receive written acknowledgement from the third party.

(ii) Disbursements are made, when needed, to pay for the labor and materials used on a specific contract. Disbursements will generally be made as the contract progresses, not with one lump sum disbursement to cover all labor and material costs. Only if the contract performance period was 30 days or less should only one disbursement for payroll be allowed. However, if a borrowing contractor wanted to acquire all of their materials up front, to take advantage of volume discounts, and/or pay for all acquired materials within 10 days, to take advantage of prompt pay discounts, the Contract CAPLine Program will accommodate such a disbursement plan. The cash flow projection submitted by the applicant should be a good indicator for the timing and amount of needed disbursements.

(iii) With the assignment of contract proceeds in place, the lender receives all the payments the borrower would normally receive if it was internally financing the contract. Included in these payments is profit, as well as funds which the borrower may need to pay for those items the Contract CAPLine did not cover, such as G&A and Overhead expenses.

(iv) Prior to the initial disbursement for any contract being financed with a Contract CAPLine, the borrower should be advised in writing by the lender of the percentage of each collection to be retained by the lender and applied to the outstanding balance.

(v) The minimum amount of each payment to be retained and applied by the lender should be expressed as a percentage of the total payment. This percentage should be based on the

ratio of labor and material expenses to all expenses, plus an additional percentage to cover the necessary interest payment. This calculation should also consider any retained amount held back by the contracting authority.

(3) Builder's CAPLines

(i) Prior to disbursement for each individual project, the lien must be recorded and position verified. Interim disbursements shall be made as construction progresses at stages approved by lender, but shall be advanced only on qualified architect, appraiser or engineer's certification and personal inspection by proper lender officer(s). Amount of disbursement shall not exceed 100 percent of labor, material, and other eligible costs of construction certified to be complete and shall be supported by contractor's statements and lien waivers to date.

(ii) Prior to final disbursement of construction funds, final lien waivers must be obtained from borrower/contractor and all subcontractors, materialmen, and any independent workers involved in the construction. No disbursement can be made after maturity of the master note.

(iii) The repayment of all funds disbursed for any individual project shall occur within 36 months after completion of each individual project or at the time of sale, whichever is less. A single principal payment is acceptable. Interest payments must be made at least semi-annually and from the applicant's own resources, not from loan proceeds.

(4) Asset Based CAPLines (including Standard Asset Based CAPLines and Small Asset Based CAPLines)

(i) For asset based CAPLines, final disbursement must occur far enough in advance of maturity so that a sufficient amount of time is available for the assets acquired with the proceeds to be converted back to cash and available to make final payment at maturity. The date of final disbursement must be established in the Authorization and should be reflective of the time required to permit orderly repayment by the maturity date.

Disbursements after the last cash cycle has begun, but before maturity, require SBA's prior written approval. No advances can be made after maturity. When a balance exists on a CAPLine at maturity, the lender should consider the following:

(a) Enforce final collection;

(b) Renew the line without SBA's guaranty;

(c) Renew the line, requesting SBA's guaranty (new application required if maturity has reached 5 years);

(d) Term out any outstanding balance, with SBA's concurrence. SBA's guaranty would remain in place but there could be no new advances; and/or

(e) Commence liquidation of supporting collateral.

(ii) Disbursement and Repayment:

(a) Loan proceeds may be disbursed to the borrower's operating account. To calculate the maximum amount available for disbursement, use the following formula:

1. Eligible A/R	\$	_____
2. Times advance rate	%	_____
3. Equals A/R Borrowing Base	\$	_____
4. Eligible inventory	\$	_____
5. Times advance rate	%	_____
6. Equals inventory Borrowing Base	\$	_____
7. Total (3 plus 6)	\$	_____
8. Face amount of Note	\$	_____
9. Borrowing base (Lesser of 7 or 8)	\$	_____
10. Loan balance on books	\$	_____
11. Amount available for disbursement (9 minus 10)	\$	_____

(b) On a monthly basis, lender should determine the amount of eligible assets for the borrowing base.

1. When advancing against receivables, lender should:

(A) Obtain an aging of accounts receivable and accounts payable

(B) Eliminate all ineligible receivables. The following types of accounts are not eligible to be included in the borrowing base:

(I) Any invoice more than 90 days past due. Exceptions are permitted over the 90 day with SBA's prior written concurrence.

(II) If a customer is delinquent on more than 50 percent of its total outstanding invoices, ALL of the accounts due from that customer are ineligible. To re-establish the customer's accounts as eligible, all delinquent accounts must be paid in full. Exceptions are permitted if the lender obtains SBA's prior written concurrence.

(III) All re-billed accounts. (Re-billing is the practice of issuing a credit to a customer and re-invoicing the obligation in the current billing cycle.)

(IV) Foreign receivables not backed by confirmed or standby letters of credit, factor's guarantee (of purchase), credit insurance (either commercial risk or commercial and political risk combinations), or Government enhancements such as those provided by the Export Import Bank or the World Bank.

(V) Offsetting receivables and payables between the borrower and one of its creditors (contra accounts).

(VI) Accounts due from affiliate companies.

(VII) Accounts that require subordination to other parties, such as Governmental contracts where the bonding company requires assignment of the project's receivables.

(VIII) Accounts from any one customer that constitute more than 20 percent of the total outstanding receivables. Accounts above the 20 percent are ineligible, unless the lender obtains SBA's prior written concurrence. Concentration of government and highly rated public companies can be deemed satisfactory.

2. When advancing against inventory, a lender should:

(A) Obtain a description of inventory and certification as to its value

(B) Limit advances to the following types of inventory:

(I) Finished Goods: Eligible if readily saleable and not obsolete.

(II) Work in Progress: Eligible if lender obtains SBA's prior written concurrence.

(III) Commodities or Raw Materials: Eligible.

3. The dollar amount of ineligible receivables and inventory will remain unchanged for the entire month. The actual borrowing base may increase or decrease as the balance on the Note changes and the receivables and inventory are generated or converted back to cash.

4. A Borrowing Base Certificate (BBC) is required with each advance to determine the amount that can be disbursed. A new BBC is required at least monthly, even if there are no advances within the month. Lenders may use their own forms for the BBC or SBA Forms BBC-1 and BBC-2, which are included in Appendix 7.

(c) Disbursements can be made at any time before the commencement of one cash cycle prior to maturity providing the borrower is not in default AND borrower and lender are in compliance with the terms of the Authorization.

(d) Repayments will come from cash sales and receivable collections. ALL receipts (from cash sales or receivable collections) are to be placed in a cash collateral, deposit-only account (an account where borrower cannot obtain any distributions and does not have any check writing capability). The lender will at least weekly withdraw funds from the cash collateral account and apply those funds first to accrued interest and balance, if any, to principal.

(e) If a balance remains in the cash collateral account after the loan has been paid down to zero, those funds may be credited to borrower's operating account. Interest must be paid at least monthly either from borrower's own resources OR loan proceeds. However, there is no provision for interest only payments. Principal payments should be tied to the borrower's cash cycle.

(f) Lenders shall report all disbursement and repayment activity on each Standard Asset Based CAPLines on a semi-annual basis every April 30, and October 31, using SBA Form CAP 1050. (All CAPLine forms can be found at Appendix 7.)

(g) Advance Rate for Accounts Receivable

1. The maximum advance rate cannot exceed 80 percent of the eligible receivables. Exceptions are permitted if the lender obtains SBA's prior written concurrence. The advance rate should not include any profit. Factors that should be taken into consideration when determining the maximum advance rate are:

- (A) Control and accounting systems of the borrower;
- (B) Enhancements such as credit insurance;
- (C) Age of receivables;
- (D) Credit quality & borrower's credit policy;
- (E) Turnover history;
- (F) Industry orientation and condition;
- (G) Direct costs required to generate the receivable; and
- (H) Gross profit margin.

2. After initial disbursement, lenders have unilateral authority to increase or decrease the advance rate for receivables by as much as 5 percent above or below the rate stated in the Authorization. Increases or decreases in the advance rate above 5% require SBA's prior written concurrence.

(h) Inventory Advance Rate

1. The inventory advance rate is the same as stated above for receivables. The maximum advance rate cannot exceed 50 percent of eligible inventory. Exceptions are permitted if the lender obtains SBA's prior written concurrence. Factors to consider when determining the maximum advance rate are:

- (A) Material and labor costs in manufacturing or invoice costs (less discounts) of resale goods in wholesale distribution;
- (B) Nature of the product;
- (C) Product liability;
- (D) Manufacturer's buyback agreements; and
- (E) Physical location of inventory (single locations are generally easier to control than multiple locations).

2. After initial disbursement, lenders have unilateral authority to increase or decrease the advance rate for receivables by as much as 5 percent above or below the rate stated in the Authorization. Increases or decreases in the advance rate above 5% require SBA's prior written concurrence.

(i) Examinations

An examination is a physical verification of the assets which compose the borrowing base. At a minimum, on-site verifications should occur prior to the initial disbursement and semi-annually thereafter. The frequency of the examinations is determined by the score on the Applicant Questionnaire, SBA Form AB-4I (low level requires semi-annual examinations and high level requires quarterly examinations). Examinations must cover no less than 20 percent of the assets (receivables and inventory) included in the borrowing base.

(j) Monitoring

1. The minimum monitoring requirements for Standard Asset Based CAPLines are as follows:

- (A) Each disbursement - Borrowing base certificate
- (B) Monthly - Borrowing base certificate; Aging of accounts receivable/payable; and Inventory listing (if advanced against)
- (C) Quarterly - Financial statements
- (D) Semi-Annually - Financial statement spread; Accounts receivable review; Accounts payable review; Disbursement report; and Report on fees and charges

- (E) Annually - Borrower's management information system; legal elements; loan agreements; NAICS review; review of cash flow and related financials ; and re-assess exam, monitoring, and control requirements.

2. High monitoring increases the frequency, such that: Quarterly becomes monthly; semi-annually becomes quarterly; and annually becomes semi-annually.

(k) Controls

1. The level of funds control is determined by the score on the Applicant Questionnaire, SBA Form AB-4I.

- (A) Medium Funds Control: ALL cash must be deposited into a cash collateral, deposit-only, account.

- (B) High Funds Control Alternatives:

- (I) The customers of the borrower can be instructed to send their remittances via joint payee checks payable to lender and borrower to the lender;

- (II) Lock box (bank account under lender control where borrower's customers remit payments for accounts receivable); or

- (III) Block box (post office box under lender control where borrower's customers remit payments for accounts receivable).

2. The level of accounts control is determined by the score on the Applicant Questionnaire.

- (A) Medium Account Control: Borrower segregates inventories subject to lender's lien and Borrower provides lender with covenant to allow lender, or its designee, management control of the area in which the collateral is kept, in the event of default or deterioration of the credit.

- (B) High Account Control: Lender creates on site segregation using elements of bailment, wherein the collateral is released only from physical control upon instructions OR lender contracts with a public warehouse to segregate or store collateral and release it only upon instructions from lender.

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

1. POST-DISBURSEMENT CHANGES

Lenders may request changes on disbursed loans by contacting the appropriate CLSC. The CLSC contact information can be found at:

<http://www.sba.gov/aboutsba/sbaprograms/elending/clc/index.html>

- a. The CLSCs have a loan servicing guide on SBA's web page at:

<http://www.sba.gov/aboutsba/sbaprograms/elending/clc/servicing/index.html>

SBA Form 2237 for routine servicing request submissions is found at:

<http://www.sba.gov/tools/Forms/smallbusinessforms/fsforms>

- b. Guidance on loan servicing is also outlined in SOP 50-50 4 which can be accessed through SBA's electronic library at:

<http://www.sba.gov/tools/resourcelibrary/sops/index.html>

- c. 13 CFR 120.500 subpart E- outlines requirements under SBA loan administration.

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=fdfb5d7a02f3a2cdf451e66f44754821&rgn=div6&view=text&node=13:1.0.1.1.14.5&idno=13>

2. SECONDARY MARKET FOR SBA GUARANTEED LOANS.

The Secondary Market was established to provide greater liquidity to lenders, and thereby expand availability of commercial credit for small business. The lender exclusively makes the decision whether to participate in the Secondary Market program and on the sale of each specific guaranteed loan. Resources to facilitate the sale of guaranteed portion on the Secondary Market:

- a. SBA's web page for lenders has specific information on the Secondary Market at:

<http://www.sba.gov/aboutsba/sbaprograms/elending/secondarymarket/index.html>

- b. Colson Services Corp. is the fiscal transfer agent (FTA) for the guaranteed portion which is sold on the Secondary Market. They have helpful information on their web page <http://www.colsonservices.com>

- c. SBA's SOP 50-50 4, Chapter 8 provides additional information and can be accessed at <http://www.sba.gov/tools/resourcelibrary/sops/index.html>
- d. SBA Express and Pilot Loan Program loans may be sold on the secondary market. For variable rate loans, the base rate must be the low prime rate as published each business day in a national financial newspaper or SBA's Optional Peg Rate. A revolving line of credit loan cannot be sold on the Secondary Market, unless it has been termed out.

3. SECURITIZATION AND OTHER CONVEYANCES

- a. Lenders are permitted to securitize the unguaranteed portion of SBA-guaranteed loans. The unguaranteed portion is sold to a trust, which issues certificates to investors. The lender is required to hold a portion of the securities issued by the trust. The size of the lender's retention is related to the loss rate of the lender. A discussion of the SBA requirements for securitization can be found at 13 CFR 120.420 through 13 CFR 120.428. ([LINK TO REGS](#))
- b. Lenders are permitted to pledge the guaranteed and unguaranteed portions of SBA loans under conditions approved by SBA. Lenders may pledge up to 90% with notice to SBA and more than 90% with SBA's prior written consent. Regulatory guidance on pledging and other conveyances can be found at 13 CFR 120.430 through 13 CFR 120.435. ([LINK TO REGS](#))

4. LENDER REPORTING

- a. Lenders must provide a monthly report on SBA Form 1502 ("Form 1502") that includes loan status information for all of its SBA guaranteed loans, regardless of whether the borrower made a payment in the current month. The information required is identified below in Item 6.
- b. The reporting period begins with the first calendar day of the month and continues through the last calendar day of the month.
- c. Lenders must compute and remit with the Form 1502 either the payment owed if the guaranteed portion has been sold in the secondary market or the ongoing guaranty fee if the guaranteed portion has not been sold.
- d. The due date for the Form 1502 and payments to the Fiscal and Transfer Agent (FTA) is the third calendar day of each month, or the next business day if the third day is not a business day, plus a two business day grace period.
- e. Lender must submit the Form 1502 to SBA's Fiscal and Transfer Agent, (FTA) using one of the following delivery methods: electronic (includes diskette, e-mail, and FTA's web site) or hard-copy via mail or fax (includes U.S. and express mail). Each method is described below followed by a mailing address and wire instructions:

(1) *E-Mail*

All E-mails with spreadsheets or database file attachments must be accompanied with a corresponding wire transfer of funds and must be sent to:

1502@colsonservices.com

(2) *Web Site*

FTA provides lenders with the option of using its web site to transmit 1502 information. The Form 1502 Connection is found at (www.colsonservices.com). The web site allows lenders to view their portfolio of loans and enter 1502 information on a 1502 data input screen directly on the site. Lender must call 877-245-6159 for an enrollment form to use the 1502 Connection. All 1502 connection entries must be accompanied with a corresponding wire transfer of funds.

(3) *Faxes*

All faxed 1502 forms must be accompanied with a corresponding wire transfer of funds to 718-315-5170.

(4) *Wire Transfer should be directed to the following wire address:*

The Bank of New York
ABA Routing # 021-000-018
For credit to: Colson Services Corp.
7(a) Collection Account # 8900606797
Text: Bank Name & Payment Information

Please note: this is a different wire address than that used for Secondary Market payoffs and prepayments.

(5) *Diskette or Hard Copy*

FTA may receive the Form 1502 in hard copy format or on a diskette sent via U.S. Mail or Express Deliver Service to:

Express Mail Address:

Colson Services Corp.
2 Hanson Place, 7th Floor,
Brooklyn, NY 11217
Attn.: Cash Processing

Regular Mail Address:

Colson Services Corp.
P. O. Box 54, Bowling Green Station
New York, NY 10274
Attn.: Cash Processing

When the Form 1502 is mailed, it must be accompanied by a corresponding check.

f. SBA Form 1502 field descriptions and instructions:

(1) Lender Information: Must state the lender's name, address, contact person, telephone and fax numbers. Check the box in the upper left-hand corner of the form when any information changes.

(2) Month-Ending Information: Show the last day of the month for which information is being reported. Check the box in the upper right-hand corner when your Form 1502 includes secondary market prepayments or late payments.

- (i) SBA GP Number: The 10 digit numerical SBA-assigned loan identification number. The GP number is the key to identifying SBA 7(a) loans on SBA's and the FTA's databases. If less than 10 digits are reported, the payment information can not be processed. This field is MANDATORY.
- (ii) Lender Loan Number: The lender's loan identification number, that is, the number the lender has assigned to the loan. This field is optional and is included for use by lenders that wish to cross reference their loan number with the SBA loan number.
- (iii) Next Installment Due Date: The date the borrower is scheduled to make its next payment. If the loan is:
 - (a) Current – report the due date of the next scheduled payment;
 - (b) Past Due – report the due date of the first missed scheduled payment;
 - (c) Deferred (status 4) – report the date the borrower is scheduled to resume making payments;
 - (d) In Liquidation (status 5) - leave blank;
 - (e) Paid-in-Full (status 6) - leave blank;
 - (f) Transferred (status 7) - leave blank;
 - (g) Purchased by SBA (status 8) - leave blank; or
 - (h) Fully Undisbursed (status 9) - leave blank.

Special situations: Frequently, when a late payment is made on a newly disbursed loan or a loan with a large principal balance, there are insufficient funds for a principal reduction. In such cases, if the borrower has made the full payment required in the note, credit the entire payment amount to interest, advance the paid-to-date, and report the next installment due date as the next payment date. If the borrower did not make the full payment required in the note, credit the entire payment amount to interest, advance the paid-to-date and report the next installment due date as the date this payment was originally due.

- (iv) Status: If the loan is:

- (a) Current - interest paid-to-date is less than 31 days from the month ending date. For example, if the interest paid-to-date 3/2/YY for the period ending 3/31/YY, leave Status Code column blank;
- (b) 31-60 Days Past Due - interest paid-to-date is 31-60 days from the month ending date. For example, if the interest paid-to-date is 2/12/YY for the month ending 3/31/YY, leave Status Code column blank;
- (c) Over 60 Days Past Due - interest paid-to-date is over 60 days from the month ending date. For example, if the interest paid-to-date is 1/3/YY for the month ending 3/31/YY, leave Status Code column blank;
- (d) Deferred - principal or principal and interest (P&I) payments have been deferred. For example, the P& I payments are deferred and are to resume on 5/1/YY. Report Next Installment Due Date as 5/1/YY, the loan status as Status Code 4, and the Interest-To date and Guaranteed Portion Closing Balance as of last payment received;
- (e) In Liquidation - if the lender is liquidating the loan, report the loan each month as Status Code 5 with an Interest-Paid-To date and Guaranteed Portion Closing Balance until the liquidation is complete. If SBA is liquidating the loan and the guaranteed portion has been purchased, report the loan one final time as Status Code 5, an Interest-Paid-To date and Guaranteed Portion Closing Balance. Until SBA purchases the guaranteed portion, continue to report the loan in liquidation status with an Interest-To date and a Guaranteed Portion Closing Balance;
- (f) Paid in Full - if a loan is paid in full, report the loan as Status Code 6, with an Interest-Paid-To date as of the payoff date and a Guaranteed Portion Closing Balance of \$0.00. It is only necessary to report the loan as paid in full once. Note - if the guaranteed portion of the loan has been sold on the secondary market, do not report the loan as Status Code 6 on the Form 1502 remittance containing the secondary market payoff; the Status Code column should be left blank. Instead, report the loan as Status Code 6 at month end;
- (g) Transferred - if a loan has been transferred to another lender, the Transferring (selling) lender reports the loan one final time as Status Code 7 with an Interest-Paid-To date and Guaranteed Portion Closing Balance as of the transfer date. Do not mark the loan as Paid in Full if it has been transferred to another lender;
- (h) Purchased by SBA - if the guaranteed portion of a loan is purchased by SBA, report one time as Status Code 8 with an Interest-Paid-To date and Guaranteed Portion Closing Balance as of the purchase date;
- (i) Purchased by Lender from the Secondary Market - if a lender has purchased the guaranteed portion from the secondary market because the borrower is in default or the lender has received special permission from SBA, but SBA has not purchased the guaranteed portion from lender, the lender must continue to report on the loan monthly using the appropriate status code; or

(j) Fully Undisbursed - if a loan has not had any disbursements made to the borrower, report as Status Code 9 and indicate the Amount Undisbursed on Total Loan. Revolving loans - once the first disbursement takes place, the loan must not be reported as Status Code 9 again, as long as the loan is outstanding, even in instances where the full amount of the credit line is repaid by the Borrower.

(v) Amt Disbursed this Period on Total Loan - The total amount disbursed during the reporting month on 100% of the loan. If no amounts were disbursed, leave blank. Do not reduce the amount disbursed by borrower principal repayments.

Example: Based on a \$100,000.00 loan (100% or total approved)
3/02/YY: \$10,000 disbursed (on total loan)
3/25/YY: \$10,000 disbursed (on total loan)
Amount disbursed for month ending 3/31/YY = \$20,000

(vi) Amt Undisbursed on Total Loan: Of the total approved amount (100% amount), the amount that has not been disbursed by the lender as of the month ending date. If fully disbursed, leave blank.

Example: Based on a \$100,000.00 loan (100% or total approved)
3/02/YY: \$10,000 disbursed (on total loan)
3/25/YY: \$10,000 disbursed (on total loan)
Amount undisbursed for month ending 3/31/YY = \$80,000.00

(vii) Interest Rate:

(a) Sold Loans - the rate of interest used to calculate the interest payment due the FTA (i.e., the borrower's note rate less the lender's servicing fee percentage).

Example: Note rate = Prime + 2.50%
Lender's servicing fee = 1.00%
Secondary market rate = Prime + 1.50%
Prime = 6.75%
Rate reported = 8.25%

(b) Unsold Loans - if an interest payment is reported, the rate of interest charged to the borrower.

Example: Note rate = Prime + 2.50%
Prime = 6.75%
Rate reported = 9.25%

(c) No Payment Received - if no interest payment was received, leave blank.

(viii) Guaranteed Portion Interest:

(a) Sold Loans - the interest payment due to the FTA on behalf of the secondary market investor. That is, the guaranteed portion of the borrower's interest payment received less the lender's servicing fee.

Example: \$100,000.00 x 80% guaranty = \$80,000.00 guaranteed portion
Interest payment on total loan @ 12.00% = \$1,000.00;
On guaranteed portion = \$800.00
Lender's servicing fee = \$80,000.00 x 1% ÷ 360 x 30 = \$66.67
Interest due to FTA = \$800.00 - \$66.67 = \$733.33

(b) Unsold Loans - the borrower's interest payment received multiplied by the guaranty percentage. Common reporting errors:

1. the SBA fee amount or guaranteed portion balance is reported in this column;
2. interest on 100% of the loan is reported

Example: Interest payment on total loan
= \$1,000.00 x 80% guaranty = \$800.00

(c) No Payment Received - if no interest payment was received, leave blank.

(ix) Guaranteed Portion Principal:

(a) Sold Loans- the principal payment due the FTA on behalf of the secondary market investor. That is, the guaranteed portion of the borrower's principal payment received.

Example: Principal payment on total loan
= \$200.00 x 80% guaranty = \$160.00

(b) Unsold Loans - same as for sold loans.

Example: Principal payment on total loan
= \$200.00 x 80% guaranty = \$160.00

(c) No Payment Received - if no principal payment was received, leave blank.

Note: For unsold loans, if interest and principal payments due in prior months (i.e., past due payments) are received in the current reporting month, report each payment received on this month's Form 1502.

(x) Total to FTA: Guar. Portion Payment or Fee: The sum of the guaranteed portion interest + guaranteed portion principal or SBA's on-going guaranty fee is reported in this column, depending on whether the loan is sold or unsold.

(a) Sold Loans - the sum of the guaranteed portion interest + guaranteed portion principal is reported and remitted to the FTA.

Example: Guaranteed Interest (less servicing fee) = \$733.33
 Guaranteed Principal = \$160.00
 Total to FTA = \$893.33

(b) Unsold Loans (subject to SBA ongoing guaranty fee) - SBA's ongoing guaranty fee is remitted every month the borrower makes an interest payment.

(c) For term loans, SBA's ongoing guaranty fee calculation is:

$$\frac{[\text{Guaranteed Portion Opening Balance}] \times [\text{ongoing fee}]}{[\text{Calendar Basis}] \times [\# \text{ of Days}]}$$

Example: Total Loan Amount is \$100,000
 Guaranty Percentage is 80%
 Ongoing Guaranty Fee is 50 basis points
 Accrual Method = 360/360

$$\begin{aligned} & \$100,000.00 \times 80\% \text{ guaranty} = \$80,000.00 \\ & \$80,000.00 \times .005 \div 360 \times 30 \text{ days} = \$33.33 \\ & \text{Total to FTA} = \$33.33 \end{aligned}$$

(d) For revolving loans or term loans with multiple disbursements, SBA's ongoing guaranty fee calculation is:

$$[\text{Guaranteed Interest Amount}] \times [\text{ongoing fee}] \div [\text{the Note Rate}]$$

Example: Guaranteed Interest Amount = \$800.00
 $\$800.00 \times .005 \div 10.00\% = \40.00
 Total to FTA = \$40.00

(e) Payment Received - if no payment was received, leave blank or fill with \$0.00. The SBA fee is not due to the FTA if the borrower did not make an interest payment in the reporting month.

(xi) Interest Period From: The date from which the reported interest started or accrued from. Leave blank if no interest payment is reported.

(xii) Interest Period To: The date to which the reported interest is paid or accrued to. If no interest payment was received from the borrower in this reporting month, indicate the interest paid-to-date as of the last payment received.

Example: \$100,000.00 total loan; 12.00% interest rate; 30/360 basis
Borrower makes \$1,000.00 interest payment on 3/15/YY. Last interest paid-to-date was 2/15/YY.

Calculation: $\$100,000.00 \times .12 \div 360 \times 30 \text{ days} = \$1,000.00$
For the reporting period ending 3/31/YY
Interest Period From: 2/15/YY Interest Period To: 3/15/YY

For newly disbursed loans that are not in repayment mode, report the date interest accrues from (either note date or first disbursement date) in this column. Also, be certain to indicate the Guaranteed Portion Closing Balance in the appropriate column.

(xiii) # of Days: The number of days covered by the reported interest payment, determined in accordance with the calendar basis used to compute interest. If no payment was received, leave blank.

Example: 2/15/YY to 3/15/YY = 30 days on a 30/360 basis
2/15/YY to 3/15/YY = 28 days on a 365/365 basis (non-leap years)

(xiv) Calendar Basis: The interest computation calendar method stated at the time of the original loan sale into the secondary market (e.g., as on 1086) or as prescribed in the Loan Authorization Agreement or Note. Acceptable computation methods for secondary market loans are 30/360 and Actual days/365.

(xv) Guaranteed Portion Closing Balance: The balance remaining after applying the borrower's most recent principal payment multiplied by the guaranty percentage.

(a) Sold Loans - the guaranteed principal balance outstanding after the application of the reported guaranteed portion principal payment.

(b) Unsold Loans - same as for sold loans.

Example: Total loan = \$100,000.00 with 80% guaranty
Guaranteed principal balance = \$80,000.00
Principal payment = \$200.00
Guaranteed principal payment = \$160.00 (i.e., \$200.00 x 80%)

Total loan closing balance = \$99,800.00 (i.e., \$100,000.00 - \$200.00)

Guaranteed Portion Closing Balance = \$79,840.00 (i.e., \$99,800.00 x 80% or \$80,000.00 - \$160.00)

(c) No Payment Received - if no payment was received from the borrower, indicate the guaranteed principal balance as of the last payment received.

(xvi) Remittance Penalty: Penalty amount if the lender does not forward secondary market payments according to the terms in SBA Form 1086.

(xvii) Total (Total to FTA column): The sum of each of the dollar values in the Total to FTA column.

(xviii) Total (Penalty column): The sum of each of the dollar values in the Remittance Penalty column.

(xix) Grand Total: Sum of the totals in Total to FTA column and Remittance Penalty column, equals the amount of the check or wire remitted to the FTA.

(xx) Check / Wire Amt: The amount of the check or wire sent for this remittance. This amount should be the same as the total in Field 19.

SUBPART C
SECTION 504 CERTIFIED DEVELOPMENT COMPANY LOAN PROGRAM

THE PURPOSE OF THIS SUBPART

This subpart contains the policies and procedures governing SBA's 504 Certified Development Company Loan Program. The policies and procedures governing Certified Development Companies are contained in Subpart A of this SOP.

Chapter 1
General Provisions

1. Purpose of the 504 Certified Development Company Loan Program

The 504 loan program is an economic development program designed to finance fixed assets for small businesses on reasonable terms and to stimulate employment through a job retention/creation goal. [ADD LINK TO 13 CFR 120.800](#)

2. Credit Standards

Certified Development Companies (CDCs) must analyze each application in a commercially reasonable manner, consistent with prudent lending standards.

On SBA-guaranteed loans, the cash flow of the Small Business Applicant is the primary source of repayment, not the liquidation of collateral. Thus, if the lender's financial analysis demonstrates that the Small Business Applicant lacks reasonable assurance of repayment in a timely manner from the cash flow of the business, the loan request must be declined, regardless of the collateral available.

(1) The CDC's analysis must include:

(i) A financial analysis of the Small Business Applicant's pro forma balance sheet. The pro forma balance sheet must reflect the loan proceeds, use of the loan proceeds, and any other adjustments such as required equity injection or stand-by debt.

(ii) A financial analysis of repayment ability based on historical income statements, tax returns (if an existing business) and projections, including the reasonableness of the supporting assumptions.

(iii) A ratio analysis of the financial statements including comments on any trends and a comparison with industry averages.

(iv) A discussion of the owners' and managers' relevant experience in the type of business, as well as their personal credit histories.

(v) An analysis of collateral adequacy, including an evaluation of the collateral and lien position offered as well as the liquidation value. (For further guidance, please see SOP 50 51, Loan Liquidation and Acquired Property, Chapter 13, Paragraph 27. [ADD HYPERLINK](#))

(vi) A discussion of the Small Business Applicant's credit experience, including a review of business credit reports and any experience the CDC may have with the applicant.

(vii) Other relevant information (for example, if the application involves a franchise, the success of the franchise).

2. Definitions

The following terms have the same meaning wherever they are used in this subpart. Defined terms are capitalized wherever they appear. [ADD LINK TO 13 CFR 120.802](#) Also refer to [13 CFR 120.10 \(add Link\)](#) for additional definitions.

- a. **Area of Operations** is a geographic area in which a CDC conducts its activities.
- b. **Central Servicing Agent (CSA)** is an entity that receives and disburses funds among the various parties involved in 504 financing under a master servicing agent agreement with SBA.
- c. **Certificate** is a document issued by SBA or its agent representing ownership of all or part of a Debenture Pool.
- d. **Debenture** is an obligation issued by a CDC and guaranteed 100 percent by SBA, the proceeds of which are used to fund a 504 loan.
- e. **Debenture Pool** is an aggregation of Debentures.
- f. **Designated Attorney** is the CDC closing attorney that SBA has approved to close loans under an expedited closing process for a Priority CDC.
- g. **Interim Financing** is any disbursement of funds (other than the borrower's contribution) to finance eligible project costs after the loan is approved by SBA but before the debenture is sold.
- h. **Investor** is an owner of a beneficial interest in a Debenture Pool.
- i. **Job Opportunity** is a full time (or equivalent) permanent job created within two years of receipt of 504 funds, or retained in the community because of a 504 loan.
- j. **Lead SBA Office** is the SBA District Office designated by SBA as the primary liaison between SBA and a CDC and with responsibility for managing SBA's relationship with that CDC.
- k. **Limited or Special Purpose Property**- A limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built.
- l. **Loan Program Requirements** are requirements imposed upon CDCs by statute, SBA regulations, any agreement the CDC has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 504 loan programs, debentures, and loan authorizations, as such requirements are issued and revised by SBA from time to time.
- m. **Local Economic Area** is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, is contiguous to the CDC's existing Area of Operations (or the applicant's proposed Area of Operations) of its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or

- applicant's proposed Area of Operations) of its State of incorporation. Examples of a local trade area would be a city that is bisected by a State line or a metropolitan statistical area that is bisected by a State line.
- n. **Multi-State CDC** is a CDC that is incorporated in one State and is authorized by SBA to operate as a CDC in a State contiguous to its State of incorporation beyond any contiguous Local Economic Areas.
 - o. **Net Debenture Proceeds** are the portion of Debenture proceeds that finance eligible Project costs (excluding administrative costs).
 - p. **New Business** is a business that is less than 2 years old at the time the loan is approved. The status of being “new” may be reconsidered at the time of loan closing if it would then be 2 years old and showed repayment ability satisfactory to the CDC and SBA. Other factors may affect SBA’s determination as to whether or not the business is “new.” Such factors include: the related experience of the owners; retained management, customers and product line; and similar demographics.
 - q. **Priority CDC** is a CDC certified to participate on a permanent basis in the program (see §120.812) that SBA has approved to participate in an expedited 504 loan and Debenture closing process.
 - r. **Project** is the purchase or lease, and/or improvement or renovation of long-term fixed assets by a small business, with 504 financing, for use in its business operations.
 - s. **Project Property** is one or more long-term fixed assets, such as land, buildings, machinery, and equipment, acquired or improved by a small business, with 504 financing, for use in its business operations.
 - t. **Special Geographic Areas** include Alaska, Hawaii, State-designated Enterprise Zones, Empowerment Zones, Enterprise Communities and Labor Surplus Areas.
 - u. **Third Party Lender** is usually a financial institution that provides the Third Party Loan and typically has a first lien on the project collateral. SBA does not permit the CDC to be the Third Party Lender on Projects financed by the CDC.
 - v. **Third Party Loan** is a loan from a commercial or private lender, investor, or Federal (non-SBA), State or local government source that is part of the Project financing.
 - w. **Underwriter** is an entity approved by SBA to form Debenture Pools and arrange for the sale of Certificates.

3. How a 504 Project is Financed

Typical 504 Structures

	Standard Financing Structure	New Business OR Limited or Special Purpose Property	Both New AND Limited or Special Purpose Property
Third Party	50	50	50

Lender			
CDC/SBA	40	35	30
Borrower	10	15	20

A 504 project has three main partners: a Third Party Lender provides 50% or more of the financing; a Certified Development Company (CDC) that provides up to 40% of the financing through a 504 debenture (guaranteed 100 percent by SBA); and the applicant (borrower) who injects at least 10% of the financing. [ADD LINK TO 13 CFR 120.801 and 13 CFR 120.900](#)

Please see Chapter 7 of this subpart for a discussion of the maximum debenture amount.

a. Third Party Loan [13 CFR 120.920 ADD LINK](#)

The terms of the Third Party Loan are defined in [13 CFR 120.921. ADD LINK](#)

b. Interim Financing

Loans under the 504 program provide permanent or take-out financing. An interim lender (either the Third Party Lender or another lender) provides the interim financing to cover the period between SBA approval of the project and the debenture sale. After the project is completed, the CDC will close the 504 loan. The proceeds from the Debenture sale repay the interim lender for the amount of the 504 project costs that it advanced on an interim basis.

- (1) Any experienced, independent source including the third party lender may supply interim financing provided they meet the conditions described in [13 CFR 120.890 ADD LINK](#). A CDC may provide interim financing but only for a project financed by another CDC. As stated in the regulation, neither the borrower nor an Associate of the borrower may supply interim financing.
- (2) The interim financing must be fully disbursed and the project completed prior to the sale of the Debenture with one exception. A portion of the debenture proceeds may be put into an escrow account to complete a minor portion of the total project. Refer to [13 CFR 120.961 ADD LINK](#) for details.
- (3) If the Third Party Lender provides the interim loan, it may do so using:
 - (a) an interim which will be paid in full with the net debenture proceeds and a permanent note; or
 - (b) a single note, which includes both the interim and permanent financing, that will be reduced by the net debenture proceeds.
- (4) If interim financing is used, additional conditions must be included in the Authorization. See chapter 4 of this subpart.

Example of Interim Financing of Eligible Project Costs

Expenses Incurred Prior to the 504 Application:

Purchase of Land (Principal portion of short-term financing)	\$180,000
Equity in Land	20,000
Purchase of M & E (Within 9 months of application)	100,000

Cost estimates submitted at time of application:

Construction of Building	600,000
<u>Total Project Costs</u>	<u>900,000</u>

Permanent Financing Structure:

First Mortgage Lender	50%	450,000
504 Net Proceeds	40%	360,000
Borrower Equity	10%	<u>90,000</u>
Total Financing	100%	\$900,000

In this example the interim loan would be \$810,000. It will have to take out all the eligible pre-application costs other than the required equity in the permanent financing of \$90,000. The borrower cannot be reimbursed directly from the net debenture proceeds but the lender can refinance these with their interim loan at any time prior to the loan closing.

- (5) The interim lender must make a number of certifications at time of the debenture closing. The certifications are stated in [13 CFR 120.891](#) and [120.892](#). [ADD LINK](#)

c. Borrower's Equity Contribution [13 CFR 120.910 – 120.913 \(ADD LINK\)](#)

- (1) The borrower must inject at least 10% of the Project cost.
- (2) New businesses must inject at least 15%.
- (3) Businesses with a Limited or Special Purpose Property also must inject 15%. SBA considers only the following as a Limited or Special Purpose Property:
 - (a) schools;
 - (b) dormitories;
 - (c) cold storage facilities where more than 50% of total square footage is equipped for refrigeration;
 - (d) tennis clubs;
 - (e) golf courses;
 - (f) swimming pools;
 - (g) amusement parks;
 - (h) sports arenas;

- (i) bowling alleys;
- (j) theaters;
- (k) marinas;
- (l) gas stations;
- (m) service centers(e.g., oil and lube, brake or transmission centers) with pits and in ground lifts;
- (n) car wash properties;
- (o) hospitals;
- (p) nursing homes;
- (q) funeral homes with crematoriums;
- (r) cemeteries;
- (s) sanitary landfills;
- (t) museums;
- (u) clubhouses; and
- (v) hotels and motels.

(4) If a Project finances both a New Business **and** a Limited or Special Purpose Property, the applicant is required to inject 20% of the project cost.

(5) The additional borrower's equity contribution will reduce the SBA's portion of the financing.

(6) The borrower's equity in land previously acquired may be counted toward the borrower's equity contribution. The borrower also may count toward its contribution, equity in land and buildings that will be part of the Project if they are adding a new building to the same property.

(7) If the borrower's equity contribution is borrowed, any lien position must be subordinate to the 504 loan. In addition, the borrower may not pay the loan for the equity contribution at a faster rate than the 504 loan. ([LINK TO 13 CFR 120.912](#))

Chapter 2 Eligibility

1. INTRODUCTION

This section discusses the steps necessary to determine if an applicant is eligible for a 504 loan. The eligibility issues that apply to the CDC or the structure of the loan are discussed elsewhere. ([LINK to 13 CFR 120.100, 101, 102, 110, 860, 861, 880 and 881](#))

Eligibility should be determined as early in the loan making process as possible. The small business must meet the eligibility requirements at the time of application and, with the exception of the size standard, must continue to meet these requirements through the closing and disbursement of the loan.

[Link to 504 Eligibility Checklist form](#)

2. SUMMARY OF ELIGIBILITY REQUIREMENTS

a. The Small Business Applicant must be:

- (1) An [Operating Business](#)
- (2) Organized [For Profit](#);
- (3) [Located in the United States](#) (includes territories and possessions);
- (4) [Small](#) (as defined by SBA)
- (5) Demonstrate a need for the desired credit; ([LINK TO 13 CFR 120.100](#))

b. CDC must certify that credit is not available elsewhere on reasonable terms; ([LINK TO 13 CFR 120.101](#))

c. The Small Business Applicant must show that the funds are not available from alternative sources, including personal resources of the principals; ([LINK TO 13 CFR 120.102](#))

d. The following businesses are ineligible:

- (1) Non-profit businesses (for profit subsidiaries are eligible);
- (2) Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);
- (3) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies);
- (4) Life insurance companies;
- (5) Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify)
- (6) Pyramid sales distribution plans;

- (7) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;
- (8) Businesses engaged in any illegal activity;
- (9) Private clubs and businesses which limit the number of memberships for reasons other than capacity;
- (10) Government-owned entities (except for businesses owned or controlled by a Native American tribe);
- (11) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;
- (12) Consumer and marketing cooperatives (producer cooperatives are eligible);
- (13) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;
- (14) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;
- (15) Businesses in which the CDC or any of its Associates owns an equity interest;
- (16) Businesses which present live performances of a prurient sexual nature; or derive directly or indirectly more than de minimus gross revenue through the sale of products or services, or the presentation of any depictions or displays of a prurient sexual nature;
- (17) A business or applicant involved in a business which defaulted on a Federal loan or Federally assisted financing resulting in a loss to the government. A compromise agreement shall also be considered a loss;
- (18) Businesses primarily engaged in political or lobbying activities; and
- (19) Speculative businesses (such as oil wildcatting). [Link \(13 CFR § 120.110\)](#)

3. ELIGIBILITY REQUIREMENTS

a. THE SMALL BUSINESS MUST BE ORGANIZED FOR PROFIT.

- (1) All small business applicants must be organized for profit. Non-profit businesses are not eligible for SBA business loan assistance.
- (2) For-profit businesses owned by a non-profit business are eligible if they meet SBA's other eligibility requirements. The non-profit affiliate must be included in the calculation of the size of the business. This may result in a determination that the for-profit entity is not considered small by SBA size standards and therefore not eligible. In addition, if the non-profit affiliate owns 20% or more of the for-profit business but cannot or will not guarantee the loan, the for-profit business is not eligible for SBA assistance. If the profits are used for the benefit of the non-profit rather than the for-profit business, the for-profit business is not eligible.
- (3) Documentation that may be reviewed to determine for-profit status:

- (i) Articles of Incorporation-- filed with Secretary of State or similar department in the state where the applicant is organized or conducts operations;
- (ii) Articles of Organization-- (for a Limited Liability Corporation (LLC)) filed with Secretary of State or similar department in the state where the applicant is organized or conducts operations;
- (iii) Corporate By-Laws and any amendments;
- (iv) Partnership Agreements;
- (v) Association By-laws; and
- (vi) Tax Returns.

b. THE APPLICANT MUST BE SMALL UNDER SBA SIZE REQUIREMENTS APPLICABLE TO 504 FINANCIAL ASSISTANCE ([LINK TO 13 CFR 121.301\(b\)](#))

- (1) The small business, together with its Affiliates if any, must meet either the same size standards applicable to 7(a) business loans or the size standards set forth in 13 U.S.C. 121.301(b), which are as follows:

The Small Business Applicant and its Affiliates must have:

- (i) A Tangible net worth of \$7.5 million or less; and
- (ii) Average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years of \$2.5 million or less.

- (2) When size status of an applicant is determined [LINK TO 13 CFR 121.302](#)

The size of an applicant for SBA financial assistance is determined as of the date the application for such financial assistance is accepted for processing by SBA. Changes in the size of the business subsequent to the applicable date when size is determined will not disqualify an applicant for assistance, even if the financing resulted in the business becoming large.

- (3) Formal size determinations
 - (i) By signing the application, a small business applicant is deemed to have certified that it is small under the applicable size standard. SBA or CDC may request additional information concerning the applicant's size based on information supplied in the application or any other source. A PCLP CDC may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

- (ii) Prior to denial of eligibility based on size, a formal size or affiliation determination may be requested by a small business applicant, the SBA loan application processing office or a CDC prior to denial of eligibility based on size. The request must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates.
[LINK TO 13 CFR 121.303](#)

(4) Review of Franchise/License/Dealer Agreements

The discussion in this section applies to Franchise Agreements, License Agreements, and Dealer Agreements (with the exception of Dealer Agreements from new car manufacturers which are not reviewed for eligibility). A finding of eligibility under this section means that the agreement does not impose unacceptable control provisions on the Small Business Applicant which would result in affiliation. The fact that the agreement is eligible does not mean that the Small Business Applicant is eligible.

- (i) Affiliation can exist through:
 - (e) common ownership;
 - (f) common management;
 - (g) excessive restrictions upon the sale of the franchise interest; or
 - (h) control by a franchisor/licensor/dealer either directly or through an affiliated entity or agent such that the Franchisee/Licensee/Dealer does not have the independent right to both profit from its efforts and bear the risk of loss commensurate with ownership. ([LINK TO 13 CFR 121.103 \(i\)](#))

(ii) Review

SBA requires in all cases a determination as to whether affiliation exists when the applicant has or will have a Franchise/License/Dealer agreement.

(iii) Review and determination must be conducted by:

- (c) SBA--for all Regular and ALP loans; and
- (d) CDC --for PCLP loans.

(iv) Franchise Information Assistance

CDCs may contact SBA at franchise@sba.gov for assistance with franchise eligibility reviews.

(v) Registry of approved franchise/license/dealer agreements

To facilitate the review of these agreements, SBA has established a Franchise Registry (“Registry”) that lists approved franchise/license/dealer agreements. SBA has previously determined that the agreements listed on this registry are acceptable. CDC must ensure that the documents with the loan application are the same as the documents listed on the Registry.

CDCs must follow the procedures set forth below to determine franchise program eligibility for a loan application.

- (a) Check www.franchiseregistry.com to determine if the agreement is listed.

3. Listed on Registry

If the Agreement is listed on the Registry (including any additional requirements listed in the footnotes), CDC may rely upon the Registry to determine eligibility. The file must include one of the following forms:

(A) Certification of No Change or Non-Material Change – SBA Form 2086

If there have been no material changes to the documents in any way since the initial registration or last revision date in the Registry the review process has been completed and the Loan File should be documented with the following:

- (I) Proof of FTC Registration
- (II) Executed Agreements
- (III) Executed Certification of No Change or Non-Material Change. ([Hyperlink to form](#))

(B) Certification of Material Change

If there has been a material change, the certification should be forwarded to the SBA loan processing center. Lender will be notified of the results of the review.

(C) Certification not provided

If a certification is not provided, a review of the Agreement and all related documents is required as if not listed on the Registry.

4. Not Listed on Registry

- (A) If the Agreement is not listed on the Registry, a review must be made of the Agreement and all related documents
- (B) Lenders should consult the Franchise Findings List (the List) posted on the SBA website ([hyperlink](#)) to see if the Agreement has been determined to be unacceptable. **This site does not purport to contain definitive eligibility rulings.** The list will provide useful information in making the eligibility determination as well as potential remedies to ineligible agreements.
- (C) If an Agreement is on the List and the reason the Agreement is on the List cannot be resolved, the CDC must determine that the applicant is ineligible.

(b) Affiliation Issues to Consider

The following are examples of common situations that should be examined to determine if affiliation exists.

7. Control

The provisions of the Agreement may not:

- (A) Set the Applicant's net profit;
- (B) Require the payment of excessive Franchise/License/Dealer Fees;
- (C) Directly control the applicant's employees including hiring or terminating (unless under a short term step-in agreement);
- (D) Require the Applicant to deposit all receipts or revenues into an account which Franchisor/Licensor/Dealer controls, or from which withdrawals may be made only with Franchisor/Licensor/Dealer consent;
- (E) Include an option to purchase the applicant's personal property assets upon expiration or breach of the Agreement, where the Franchisor/Licensor/Dealer has the ability to control the price at the time of purchase;

- (F) Include a purchase option for real estate owned by the applicant (right of first refusal is allowed provided it is on commercially reasonable terms);
- (G) Allow the hiring of the applicant's employees by the Franchisor/Licensor/Dealer (in the temporary personnel industry, consider temporary employees hired by the franchisee to be employees of the franchisor); or
- (H) Require that the billing activities for the applicant be handled by the Franchisor/Licensor/Dealer for a fee.

8. Leasing from Franchisor/Licensor/Dealer

During the term of the SBA-guaranteed loan, Franchisor/Licensor/Dealer may not terminate any Real Estate Lease unless an uncured default has occurred under the terms of the Real Estate Lease or the Franchise Agreement

9. Transfer

Any transfer provision which requires a Franchisor/Licensor/Dealer's consent must state "**Consent must not be unreasonably withheld or delayed**" or its equivalent.

10. Termination

A Franchisor/Licensor/Dealer's power to cancel without cause does not confer upon it power to control the applicant and is not an indicia of affiliation

11. Independent Contractor

Franchisor/Licensor/Dealer and applicant must maintain an Independent Contractor Relationship.

Example: Insurance Agents who sell policies issued by one insurance company have been found to be independent contractors when the Agents performed their services at their own business locations and paid all of the expenses of maintaining their own offices.

12. Specific Industries

- (A) Insurance Industry. Based on the Industry standard established by the Insurance Agency, it is common practice for the franchisor to own the Insurance Policies as well as receive the payments on the policy. This type of arrangement, by itself, does not create affiliation.
- (B) Gasoline Industry. Most Dealer Agreements are for a term of three years with limited or no renewal terms. In situations where a gasoline supplier is leasing the real property to the dealer, the Petroleum Marketing Practices Act controls and contains detailed provisions on the authority and procedure for non renewal or termination. This type of lease arrangement, by itself, does not place inappropriate control in the oil company/dealer.

c. THE SMALL BUSINESS APPLICANT MUST DEMONSTRATE A NEED FOR A GUARANTY ON THE LOAN.

- (1) The Small Business Applicant’s need for the loan is determined by applying the “Credit Elsewhere Test.” The purpose of the Credit Elsewhere test is to determine if the Small Business Applicant along with its principals have the ability to obtain some or all of the requested loan funds from alternative sources without causing undue hardship. [LINK TO 13 CFR 120.101](#)
- (2) The CDC must determine that:
 - (i) the Small Business Applicant is unable to obtain the loan on reasonable terms without a Federal government guaranty, and
 - (ii) some or all of the loan is not available from any of the following sources:
 - (a) The resources of the applicant business; or
 - (b) The personal resources of the principals of the applicant concern.

If some or all of the loan applied for is otherwise available on reasonable terms from any of these sources, the loan application must be reduced or declined.

- (3) The CDC must substantiate the factors that prevent the financing from being accomplished without SBA support and retain the explanation in the Small Business Applicant’s file.

- (4) Acceptable factors that demonstrate an identifiable weakness in the credit or exceed policy limits of the CDC include, among others:
- (i) The business needs a longer maturity than the CDC's policy permits (for example, the business needs a loan that is not on a demand basis);
 - (ii) The requested loan exceeds either the CDC's legal lending limit or policy limit regarding the amount that it can lend to one customer;
 - (iii) The CDC's liquidity depends upon selling the guaranteed portion of the loan on the secondary market;
 - (iv) The collateral does not meet the CDC's policy requirements
 - (v) The CDC's policy normally does not allow loans to new businesses or businesses in the applicant's industry; and/or
 - (vi) Any other factors relating to the credit that, in the CDC's opinion, cannot be overcome except for the guaranty.
- (5) Unacceptable factors include:
- (i) To address the CDC's Community Reinvestment Act (CRA) compliance; or
 - (ii) To refinance debt already on reasonable terms.
- (6) The CDC must certify that credit is not otherwise available by signing the CDC Official block on the appropriate application form.
- (7) Utilization of personal resources -- As part of the credit elsewhere test, SBA requires the personal resources of any owner of 20 percent or more of the Small Business Applicant be reviewed. [LINK TO 13 CFR 120.102](#)
- (i) The rule also applies to each person when the combined ownership of the spouses and dependent children is 20% or more.
 - (ii) The utilization of the personal resources rule does not apply to the business resources of an associate or affiliated business.
 - (iii) Once it is determined that an individual owner is subject to the utilization of personal resources rule, his or her percentage of ownership has no effect on the amount of the required injection.

(8) Personal Resources of Spouses and Dependent Children

- (i) The SBA's lending programs qualify as a "Special-Purpose Credit Program" under the Federal Reserve's Regulation B relating to the Equal Credit Opportunity Act (ECOA). This regulation stipulates that information pertaining to the applicant's marital status, sources of personal income, alimony, child support, and spouse's financial resources can be obtained and considered in determining program eligibility. Therefore, the CDC has the right to obtain the signature of an applicant's spouse (whether an owner of the business or not) or other person on an application.
- (ii) Unless there is some legal impediment to access the personal resources of the spouse such as those held by an independent trustee of an irrevocable trust, the applicant is presumed to have access to the personal resources of his/her spouse and minor children. The personal resources of close relatives (excluding spouse and dependent children), including children above the age of majority, living in the household are not considered to be available to the applicant for injection into the business.
- (iii) SBA or the CDC can require injection of the available personal resources of the individual's minor children.
- (iv) SBA or the CDC cannot require the injection of the spouse's personal resources, but can determine that the applicant is ineligible because of access to personal resources.

(9) Liquid Assets

- 2. Only liquid assets are subject to being injected into the project. Liquid assets include:
 - (a) Cash;
 - (b) certificates of deposit;
 - (c) marketable securities and bonds;
 - (d) cash surrender value of life insurance; and
 - (e) similar assets. CDCs should consider carefully the transfer of assets or other actions of the applicant to avoid compliance with the intent of this provision. At a minimum, liquid assets transferred by applicants within 6 months of application for SBA assistance will not be exempt.
- 3. Liquid assets do not include:
 - (a) Closely held non-marketable stocks or bonds;
 - (b) Individual retirement accounts (IRAs), 401(k), 403(b), 529 accounts, Keoghs, or other established retirement accounts subject to withdrawal

restrictions or penalties; Health Savings Accounts, and other similar assets;

- (c) Equity in real estate or other fixed assets; or
- (d) Assets pledged as security on debt obtained over 6 months prior to the loan application. The dollar value of the pledged liquid assets that exceeds the amount of the debt being secured is considered a liquid asset.

(10) Utilization of Personal Resources Rule

- (i) The CDC must determine the overall dollar value of the allowable exemption, which is defined as the amount of personal resources that do not have to be injected into the business. The allowable exemption is determined on the basis of the “total financing package.” The total financing package includes the SBA loan, together with any other loans, equity injection, or business funds used or arranged for at the same general time for the same project as the SBA loan.
- (ii) If the total financing package is:
 - (a) Is \$250,000 or less, the exemption is two times the total financing package or \$100,000, whichever is greater;
 - (b) Is between \$250,001 and \$500,000, the exemption is one and one-half times the total financing package or \$500,000, whichever is greater; or
 - (c) Exceeds \$500,000, the exemption is one times the total financing package or \$750,000, whichever is greater;
- (iii) Once the exemption is determined, it is subtracted from the liquid assets. If the result is positive, that amount must be injected into the project.
- (iv) Liquid assets required to be injected into the business under the utilization of personal resources rule can not be pledged as an alternative to injection.
- (v) SBA or the CDC may require additional capitalization beyond that required by the utilization of personal resources rule.

(11) Determining the Amount of the Allowable Exemption

CDCs must use the following procedures to make, as of the date of the loan application, a written determination of the allowable exemption which must be kept in the file, available for SBA’s review:

- (i) Carefully review the personal financial statements required from the owners of 20% or more of the equity of the business (including the resources of spouse and dependent children);

- (ii) Determine the value of the liquid assets subject to the rule for each individual; and
- (iii) Subtract the allowable exemption from the liquid assets of each individual subject to the rule (including their immediate family).

Note: A husband and wife and their dependent children are only entitled to one exemption.

(12) Reducing Ownership Interest

- (i) Any person subject to the utilization of personal resources rule 6 months prior to the date of the loan application would continue to be subject to the rule even if that person has changed his or her ownership interest to less than 20%.
- (ii) The only exception to the 6-month rule is when that person completely divests his or her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Small Business Applicant (and any associated Eligible Passive Concern) in any capacity, including being an employee (paid or unpaid).

d. INELIGIBLE TYPES OF BUSINESSES

- (1) To determine if a business is eligible for SBA assistance, the CDC must:
 - (i) determine the primary business industry of the Small Business Applicant. [LINK TO 13 CFR 121.107](#)
 - (ii) determine whether the Small Business Applicant is one of the types of business listed as ineligible in SBA regulations. [LINK TO 13 CFR 120.110](#)
- (2) SBA may not guarantee a loan to a Small Business Applicant for the benefit of an ineligible affiliated business.
- (3) SBA cannot guarantee a loan to any of the following types of businesses:
 - (i) Businesses organized as a non-profit (for-profit subsidiaries are eligible).
 - (ii) Businesses Engaged in Lending
 - (a) SBA cannot guarantee a loan that provides funds to businesses primarily engaged in lending or investment, or to an otherwise eligible business for the purpose of financing investment not related or essential to the business. This prohibits loans to:

1. Banks;
2. Life Insurance Companies (not independent agents);
3. Finance Companies;
4. Factors;
5. Investment companies;
6. Bail Bond companies; and
7. Other businesses whose stock in trade is money and which are engaged in financing.

(b) The following are exceptions to this regulation:

1. A pawn shop that provides financing is eligible if more than 50 percent of its income for the previous year was from the sale of merchandise rather than from interest on loans.
2. A business that provides financing in the regular course of its business (such as a business that finances credit sales) is eligible provided not more than 50% of its income is from financing its sales.
3. A mortgage servicing company that disburses loans and sells them within 14 days of loan closing is eligible. Mortgage companies are eligible when they are primarily engaged in the business of servicing loans. Mortgage companies that make loans and hold them in their portfolio are not eligible.

(iii) Passive Businesses

- (a) Apartment buildings are not eligible.
- (b) Mini-warehouses, office suites, shopping centers, flea markets, and mobile home parks, are eligible only if they provide sufficient services. Sufficient services shall be deemed to exist when at least 50% of the business's income for the prior year is derived from the services provided.
- (c) An ineligible passive business cannot obtain an SBA loan for any purpose, including the purchase or construction of a building for its own use.

(iv) Life Insurance Companies

- (a) Life insurance companies are not eligible.
- (b) Even if a life insurance agent writes insurance for only one company, he or she may qualify as an eligible independent contractor if the business meets all of the following factors:
 - 1. If the insurance agent is subject to the control or direction of another merely as to the result to be accomplished and not as to the means and methods for accomplishing the result;
 - 2. If the insurance agent hires, supervises and pays employees he or she needs to help perform his or her services;
 - 3. If the insurance agent performs his or her services at his or her own place of business rather than at the company's place of business;
 - 4. If the insurance agent is paid by the job or on a commission basis, rather than by the hour, week or month;
 - 5. If the insurance agent is responsible for paying his or her own business expenses;
 - 6. If the insurance agent provides the significant amount of his or her tools, materials, and other equipment, even if the insurance company provides some forms, manuals, or other materials;
 - 7. If the insurance agent invests in facilities that are used by him or her in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair market value from an unrelated party); and
 - 8. If the insurance agent can realize a profit or incur a loss as a result of his or her services.

(v) Business Located in a Foreign Country or Owned by Undocumented (Illegal) Aliens

- (a) Businesses are not eligible if the business is:
 - 1. located in a foreign country with no activities in the United States; or
 - 2. owned in whole or in part by undocumented (illegal) aliens.
- (b) Businesses are eligible if the business:
 - 1. is located in the U.S.;

2. operates primarily in the U.S.; and
3. is authorized to operate in the state or territory where they seek SBA financial assistance; OR
4. makes a significant contribution to the U.S. economy through the:
 - (A) payment of taxes to the U.S.; or
 - (B) use of American products, materials, and labor.
- (c) The proceeds must be used exclusively for the benefit of the domestic operations. As a result the business and its employees are subject to U.S. and local taxes.
- (d) Businesses involved in international trade are subject to U.S. trade restrictions.
- (e) Businesses owned by legal permanent residents are eligible. See paragraph 5 of this chapter. See Paragraph 3.e. of this Chapter.

(vi) Businesses Selling Through a Pyramid Plan

Pyramid or multilevel sales distribution plans are not eligible for SBA assistance.

(vii) Businesses Engaged in Gambling

- (a) Small businesses that obtain more than one-third of their annual gross income, including rental income, from legal gambling activities are not eligible.
- (b) Small businesses are eligible if they obtain one-third or less of their annual gross income, including rental income, from:
 1. commissions from official State lottery ticket sales under a State license; or
 2. gambling activities licensed and supervised by state authority in those states where the activities are legal.
- (c) If the purpose of the business is gambling, such as a pari-mutuel betting racetrack or a gambling casino, it is not eligible, regardless of the percentage of gross income derived from gambling.

(viii) Businesses engaged in any illegal activity

SBA must not approve loans to borrowers that are engaged in illegal activity or who make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the borrower's intended market.

(ix) Businesses Which Restrict Patronage

Businesses that restrict patronage for any reason other than capacity are not eligible. For example, a men's only or women's only health club is not eligible.

(x) Government-Owned Entities, Excluding Native American Tribes

(a) Municipalities and other political subdivisions are not eligible.

(b) Special Requirements Applicable to Native American Businesses

A Native American tribe is a Governmental entity and is not eligible. A small business owned in whole or in part by a Native American tribe is eligible if:

1. it establishes that it is a separate legal entity from the tribe and submits the documents authorizing its existence; and
2. the tribe waives sovereign immunity with respect to the collateral for the loan and collection of the loan from the borrower, OR agrees to a "sue and be sued" clause specifically naming U.S. Federal courts as "courts of competent jurisdiction."

CDCs may seek the advice and assistance of the Bureau of Indian Affairs (BIA) personnel when dealing with loans collateralized by Indian lands held in trust.

(xi) Businesses Engaged in Promoting Religion

(a) A Small Business Applicant is not eligible if principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting.

(b) A Small Business Applicant is not ineligible merely because it offers religious books, music, ceremonial items and other religious articles for sale. The CDC must consider the overall activities and business environment of the Small Business Applicant. SBA has a worksheet to assist with this process. ([LINK TO Religious Eligibility Worksheet in SOP 70 50 3](#))

(xii) Cooperatives

- (a) Consumer and marketing cooperatives are not eligible.
- (b) Producer Cooperatives.

A producer cooperative is eligible if:

1. It is engaged in a business activity;
2. The purpose of the cooperative is to obtain financial benefit for itself as an entity AND its members in their capacity as businesses; and
3. Each member of the cooperative is small.

(xiii) Businesses engaged in loan packaging

A Small Business Applicant that receives more than 1/3 of its gross annual revenue from packaging SBA loans is not eligible.

(xiv) Businesses Owned by Persons of Poor Character or on Probation or Parole

- (a) The SBA cannot provide financial assistance to persons with poor character or on probation or parole.
- (b) An application can be accepted for processing if the individual indicates an arrest record, but was acquitted or the indictment was dismissed and the individual is not incarcerated, on probation or on parole for any offense.
- (c) An individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an applicant is not eligible.
- (d) To determine eligibility under this section, the Agency requires that every proprietor, partner, officer, director, and owner of 20% or more of the Applicant (“Subject Individual”) must be of good character. The completion of an [SBA Form 912, Statement of Personal History \(“912”\)](#), [\(LINK TO FORM\)](#) by each Subject Individual is required as part of the character evaluation process. Every person completing a 912 must answer each question fully giving details about any “yes” response. *NOTE: A “yes” is required even when the record is allegedly sealed, expunged or otherwise unavailable. (This information is kept private and confidential.)*
There are no exceptions to or waivers of this policy.

4. If every Subject Individual answers questions 7, 8 and 9 as “no,” normal loan processing may proceed.
5. If a Subject Individual answers “yes” to at least one of these three questions, then that individual must go through a background check and character determination unless the charge resulting in a “yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be submitted along with the SBA Form 912.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. Currently, SBA conducts two types of background checks: (1) a Name Check, which requires a search of available records based on a person’s name and social security number (SSN); and (2) a Fingerprint Check, which searches available records based on the person’s name and SSN plus a complete and legibly written FD-258 Fingerprint Card.
6. If there is a “yes” response, the CDC must take the following actions:
 - (A) The CDC must obtain a complete understanding of the reason(s) for the “yes” response and when necessary for clarification, the CDC must obtain additional written explanation from the Subject Individual to include the following:
 - (VII) Date of the offense(s) including month, day and year. If the actual day is not known, include the month and year.
 - (VIII) City and state **or** the county and state where the offense(s) occurred.
 - (IX) The specific charge(s) [DUI, assault, forgery, robbery etc.] **AND** the level of the charge; (either a misdemeanor or felony).
 - (X) Disposition of the charge(s). This may include but is not limited to the following:
 1. Any fines imposed;
 2. Any class or workshop to be attended;
 3. Any jail time served;
 4. If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation);
or

5. Any other court conditions (such as registration as a sex offender).
- (XI) Assuming the court's conditions have been met, the applicant should state that all conditions of the court have been satisfied in his explanation and provide court documents evidencing that these conditions were met.
 - (XII) The borrower's dated signature on the explanation.
- (B) When an applicant discloses a felony arrest a Fingerprint Check is required and a Fingerprint Card (FD 258) must be completed. Local law enforcement agencies will usually assist the individual with the fingerprinting. CDCs may obtain the FD 258 from their local field office.
- (C) When an applicant discloses a past offense(s) that was classified as a misdemeanor, the background check may either be a Name Check or a Fingerprint Check.
- (D) Regardless of whether the past offense was a felony or misdemeanor, the CDC must submit the complete 912 package to the local field office before loan processing can proceed. Copies of the documents are to be submitted to the field office. The CDC must retain the originals in its loan file. SBA recommends that the CDC submit the 912 package as soon as possible.
- (E) The field office will send the complete 912 package to the Office of Inspector General/Office of Security Operations (OIG/OSO) at SBA Headquarters. When a 912 with a "yes" response is forwarded to the OIG/OSO, CDC personnel must not make any statement to anyone outside the SBA about action being taken regarding the 912 information submitted. Exceptions are only permitted when in compliance with the provisions of the Privacy Act. [\(See SOP 40 04. ADD LINK TO SOP\)](#)

4. Decisions Available to the SBA When Processing a 912 with a "yes" response:

- (A) Clear the 912 to permit processing, approval and disbursement;
- (VII) SBA will clear a positive 912 for processing and waive the fingerprint requirement only when the reason for the "yes" response meets the following criteria:

1. A single minor (misdemeanor) offense or arrest;

OR

2. Up 3 minor offenses (arrests and/or convictions at one time or separately), concluded more than 10 years prior to the date of the SBA application;

OR

3. A Prior Offense cleared by the Director, Office of Financial Assistance (D/FA) or designee on a previous application where no other offenses have occurred since the previous application was cleared by the D/FA or designee. **This clearance is only valid for six months from date of issuance.**

NOTE: *Only the D/FA or designee may authorize the processing center or CDC to process and subsequently disburse a loan when the Form 912 is not cleared.*

- (VIII) ***The field office cannot clear felony arrests or convictions for loan processing.***
- (IX) When the field office receives the completed 912 package and decides to clear it for processing, it will submit the 912 package to the OIG/OSO for a Name Check.
- (X) When the field office clears the 912 and the Name Check corroborates the information on the 912, OIG/OSO will advise the field office. The field office will notify the CDC that it can proceed with the loan.
- (XI) When the Name Check results contradict the disclosure on the 912, or the disclosed criminal history raises a question about the character of the individual, OIG/OSO will refer the matter to the D/FA . If the loan was already processed and approved, the CDC shall be notified of the adverse change. If the loan has not been funded, the CDC will not be permitted to close the loan. If the loan has been funded, the CDC must contact the appropriate CLSC to determine the proper course of action.
- (XII) The D/FA or designee can overrule the clearance by the field office in either situation.

- (B) Place the processing of the application on hold for further investigation;
 - (I) The Subject Individual must submit a Form FD 258, SBA Fingerprint Card and a fingerprint check must be requested; or
 - (II) A character evaluation/name check must be required.
 - (III) If additional criminal activity is revealed, information pertaining to the additional criminal activity will be provided to the D/FA or designee who will notify the field office that an adverse condition exists. The processing of the application will remain on hold until the results of a Fingerprint Check are received at which time the application will either proceed or be declined.
- (C) Decline the application because the information supplied on the Subject Individual demonstrates a lack of good character.

5. Expedited Processing of a 912 with a “yes” response.

Where an applicant discloses an offense(s) classified as a misdemeanor, the CDC has the option of submitting a completed fingerprint card along with the 912, regardless of the type of offense disclosed. When OIG/OSO receives a 912 package that includes a fingerprint card, it will automatically request a Fingerprint Check from the fingerprint section of the Federal Bureau of Investigation (FBI) even if the offense(s) disclosed on the 912 is a misdemeanor. If OIG/OSO receives the 912 without a fingerprint card, OIG/OSO will request an FBI Name Check unless the offense indicated is a felony, in which case the Form 912 will be returned so that the fingerprint card can be completed. It is anticipated that a 912 submitted with a fingerprint card will produce a more expeditious character determination.

6. 912 Decision Appeals

SBA will consider a request submitted by an applicant for reconsideration of a determination of lack of good character. Factors that contribute to a favorable reconsideration include: (1) additional information provided by the applicant that satisfactorily explains the circumstances of the prior offense(s); (2) a statement from the applicant indicating that he or she understands the significance of the previous offense(s); and/or (3) the passage of time between the date of the prior offense(s) and the date of application, during which the applicant has not committed additional

offenses and has generally led a responsible life and made a contribution to the community.

The applicant should send a written request for reconsideration through the CDC to: **Director, Office of Financial Assistance, U.S. Small Business Administration, Office of Financial Assistance, 409 3rd Street, SW, Suite 8300, Washington, DC 20416.**

7. **PCLP 912 Procedures.** If, in connection with a PCLP loan, a Subject Individual answers either question 7, 8 or 9 with “yes,” then that individual must go through a background check and character determination unless the charge resulting in a “yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be submitted along with the SBA Form 912.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. The application may be processed using PCLP Procedures after the CDC has requested and received written clearance of the character issue(s) from the district office.

To request clearance from the district office, the CDC must submit a cover letter with the CDC’s contact information, a brief description of the business along with SBA Form 912 and any required attachments.

8. If the 912 is incomplete, it cannot be processed and will be returned to the CDC. The CDC must submit a corrected 912 before processing continues.

9. Reducing Ownership to Avoid Submitting Form 912

A Subject Individual may not reduce his or her ownership in a Small Business Applicant for the purpose of avoiding completion of Form 912. Anyone who would have been considered a Subject Individual within 6 months prior to the application must complete Form 912. The only exception to the 6-month rule is when a Subject Individual completely divests his or her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Small Business Applicant (and any associated Eligible Passive Concern) in any capacity, including being an employee (paid or unpaid).

(xv) Equity Interest by CDC or Associates in Applicant Concern

A CDC or any of its associates may not obtain an equity position, either directly or indirectly, in the Small Business Applicant. The only exception is when the associate of the CDC is a Small Business Investment Company (SBIC), in which

case the requirements of [13 CFR 120.104 ADD LINK](#) apply. See [13 CFR 120.140 ADD LINK](#) for a list of ethical requirements that apply to CDCs. And

(xvi) Businesses Providing Prurient Sexual Material

(a) A business is not eligible for SBA assistance if:

1. It presents live or recorded performances of a prurient sexual nature; or
2. It derives more than 5% of its gross revenue, directly or indirectly, through the sale of products, services or the presentation of any depictions or displays of a prurient sexual nature.

(b) By law SBA must consider the public interest in granting or denying financial assistance. The SBA has determined that financing lawful activities of a prurient sexual nature is not in the public interest. The CDC must consider whether the nature and extent of the sexual component causes it, in view of community standards, to be prurient.

(xvii) Prior Loss to the Government

(a) Unless waived by SBA for good cause, SBA cannot provide assistance to a Small Business Applicant:

1. that has previously defaulted on a Federal loan or Federally assisted financing, resulting in a loss to the Federal government; or
2. owned or controlled by a business or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which defaulted) and caused the Federal government to sustain a loss.

(b) A compromise agreement shall also be considered a loss.

(c) “Federal loan or Federally assisted financing” includes any loan made directly or guaranteed/insured by any Federal agency, any unreimbursed advance payments under 8(a) or similar programs operated by any Federal agency, federally-backed student loans and disaster loans (excluding any amount forgiven as a condition of the loan at the time of origination).

(d) “Loss” means the dollar amount of any deficiency which has been incurred and recognized by a Federal agency after it has concluded its write-off and/or close-out procedures for the particular account.

(e) The procedures for obtaining a waiver of this regulation.

1. The D/FA or designee has the authority to waive the application of this regulation when it can be shown that there is “good cause.” When there are compelling circumstances, the CDC shall send a written request for a waiver to the SBA office processing the loan. The processing office will forward the request to SBA Headquarters for a final decision.
2. The CDC must explain:
 - (A) the circumstances surrounding the prior loss and the relationship of the applicant to the entity causing the loss; and
 - (B) the connection between the individuals associated with the prior loss and the individuals requesting the new assistance.

- (f) This rule applies to:
1. The Small Business Applicant;
 2. Any business in which a principal of the Small Business Applicant was also a principal in the entity that caused the loss; or
 3. Any business controlled by the same person(s) who controlled the entity that caused the loss.
- (g) “Principal” means any person who has at least a 20% ownership interest in a business concern, whether direct or indirect.
- (h) Unpaid/delinquent taxes are not covered under the prior loss rule.
- (i). The loss which Federal Deposit Insurance Corporation (FDIC) incurs when they sell a loan off for a discount is not covered by the prior loss rule.
- (j) If the debt is fully satisfied, the application can be processed without a waiver from the D/FA

(xviii) Businesses primarily engaged in political or lobbying activities

A Small Business Applicant that derives over 50 percent of its gross annual revenue from political or lobbying activities is not eligible.

(xix) Speculation

- (a) Speculative businesses are not eligible. This prohibits loans to a Small Business Applicant for

1. the sole purpose of purchasing and holding an item until the market price increases; or
2. engaging in a risky business for the chance of an unusually large profit.

(b) Speculative businesses include:

1. Wildcatting in oil;
2. Dealing in stocks, bonds, commodity futures, and other financial instruments;
3. Mining gold or silver in other than established fields; and
4. Building homes for future sale.

Note: Construction of homes for future sale with no sales contract in place (spec homes) is eligible under the Builder's CAPLine program. [Link to 13 CFR 120.391](#)

(c) Non-speculative businesses which are eligible include:

1. A business, such as a grain elevator, that uses a commodity contract to lock in a price;
2. A farmer who uses a commodity contract to lock in the sale price of his or her harvest;
3. A business engaged in drilling for oil in established fields; and
4. A business engaged in building a home under contract with an identified purchaser.

e. **BUSINESSES OWNED BY NON-US CITIZENS**

SBA can provide financial assistance to businesses that are at least 51% owned and controlled by persons who are not citizens of the US provided the persons are lawfully in the US. The processing procedures and the terms and conditions will vary, depending upon the status of the owners assigned by the United States Citizenship and Immigration Services (USCIS).

- (1) Businesses owned by Naturalized Citizens are eligible and the naturalized citizens are not subject to any special restrictions or requirements. If an

individual's SBA Form 912 reflects that he or she is a citizen, no further verification is required.

- (2) Businesses owned by Legal Permanent Residents (LPRs) are eligible. Legal Permanent Residents (LPR) are persons who may live and work in the U.S. for life unless their status is revoked through an administrative hearing.
 - (i) The USCIS Form I-551 (551) is evidence of LPR status. USCIS has two versions of the 551:
 - (a) Resident Alien Card; and
 - (b) Permanent Resident Card. (This is the most recent version.)
 - (ii) USCIS requires replacement of the 551 every 10 years to update the photograph and security measures. Replacements may also be necessary if the 551 is lost, the individual changes name, etc. Replacement of the 551 may take more than a year. LPR status is not in jeopardy merely because the 551 document lapses.

Acceptable forms of evidence when the 551 has been submitted to USCIS for replacement or has an expired date include the following:

- (a) A temporary stamp by USCIS on the individual's passport that says, "Processed for I-551 – Temporary Evidence of Lawful Permanent Residence;"
 - (b) USCIS Form I-327, "Re-entry Permit," issued to LPRs in lieu of a visa, which is valid for only 2 years;
 - (c) USCIS Form I-797, "Notice of Action," a receipt issued to an alien when the 551 is lost or surrendered for renewal or changes (e.g., a name change because of marriage or divorce).
 - (d) SBA requires that the 551 or an acceptable substitute must be current at the time it is submitted with an application or it will be returned and not processed.
- (3) Businesses owned by the following persons may be eligible:
 - (i) Non-immigrant aliens residing in the US. Non-immigrant (documented) aliens are persons who are admitted to the U.S. for a specific purpose(s) and for a temporary period of time with a

current/valid United States Customs and Immigration Service (USCIS) document, such as a visa.

- (a) They must have current/valid USCIS documentation permitting them to reside in the U.S. legally; and
 - (b) The documentation/status of each alien must be verified with USCIS.
 - (ii) Asylees and refugees (persons who receive temporary refuge in the United States) with LPR status.
- (4) Businesses owned by aliens who are subject to the Immigration Reform and Control Act of 1986 (IRCA) might be eligible under limited circumstances.
 - (i) IRCA vests USCIS with the authority to grant illegal aliens lawful temporary resident status. IRCA prohibits financial assistance to businesses owned 20 percent or more by such individuals for a period of 5 years after USCIS grants lawful temporary resident status.
 - (ii) This disqualification does not apply to Cuban or Haitian entrants or alien entrants subject to IRCA who are aged, blind or disabled. The definition of blind or disabled is equivalent to SBA's criteria for determining eligibility for assistance to any small business owned by disabled individuals.
 - (iii) All applicants self-certify that they are eligible under IRCA by signing SBA Form 4 or SBA Form 1919, which includes the "Statements Required by Law and Executive Orders." This includes a certification that IRCA does not apply to them.
- (5) Documentation to evidence and verify an alien's status.

At time of application:

- (i) SBA Form 912, "Statement of Personal History," [ADD LINK TO FORM](#) requires that aliens provide their alien registration number.
- (ii) CDCs must obtain a copy of the individual's USCIS documentation and maintain in the case file.
- (iii) The CDC submits an USCIS Form G-845 (845), "Document Verification Request," with supporting information to the nearest USCIS office.
- (iv) USCIS releases information about the status of an alien to CDCs or other non-governmental entities ONLY when a signed and dated authorization from the alien is attached to and submitted with the 845 on that alien providing name, address and date of birth.
 - (a) USCIS accepts either of the following authorization statements:

1. I authorize the U.S. Customs and Immigration Service to release information regarding my immigration status to [name of CDC] **because I am applying for a U.S. Small Business Administration loan.**

2. I authorize the U.S. Customs and Immigration Service to release alien verification information about me to [name of CDC] **because I am applying for a U.S. Small Business Administration loan.**

(b) USCIS requires a “wet” signature on all Freedom of Information Act requests. Therefore, the Form G845 and the statement authorizing USCIS to release the status information to the CDC should never be faxed to an office.

(c) The authorization statement must not be on SBA or CDC stationery.

(6) Businesses owned by Foreign Nationals or Foreign Entities may be eligible.

(i) Businesses listed in Appendix 1 of the SOP “Restrictions on Foreign Controlled Enterprises,” that are owned and managed by Foreign Nationals, Foreign Entities or Non-Immigrant Aliens are not eligible. If a business is not listed in Appendix 1 it may be eligible.

(7) Additional requirements for eligibility of businesses owned by non-citizens other than LPRs:

(a) The application must contain assurance that management is expected to continue in place indefinitely and have U.S. citizenship or verified LPR status.

1. Management must have operated the business for at least 1 year prior to the application date. (This requirement prevents financial assistance to “start-up” businesses owned by aliens who do not have LPR status.)

2. The personal guaranty of management must be considered as a loan condition and if not required, the decision must be explained in the loan file.

(b) The applicant must pledge collateral within the jurisdiction of the U.S. sufficient to pay the loan in full at any time during its life. If the small business applicant owned by foreign nationals, foreign entities or non-immigrant aliens residing in the US does not have sufficient collateral, the applicant is not eligible for a guaranteed loan.

(c) In order for a business not to be subject to these additional requirements, it must be at least 51 percent owned by individuals

who are U.S. citizens and/or who have LPR Status from USCIS and control the management and daily operations of the business.
This can only be waived by the D/FA or designee

f. THE ELIGIBLE PASSIVE COMPANY RULE

The Eligible Passive Company (EPC) rule is an exception to SBA regulations which prohibit financing assets which are held for their passive income. Because the EPC rule is an exception, it is interpreted strictly.

- (1) Conditions necessary to qualify as an EPC. [LINK to 13 CFR 120.111](#)
 - (i) Under SBA regulations, an EPC can take any legal form. A tenancy in common is a form of legal ownership and does not create a new or separate legal entity. If authorized by state law, legal entities can be a tenant in common with individuals.
 - (a) There may be several individuals or entities in a tenancy in common, but the tenancy in common is considered 1 EPC.
 - (b) The loan documents must be signed by all of the members of the tenancy in common, with authorized individuals signing for the entity members.
 - (ii) An EPC must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases to one or more Operating Companies (OC) for conducting the OC's business.
- (2) Conditions that apply to all legal entities:
 - (i) The OC must be an eligible small business; and
 - (ii) The proposed use of proceeds must be an eligible use as if the OC were obtaining the financing directly;
 - (iii) The EPC (with the exception of a trust) and the OCs each must be small under the appropriate size standard of [13 CFR Part 121 LINK](#).
 - (iv) The EPC must lease the project property directly to the OC and:
 - (a) The lease must be in writing;
 - (b) The lease must be subordinated to the SBA's mortgage, trust deed lien, or security interest on the property;

- (c) The lease must have a term, including options to renew exercisable solely by the OC, at least equal to the term of the loan;
 - (d) The EPC (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease. An assignment of the lease is only required when necessary to perfect the assignment of rents or to enable CDC to exercise the tenant's rights upon default;
 - (e) The rent or lease payments cannot exceed the amount necessary to make the loan payment to the CDC, and an additional amount to cover the EPC's expenses of holding the property, such as maintenance, insurance and property taxes; and
 - (f) The OC must lease 100% of the property from the EPC, but it can sublease a portion of the property under the rules governing occupancy requirements with which all SBA borrowers must comply.
- (v) The OC must be a guarantor or a co-borrower on the loan. The OC must be a co-borrower if it receives any loan proceeds as working capital or for the purchase of assets.
 - (vi) Each holder of an ownership interest constituting at least 20% of either the EPC or the OC must:
 - (a) guarantee the loan (if the holder is a trust, then the Trustee shall execute the guarantee on behalf of any trust); and
 - (b) must comply with the Utilization of Personal Resources Rule. See Paragraph 3.c.(7)-(11) of this Chapter.
- (3) Conditions that apply to trusts.
- (i) The eligibility status of the Trustor will determine trust eligibility.
 - (ii) All donors to the trust will be deemed to have Trustor status for eligibility purposes.
 - (iii). The Trustee must warrant and certify that the trust will not be revoked or substantially amended for the term of the loan without the prior written consent of SBA.
 - (iv) The Trustor must guarantee the loan.

- (a) If an Employee Stock Ownership Plan trust agreement prohibits it from being a guarantor or co-borrower, then it cannot use the EPC form of borrowing.
 - (b) Beneficiaries usually do not have any control over the actions of the trust and, therefore, do not have to meet the guaranty and personal resource requirements.
 - (v) The Trustee shall certify in writing to SBA that:
 - (a) The Trustee has authority to act;
 - (b) The trust has authority to borrow funds, pledge trust assets, and lease the property to the OC;
 - (c) The Trustee has provided accurate, pertinent language from the trust agreement confirming the above; and
 - (d) The Trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.
 - (vi) The trust itself does not have to be small by SBA size standards.
- (4) Size Determinations under the EPC rule
- (i) If the EPC and the OC are affiliated the two companies are combined for determining size.
 - (a) If there is only one OC, use the OC's code.
 - (b) If there are multiple, unaffiliated OCs, use the NAICS code pertaining to the portion of the business that derives the most revenue.
 - (c) If the multiple OCs are affiliated, then use the rules detailed in 13 CFR 121.107 ([LINK to 13 CFR 121.107](#)) for determining the primary industry of affiliated businesses. The NAICS Code of the primary industry of the OC shall be the identify NAICS Code.
 - (ii) If the EPC and the OC are not affiliated, each entity must be considered under the size requirement for its particular industry and must be small.
 - (iii) The existence of a lease between the EPC and the OC does not, in and of itself, create an affiliation, even if the EPC and OC are co-borrowers.
 - (iv) An EPC (including a trust) may engage in a business activity other than leasing the property to the OC.

- (5) Multiple OCs can be separately owned.
- (6) Multiple EPCs in one transaction are not permitted.
- (7) When sending data to SBA, use the same NAICS Code that was used to determine size for the Small Business Applicant.
- (8) Submission of Financial Statements by the EPC and the OC
 - (i) Both the EPC and each OC must submit Financial Statements. The OC's statements are subject to tax verification.
 - (ii) The regular requirement for an Aging of receivables and payables is waived for EPCs.
 - (iii) For a newly formed EPC, the CDC must have in its file a balance sheet for the EPC. This will reflect the assets of the EPC, including those being leased to the OC, and the corresponding liabilities of the EPC, plus the equity. The owner's personal financial statement is not sufficient.

g. SPECIAL REQUIREMENTS FOR LOANS WHERE COLLATERAL MAY BE INCLUDED IN THE NATIONAL REGISTER OF HISTORIC PLACES

If a loan will in any way affect properties included or eligible to be included in the National Register of Historic Places, lender must consult with local SBA counsel for further guidance.

h. 504 PROGRAM-SPECIFIC ELIGIBILITY FACTORS

- (1) Objectives of a 504 Project [LINK TO 13 CFR 120.860 and 120.861](#)
 - a. Job Creation or Retention
 - (a) At least 1 job for every \$50,000 of project debenture (\$100,000 for Small Manufacturers).
 - (b) Job Opportunity is defined in chapter 1 of this Subpart.
 - (c) A Job Opportunity does not have to be at the project facility, but 75% of the jobs must be in the community where the project is located.
 - (d) Job Retention may only be used if the CDC can reasonably show that jobs would be lost to the community if the project was not done.

- b. Or meet one of 14 community development or public policy goals found in [13 CFR 120.862 LINK TO REG](#)
- (a) If any of the following community development or public policy goals are met, then the applicant is eligible even if it does not meet the job creation or job retention requirements provided the CDC meets its required Job Opportunity average:
1. Improving, diversifying or stabilizing the economy of the locality;
 2. Stimulating other business development;
 3. Bringing new income into the community;
 4. Assisting manufacturing firms (NAICS Codes 31-33)
 - a. Will qualify for \$4,000,000 debenture if it meets one of the community development or public policy goals; and
 - b. Creates or retains 1 Job Opportunity per \$100,000 in 2 years.
 - c. Job creation for Small Manufacturers cannot be waived.
 5. Assisting businesses in Labor Surplus Areas, as defined by the Department of Labor.
- (b) If any of the following public policy goals are met, then the applicant can qualify for a larger debenture amount (up to \$2,000,000 [LINK TO Section 502\(2\)\(A\)\(ii\) of the SBI Act](#)):
1. Business District Revitalization;
 2. Expansion of Exports;
 3. Expansion of Minority Business Development;
 4. Rural Development;
 5. Enhanced Economic Competition;
 6. Restructuring Because of Federally Mandated Standards or Policies;
 7. Changes Necessitated by Federal Budget Cutbacks;
 8. Veteran Owned (51% or more) and Controlled [[add Link to 38 USC 101\(2\)](#)]; or
 9. Woman Owned (51% or more) and Controlled.
- (c) The CDC must have a job opportunity average of 1 Job Opportunity created or retained for every:
1. \$50,000; or
 2. \$75,000 for Projects located in Special Geographic Areas (Alaska, Hawaii, State-designated enterprise zones, empowerment zones, enterprise communities, and labor surplus areas).
 3. Loans to Small Manufacturers are excluded from this average.

- (d) If the project cannot meet any of these guidelines then the amount of the debenture must be reduced to meet the job creation or retention requirement.

(2) Basic Eligibility Requirements for 504

To be an eligible Borrower for a 504 loan [LINK TO 13 CFR 120.880](#):

- (i) The Small Business Applicant must use the Project Property (except that an EPC may lease to an OC); and
- (ii) Meet the size requirements set out in paragraph 3.b. of this Chapter.

(3) Ineligible 504 Projects [LINK TO 13 CFR 120.881](#)

- (i) Relocation out of a Community – A Project cannot be approved under the 504 program, if the Project involves the relocation of a business out of a community and will either have a net reduction of one-third of its jobs or cause a substantial increase in unemployment in any area of the country. An exception may be allowed if the CDC can justify the relocation as outlined in 120.881(a)(1) and (2).
- (ii) Projects in foreign countries

(4) Eligible and Ineligible Project Costs

(i) ELIGIBLE PROJECT COSTS [LINK TO 13 CFR 120.882](#)

- (a) Land and Necessary Land Improvements -- (For example, grading, new streets including curbs and gutters, parking lots, utilities and landscaping.)
 - (a) no matter how long the land has been owned;
 - (b) the value of the land will only be counted at cost if it was bought less than 2 years prior to the date of the application;
- (b) Short Term debt (“Bridge Financing”) on the Project land as long as:
 - 1. there is no building currently on the land; and
 - 2. the financing is for a term of 3 years or less;
- (c) Building and Building Improvements When Some Space is Leased -- Integral costs for improvements to the building such as facade expenditures, heating, electrical, plumbing and roofing costs;
- (d) Machinery and Equipment –
 - 1. All costs associated with the purchase, transportation, dismantling or installation of machinery and equipment;
 - 2. If the Project is only for machinery and equipment, the machinery and equipment has to have a useful life of at least 10 years;

3. If the borrower owns equipment that is heavy or highly calibrated (such as a large printing press) that must be moved as an essential part of the Project then any special moving costs (including dismantling and installation) may be included in the project costs;
 - (e) Expenditures within 9 months of the date of the application, including land and buildings, and/or equipment, can be included in the project costs and be reimbursed by the interim lender net of the borrower's equity contribution. Costs incurred prior to that date may be included solely at the SBA's discretion.
 - (f) Furniture and Fixtures - If the dollar amount is minimal and will not affect the weighted average maturity;
 - (g) Professional Fees – Directly attributable and essential to the Project
 - (h) Interim financing – Repayment of interim financing including points, fees and interest; and
 - (i) Contingency Fund - May not exceed 10 percent of the Project construction costs:
 - (a) If the residual contingency amount does not exceed 2% of the debenture just prior to closing, it may be refunded to the small business at the time the debenture is funded.
 - (b) If the contingency residual is in excess of 2%, the debenture has to be reduced by the excess amount.
- (5) Eligible Administrative Costs [LINK TO 13 CFR 120.883](#)

The administrative costs set out in 13 CFR 120.883 are not part of the Project costs but are added to the Net Debenture to calculate the Gross Debenture amount. Examples of borrower's out-of-pocket costs include:

- (i) Title insurance, title searches and abstract costs, even if done by the CDC attorney;
 - (ii) Flood insurance;
 - (iii) Recording and filing fees;
 - (iv) Surveys;
 - (v) Certified copies of organizational documents;
 - (vi) Settlement agent's fees;
 - (vii) Overnight delivery, postage and messenger services;
 - (viii) Certifications required by SBA (such as earthquake, flood, IRS, Certificate of Occupancy, and certificate of completion); and
 - (ix) Copying costs attributable to the above.
- (6) Ineligible Costs for 504 Loans

Any costs not directly attributable to or necessary for the Project may not be paid with proceeds of the 504 loan. Examples can be found in [13 CFR 120.884](#). [ADD LINK](#)

(7) Debt Refinancing [13 CFR 120.922](#) ([ADD LINK](#))

Pre-existing debt is not an eligible project cost. The Third Party Loan may include consolidation of existing debt so long as it does not improve the Third Party Lender's lien position on the existing debt.

(8) Leasing

(i) Leasing policies specific to 504 loans

(a) The borrower may use 504 loan proceeds to acquire or build a building or install machinery or equipment on leased land. There are specific requirements which must be followed in this case and they may be found at [13 CFR 120.870](#). [ADD LINK](#)

(b) The CDC must not subsidize the project by charging an amount less than enough to pay their costs for the project.

(c) The borrower may not use 504 loan proceeds for interior tenant improvements and such improvements may not secure the Third Party Loan. [LINK TO 13 CFR 120.871\(a\)](#)

(ii) Leasing part of a building acquired with loan proceeds [LINK TO 13 CFR 120.131](#)

- (a) Amount of rentable property that can be leased:
 - 1. For an existing building, a small business must occupy 51% of the rentable property and may lease up to 49%; and
 - 2. For new construction, a small business must occupy 60% of the rentable property, may lease long term up to 20% and temporarily lease an additional 20% with the intention of using some of the additional 20% within three years and all of it within 10 years. [LINK TO 13 CFR 120.870\(b\)](#)
 - 3. An EPC must lease 100% of the rentable property to an OC. The OC must follow (a) and (b) above.
 - 4. Circumstances may justify allowing the SBC a period of time after closing of the SBA loan to comply with the above occupancy requirements. For example, a pre-existing lease may have a few more months to run. In no case may the small business have more than 1 year to meet occupancy requirements.

- (b) “Rentable Property” is the total square footage of all buildings or facilities used for business operations ([LINK TO 13 CFR 120.10](#)) excluding vertical penetrations (stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors), and including common areas (lobbies, passageways, vestibules, and bathrooms). Rentable property excludes all outside areas.

- (c) Only the D/FA or designee can classify outside areas as usable square footage or common area. All requests for an exception to this policy must be referred to the Director, Loan Programs Division (D/LPD).

(9) Change of Ownership Projects

- (i) Loan proceeds may be used to acquire long term fixed assets in conjunction with a change of ownership as long as either:
 - (a) Jobs will be retained because of the change of ownership (there has to be a reasonable demonstration that the jobs would be lost without the change of ownership); or
 - (b) The Project meets one of the community development or public policy goals.

- (ii) Loan proceeds must not be used to purchase stock.

CHAPTER 3 Collateral, Appraisals and Environmental Policies

1. COLLATERAL

a. SBA's 504 Collateral Policy [13 CFR 120.934 ADD LINK](#)

SBA usually takes a 2nd lien position on Project Property.

b. Adequacy of Collateral

(1) SBA's 2nd lien position will be considered adequate when the applicant meets *all* of the following criteria:

- (i) strong, consistent cash flow that is sufficient to cover the debt;
- (ii) Demonstrated, proven management;
- (iii) The applicant business has been in operation for more than 2 years; and
- (iv) The proposed Project is a logical extension of the applicant's current operations.

(2) If one or more of the above factors is *not* met, additional collateral and/or increased equity contributions may be required.

(3) Because leasehold improvements provide minimal collateral value, the CDC must consider requiring additional collateral.

(4) If the Project Property, when liquidated, will not protect the interests of the government, SBA will require additional collateral and/or greater equity injections.

(5) Do not encumber assets or require additional collateral that the borrower needs to support on-going operations.

c. Third Party Loan

(1) The Third Party Lender usually has a 1st lien on the Project Property, and SBA cannot guarantee these loans. ([LINK TO 13 CFR 120.920](#))

(2) When the Third Party Lender is the property seller, the Third Party Loan must be subordinate to the 504 loan *except under the following circumstances* ([LINK TO 13 CFR 120.923](#)):

- The borrower assumes an existing note as part of the total financing;
- The FDIC has carry-back financing; or
- The property is classified as "Other Real Estate Owned" (OREO), by a national bank, a State-chartered, or other federally regulated lender and the property is of sufficient value to support the 504 loan.

(3) Loans made from proceeds of a tax-exempt obligation must be subordinate to the 504 loan.

(4) The borrower must not prepay any subordinate financing without SBA's prior written consent.

d. Mixed-Use Collateral

When one 504 debenture finances both real estate and significant short term assets, such as machinery and equipment and furniture and fixtures, the CDC must consider the following:

- (1) Taking, along with the Third Party Lender, lien positions based upon proportional shares in the financing of the Project.
- (2) Taking a 1st lien position on the short term assets. SBA requires a 1st position unless a compelling case could be made to the contrary.
- (3) Requiring additional equity or collateral.
- (4) Removing the short term assets from the Project and have them financed by another source.

e. Guaranties

(1) Personal Guaranties: Individuals who own 20% or more of a Small Business Applicant must provide an unlimited full personal guaranty. CDCs may require other individuals to guarantee the loan as well. ([LINK TO 13 CFR 120.160\(a\)](#)) The guaranty by owners of less than 20% may be limited or full. If a limited guarantee is used, CDC must choose one of the payment limitation options in SBA Form 148L (Unconditional Limited Guarantee) and specify the option in the Authorization.

(iv) CDC must obtain a personal financial statement from all individuals guaranteeing the loan.

(v) Guaranty may be secured or unsecured but must meet SBA's collateral requirements. If the loan is not fully collateralized by business assets, available personal assets must be pledged to secure the guaranty.

(vi) Guaranty of Spouse:

(a) When the combined ownership interest of spouses is 20% or more, both spouses must personally guarantee the loan in full.

(b) For a non-owner spouse, CDC must require the signature of the spouse on the appropriate collateral documents. The spouse's guaranty secured by jointly held collateral will be limited to the spouse's interest in the collateral.

(2) Corporate/Other Guaranties: All entities that own 20% or more of a Small Business Applicant must provide an unlimited full guaranty. Financial statements are necessary to determine the assets available to support the guaranty.

(3) Employee Stock Ownership Plans (ESOPs) and 401(k) Accounts: When an ESOP or 401(k) owns 20% or more of a Small Business Applicant, SBA will not require these accounts to guarantee the loan, however, the following conditions apply:

- (iv) The beneficiary(ies) of the ESOP or 401(k) must provide his or her full unconditional personal guaranty regardless of the individual ownership interest in the applicant concern. This guaranty must be a secured guaranty if required by SBA's existing collateral policies.
- (v) The members of the ESOP are not required to personally guarantee the debt.
- (iii) The borrower cannot be an eligible passive company (EPC). [LINK TO 13 CFR 120.111\(a\)\(6\)](#) (SBA regulations require all 20 percent or more owners of an EPC to guarantee the loan and the regulation does not provide for an exception.)

2. APPRAISAL REQUIREMENTS

The regulations governing appraisal requirements are set forth at ([LINK TO REG 13 CFR § 120.160\(b\)](#)): http://www.access.gpo.gov/nara/cfr/waisidx_04/13cfr120_04.html)

a. Commercial Real Estate

(1) SBA requires a real estate appraisal if the estimated value of the Project Property is:

- (i) greater than \$250,000; or
- (ii) \$250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(2) The appraiser must be:

- (i) independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and
- (ii) either State-licensed or State-certified.

(3) The appraisal report must be prepared in compliance with Uniform Standards of Professional Appraisal Practice (USPAP) and use one of the following options:

- (i) a self-contained appraisal report; or
- (ii) a summary appraisal report.

Note: A restricted appraisal report is acceptable only when it is used to update a self-contained or summary appraisal that is no more than 12 months old and that meets SBA's requirements.

(4) Appraisals may either be "complete" which details three methods of valuation (cost, income, and comparable sales of similar property) or "limited" which does not use all three methods.

- (i) SBA, however, requires that at a minimum both the “cost” and “comparable sales” valuations are part of the appraisal and are the parts that are used to determine the fair market value of the property. If the appraisal also includes an “income” valuation, this valuation is not to be used either separately or as part of any averaging of the values when identifying the real estate value to support a 504 loan. SBA requires a “bricks and mortar” valuation on the commercial real estate. An income valuation describes the use of the property as an investment, landlord/tenant property.
 - (ii) An appraisal may include a liquidation valuation in addition to the “cost” and “comparable sales” valuations. Such a valuation may assist the CDC in underwriting the loan by establishing the collateral risk as well as to what extent any additional available collateral will need to be pledged to secure a 504 loan.
 - (iii) If the loan will finance new construction, the valuation must be an “as-built” appraisal, architect’s certified cost estimate, or a contractor’s contract based on completed plans and specifications with a final appraisal (or an “as-completed” certificate for an as-built appraisal) upon completion of construction that demonstrates that the pre-construction appraised value is equal to or less than the appraised value at time of completion.
- (5) In order for the appraiser to identify the scope of work appropriately, the appraisal report must be requested by and prepared for the CDC. The cost may be passed on to the borrower.
- (6) An appraisal must be submitted and approved by SLPC prior to closing. If the appraisal comes in:
- 3. at 90 percent or more of the estimated value, the CDC may close the loan but must include a written explanation as to why the appraisal is less than the estimated value in the loan file; or
 - 4. at less than 90 percent of estimated value, the debenture must be reduced.
- b. Non-commercial real estate or real estate securing a personal guaranty

SBA has no specific requirements for non-commercial real estate (such as a residence) or real estate (commercial or non-commercial) taken as collateral to secure a personal guaranty.

3. ENVIRONMENTAL POLICIES AND PROCEDURES

These environmental policies and procedures apply to all 504 loans.

a. Definitions

Terms that are capitalized in this paragraph are defined in the “Definitions” section in [Appendix 2 LINK TO DOCUMENT](#). Online users of this SOP may click on a defined term and be taken by hyperlink to the definition of that term.

b. The Risks of Environmental Contamination include:

- (1) The costs of Remediation could impair the borrower’s ability to repay the loan and/or continue to operate the business;
- (2) The value and marketability of the Property could be diminished. If the borrower defaults, CDC or SBA might have to abandon the Property to avoid liability or accept a reduced price for the Property;
- (3) CDC or SBA could be liable for environmental clean-up costs and third-party damage claims arising from Contamination if title to contaminated Property is taken as a result of foreclosure proceedings and/or CDC or SBA exercises operational control at the Property; and
- (4) If a Governmental Entity cleans a site, it may be able to file a lien for recovery of its costs which may be superior to SBA’s lien.

c. Environmental Investigations

SBA requires an Environmental Investigation of all commercial Property upon which a security interest such as a mortgage, deed of trust, or leasehold deed of trust is offered as security for a loan or debenture. The type and depth of an Environmental Investigation to be performed varies with the risks of Contamination. This paragraph provides minimum standards. Prudent lending practices may dictate additional Environmental Investigations or safeguards.

d. Submission of Environmental Investigation Reports

The CDC (except on PCLP loans) must submit the Environmental Investigation Report to the SBA Center processing the application. All Transaction Screens, Phase I and Phase II ESAs **must** be performed by an Environmental Professional and be accompanied by the Reliance Letter in [Appendix 3 LINK TO DOCUMENT](#).

e. The Steps of an Environmental Investigation

NAICS Codes. CDC must begin by determining the NAICS code(s) for the Property’s **current and known prior uses** and comparing the NAICS code(s) to the list of environmentally sensitive industries in [Appendix 4 LINK TO DOCUMENT](#).

- (1) If there is a NAICS code match to an environmentally sensitive industry identified in [Appendix 4](#), the Environmental Investigation must begin with a Phase I, regardless of the amount of the loan.

If the NAICS code begins with 447 (gas stations with or without convenience stores), CDC must comply with “Requirements Pertaining to Gas Station Loans” in [Appendix 5 LINK TO DOCUMENT](#).

- (2) If there is not a NAICS code match to an environmentally sensitive industry, the CDC must proceed as follows:
 - (a) If the loan amount is **up to and including** \$50,000, the Environmental Investigation may begin with an Environmental Questionnaire.
 - (b) If the loan amount is **more than** \$50,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and Records Search with Risk Assessment.

Environmental Questionnaire Results. If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination on the site and that no further investigation is warranted, CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA’s concurrence.

If at any time an Environmental Questionnaire reveals that further investigation is warranted, CDC must obtain, at a minimum, a Transaction Screen.

Environmental Questionnaire & Records Search with Risk Assessment Results

- (1) If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination on the site and that no further investigation is warranted, and the Records Search with Risk Assessment concludes that the Property is a “low risk” for Contamination, CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA’s concurrence.
- (2) If the Records Search with Risk Assessment concludes that the Property is a “high risk” for Contamination, CDC must obtain a Phase I ESA.

Transaction Screen Results

- (1) If the Environmental Professional conducting the Transaction Screen concludes that no further investigation is warranted, the CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA’s concurrence.
- (2) If the Environmental Professional conducting the Transaction Screen concludes that further investigation is warranted, the CDC must obtain a Phase I ESA.

Phase I ESA Results

- (1) If the Environmental Professional conducting the Phase I ESA concludes that no further investigation is warranted, the CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.
- (2) If the Environmental Professional conducting the Phase I ESA concludes that further investigation is warranted (typically a Phase II), and the CDC still wants to make the loan, the CDC must proceed as recommended by the Environmental Professional, or in the alternative submit the results of the Environmental Investigation to the SBA with recommendations and seek SBA's concurrence. In general, SBA will require compliance with all of an Environmental Professional's recommendations (including "housekeeping measures," such as secondary containment, decommissioning monitoring wells, sealing floor drains, etc.). In the rare instance where an exception may be warranted, CDCs must provide a rationale for not wanting to follow the Environmental Professional's recommendation.

Phase II ESA Results

- (1) If the Environmental Professional conducting the Phase II ESA concludes that no further investigation is warranted, the CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.
- (2) If the Phase II ESA reveals Contamination and the CDC still wishes to make the loan, CDC must ensure that the Environmental Professional has documented:
 - (i) Whether the Contamination quantities exceed the reportable or actionable levels;
 - (ii) Whether Remediation is necessary;
 - (iii) An estimate of any Remediation costs (Environmental Professionals may use ASTM E2137-01 Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters); and
 - (iv) The projected completion date of any Remediation.
- (3) If the Environmental Investigation reveals Contamination, the CDC should determine whether disbursement is appropriate under one or more of the factors identified in subparagraph "g.," "Approval and Disbursement of loans when there is Contamination or Remediation at the Property".

- (4) If at any stage of the Environmental Investigation SBA concurs with a CDC's recommendation that **environmental risk has been sufficiently minimized** and that **no further investigation is required**, the loan may be disbursed.

f. Legal Responsibilities of SBA Field Counsel

SBA loan processing personnel must obtain field counsel's opinion as to the adequacy of an Environmental Investigation and whether the risk of Contamination, if any, has been sufficiently minimized.

g. Approval and Disbursement of loans when there is Contamination or Remediation at the Property

Loans may not be approved or disbursed if there is Contamination or on-going Remediation at the Property unless the risks have been minimized to the satisfaction of SBA Loan Processing Center personnel after consulting with and obtaining the concurrence of SBA field counsel. CDCs seeking loan approval or disbursement authority despite Contamination or on-going Remediation at the Property must submit a recommendation to SBA that includes, at a minimum, a discussion of the following:

Nature and Extent of the Contamination including copies of the following documents pertaining to the Property:

- (1) All relevant Environmental Investigation Reports;
- (2) All Government Entity correspondence;

Remediation

- (1) Recommended method of Remediation;
- (2) Status of on-going Remediation, if any;
- (3) Environmental Professional's estimated cost of Remediation;
- (4) Environmental Professional's estimated completion date;
- (5) Government Entity's designation of responsible Person(s);
- (6) Person(s) paying for on-going Remediation;

Collateral Value

- (1) Proposed loan amount and proposed use of proceeds;
 - (2) Appraised or the estimated value of the Property;
 - (3) Institutional Controls and Engineering Controls, if any, and their impact on repayment ability, collateral value and marketability of the Property;
- and

Mitigating Factors

- (1) Indemnification. If the seller or any other Person, who possesses sufficient financial resources to cover the costs of completing Remediation and any potential third-party claims, executes the SBA Environmental Indemnification Agreement in Appendix 6, approval or disbursement may be considered.

CDC must conduct an analysis of the proposed indemnitor to ensure that it has sufficient assets to honor an indemnification agreement, and this analysis must include, at a minimum, a review of its financial statements.

The SBA Environmental Indemnification Agreement:

- (vi) cannot be modified;
- (vii) must be executed by the Small Business Concern;
- (viii) must be executed by the seller, if the loan is to purchase the Property;
- (ix) must have a copy of the Environmental Investigation Report attached to it; and
- (x) must be properly recorded in the memorandum format in Exhibit C to Appendix 6.

All CDCs must submit the finalized SBA Environmental Indemnification Agreement to SBA for review and approval prior to a request that SBA fund the loan.

- (2) Completed Remediation. If the Governmental Entity has affirmed in writing that active Remediation is complete but additional monitoring is required, approval or disbursement may be considered after the following occurs: (a) monitoring results for the first year are obtained; (b) an Environmental Professional concludes that the results show no unacceptable increase in Contamination since Remediation; and (c) Environmental Professional concludes that the owner/operator of the Property is in compliance with any continuing obligations, including activity and use limitations, Engineering and Institutional Controls, and post-Remedial monitoring required by the Governmental Entity.
- (3) “No Further Action”. If a CDC obtains a “no further action letter,” “comfort letter,” “closure letter,” or other agreement from a Governmental Entity stipulating that the Property owner and future purchasers will not be liable for the known and identified Contamination at the Property, approval or disbursement may be considered. CDC should attempt to have CDC and SBA included by name in the letter along with the Property owner and future purchasers.
- (4) “Minimal Remediation”. If the extent of Contamination and cost of Remediation is minimal in relation to the value of the Property and/or the

resources of the Person responsible for Remediation, and the Remediation is projected to be completed within one year, approval or disbursement may be considered. The CDC should identify the Environmental Professional that will supervise the Remediation and discuss: (a) the nature of the Contamination; (b) the reliability of the Remediation estimates; (c) the projected completion date; and (d) the duration of ongoing monitoring.

- (5) Clean-up Funds. If CDC provides evidence from a Governmental Entity that the borrower or Property has been approved by a fund to pay for or reimburse Remediation costs, and the amount allocated is sufficient to cover the costs of Remediation, approval or disbursement may be considered. CDC must also address any conditions of Remediation that might preclude payment or reimbursement and the financial capability of the fund.
- (6) Escrow Account. If an escrow account is available which (a) equals a minimum of 150 percent of the total estimated cost of required Remediation and (b) is controlled by a 7(a) Lender or first mortgage holder in a 504 loan as trustee, approval or disbursement may be considered. The Governmental Entity must concur with the Remediation's scope. The Loan Authorization must ensure that escrow funds will only be used for Remediation costs. Depending upon the circumstances, an escrow account with more than 150 percent of the estimated costs of Remediation may be appropriate. Any remaining funds in the account may not be released until the appropriate "closure letter" or "no further action letter" is received or, in the case of monitoring, when all monitoring wells related to the Property have been decommissioned.

Note: Lender's role as trustee of the escrow account is solely to release funds upon the satisfactory completion of Remediation work -- the Lender must not control or manage the Property being Remediated.

- (7) Groundwater Contamination Originating from Another Site. If groundwater Contamination on the Property is shown to have come from another property, and CDC can demonstrate that the Contamination has not caused significant damage to the collateral value and marketability of the Property, approval or disbursement may be considered if another Person with sufficient resources is performing Remediation pursuant to a Remediation action plan that has been approved by the appropriate Governmental Entity and:
 - (a) The state has laws or regulations that provide that an owner or operator of property will not be responsible for Contamination from another site; or

(b) The Governmental Entity provides satisfactory written assurance that it will not hold the Property owner liable for the Contamination.

(8) Additional or Substitute Collateral. If additional or substitute collateral is being pledged, or an additional equity contribution is being made, sufficient to overcome the potential loss due to Contamination, then approval or disbursement may be considered.

(9) “Other Factor(s)”. CDC and SBA may rely on factors other than or in addition to the eight referenced above when considering approval or disbursement. For example, the existence of adequate environmental insurance, bonds, agreements not to sue present and future property owners from the Governmental Entity, Engineering and Institutional Controls, etc. However, reliance solely upon “Other Factor(s)” requires clearance from the SBA Environmental Committee. This requirement extends to PCLP CDCs.

PCLP CDCs must follow these guidelines, but they do not have to submit documentation or obtain SBA’s concurrence prior to approval or disbursement of the loan unless they are relying solely upon the “Other Factor(s)” in subparagraph g. (9), above. However, all CDCs, *including* PCLP CDCs, must forward each finalized SBA Environmental Indemnification Agreement (located in Appendix 6) to the SBA District Office for review and approval no less than two weeks in advance of submission of the loan closing package to the SBA District Office if they want the loan to be considered in that closing cycle.

h. Special Use Facilities

Prudent lending practices dictate that specific environmental assessments be performed for certain special use facilities. For example, Property constructed prior to 1978 that will be used for daycare or child care centers or nursery schools must undergo a lead risk assessment and the results of this assessment must be submitted to the SBA. Disbursement will not be authorized unless the risk of lead exposure to infants and small children has been sufficiently minimized.

i. Brownfields Sites

SBA encourages the redevelopment of brownfields, and SBA loan guarantees are available to small businesses interested in locating on revitalized brownfields. Typically this occurs through utilization of one or more of the nine factors in subparagraph “g.” of this paragraph.

j. Questions on SBA’s Environmental Policy, Requests for Reconsideration, and Appeals

Questions on SBA's Environmental Policy should be directed to local field counsel for the area where the Property is located.

CDCs who believe that the decision of field counsel is inconsistent with this SOP may appeal the decision by forwarding a copy of the decision, along with an explanation of how the determination is perceived to be inconsistent with this SOP to EnvironmentalAppeals@sba.gov. Environmental appeals will be reviewed by the SBA Environmental Committee comprised of OGC and field attorneys appointed by the Associate General Counsel for Litigation, who may consult with an environmental engineer. The Associate General Counsel for Litigation would retain the authority to overrule decisions rendered by the SBA Environmental Committee.

Chapter 4 Loan Application Procedures and Controls

1. CDC's 504 Application

The CDC must complete in full Application for Section 504 Loan, [SBA Form 1244](#).

2. Minimum Debenture Amount

The minimum dollar amount for a debenture must be at least \$25,000. [LINK TO 13 CFR 120.930\(b\)](#)

3. Submitting the Application

a. Regular 504 Loans

- (1) All 504 loans are processed in the SLPC.
- (2) The CDC completes the following documents which can be found at http://www.sba.gov/aboutsba/sbaprograms/elending/programguides/BANK_LOAN_PROG_INFO_FORMS.html (scroll down to "504 Documents"):
 - (i) CDC Checklist for Submitting a 504 Loan Application (ver. 7/20/06)
 - (ii) Eligibility Information Required for 504 Submission (ver. 7/20/06); and
 - (iii) Supplemental Information for 504 Processing (ver. 7/20/06)
- (3) Send the completed items along with SBA Form 1244, the CDC's credit analysis, and a disk of the Authorization (http://www.sba.gov/aboutsba/sbaprograms/elending/authorizations/BANK_STAND_NAT_504_LOAN_AUTH.html) to:

Sacramento Loan Processing Center
Small Business Administration
6501 501 I Street
Suite 12-100
Sacramento, CA 95814-2322

- (4) In lieu of submitting a disk, the CDC may email the Authorization to Sacramento504LoanAuthorizations@sba.gov. (Include the SBA Loan Name of the Small Business Applicant in the subject line of your email.) Please include a copy of this email in the loan package.

b. PCLP Loans:

- (1) The PCLP CDC completes the following documents which can be found at http://www.sba.gov/aboutsba/sbaprograms/elending/programguides/BANK_LOAN_PROG_INFO_FORMS.html (scroll down to "PCLP Documents"):

- (i) PCLP Guarantee Request (SBA Form 2234 (Part A));
- (ii) Copy of pages 2 and 7 of SBA Form 1244;
- (iii) Copy of “Supplemental Information for PCLP Processing” (Part B)(ver. 7/20/06); and
- (iv) Copy of “Eligibility Information Required for PCLP Submission” (Part C)(ver. 7/20/06).

(2) Send the completed items to the SLPC by mail to the above address or by fax to 916-995-2492.

c. Processing times for complete application packages

- (1) Regular loans: within 6 business days.
- (2) ALP loans: 3 business days.

d. Abridged Submission Method (ASM)

(1) SBA has established a streamlined loan application processing procedure known as ASM. Under this process, the CDC is required to collect and retain all exhibits to SBA Form 1244, but are only required to submit the documents not marked with an asterisk on the instructions. See [SBA Form 1244](#). The application includes:

- (i) Credit memorandum,
- (ii) Draft loan authorization,
- (iii) SBA Form 1244.
- (iv) Only the following exhibits to the 1244:
 - (a) eligibility checklist (Exhibit 2);
 - (b) SBA Forms 912 (Exhibit 3);
 - (c) Franchise documentation (Exhibit 13);
 - (d) Collateral appraisals (Exhibit 16);
 - (e) Environmental documentation (Exhibit 17); and
 - (f) INS Verification (Exhibit 21).

(2) The CDC files including the Exhibits must be available for review by SBA at any time.

(3) When SBA has the capability to accept scanned and/or digitized documents electronically, we will notify ASM participants that they may use that option.

(4) Criteria for ASM

- (i) SLPC selects CDCs to participate in ASM. To be selected, CDCs must submit complete, quality loan applications.
- (ii) To submit loans using ASM, a CDC must:
 - (a) be an (ALP)
 - (b) be Premier Certified Lenders Program (PCLP): or
 - (c) Have submitted at least 25 loans in the last 12 months, and have passed benchmark measures using the most recent loans processed; and

- (d) earn an average “loan package score” (LPS) numeric equivalent rating of no more than “1.9” **and** have no loan rated “C” or lower (in a range of A to E) among the most recent 10 loans submitted as determined by the SLPC upon the review of the comprehensiveness and quality of the loan application package. See the loan package score components at <http://www.sba.gov/aboutsba/sbaprograms/elending/programguides/index.html>.

(5) Monitoring

SBA will monitor CDC’s continued eligibility to use ASM by reviewing 1 loan out of 10 loan applications based upon the following:

- (i) Each CDC will have at least 1 loan reviewed during a 12 month period.
- (ii) No CDC will have more than 12 loans reviewed during a 12 month period.
- (iii) SLPC will send CDC a written notice for review, and CDC will have 3 business days to submit the entire file to the SLPC.
- (iv) The CDC will lose its ASM status if:
 - (a) the review of the file result in a “C” or lower rating, the CDC will lose its ASM status.
 - (b) a CDC fails to meet the required portfolio performance standards or any other criteria for ASM.
- (v) SBA will rely more heavily on the analysis of the CDCs therefore, continued quality performance of the CDCs portfolio is essential.

Chapter 5
Loan Conditions/Authorization Requirements

1. AUTHORIZATION BOILERPLATE/WIZARD

The Authorization is SBA's written agreement between the SBA and the CDC providing the terms and conditions under which SBA will guarantee a business loan.

a. Basic Loan Conditions

120.160 Loan conditions. [LINK 13 CFR 120.160](#)

(1) SBA establishes the wording for the standard 504 Authorization conditions in the National Authorization Boilerplate (“the Boilerplate”). These conditions reflect the policies and procedures in effect at the time the Boilerplate is issued. The Boilerplate is incorporated by reference into this SOP. If there is any conflict between the Boilerplate and the SOP, the Boilerplate supercedes the SOP.

- (i) The [Boilerplate](#) contains the mandatory national standard language for all SBA authorizations.
- (ii) The [Wizard](#) is a technical tool intended to make it easier for CDCs to create Authorizations based on the Boilerplate.

(2) The latest edition of the Boilerplate can be found at www.sba.gov/aboutsba/sbaprograms/elending (then click on “Authorizations”). The Authorization for 504 loans must use the pre-approved conditions that are found in the Boilerplate.

(3) The party responsible for drafting the SBA Authorization is determined by the program the loan is processed under.

<u>Loan Program</u>	<u>Responsible Party</u>
Regular/ALP	CDC drafts and SBA finalizes and executes
PCLP	CDC drafts and executes on SBA’s behalf

(4) Processing center counsel must review and approve any Authorization that proposes to deviate from the Boilerplate language with the following exception. PCLP CDCs may develop Authorization conditions that are not pre-approved in the Boilerplates and use them without prior SBA approval, provided they are only used one time. Whenever a PCLP CDC develops and uses a non-standard condition, an explanation for its development must be in the loan file.

b. Disbursement Period, Interest Rates and Loan Maturity

(1) Disbursement Period: The loan must be disbursed within 4 years from the date of approval. There will be no extensions.

(2) Interest Rate: The interest rate for 10 and 20 year 504 debentures is based on market conditions for long-term government debt at the time of sale. [13 CFR 120.932 ADD LINK](#)

(3) Maturity:

- (i) 20 years for real estate;
- (ii) 10 years for machinery and equipment; and
- (iii) 10 or 20 years based upon a weighted average of the useful life of the assets being financed.

c. Interim and Third Party Lender Requirements

CDC must insert the names of the Interim and Third Party Lenders and the amounts of the loans into the Authorization.

d. Insurance Requirements

(1) Hazard Insurance

[LINK TO 13 CFR 120.160\(c\)](#)

(5) SBA requires hazard insurance on all assets pledged as collateral.

(6) Real Estate:

- (i) Coverage must be in the amount of the full replacement cost.
- (ii) If full replacement cost insurance is not available, coverage must be for the maximum insurable value.
- (iii) Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of the CDC. This clause must provide that any action or failure to act by the mortgagor or owner of the insured property will not invalidate the interest of CDC. The policy or endorsements must provide for at least 10 days prior written notice to CDC of policy cancellation.

(7) Personal Property:

- (i) Coverage must be in the amount of full replacement cost.
- (ii) If full replacement cost insurance is not available, coverage must be for maximum insurable value.
- (iii) Insurance coverage must contain a LENDER'S LOSS PAYABLE CLAUSE in favor of CDC. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of CDC. The policy or endorsements must provide for at least 10 days prior written notice to CDC of policy cancellation.

(2) Marine Insurance

- (7) Coverage in the amount of the full insurable value on the vessel(s) with CDC designated as "Mortgagee" must be obtained when the vessel is the collateral on the loan.
- (8) The policy must contain a Mortgagee clause providing that the interest of CDC will not be invalidated by any:
 - (a) act, omission, or negligence of the mortgagor, owner, master, agent or crew of the insured vessel;
 - (b) failure to comply with any warranty or condition out of mortgagee's control; or
 - (c) change in title, ownership or management of the vessel.
- (9) The policy must include Protection and Indemnity, Breach of Warranty, and Pollution coverage.
- (10) The policy or endorsements must provide for at least 10 days prior written notice to CDC of policy cancellation.

(3) Flood Insurance

- (i) SBA flood insurance requirements are based on the Standard Flood Hazard Determination [FEMA Form 81-93](#).
- (ii) If any portion of a building that is collateral for the loan is located in a special flood hazard area, CDC must require Borrower to obtain flood insurance for the building under the National Flood Insurance Program (NFIP).
- (iii) If any equipment, fixtures or inventory that is collateral for the loan ("Personal Property Collateral") is in a building any portion of which that is located in a special flood hazard area and that building is collateral for the loan, CDC must require Borrower to also obtain flood insurance for the Personal Property Collateral under the NFIP.
- (iv) If any Personal Property Collateral is in a building any portion of which is located in a special flood hazard area and that building is not collateral for the loan, CDC must require Borrower to obtain flood insurance for the Personal Property Collateral. The CDC may waive this requirement when the building is not collateral for the loan if it:
 - (a) uses prudent lending standards to determine that flood insurance is not economically feasible or not available; and
 - (b) includes a written justification in the loan file that fully explains why flood insurance is not economically feasible or, if flood insurance is not available, the steps taken to determine that it is not available.
- (11) Insurance coverage must be in amounts equal to the lesser of the insurable value of the property or the maximum limit of coverage available.
- (12) Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of CDC. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of CDC.

(4) Life Insurance

- (5) CDC must determine if the viability of the business is tied to an individual or small group of individuals. In these situations, the CDC must require life insurance in an amount sufficient to repay the loan in the event of the death of key personnel.
- (6) For each policy required under this paragraph, CDC must obtain a collateral assignment, identifying the CDC as assignee, that is acknowledged by the Home Office of the Insurer. The CDC must assure that the borrower pays the premiums on the policy.
- (7) Life insurance required must be consistent with the size and term of the loan.
- (8) The CDC may accept the pledge of an existing life insurance policy. When a new policy is required, a decreasing term policy is most appropriate. Credit life insurance or whole life insurance should not be required.

(5) Other Insurance

CDC must include any other insurance appropriate to the loan, including but not limited to:

- (i) Liability Insurance;
- (ii) Product Liability Insurance;
- (iii) Dram Shop/Host Liquor Liability Insurance;
- (iv) Malpractice Insurance;
- (v) Disability Insurance;
- (vi) Workers' Compensation Insurance; and
- (vii) any State specific insurance requirements.

e. IRS TAX TRANSCRIPT/VERIFICATION OF FINANCIAL INFORMATION

- (1) SBA's Tax Verification process is to determine if:
 - (i) the Small Business Applicant filed business tax returns; and
 - (ii) the Small Business Applicant's financial statements provided as part of the application agree with the business tax returns submitted to the IRS .
- (2) For a sole proprietorship, the CDC must verify the Schedule C.
- (3) For a change of ownership, the CDC must verify the seller's business tax returns or a sole proprietor's Schedule C. Where there is an acquisition of a division or a segment of an existing business, other forms of verification may be used in lieu of the 4506-T (e.g. Sales tax payment records).
- (4) Prior to any disbursement of Loan proceeds, CDC must obtain:
 - (i) Verification of Financial Information—

- (a) CDC must submit [IRS Form 4506 - T with SBA logo \(ADD LINK\)](#) to the Internal Revenue Service to obtain federal income tax information on Borrower, or the Operating Company if the Borrower is an EPC, for the last 2 years unless the 7(a) size standard is used which requires 3 years.
 - (b) If the business has been operating zero and 2 years, CDC must obtain the information for all years in operation.
 - (c) This requirement does not include tax information for the most recent fiscal year if the fiscal year-end is within 6 months of the date SBA received the application.
 - (d) CDC must compare the tax data received from the IRS with the financial data or tax returns submitted with the loan application.
 - (e) Borrower must resolve any significant differences to the satisfaction of CDC and the appropriate SBA CLSC. Failure to resolve differences may result in cancellation of the loan.
 - (f) For a change of ownership, CDC must verify financial information provided by the seller of the business in the same manner as above.
 - (g) If CDC does not receive a response from the IRS or copy of the tax transcript within 10 business days, the CDC:
 - 1. may proceed to close and disburse the loan;
 - 2. must follow-up with the IRS to obtain and verify the tax data by resubmitting a copy of the Form 4506-T to IRS with the notation “Second Request” in the top right hand side;
 - 3. must document its file with a dated copy of the second submission; and
 - 4. must perform the verification and resolve any significant differences discovered.
- (ii) If the IRS advises that it has no record on the applicant or the CDC is unable to reconcile the IRS information to the Small Business Applicant’s financial information, the CDC must report the issue to the appropriate SBA CLSC. If the loan has not been disbursed, either the loan must be cancelled or the closing must be postponed until the issue is resolved.
 - (ii) If a Small Business Applicant has not filed required federal tax returns, the applicant is not eligible for SBA financial assistance.

f. STANDBY AGREEMENTS

- (1) SBA Form 155 - [Standby Agreement LINK](#) CDC may use SBA Form 155 or its own Standby Agreement Form.
- (2) Standby Creditor must subordinate any lien rights in collateral securing the Loan to CDC’s rights in the collateral, and take no action against Borrower or any collateral securing the Standby Debt without CDC’s consent.

g. ASSIGNMENT OF LEASE AND LANDLORD’S WAIVER

- (1) When a substantial portion of the loan proceeds are to be used for leasehold improvements or a substantial portion of the collateral consists of leasehold improvements, fixtures, machinery, or equipment that is attached to leased real estate, the CDC should obtain:
 - (i) an Assignment of Lease with
 - (a) a term including renewal options that equals or exceeds the term of the loan; and
 - (b) a requirement that the lessor provide a 60-day written notice of default to the CDC with option to cure the default; and
 - (ii) a Landlord's Waiver.
- (2) The Landlord's Waiver gives the CDC access to the leased premises and facilitates the liquidation of the collateral on the borrower's premises and should be obtained for all SBA loans with tangible personal property as collateral.
- (3) If the loan proceeds will finance improvements on a leasehold interest in land, the underlying ground lease must include, at a minimum, detailed clauses addressing the following:
 - (i) Tenant's right to encumber leasehold estate;
 - (ii) No modification or cancellation of lease without CDC's or assignee's approval;
 - (iii) CDC's or assignee's right to:
 - (a) acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by CDC or successors; lessor may not unreasonably withhold, condition or delay the reassignment;
 - (b) sublease;
 - (c) hazard insurance proceeds resulting from damage to improvements;
 - (d) share in condemnation proceeds; and
 - (iv) CDC's or assignee's rights upon default of the tenant or termination.
- (4) For lease requirements concerning EPCs and OCs, see Chapter 2 of this Subpart.
- (5) For loans collateralized by Indian lands held in trust, if the owner of the land cannot get approval for a lien on the property, you may consider requiring an Assignment of Lease. The Assignment of Lease also has to be approved by the Secretary of the Interior or his/her authorized representative.

h. CONSTRUCTION LOAN PROVISIONS

- (1) In the construction of a new building or an addition to an existing building, CDC must obtain:
 - (i) Evidence of compliance with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New

Buildings" (NEHRP), or a building code that has substantially equivalent provisions. [ADD LINK TO 13 CFR 120.174.](#)

(a) The NEHRP provisions may be found in the American Society of Civil Engineers (ASCE) Standard 7 and the International Building Code.

(b) Examples of evidence include a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that an occupancy permit is required and that the local building codes upon which the permit is based include the Seismic standards.

(ii) The CDC must certify that the Project was completed in accordance with the final plans and specifications unless a minor portion of the project has been escrowed for a valid reason. [13 CFR 120.891 LINK](#)

(2) If the interim financing comes from a CDC, the following additional conditions must be required in the Authorization:

(i) Mortgages must be recorded prior to beginning construction.

(ii) Inspections must be made by a qualified engineer, appraiser, or other party satisfactory to SBA prior to all progress disbursements.

(iii) The small business must furnish a firm construction contract to the CDC from an acceptable contractor at a specified price, including a provision that no material changes are to be made without the prior written consent of the CDC;

(iv) The contractor must furnish builder's risk and workers' compensation insurance;

(v) One complete set of plans and specifications of the proposed construction must be submitted to the CDC;

(vi) Where the CDC or the small business is to inject funds into the construction project, these funds must be used prior to the disbursement of the interim financing;

(vii) The CDC must make and document periodic inspections of construction; and

(viii) When loan funds will be used to improve buildings on leased land, assignment of the lease must be obtained.

(3) "Do-it-yourself" construction and/or installation of machinery and equipment, or situations where the borrower acts as its own contractor have proven to be generally unsatisfactory and can cause problems with lien waivers and mechanics liens, causing potential losses to lender and/or SBA.

“Do-it-yourself” construction and/or installation of machinery and equipment, or situations where the borrower acts as its own contractor may be permitted, if the CDC can justify and document in the loan file that:

- (i) The borrower/contractor is experienced in the type of construction and has all appropriate licenses;
- (ii) The cost is the same as, or less than, what an unaffiliated contractor would charge as evidenced by 2 bids on the work; and
- (iii) The borrower/contractor will not earn a profit on the construction.

i. SPECIAL PROVISIONS FOR FRANCHISES

When lending to a franchise, the CDC should consider obtaining an agreement from the franchisor that:

- (1) allows CDC and SBA access to Franchisor’s books and records relating to Borrower’s billing, collections and receivables;
- (2) upon loan payment default or deferment, defers payment of franchise fees, royalties, advertising, and other fees until Borrower brings loan payments current;
- (3) gives CDC 30 days notice of intent to terminate the Franchise Agreement; and/or
- (4) gives CDC an opportunity to cure any default under the franchise or lease agreement that is given the franchisee under the same agreements.

j. CERTIFICATIONS OF THE CDC

The certifications required of the CDC are listed on [SBA Form 2101. ADD LINK](#)

k. CERTIFICATIONS OF THE BORROWER

The certifications required of the Borrower are listed on [SBA Form 2289 ADD LINK](#)

l. CERTIFICATIONS OF THE INTERIM LENDER

The certifications required of the Interim Lender are listed on [SBA FORM 2288 ADD LINK](#)

2. MODIFYING THE AUTHORIZATION

a. The CDC may request in writing modifications to the terms and conditions of the Authorization at any time after approval, but before funding. All modifications must be approved by a 327 action by the same level of delegated authority at which the loan was originally approved, except as stated elsewhere in this SOP and by delegation of authority.

- (1) For an increase or decrease in the amount of an approved loan, the 327 action must clearly support the need for the change in the amount and address the effects on repayment ability, collateral and jobs created or retained. The 327 action must also

provide the revised breakdown of the private sector lender, debenture, and CDC/small business injection, including a revised use of funds.

(2) Neither the amount nor the maturity of a loan can be modified after the debenture closing has been completed.

(3) PCLP CDCs may modify and extend the loan authorization unilaterally and must notify SLPC of any change in loan amount.

Chapter 6 Closings

1. RESPONSIBILITY FOR CLOSING THE 504 LOAN AND DEBENTURE

- a. The CDC is responsible for the 504 Loan closing, including compliance with all **SBA Loan Program Requirements**. ([ADD LINK TO DEF OF “SBA Loan Program Requirements” 13 CFR 120.10](#)) Each CDC has its own division of labor and dictates the CDC counsel’s role. Although SBA Counsel is available for advice and assistance, the CDC and its attorney are ultimately responsible for the 504 Loan closing. [ADD LINK TO REGS 13 C.F.R. Sections 120.960 and 120.10.](#)
- b. The debenture closing is the joint responsibility of the CDC and SBA. CDC must prepare the documents necessary for closing the debenture. SBA Counsel reviews the loan closing package for legal sufficiency and opines whether SBA may guarantee the debenture. [13 C.F.R. Section 120.960.](#)[ADD LINK TO REG](#)

2. THE CLOSING PACKAGE

a. Types of Loan Closing Packages

There are two types of loan closing packages:

- (1) a regular closing package submitted by either non-Priority CDCs or **Priority CDCs** [ADD LINK TO DEF](#) who are not using a **Designated Attorney**; [ADD LINK TO DEF](#) and
- (2) an expedited closing package submitted by a **Priority CDC** [ADD LINK TO DEF](#) using a **Designated Attorney** [ADD LINK TO DEF](#) under the expedited closing process.

b. The Closing Package

(1) SBA has adopted a **504 Debenture Closing Checklist (Checklist)** (SBA Form **2286**). [ADD LINK TO FORM](#) CDCs and SBA must use this Checklist [ADD LINK TO FORM](#) for all 504 debenture closings. The **Checklist** [ADD LINK TO FORM](#) lists the documents SBA requires to determine whether the debenture can be sold to fund the loan. It is not intended to include *all* the items the CDC will need to properly close the loan.

(2) SBA requires that the CDC submit to SBA Counsel for review:

- (i) For regular closings, the 25 items on the **Checklist**; or [ADD LINK TO FORM](#)

(ii) For expedited closing packages, the first 12 items on the Checklist to SBA for SBA Counsel’s review after closing.

(iii) With either type of loan closing package, in rare circumstances if an additional document is necessary, the CDC may submit it along with an explanation of the significance.

(3) Mandatory Forms:

(i) Documents on the Checklist that have an SBA form number

(ii) Opinion of CDC Counsel (Appendix D to the 504 Authorization Boilerplate); and

(iii) the SBA-approved environmental indemnification agreement.

(4) CDCs may use their own forms for the lien instruments on Project Property and secondary collateral, those forms must be either state bar-approved forms or approved by SBA Counsel prior to submission.

(5) Specific guidance on how the CDC must complete each document on the Checklist is in “Legal Responsibilities” SOP 70-50, Chapter 4, Paragraph 4.

3. SPECIFIC RESPONSIBILITIES AND PROCEDURES FOR CLOSING AND POST-CLOSING ACTIVITIES

a. CDC’s Responsibilities

The CDC must:

(1) **Notify SBA Counsel in writing of planned debenture closings** at least 30 days before the Field Office deadline for CDCs to submit closing packages. This notification is for SBA Counsel’s planning purposes only and the CDC may ultimately submit more, fewer or different closing packages.

(2) **Request from the SLPC all necessary modifications to the Authorization before submitting closing packages** as far in advance of submitting the loan closing package as possible. The CDC must obtain SBA approval of all such issues before submitting the closing package to the field office.

(3) **Request each Authorization be transmitted by the SLPC to the field office for closing** in time to meet the field office’s deadline for submission of loan closing packages. CDCs must not request a transmission unless the debenture is ready for closing and sale during the month following the request. If an Authorization has not been received in the field office by its loan closing package submission deadline, SBA Counsel may return the closing package to the CDC or may hold over the package for the next month’s debenture sale.

- (4) **Submit closing packages by the deadline established by SBA Counsel .** CDCs may submit a closing package electronically, by facsimile or hard copy. SBA Counsel may return or hold late packages over for the next month's debenture sale.
- (5) **Use only the 504 Debenture Closing Checklist, and submit documents in the order appearing on the Checklist.** In the column labeled "CDC" on the Checklist, the CDC must check off each document the CDC has included in the closing package or for documents not applicable to a particular transaction, write "NA" in the block. CDC must submit only a copy of each document, and must retain the original until SBA Counsel completes his or her review. After the debenture sale, the CDC must retain a copy of the closing package in its files and make it available to SBA upon request.
- (6) **Hold all original loan documents until SBA gives the CDC written notification that SBA has completed its review of the closing package and approved the debenture sale.** If SBA Counsel determines that the loan is ready for funding, SBA Counsel must notify the CDC and CSA that the debenture is ready for sale. If the SBA Counsel determines that changes are needed in the closing documents, SBA must notify the CDC of such changes before the cut-off-date by which the CSA must receive documents from the CDC for the debenture sale. After the CDC makes the necessary changes and SBA has approved the changes, SBA must notify the CDC and CSA that the debenture is ready for sale.
- (7) **Send by overnight mail to the CSA the necessary debenture closing documents for the debenture sale.** After SBA sends the CDC notice of which debentures SBA has approved for sale, the CDC must send to the CSA by overnight mail the following debenture closing documents for each debenture to be sold:
- (i) Servicing Agent Agreement (SBA Form 1506) *(original)*
 - (ii) Development Company 504 Debenture (SBA Form 1504) *(original)*
 - (iii) Note (CDC/504 Loans) (SBA Form 1528) *(copy)*
 - (iii)**
 - (i) Servicing Agent Agreement (SBA Form 1506) [ADD LINK TO FORM](#) *(original)*
 - (ii) Development Company 504 Debenture (SBA Form 1504) [ADD LINK TO FORM](#) *(original)*
 - (iii) Note (CDC/504 Loans) (SBA Form 1528) [ADD LINK TO FORM](#) *(copy)*
 - (iv) Authorization Agreement for Preauthorized Payment (Debit) [ADD LINK TO FORM](#) and voided check *(original)*
 - (v) Request for Taxpayer ID Number and Certification (IRS Form W-9) [ADD LINK TO FORM](#) *(original)*

(vi) Third Party Lender participation fee check (if not being deducted from the CDC processing fee) (*original*)

(8) **Forward the original of all documents listed on the 504 Debenture Closing Checklist [ADD LINK TO FORM](#) (which serves as the original collateral listing) to the appropriate CLSC [ADD LINK TO CLSC WEBSITE](#) within 30 days after the debenture sale.**

(i) The CDC must forward the collateral file containing all the original documents listed on the Checklist [ADD LINK TO FORM](#) to the CLSC. [ADD LINK TO CLSC WEBSITE](#) CDC must use the Checklist [ADD LINK TO FORM](#) as the collateral listing. The CDC must maintain the collateral file in a manner acceptable to SBA.

(ii) If the CDC has not yet received all original documents by 30 days after the debenture sale date, the CDC must send the documents it does have and must send a additional documents along with a collateral listing upon receipt.

b. What are SBA Counsel’s Responsibilities?

SBA Counsel must comply with the procedures for loan and debenture closings outlined in SOP 70 50, “Legal Responsibilities,” Chapter 4, paragraphs 4 and 5, [ADD LINK TO SOP 70 50 3](#) including the conduct of Quality Assurance Reviews and Complete File Reviews.

(1) **Quality Assurance Reviews (QARs).** SBA Counsel must conduct QARs of a random selection of closing packages submitted by Priority CDCs [ADD LINK TO DEF](#) to assure the quality of the expedited closing process. A QAR is a review by SBA Counsel of the closing package as if it were a regular closing package submitted by a non-Priority CDC.

(2) **Complete File Reviews (CFRs).** SBA Counsel must conduct a CFR of a random selection of all loan closings, whether those closing packages were submitted by Priority CDCs [ADD LINK TO DEF](#) or non-Priority CDCs, to ensure program integrity. A Complete File Review consists of the CDC’s *entire* closing file, including all of the documents used by the CDC in conjunction with the closing, whether or not listed on the 504 Debenture Closing Checklist. [ADD LINK TO FORM](#)

c. Central Servicing Agent’s (CSA) Responsibilities

(1) **Review debenture closing documents, package and price debenture for sale, and conduct debenture sale.** The CSA notifies the CDC of any changes that need to be made or additional information to be provided before the debenture sale can occur:

- (2) **Complete the Servicing Agent Agreement and Note:** The CSA fills in the remaining blanks on the Note [ADD LINK TO FORM](#) and Servicing Agent Agreement, [ADD LINK TO FORM](#) generating conformed pages, and executes the Servicing Agent Agreement. [ADD LINK TO FORM](#)
- (3) **Distribute post-closing documents.** The CSA will provide the following documents on-line:
 - (i) The first page of the Note; [ADD LINK TO FORM](#)
 - (ii) The Note amortization and prepayment schedules; and
 - (iii) Pages 3 and 4 of the Servicing Agent Agreement. [ADD LINK TO](#)

[FORM](#)

d. The Trustee's responsibilities

The Trustee will provide copies of the Debenture [ADD LINK TO FORM](#) and the Debenture amortization and prepayment schedules to the CDC, CSA, or SBA, as directed.

4. USE OF CONSTRUCTION ESCROW ACCOUNT (13 C.F.R. §120.961) [ADD LINK TO REG](#)

With SBA's prior approval, if acquisition of machinery and equipment or other portions of a project (such as a parking lot, landscaping, etc.) represent a relatively minor portion of the total project, and it has been contracted for delivery at a specified price and date, but cannot be installed or delivered prior to acquisition or completion of the plant, the debenture may be sold, provided:

- a. the proceeds authorized for acquisition of such assets are held in escrow by the CSA, title company, CDC attorney, or bank to complete Project components;
- b. all required lien positions and collateral are obtained prior to closing;
- c. disbursement from such account(s) must be approved by the CDC and SBA, supported by invoices, and be made payable jointly to the small business and the designated contractor; and
- d. funds not disbursed after one year will be applied to pay down the first mortgage loan.

CHAPTER 7

DEBENTURE PRICING & FUNDING

1. PRICING A 504 DEBENTURE [13 CFR 120.971](#) [ADD LINK](#)

a. Terms

(1) Net Debenture Proceeds [ADD LINK TO DEF](#) is defined in Chapter 1 of this Subpart.

(2) Gross Debenture: The net debenture proceeds plus the administrative costs. See Chapter 2 in this Subpart for eligible administrative costs.

The **Gross Debenture** cannot exceed:

- (i) \$1,500,000 for Regular 504 loans,
- (ii) \$2,000,000 for Public Policy Projects ([hyperlink to Public Policy section](#)), and
- (iii) \$4,000,000 for Small Manufacturers (defined as a business with its primary NAICS Code in Sectors 31, 32, and 33, **and** all of its production facilities are located in the United States; see SBA Policy Notice 5000-940) .

b. Determining SBA's Share of the Project Costs

To price a debenture, you must determine SBA's share of a project's total cost. The following hypothetical project will identify the amount of funds required to fund both the eligible project costs (Net Debenture) plus the administrative costs totals the Gross Debenture amount

To illustrate, assume that total project costs (land, building and machinery and equipment and eligible soft costs) are \$1,000,000. Assuming SBA will finance 35 percent of the project costs for 20 years, participation in project financing would be as follows:

<u>%</u>	<u>Participation</u>	<u>Amount</u>
50%	Third-Party Lender	\$500,000
35%	504 Net Debenture	\$350,000
<u>15%</u>	<u>Small Business Injection</u>	<u>\$150,000</u>
100%	Total Project Costs	\$1,000,000

c. Steps to Calculate the Gross Debenture

Use the following step by step pricing model procedures to determine the administrative costs and the Gross Debenture amount. Except for the underwriting fee and closing costs, each administrative cost is based on the amount of the Net Debenture.

(1) Net Debenture

Determine the Net Debenture: \$350,000.00

(2) SBA Guaranty Fee (0%)

multiply \$350,000 by 0.000 = \$0.00

(3) Funding Fee (.25%)

multiply \$350,000 by .0025 = \$875.00

(4) CDC Processing Fee (1.5%)

multiply \$350,000 by .015 = \$5,250.00

(5) Eligible Closing Costs

= \$2,500.00

(For Eligible Project Costs and fees, see Chapter 2 of this Subpart.)

(6) Gross Debenture Amount

To calculate the Gross Debenture, add items 1 through 5 above and divide the total by 0.996 for 20-year debentures (For 10-year debentures, this number would be 0.99625). This step adds the Underwriter's Fee to the total debenture. Round this number up to the next even thousand.

Net Debenture Proceeds	\$350,000.00
SBA Guaranty Fee	\$0.00
Funding Fee	\$875.00
CDC Processing Fee	\$5,250.00
Closing Costs	<u>\$2,500.00</u>
Total	\$358,625.00
Divide by 0.99600	\$360,065.20

(0.99625 for 10-Year Debenture)

Round up to the next even thousand \$361,000.00

The Gross Debenture in this example is \$ 361,000.00.

Note: The Gross Debenture is calculated first because the Underwriter's Fee is based on the Gross Debenture, not the Net Debenture.

(7) Underwriter's Fee.

To determine the exact amount of the underwriter's fee, multiply the 20-year Gross Debenture by .004. (For 10-year debentures, this number would be .00375.)

Multiply \$361,000.00 by .004= \$1,444.00

(8) Balance to Borrower.

The difference between the Gross Debenture amount (\$361,000.00) and the sum of Net Debenture proceeds (\$350,000.00), processing and closing fees (\$8,625.00), and underwriters fee (\$1,444.00) goes to the borrower.

In this example, the Balance to Borrower is:

$$\$361,000.00 - (\$350,000.00 + \$8,625.00 + \$1,444.00) = \$931.00.$$

d. Separate Payment of the Debenture Fees

(1) The CDC Processing Fee and the closing costs are the only fees that can be paid upfront and deleted from the Gross Debenture calculations.

(2) If the borrower chooses to pay the CDC's Processing Fee upfront, the Borrower may be reimbursed for the CDC fee from the debenture proceeds.

(i) If the Borrower is reimbursed, the CDC Processing Fee will be included in calculating the Gross Debenture. The CDC will receive the fee as usual. The CDC then must reimburse the borrower.

(ii) If the borrower does not want to be reimbursed for the CDC processing fee from the debenture proceeds, the Gross Debenture calculation must include the CDC processing fee in order to determine the correct Underwriter's Fee. Once the Underwriter's Fee is calculated, a zero is then entered on the CDC Processing Fee line in the SBA Form 1506, and the dollar amounts are re-totaled and rounded to the next higher thousand for the new Gross Debenture amount.

e. When the Debenture is priced

(1) A Debenture is priced at time of application. If there are any changes in the 504 portion of the project costs between loan approval and project completion, the Debenture must be re-priced.

(2) If the borrower does not use the full amount of any contingency fund, then the Debenture may be re-priced as follows:

(i) If the amount of the unused contingency fund is 2 percent or less of the approved Gross Debenture amount, the difference must be refunded to the borrower from the Gross Debenture proceeds by the CSA. No change is needed in the Debenture amount, and this does not require a loan modification request.

(ii) If the amount of the unused contingency fund is greater than 2 percent of the approved Gross Debenture amount, the CDC must request a loan modification from the SLPC prior to closing to reduce the Net Debenture proceeds by the amount of the unused contingency fund, and the Debenture amount is recalculated. [LINK TO 13 CFR 120.930\(c\)](#)

2. FUNDING THE DEBENTURE

The 504 Debentures are normally sold and proceeds disbursed on the Wednesday after the second Sunday of each month. The Fiscal Agent normally negotiates the final rate and fees with underwriters on the Tuesday after the first Sunday of each month.

a. Disbursement of Debenture Proceeds

On the scheduled sale date, the Gross Debenture proceeds, less the Underwriter's Fee, will be wired to the CSA. Upon receipt of the proceeds, the CSA must:

- (i) Deduct an amount sufficient to cover the following:
 - (a) Its initiation fee as computed and identified by SBA in the Servicing Agent Agreement, if applicable (not presently applicable); and
 - (b) A guaranty fee payable to SBA, as in effect at the time of loan approval.
- (ii) Disburse the balance of the proceeds within 48 hours of receipt of funds as follows:
 - (a) Payoff the interim lender of the Net Debenture amount;
 - (b) CDC Processing Fee; and

(c) Balance to Borrower based on the CSA's computations under the pricing model.

CHAPTER 8

ALLOWABLE FEES

1. ALLOWABLE FEES THAT A 504 BORROWER MAY BE CHARGED

The fees that a 504 borrower may be charged can be found at: [13 CFR 120.971](#) and [13 CFR 972](#) [ADD LINK](#) and are described in the table below.

<u>504 Fees</u>		
<u>CDC Fees -- 13 CFR §120.971(a)</u>		
(1) Processing fee (Packaging fee)	Up to 1.5% of the Net Debenture	Paid by borrower to CDC
(2) Closing Fees	Maximum of \$2500 may be financed from the debenture proceeds. 13 CFR 120.883(e) ADD LINK	CDC may charge a reasonable closing fee --sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs. Paid by Borrower.
(3) Servicing fee (monthly)	Minimum of 0.625%/year. Maximum of 2%/year Note: Maximum 1.5% for rural areas and 1% for everywhere else without prior SBA approval.	Based on the unpaid principal balance of the loan – paid by borrower to CDC
(4) Late fees	Loan payments received after the 15 th of each month may be subject to a late payment fee of 5% of the late payment or \$100, whichever is greater.	
(5) Assumption fee	Not to exceed 1% of the outstanding principal balance of the loan being assumed	Upon SBA's written approval– paid by borrower to CDC
<u>CSA Fees – 13 CFR §120.971(b)</u>		
	On-going fee of 0.1% per year is charged. CSA is paid out of this fee.	
<u>Other Agents Fees – 13 CFR §120.971(c)</u>		
Underwriters' fee for 20 year Debenture	Upfront fee of 0.4%	Paid by borrower to underwriter
Underwriters' fee for 10 year Debenture	Upfront fee of 0.375%	Paid by borrower to underwriter

504 Fees(Continued)		
<u>SBA Fees -- 13 CFR §120.971(d)</u>		
(1) SBA Guaranty Fee -- (up-front fee)	0%	One time fee
(2) Annual Fee -- (Ongoing fee)	.021%	Fee is adjusted annually by cohort year (based on date the individual loan was approved) and is charged on the unpaid principal balance of the loan.
<u>Funding Fee -- 13 CFR §120.971(e)</u>		
	0.25% of the net Debenture Proceeds	Charged to cover the costs incurred by the trustee, fiscal agent, transfer agent (for DCFC, Bank of New York, printing costs, monthly accountant's opinion for offering circular, with left over balance to SBA)
<u>3rd Party Lender & CDC -- 13 CFR §120.972</u>		
(a) Participation Fee -- Senior Lienholder	0.50 % of the senior mortgage loan -- One Time fee	A one-time fee from the Third Party Lender if in a senior lien position to SBA in the project. The fee may be paid by the Third Party Lender, CDC or borrower.
(b) CDC Fee	On-going fee to SBA of 0.125% of the outstanding principal balance of the debenture -- Annual Fee	The fee must be paid from the servicing fees collected by the CDC and <u>cannot be paid from any additional fees imposed on the Borrowers</u> (loans approved by SBA after 9/30/1996)

2. Fees for Other Services

a. The CDC may be compensated for other services provided to a small business such as packaging and servicing a 7(a) loan or providing management assistance. Such fees are to be charged pursuant to a formal agreement between the CDC and the 7(a) Lender setting forth the roles and relationships of the parties as well as terms and conditions and must be in compliance with SBA regulations.

b. CDC referral fees for locating third party financing [13 CFR 120.926](#) [ADD LINK](#)

The CDC may earn a fee for this service, but it must not be paid by the borrower or funded from the debenture proceeds.

CHAPTER 9

BORROWER'S DEPOSIT, DEBENTURE POOLS AND POST-DISBURSEMENT ISSUES

1. RULES GOVERNING THE BORROWER'S DEPOSIT

- a. At the time of application, the CDC may require a deposit from the Borrower of \$2,500 or 1 percent of the Net Debenture Proceeds, whichever is less. For additional information relating to this fee, see [13 CFR 120.935](#). [ADD LINK](#)
- b. Agreements Regarding the Deposit
 - (1) A written agreement between the CDC and the Small Business Applicant should include the following:
 - (i) If the CDC or SBA declines the application, the deposit will be refunded in full within 10 business days after decline, including any period for reconsideration;
 - (ii) If SBA approves the loan, the deposit may be applied toward the CDC processing fee described in 13 CFR 120.883; and
 - (iii) If the applicant withdraws its loan application at any time before SBA issues the Authorization, the CDC may deduct its reasonable and necessary costs incurred in packaging and processing the loan application. Such costs must be documented and cannot be a percentage of the loan. Any remaining deposit balance must be remitted to the applicant within ten business days of the withdrawal.
 - (2) A copy of the agreement must be placed in the CDC's file.

2. DEBENTURE POOLS

Neither a Borrower nor an Associate of the Borrower may purchase an interest in a Debenture Pool in which the Debenture that funded its 504 loan has been placed. [13 CFR 120.939](#) [ADD LINK](#)

3. MISCELLANEOUS

See [13 CFR 120.990](#) and [13 CFR 120.991](#) [add Link](#) on the impact of current rules on older loans and the effect of other laws.

4. POST-DISBURSEMENT ISSUES

- a. A CDC may request changes on disbursed 504 loans by contacting the appropriate CLSC. The contact information can be accessed at:

<http://www.sba.gov/aboutsba/sbaprograms/elending/clc/index.html>

- (1) The CLSCs have a loan servicing guide on SBA's web page at:

<http://www.sba.gov/aboutsba/sbaprograms/elending/clc/servicing/index.html>

- (2) Guidance on loan servicing is also outlined in SOP 50-50 4, which can be accessed through SBA's electronic library at:

<http://www.sba.gov/tools/resourcelibrary/sops/index.html>

- (3) 13 CFR 120.500 subpart E- outlines requirements under SBA loan administration.

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=fdfb5d7a02f3a2cdf451e66f44754821&rgn=div6&view=text&node=13:1.0.1.1.14.5&idno=13>

- b. Prepayment. The borrower may prepay its 504 loan. More information may be found at:

- (1) SBA's SOP 50-50 4, Chapter 11 contains information on prepayment or purchase of a development company loan or debenture.

<http://www.sba.gov/tools/resourcelibrary/sops/index.html>

- (2) Colson Services Corp. is the current central servicing agent (CSA) for closed SBA 504 loans. Colson's Services Corp's web page.

<http://www.colsonservices.com/main/index.shtml> has a secure log on site for the CDC which calculates prepayment information on a specific 504 loan.

13 CFR 120.940 addresses prepayment of the 504 loan or debenture.

APPENDIX 1

RESTRICTIONS ON FOREIGN CONTROLLED ENTERPRISES

Various Federal laws prohibit foreign controlled U.S. enterprises from certain types of activities. These activities are listed below for your guidance. Exercise special care in processing loans involving these types of enterprises.

1. General restrictions for foreign controlled enterprises

Foreign controlled enterprises operating in the United States, whether in branch or subsidiary form, may not do the following.^{1/}

- a. Engage in operations involving the utilization or production of atomic energy (42 U.S.C. 2133(d)).
- b. Own vessels which transport merchandise or passengers between U.S. ports or tow U.S. vessels carrying such merchandise or passengers between U.S. ports (46 U.S.C. Appx. 802, 883, 888). There are exceptions to this general rule, one of which permits a foreign controlled U.S. manufacturing or mining company to engage in shipping activities related to its principal business (46 U.S.C. Appx. 833-1).
- c. Acquire rights of way for oil pipelines or leases or interests therein for mining coal, oil, or certain other minerals on Federal lands other than the outer continental shelf if the foreign investor's home country does not permit such mineral leasing to U. S. controlled enterprises (30 U.S.C. 181, 185).
- d. Engage in radio or television broadcasting unless the Federal Communications Commission (FCC) finds the grant of a license to be in the public interest (47 U.S.C. 301). The FCC has granted licenses for broadcasting activities ancillary to another business of a foreign controlled enterprise.
- e. Acquire control of a company engaged in any phase of aeronautics (49 U.S.C. Appx. 1301(1), 1378(a)).

^{1/} In certain cases foreign enterprises can acquire a minority interest in corporations engaging in the activities noted but certain management requirements may have to be met.
- f. Be issued permits for intra-United States air commerce or navigation (49 U.S.C. 1371, 1401(b), 1508).
- g. Obtain a fishery loan from the Secretary of Interior for the financing or refinancing or the cost of purchasing, constructing, or operating commercial fishing vessels or gear (16 U.S.C. 742c(b)(7)).

- h. Sell obsolete vessels to the Secretary of Commerce in exchange for credit towards new vessels (46 U.S.C. Appx. 1160(h)).
- i. Receive a preferred ship mortgage (46 U.S.C. Appx. 922).
- j. Purchase vessels converted by the Government for commercial use or surplus war-built vessels at a special statutory sales price (50 U.S.C. Appx. 1737, 1745).
- k. Obtain special Government emergency loans from the USDA for agricultural purposes after a natural disaster (7 U.S.C. 1961) or USDA loans to individual farmers or ranchers to purchase and operate family farms (7 U.S.C. 1922, 1941).
- l. Establish an Edge Act corporation to engage in international or foreign banking (12 U.S.C. 619). 1/
- m. Purchase Overseas Private Investment Corporation (OPIC) insurance or guarantees (22 U.S.C. 2198(c)).
- n. Obtain construction-differential or operating-differential subsidies for vessel construction or operation (46 U.S.C. Appx. 1151 ff., 802).
- o. During war or a national emergency, acquire or charter U.S. flag vessels, vessels owned by a U.S. citizen or shipyard facilities (46 U.S.C. Appx. 835) or acquire controlling interest in corporations owning the vessels or facilities described above without the approval of the Secretary of Commerce (46 U.S.C. Appx. 835).

1/ In addition to its limitations on stock ownership by foreign enterprises, the Edge Act requires that all the directors of the corporation be United States citizens.

2. Management-related restrictions on foreign enterprises

In certain cases, a foreign controlled enterprise operating in the United States must meet certain requirements relating to management in order to engage in particular activities. The foreign investor, however, can continue to own all the equity in the enterprise because the laws in question do not contain limitations relating to stock ownership. Unless these management requirements are met, foreign controlled enterprises may not do the following:

- a. Organize a national bank (all directors must be United States citizens) (12 U.S.C. 72).
- b. Engage in dredging or salvaging operations in U.S. waters (To register a vessel to engage in these activities, the president or chief executive officer of a domestic corporation and the chairman of its board must be U.S. citizens. The foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum.) (46 U.S.C. Appx. 316).

- c. Fish in the territorial water of the United States, land fish caught on the high seas and, except for corporations of countries with traditional fishing rights, fish in the United States fishing zone (See 2.b of this appendix for the management requirements.) (16 U.S.C. 1801, 1821, 46 U.S.C. Appx. 7105) 1/
- d. Transport certain commodities procured by or financed for export by the United States Government or an instrumentality thereof. (See 2.b of this appendix for the management requirements.) There are certain statutory exceptions to this rule (46 U.S.C. Appx. 1241).
- e. Obtain certain types of vessel insurance. (See 2.b of this appendix for the managements requirements.) (46 U.S.C. Appx. 1281 ff.)
- f. Obtain licenses to operate as customs-house brokers (19 U.S.C. 1641). (At least two of the officers must be U.S. citizens.)

1/To the extent that these activities involve the coast wise trade, certain limitations on stock ownership would have to be met (Cf. Sec. 1).

3. Restrictions applicable to foreign branches or individuals

- a. In certain cases the form of business organization chosen by a foreign controlled enterprise will determine whether it will be treated differently from an enterprise controlled by United States citizens. If a foreign controlled enterprise chooses to operate through a sole proprietorship or a branch office rather than a corporation organized under the laws of one of the states, it may not:
 - (1) Obtain licenses to construct dams, reservoirs, houses, and transmission lines (16 U.S.C. 797(e));
 - (2) Obtain licenses to develop and utilize geothermal steam and associated resources on Federal lands (30 U.S.C. 1001 ff.); or
 - (3) Obtain certain rights of way, mining rights, leases or other rights on Federal lands. (See, generally, 43 CFR.)

These restrictions would not apply if the foreign controlled enterprises operated through a domestic subsidiary.

- b. In addition to restrictions previously noted, foreign citizens may not:
 - (1) Act as officers and serve in certain other positions on certain vessels (Cf. 46 U.S.C. 8103); or
 - (2) Function as operators in radio or television stations (47 U.S.C. 303(1)).

4. OBTAINING EX-IM BANK'S COUNTRY LIMITATION SCHEDULE

The Country Limitation Schedule (CLS) is made available by Ex-ImBank and is updated as needed or annually. A current schedule can be obtained via the internet @ <http://www/exim.gov/country/country.htm>.

APPENDIX 2

DEFINITIONS

For purposes of this SOP, the following definitions apply. Terms that are not defined below but are defined in CERCLA, 13 CFR or 40 CFR shall have the meaning provided in CERCLA, 13 CFR or 40 CFR.

“Acquisition” or “Acquisition Date” means the date on which a Person acquires title to the Property.

“Adjoining Properties” means any real property or properties the border of which is (are) shared in part or in whole with that of the Property, or that would be shared in part or in whole with that of the Property but for a street, road, or other public thoroughfare separating the properties (See 40 CFR § 312.20).

“All Appropriate Inquiries” (“AAI”) means the standards and practices set forth in 40 CFR § 312.20.

“ASTM” refers to ASTM International. www.astm.org

“At”, whether capitalized or not, when used with respect to the Property or Adjoining Properties, means "at, on, in, into, under, above, from or about."

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.

“Contamination” means the presence of any Hazardous Substance at or affecting the Property, including any Hazardous Substances that have migrated to or from the Property, in such quantities or under such conditions as to render the Property or the operations conducted thereon subject to, or potentially subject to, a directive or order from a Governmental Entity.

“Engineering Control” means a device or structure constructed at the Property to prevent people from coming into contact with Contamination or to prevent mobile Contamination such as groundwater Contamination from moving off site. Examples include asphalt or concrete caps, fences, extraction wells, trenches and subsurface barrier walls.

“Environmental Investigation” refers to the process of assessing the environmental conditions at a Property. For example, an Environmental Investigation may include one or more of the following: an Environmental Questionnaire, Records Search with Risk Assessment, Phase I Environmental Site Assessment (Phase I ESA) or Phase II Environmental Site Assessment (Phase II ESA).

"Environmental Investigation Report" (or the "Report") means the written account of the Environmental Investigation of the Property prepared by the Person who conducted the Environmental Investigation.

"Environmental Laws" means any and all applicable federal, state, tribal and local statutes, laws, rules, regulations, ordinances, codes, judicial or administrative orders, consent decrees, judgments, or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards or otherwise relating to protection of the environment, health and safety.

"Environmental Professional" means a person who meets the requirements set forth in 40 CFR § 312.10(b). Further, SBA requires that an Environmental Professional be impartial and maintain a minimum coverage of one million dollars per occurrence in errors and omissions insurance.

"Environmental Questionnaire" means the questionnaire used by a Lender to determine the likelihood that Contamination may be present at Property offered to secure an SBA guaranteed loan. Environmental Questionnaires must be completed or overseen by a Lender that has made at least one site visit to the Property and a good faith effort to conduct an interview with the current owner or operator of the site. An Environmental Questionnaire may be considered if it was completed up to one year prior to submission.

Prudent lending practices dictate that an Environmental Questionnaire must, at a minimum, inquire into the following areas:

- Past or present uses of the Property and Adjoining Properties, with particular attention paid to those uses by environmentally sensitive industries;
- Past or present identification of any Hazardous Substances at the Property and Adjoining Properties;
- Storage, generation, treatment, emission or disposal of Hazardous Substances at the Property and Adjoining Properties;
- Possession of permits to use, store, generate, dispose, treat, emit or dispose of Hazardous Substances by businesses operating at the Property and Adjoining Properties;
- Evidence of Contamination at the Property and Adjoining Properties;
- Potential sources of Contamination¹ at the Property and Adjoining Properties;
- Knowledge on the part of the borrower, seller or Lender of any past evidence of Contamination or sources of Contamination at the Property and Adjoining Properties;

¹ Sources of Contamination may include, but are not limited to, the following: (1) damaged or discarded automotive or industrial batteries; (2) pesticides, paints or other chemicals stored in individual containers greater than 5 gallons in volume or 50 gallons in the aggregate; (3) chemicals in industrial drums or sacks; (4) pits, ponds or lagoons used for waste disposal or storage; (5) fill dirt from a contaminated or unknown source; (6); underground or above-ground storage tanks; (7) vent pipes, fill pipes or access ways indicating a fill pipe protruding from the ground; (8) flooring drains or walls within a facility that are stained by substances other than water and/or are emitting noxious odors; (9) clarifiers, pits or sumps; (10) dry wells

- Knowledge on the part of the borrower, seller or Lender of any past, threatened or pending lawsuits or administrative proceedings concerning a Release or threatened Release at the Property and Adjoining Properties;
 - Existence of any regulatory actions by any Governmental Entity for environmental conditions at the Property and Adjoining Properties;
 - Identification of any previously performed environmental risk studies environmental documents pertaining to the Property (attach copies); and
 - Presence of lead paint, asbestos, or Polychlorinated Biphenyls (“PCBs”) at the Property.
- "Governmental Entity"** means any federal, state, commonwealth, tribal or local government branch, authority, district, agency, court, tribunal, department, officer, official, board, commission or other instrumentality that exercises any form of jurisdiction or authority under any Environmental Law.*

"Hazardous Substance" means and includes any substance, material or waste regulated by CERCLA or any other Environmental Law, and specifically includes petroleum products.

"Institutional Control" means a legal or administrative action or requirement imposed on the Property to minimize the potential for human exposure to Contamination or to protect the integrity of Remediation. Examples include deed notices, deed restrictions, and long-term site monitoring or site security requirements.

"Lender" refers to banks, non-bank lenders, credit unions, certified development companies, and any other entities that participate as a lender in SBA programs. The term Lender does not include the Third Party Lender on a 504 loan.

"Person" means an individual, firm, corporation, limited liability company, limited liability partnership, association, partnership, consortium, joint venture, commercial entity, tribe or trust, public, governmental or interstate body, agency or instrumentality.

"Phase I Environmental Site Assessment" (“**Phase I ESA**”) means an AAI compliant Phase I ESA conducted by an Environmental Professional in accordance with the most recently adopted standard for a Phase I ESA established by ASTM International, currently ASTM E1527-05.

A Phase I ESA must contain an opinion by the Environmental Professional as to whether the inquiry has identified conditions indicative of Releases or threatened Releases at the Property. *Additionally*, SBA requires that all Phase I ESAs contain a conclusion by the Environmental Professional that performs the assessment that either: (1) the risk of Contamination at the Property is so minimal that no further investigation is warranted; or (2) there is risk sufficient to warrant additional investigation. Alternatively, the Environmental Professional may include a similar statement to this effect. If further investigation is warranted, the Environmental Professional should provide a detailed description of the recommendation.

All Phase I ESAs must be performed within the Environmental Protection Agency’s AAI regulatory time frames. A Phase I ESA may be relied upon if it was completed less than 180

days prior to the Acquisition Date. A Phase I ESA performed within one year of the Acquisition Date may be updated by an Environmental Professional if the following requirements are met:

- The Phase I ESA was prepared as part of a previous All Appropriate Inquiries investigation of the Property; and
- Components of the previously conducted Phase I ESA are conducted or updated within 180 days prior to the Acquisition Date of the Property, e.g., the interviews, visual inspections, record reviews, environmental lien search and the Environmental Professional's declaration. (See 40 CFR § 312.20 for the specific requirements for updating a Phase I ESA.)

"Phase II Environmental Site Assessment" ("Phase II ESA") means an Environmental Investigation, which at a minimum, is conducted by an Environmental Professional in accordance with the most recently adopted standard for a Phase II ESA process established by ASTM International, currently ASTM E1903-97 (2002).

"Property" means any interest in commercial real estate upon which a security interest such as a mortgage, deed of trust, or leasehold deed of trust is required as collateral for a loan or debenture.

"Records Search with Risk Assessment" means an environmental records search and an assessment of risk that includes (1) a search of the databases identified at 40 CFR § 312.26; (2) a search of historical use records of the Property; (3) a search of historical use records of the adjoining properties; and (4) a risk assessment by the company that conducted the records search (or if preferred by Lender, by an Environmental Professional) that concludes that the Property is either "high risk" or "low risk" for Contamination.

"Release" means the presence of or any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance into the environment including the abandonment or discarding of barrels, drums, tanks, and similar receptacles and containers, containing Hazardous Substances.

"Reliance Letter" means SBA's standard Reliance Letter pertaining to Environmental Investigation Reports, a copy of which is located in Appendix 7.

"Remediation" or "Remedial Action" and their derivatives (such as **"Remediate"**) means and includes any clean-up, corrective action or monitoring required to comply with applicable Environmental Laws including all actions within the definition of "removal" and "remedial" actions as those terms are defined in applicable Environmental Laws.

"SBA Environmental Indemnification Agreement" or "SBA Indemnification Agreement" means SBA's standard environmental indemnification agreement, a copy of which is located in Appendix 7.

"Transaction Screen" means an Environmental Investigation pursuant to the most recently adopted standard practice for limited environmental due diligence established by ASTM

International, currently ASTM E1528-06. The basic elements of a Transaction Screen include: (1) an interview with the owner or operator of the Property; (2) a visit to the Property; (3) completion of an environmental questionnaire, and (4) a review of government records and historical sources. *Additionally*, SBA requires that an Environmental Professional conduct the site reconnaissance and conclude either (a) the risk of contamination at the site is so minimal that no further investigation is warranted; or (b) there is risk sufficient to warrant additional investigation. Alternatively, the Environmental Professional may include a similar statement to this effect. If further investigation is warranted, the Environmental Professional should provide a detailed description of the recommendation. A Transaction Screen may be considered if it was completed up to one year prior to submission.

APPENDIX 3

[Letterhead of Environmental Professional Company]

RELIANCE LETTER

[Date]

To: [Lender/CDC Name and Address] (“Lender”)

and

U.S. Small Business Administration (“SBA”)

Re: Borrower Name:
Project Address (“Property”):
Environmental Investigation Report Number(s):

Dear Lender and SBA:

[Name of Environmental Professional] (“Environmental Professional”) meets the definition of an Environmental Professional as defined by 40 C.F.R. § 312.10(b) and has performed the following “Environmental Investigation(s)” (check all that apply):

____ A Transaction Screen of the Property dated _____, 20____, conducted in accordance with ASTM International’s most recent standard, currently ASTM E1528-06;

____ An Phase I Environmental Site Assessment of the Property dated _____, 20____, conducted in accordance with ASTM International’s most recent standard, currently ASTM E1527-05. In addition, the Environmental Professional has performed the “additional inquiries” set forth at 40 C.F.R. § 312.22;

____ A Phase II Environmental Site Assessment of the Property dated _____, 20____, conducted in accordance with ASTM International’s most recent standard, currently ASTM E1903-97 (2002).

Environmental Professional understands that the Property may serve as collateral for an SBA guaranteed loan, a condition for which is an Environmental Investigation of the Property by an Environmental Professional.

Environmental Professional authorizes Lender and SBA to use and rely upon the Environmental Investigation. Further, Environmental Professional authorizes Lender and SBA to release a copy of the Environmental Investigation to the borrower.

Environmental Professional certifies that it has errors and omissions liability insurance with a minimum coverage of \$1,000,000 per occurrence, that the policy includes coverage for third-party reliance and that evidence of this insurance is attached. As to the Lender and SBA, Environmental Professional specifically waives any limitations on liability up to the amount of insurance coverage that may be set forth in the engagement letter, contract with the client or any other agreement, and further waives any right to indemnification by the Lender and SBA.

Environmental Professional certifies (1) the Environmental Professional is independent of and not a representative, nor an employee or affiliate of seller, Lender or any person in which seller or Lender has an ownership interest; and (2) the Environmental Professional has not been unduly influenced by any person with regard to the preparation of the Environmental Investigation or the contents thereof.

The undersigned acknowledges and agrees that intentionally falsifying or concealing any material fact with regard to the subject matter of this letter or the Environmental Investigations may, in addition to other penalties, result in prosecution under applicable laws including 18 U.S.C. § 1001.

Authorized Representative of Environmental Professional

Printed Name:

Title:

Enclosure: Evidence of Insurance

APPENDIX 4

NAICS CODES OF ENVIRONMENTALLY SENSITIVE INDUSTRIES

How to determine if an industry is included on this list:

- A 3 digit NAICS code includes all industries beginning with those 3 digits.
- A 4 digit NAICS code includes all industries beginning with those 4 digits.
- A 5 digit NAICS code includes all industries beginning with those 5 digits.
- A 6 digit NAICS code includes only that industry under that industrial code.

- 111 CROP PRODUCTION
- 112 ANIMAL PRODUCTION
- 113 FORRESTRY AND LOGGING
- 211 OIL & GAS EXTRACTION
- 212 MINING (EXCEPT OIL & GAS)
- 213 SUPPORT ACTIVITIES FOR MINING
- 237 HEAVY & CIVIL ENGINEERING CONSTRUCTION
- 311 FOOD MANUFACTURING
- 312 BEVERAGE & TOBACCO PRODUCT MANUFACTURING
- 313 TEXTILE MILLS
- 314 TEXTILE PRODUCT MILLS
- 315 APPAREL MANUFACTURING
- 316 LEATHER & ALLIED PRODUCT MANUFACTURING
- 321 WOOD PRODUCT MANUFACTURING
- 322 PAPER MANUFACTURING
- 323 PRINTING & RELATED SUPPORT ACTIVITIES
- 324 PETROLEUM & COAL PRODUCTS MANUFACTURING
- 325 CHEMICAL MANUFACTURING
- 326 PLASTICS & RUBBER PRODUCTS MANUFACTURING
- 327 NONMETALLIC MINERAL PRODUCTS MANUFACTURING
- 331 PRIMARY METAL MANUFACTURING
- 332 FABRICATED METAL PRODUCT MANUFACTURING
- 333 MACHINERY MANUFACTURING
- 334 COMPUTER & ELECTRONIC PRODUCT MANUFACTURING
- 335 ELECTRICAL EQUIPMENT, APPLIANCE & COMPONENT MANUFACTURING
- 336 TRANSPORTATION EQUIPMENT MANUFACTURING
- 337 FURNITURE & RELATED MANUFACTURING
- 339 MISCELLANEOUS MANUFACTURING
- 441 MOTOR VEHICLE & PARTS DEALERS
- 42311 AUTOMOBILE & OTHER MOTOR VEHICLE MERCHANT WHOLESALERS
- 42314 MOTOR VEHICLE PARTS (USED) MERCHANT WHOLESALERS
- 42345 MEDICAL, DENTAL, & HOSPIITAL EQUIPMENT & SUPPLIES MERCHANT WHOLESALERS
- 4235 METAL & MINERAL MERCHANT WHOLESALER
- 42381 CONSTRUCTION & MINING, MACHINERY & EQUIPMENT MERCHANT WHOLESALERS
- 42382 FARM & GARDEN MACHINERY & EQUIPMENT MERCHANT WHOLESALERS

42383 INDUSTRIAL MACHINERY & EQUIPMENT MERCHANT WHOLESALERS
42393 RECYCLABLE MATERIAL MERCHANT WHOLESALER
4246 CHEMICAL & ALLIED PRODUCTS MERCHANT WHOLESALERS
4247 PETROLEUM & PETROLEUM PRODUCTS MERCHANT WHOLESALERS
441 MOTOR VEHICLE AND PARTS DEALERS
447 GASOLINE STATIONS
45431 FUEL DEALERS
481 AIR TRANSPORTATION
482 RAIL TRANSPORTATION
486 PIPELINE TRANSPORTATION
48841 MOTOR VEHICLE TOWING
53212 TRUCK, UTILITY TRAILER, AND RV (RECREATIONAL VEHICLE) RENTAL & LEASING
53241 CONSTRUCTION, TRANSPORTATION, MINING & FORESTRY MACHINERY & EQUIPMENT RENTAL & LEASING
53249 OTHER COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT RENTAL & LEASING
54138 TESTING LABORATORIES
56171 EXTERMINATING & PEST CONTROL
562 WASTE MANAGEMENT & REMEDIATION SERVICES
62149 OTHER OUTPATIENT CARE CENTERS
6215 MEDICAL & DIAGNOSTIC CENTERS
6221 GENERAL MEDICAL & SURGICAL HOSPITALS
71391 GOLF COURSES & COUNTRY CLUBS
71292 SKIING FACILITIES
71393 MARINAS
7212 RV (RECREATIONAL VEHICLES) PARKS & RECREATIONAL CAMPS
8111 AUTOMOTIVE REPAIR & MAINTENANCE
8112 ELECTRONIC & PRECISION EQUIPMENT REPAIR & MAINTAINANCE
8113 COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT REPAIR & MAINTAINENCE
8122 DEATH CARE SERVICES
8123 LAUNDRY & DRYCLEANING SERVICES
812921PHOTOFINISHING LABORATORIES

***A PHASE I SHOULD ALWAYS BE OBTAINED IF THE BUSINESS SELLS, SUPPLIES OR DISPENSES FUEL, GAS, HEATING OIL OR LIQUIFIED PETROLEUM (LP) GAS, EVEN IF THE NAICS CODE FOR THE BUSINESS IS NOT IDENTIFIED ON THIS LIST OF ENVIRONMENTALLY SENSITIVE INDUSTRIES ***

A COMPLETE LIST OF INDUSTRIES AND CORRESPONDING NAICS CODES IS AVAILABLE ONLINE AT <http://www.census.gov/epcd/naics02/naicod02.txt>

APPENDIX 5

REQUIREMENTS PERTAINING TO GAS STATION LOANS

The following requirements apply to all loans secured by real or personal property currently or formerly associated with the operation of a gas station ("Gas Station Loans"). No exceptions are allowed.

1. Relevant Document Review. All Relevant Documents must be reviewed to determine whether any provisions could create one or more of the unacceptable results listed below. For purposes of this paragraph, the term "Relevant Documents" includes but is not limited to (a) the report containing the preliminary results of a search of the title to the Property including the documents listed in the abstract of title (hereafter the "Title Report"), (b) the Small Business Concern's ("SBC's") oil company supply agreement, if any, and (c) if the loan is to purchase the Property, all purchase and sale documents including the exhibits, addendums, amendments, etc., (hereafter the "Purchase and Sale Documents").

Examples of Relevant Documents. While titles vary, examples of Relevant Documents that must be reviewed include: the Real Estate Sale Agreement; Terms and Conditions of Sale Contract; Escrow Instructions; Escrow Agreement; Franchise Agreement; Contract Dealer Gasoline Agreement; Branded Reseller Agreement; Memorandum of Gasoline Agreement for Dealer-Owner, Franchisee-Operated Facility; Branded Gas Sales Restriction and Covenant; Special Warranty Deed; Bill of Sale; Use Restriction Addendum; Right of First Refusal Agreement; Repurchase Option; Subordination Agreement; Environmental Release; Environmental Declaration; Environmental Matters, Remediation and Indemnification Addendum; and Site Access Agreement.

Subordination is not sufficient to overcome the unacceptable results of objectionable provisions that are of record or to be recorded. This is because to clear the title, SBA's lien would need to be foreclosed and doing so would prevent the SBC from selling the gas station as a going concern and significantly diminish SBA's recovery in the event of default.

Unacceptable Results

- a. Affiliation. An SBC affiliated with a non-SBC is not eligible for SBA financing. See 13 CFR § 120.100(d). All Relevant Documents must be reviewed to determine whether based on the totality of the circumstances the SBC is affiliated with an oil company or any other Person.
- b. Institutional or Engineering Controls That Could Significantly Impair the Collateral Value and Marketability of the Property or SBC's Repayment Ability. Lender must ensure that there are no Institutional or Engineering Controls in place or required after closing that could significantly impair the collateral value and marketability of the Property or the SBC's repayment ability. This requirement applies even if the collateral consists solely of personal property, such as buildings and trade fixtures located on leased land, since they would ordinarily be sold in-place in the event of foreclosure, e.g.,

a carwash, mini-mart, or fuel pumping equipment. Examples of unacceptable Institutional and Engineering Controls include:

- (1) Deed restrictions, covenants, easements, reversionary interests and other provisions that restrict the use of the Property for the benefit of the seller, an oil company, or any other Person such as those that restrict the brand of fuel that can be sold on the Property or impose liquidated damages in the event the SBC or a subsequent owner sells the Property to any Person other than a specific oil company; and
 - (2) Provisions that require the SBC or subsequent owners to install costly Engineering Controls prior to constructing a building, remodeling or otherwise improving the Property.
- c. Alteration of SBA or Lender's Legal Rights, Remedies or Responsibilities. Lender must ensure that there are no provisions in the Relevant Documents that:
- (1) Alter SBA or Lender's legal rights or remedies. These include, for example, provisions that require (a) subsequent owners of the Property to waive their legal rights and remedies or release all claims against the seller, an oil company or other Person; or (b) subordination of SBA's lien.
 - (2) Impose additional duties on SBA or Lender. These include, for example, provisions that (a) require subsequent owners of the Property to indemnify the seller, an oil company or any other Person; or (b) require SBA or Lender to provide the seller, an oil company or any other Person with special notice of default or foreclosure, or a forbearance period before initiating liquidation activities.
2. Environmental Investigation. The following requirements apply to all Gas Station Loans regardless of whether the SBC owns, is purchasing, or leasing the real property upon which the gas station is located:
- a. Phase I ESA. The Environmental Investigations for all Gas Station Loans must begin with a Phase I ESA conducted by an independent Environmental Professional who executes the Reliance Letter in Appendix 7. The Phase I ESA must include (1) an analysis of all relevant environmental records concerning the Property and Adjoining Properties including any records provided by the seller if the loan is to purchase the Property; and (2) the results of any other investigation recommended by the Environmental Professional such as soil and water testing needed to establish the nature and extent of any Contamination and the cost of Remediation. The Environmental Investigation Report may not contain any data gaps with regard to environmental cleanup liens or Institutional and Engineering Controls. If the Phase I ESA indicates soil or groundwater contamination, a Phase II ESA must be obtained.
 - b. Equipment Testing. Lender must ensure that all underground storage tanks (USTs), lines and related equipment are tested and provide SBA with the results. The testing must at a minimum:

- Be conducted within six months prior to closing;
- Be conducted by an independent contractor;
- Use a methodology acceptable to the Government Entity with oversight authority; and
- Include tightness tests of all USTs and lines; functional testing of any vapor recovery (Stage II) systems and monitoring systems; and hydrostatic testing of all containment devices.

All leaking or otherwise defective equipment, systems, containment devices, etc., must be replaced or repaired prior to disbursement. Provisions in Purchase and Sale Documents that allow the seller to provide the SBC with a credit towards the purchase price, pay a lump sum, or otherwise avoid repairing defective equipment, are not acceptable.

- c. Additional Duties If Environmental Investigation Reveals Contamination. If the Environmental Investigation Report indicates that the Property is Contaminated, Lender can either (1) decline the loan, or (2) in addition to the requirements of this paragraph, follow those set forth in paragraph “g.” of paragraph 7 entitled, "Approval and Disbursement of loans when there is Contamination or Remediation at the Property."

3. SBA Indemnification Agreement. SBA's Indemnification Agreement, a copy of which is located in Appendix 7, is required for all Gas Station Loans. SBA's Indemnification Agreement:

- Cannot be modified;
- Is required even if the Property is "clean;"
- Must be executed by the SBC;
- Must be executed by the seller, if the loan is to purchase the Property;
- Must have a copy of the Environmental Investigation Report attached to it; and
- Must be properly recorded in the memorandum format in Appendix 7.

In addition, any oil company or other Person with a right to indemnification by subsequent owners of the Property must either execute the SBA Indemnification Agreement or a similar document in which they waive all known and unknown rights and release all claims and causes of action whether now or hereafter in existence against SBA and Lender related to Contamination at the Property including the right to indemnification in the event SBA or Lender acquires title to the Property.

Lenders, other than PLP and PCLP CDCs and Express Lenders, must submit all waiver and releases as well as SBA Indemnification Agreements to the SBA center processing the loan for review and approval by SBA field counsel, along with a copy of (1) the Title Report, (2) the Purchase and Sale Documents, if any, and (3) Lender's financial analysis of the proposed indemnitor(s). (Note that PCLP CDCs must submit the finalized SBA Environmental Indemnification Agreement to the SBA for review and approval prior to a request that SBA fund the loan).

4. Environmental Insurance. To the extent reasonably available and affordable, the SBC must carry Environmental Pollution Liability Insurance or Environmental Impairment Liability Insurance that, at a minimum covers leaking USTs and piping systems and Remediation costs, including excavation of contaminated soil, in an amount not less than \$500,000 combined liability per incident.

UST Reimbursement Funds. Borrower must register for all federal, state or local petroleum storage tank fund programs that Borrower is eligible to participate in, which permit full or partial reimbursement of costs incurred for the assessment or Remediation of Contamination, even if such program is voluntary.

APPENDIX 6

SBA ENVIRONMENTAL INDEMNIFICATION AGREEMENT

SBA Loan No: _____

This SBA Environmental Indemnification Agreement ("Agreement") effective _____, is executed by _____ ("Borrower"), _____ [insert name(s) of indemnitor(s) not obligated on the Loan] ("Third Party Indemnitor"), (Borrower and Third Party Indemnitor collectively referred to as "Indemnitors"), _____ [Insert name of Certified Development Company or 7(a) Lender] ("Lender") and the U.S. Small Business Administration ("SBA").

The parties to this Agreement mutually agree as follows:

I. RECITALS

A. Borrower has applied for an SBA loan from Lender in the principal amount of \$ _____ [insert full loan amount] (the "Loan") to be evidenced by a promissory note (the "Note") and secured by a "Mortgage" encumbering certain real and personal property (collectively, the "Property") described in the "Loan Documents" including the land located at _____ [insert address] and described in Exhibit "A" attached hereto.

B. SBA and Lender are not willing to make the Loan without the execution and delivery of this Agreement.

II. DEFINITIONS

For purposes of this Agreement: (1) whenever the singular form of a word is used it includes the plural, and whenever the plural form of a word is used it includes the singular; (2) the word "or" has the inclusive meaning represented by the phrase "and/or"; (3) terms used in this Agreement that are not defined below but are defined in either 13 CFR, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601-9875 ("CERCLA") or 40 CFR, shall have the meaning provided in 13 CFR, CERCLA or 40 CFR; and (4) unless the context otherwise clearly requires, the following definitions apply:

A. **"Adjoining Properties" means any real property or properties the border of which is (are) shared in part or in whole with that of the Property, or that would be shared in part or in whole with that of the Property but for a street, road, or other public thoroughfare separating the properties.**

B. **"At", whether capitalized or not, when used with respect to the Property or Adjoining Properties, means "at, on, in, into, under, above, from or about."**

C. **"Borrower" means the Person(s) identified as the Borrower in the Loan Documents and the first paragraph of this Agreement and includes any successor in interest by virtue of assumption, merger, acquisition, transfer, assignment or otherwise.**

D. **"Contamination" means the presence of any Hazardous Substance at or affecting the Property, including any Hazardous Substances that have migrated to or from the Property, provided such Hazardous Substances are present in such concentrations or under such conditions as to create a violation, liability or duty to conduct a response under any Environmental Law.**

E. **"Engineering Control" means a device or structure constructed at the Property to prevent people from coming into contact with Contamination or to prevent mobile Contamination such as groundwater Contamination from moving off site. Examples include asphalt or concrete caps, fences, extraction wells, trenches and subsurface barrier walls.**

F. **"Environmental Activity" means any use, storage, holding, existence, Release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance.**

G. **"Environmental Claim" means any written complaint, summons, action, citation, notice of violation, directive, order, claim, litigation, investigation, judicial or administrative proceeding or action, judgment, lien, demand, letter or communication from any Person alleging non-compliance with any Environmental Law, Institutional Control or Engineering Control, relating to any actual or threatened Release, or arising from an Environmental Activity.**

H. **"Environmental Investigation" means an investigation of the Property that: (1) is conducted by an independent Environmental Professional; (2) begins with a Phase I Site Assessment in accordance with ASTM E1527-05 that includes a review of all relevant and material environmental records concerning the Property and Adjoining Properties in the actual or constructive possession, custody or control of the Borrower including, if any, those provided by the seller; and (3) includes any other investigation recommended by the Environmental Professional conducting the Phase I to determine and document the nature and extent of any Contamination and the cost to remediate it such as record reviews, soil and water testing, or underground storage tank inspections.**

I. **"Environmental Investigation Report" (or the "Report") means the written account of the Environmental Investigation of the Property attached as Exhibit "B", which: (1) is signed by the Environmental Professional who conducted the Environmental**

Investigation; (2) includes a reliance letter that specifically grants SBA and Lender the right to rely on the Report; and (3) includes a detailed list of all relevant and material environmental records utilized by the Environmental Professional to establish the nature and extent of Contamination including those pertaining to past or on-going Remediation at the Property or Adjoining Properties.

J. "Environmental Laws" means any and all applicable federal, state tribal and local statutes, laws, rules, regulations, ordinances, codes, principles of common law, judicial orders, administrative orders, consent decrees, judgments, permits, licenses or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, land use matters or the presence, use, generation, treatment, storage, disposal, Release or threatened Release, transport or handling of Hazardous Substances.

K. "Environmental Professional" means a person who meets the requirements set forth in 40 CFR Section 312.10(a).

L. "Governmental Entity" means any federal, state, commonwealth, tribal or local government branch, authority, district, agency, court, tribunal, department, officer, official, board, commission or other instrumentality that exercises any form of jurisdiction or authority under any Environmental Law.

M. "Hazardous Substance" means and includes any substance, material or waste regulated by CERCLA or any other Environmental Law, and specifically includes petroleum products, radioactive materials, asbestos, polychlorinated biphenyls, and radon gas.

N. "Including", and its derivatives such as "include" and "includes", whether or not capitalized, means including without limitation.

O. "Indemnified Parties" means and includes SBA and Lender.

P. "Institutional Control" means a legal or administrative action or requirement imposed on the Property to minimize the potential for human exposure to Contamination or to protect the integrity of a Remedy. Examples include deed notices, deed restrictions, and long-term site monitoring or site security requirements.

Q. "Lender" means the Person identified as the Lender in the first paragraph of this Agreement and any successor in interest by virtue of merger, acquisition, transfer, assignment or otherwise including any Person acquiring the Property or the Loan from Lender or SBA.

R. "Loan Documents" means and includes the Note, the Mortgage and any other document regarding the Loan. This Agreement is one of the Loan Documents, but it is not secured by the Mortgage.

S. **"Mortgage"** means the Mortgage identified in the Recitals section of this Agreement and includes all liens that secure the Loan regardless of their method of creation including those created by recording a mortgage, deed of trust, assignment of rents, collateral assignment of purchaser's interest in land sale contract or a Uniform Commercial Code financing statement. The Mortgage secures the Loan and all extensions, modifications, replacements, renewals, substitutions or consolidations thereof, including increases to the principal balance of the Note resulting from payment of expenses incurred to enforce the terms of the Note or other Loan Documents, or to preserve or dispose of the collateral securing the Loan, such as payments for property taxes, prior liens, insurance, appraisals, and attorney's fees and costs.

T. **"Mortgage Release Date"** means the earlier of the following two-dates: (1) the date on which the indebtedness and obligations secured by the Mortgage have been fully paid and performed and the Mortgage has been released of record; or (2) the date on which the Mortgage is foreclosed, or a conveyance by a deed in lieu of foreclosure is effective, and possession of the Property has been given to and accepted by a Person other than Lender or SBA free of occupancy, redemption rights or any other claim by Borrower or guarantors of the Loan.

U. **"Person"** means an individual, firm, corporation, limited liability company, limited liability partnership, association, partnership, joint venture, commercial entity, tribe, trust, or Government Entity.

V. **"Property"** means all or any portion of the real and personal property identified in the Recitals section of this Agreement, including all improvements, fixtures and equipment, soil, ground water, surface water, air, waterways, and water bodies associated with the real property.

W. **"Purchase and Sale Documents"** means and includes every document memorializing each agreement related to Borrower's acquisition of the Property including the purchase and sale agreement and amendments thereto, and all related documents such as supply agreements, deeds, environmental declarations, rights of first refusal, options, etc.

X. **"Release"**, when used with respect to the Property or Adjoining Properties, means the presence of or any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance into the environment including the abandonment or discarding of barrels, drums, tanks, and similar receptacles and containers, containing Hazardous Substances.

Y. **"Remediation"** or **"Remedial Action"** and their derivatives (such as "Remediate") means and includes any investigation, clean-up, corrective action or monitoring required to comply with applicable Environmental Laws including all actions within the definition of "removal" and "remedial" actions as those terms are defined in applicable Environmental Laws.

Z. "Third Party Indemnitor" means, individually and collectively, the Person(s) identified as the Third Party Indemnitor in the first paragraph of this Agreement and includes any successor in interest by virtue of merger, acquisition, transfer, assignment or otherwise.

III. REPRESENTATIONS AND WARRANTIES

A. Full Disclosure of Property Purchase and Sale Agreement. If the Loan is to enable Borrower to acquire the Property, Borrower represents and warrants that all of the relevant and material terms and conditions of the purchase and sale of the Property have been disclosed to Lender and that Borrower has provided Lender with an accurate and complete copy of the Purchase and Sale Documents.

B. Control of Property. If the Loan is to enable Borrower to acquire the Property from Third Party Indemnitor, Third Party Indemnitor represents and warrants that the Property is free from all encumbrances that could enable Third Party Indemnitor or its affiliates to control the use or ownership of the Property e.g., rights of first refusal; options to purchase or repurchase the Property; deed restrictions; or restrictive covenants such as those that limit the brand of fuel that can be sold on the Property.

C. Condition of Equipment. If the loan is to enable the Borrower to acquire the Property associated with the operation of a gas station, Indemnitors warrant that all fuel dispensing equipment located on the Property has been tested by an independent contractor within the preceding six months and that all leaking or otherwise defective equipment, systems, containment devices, etc., have been or will be replaced or repaired prior to closing.

D. Disclosure of Environmental Information.

1. Full Disclosure by Third Party Indemnitor. Third Party Indemnitor represents and warrants that Third Party Indemnitor has provided Borrower with an accurate and complete copy of each record pertaining to the Property, (regardless of origin or method by which it was produced, recorded or preserved), in Third Party Indemnitor's actual or constructive possession, custody or control that pertain to the Property including those that materially relates to: (1) Contamination; (2) Hazardous Substances at the Adjoining Properties; or (3) compliance with any Environmental Law, Institutional Control or Engineering Control concerning the Property.

2. Full Disclosure by Borrower. Borrower represents and warrants that Borrower provided the Environmental Professional who signed the Report with an accurate and complete copy of each record, (regardless of origin or method by which it was produced, recorded or preserved and including all records provided to Borrower by Third Party Indemnitor), in Borrower's actual or constructive possession, custody or control that materially relates to: (1) Contamination; (2) Hazardous Substances at the Adjoining Properties; (3) compliance with any Environmental Law, Institutional Control or Engineering

Control concerning the Property; or (4) any other matter addressed by this Agreement.

E. Environmental Investigation of Property.

1. Conducted by Independent Environmental Professional. Lender and Borrower represent and warrant to SBA that an independent Environmental Professional has conducted an Environmental Investigation of the Property and that a complete and accurate copy of the Environmental Investigation Report is attached hereto as Exhibit "B".

a. Lender's Warranty. Lender represents and warrants to SBA that: (1) the Environmental Professional who prepared the Report is not a representative, employee, associate or affiliate of, Lender or any Person in which Lender has an ownership interest; and (2) no influence has been exerted over the Environmental Professional with regard to the preparation of the Report or the contents thereof by Lender or by any of Lender's attorneys, agents, employees, associates or affiliates.

b. Indemnitors' Warranty. Each Indemnitor independently represents and warrants to SBA that: (1) the Environmental Professional who prepared the Report is not a representative, employee, associate or affiliate of, Indemnitor or any Person in which Indemnitor has an ownership interest; and (2) no influence has been exerted over the Environmental Professional with regard to the preparation of the Report or the contents thereof by Indemnitor or by any of Indemnitor's attorneys, agents, employees, associates or affiliates.

2. Report Establishes Environmental Baseline of Property. Lender and each Indemnitor independently represent and warrant to SBA that they have no knowledge of any facts or circumstances that could result in the Report containing incomplete or inaccurate information.

F. Execution and Performance of Agreement. Each Indemnitor independently represents and warrants to SBA and Lender that:

1. Authority and Financial Capability. Indemnitor is either an individual or a duly organized, validly existing business entity in good standing and duly qualified to do business in each jurisdiction where the conduct of its business requires such qualification; and Indemnitor has and will maintain full power, financial capability and authority to enter into this Agreement, and to perform Indemnitor's obligations hereunder.

2. Validity of Agreement. This Agreement is a legal, valid, and binding obligation of Indemnitor enforceable according to its terms.

3. Authority to Sign. Indemnitor has proper authority to execute this Agreement as evidenced by, and has if required, provided Lender with a complete and accurate copy of a valid, certified resolution or other evidence confirming such authority.

IV. COVENANTS

In addition to their obligations and liabilities under applicable law, Indemnitors covenant and agree as follows:

A. Notice to Lender. Borrower shall immediately notify Lender upon becoming aware of any of the following: (1) Any Release on the Property that must be reported to any Governmental Entity under applicable Environmental Laws; (2) Any Contamination, or imminent threat of Contamination, or any violation of Environmental Laws in connection with the Property or operations conducted thereon; (3) Any order, notice of violation, fine or penalty or similar action by any Governmental Entity relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted thereon; (4) Any expiration or revocation of any required environmental permit, registration or authorization with regard to the Property or the operations conducted thereon; (5) Any Environmental Claim relating to the Property or the operations conducted thereon; or (6) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent lender cause to be concerned that the value of their security interest in the Property may be reduced or threatened or that may impair or threaten to impair Borrower's ability to perform any of Borrower's obligations under this Agreement when such performance is due.

B. Record Retention. Until the Mortgage Release Date, Indemnitors shall retain and make available to SBA and Lender upon request an accurate and complete copy of each record, (regardless of origin or method by which it was produced, recorded or preserved), in Indemnitor's actual or constructive possession, custody or control that materially relates to: (1) Contamination; (2) Hazardous Substances at the Adjoining Properties; (3) compliance with any Environmental Law, Institutional Control or Engineering Control concerning the Property; or (4) any other matter addressed by this Agreement.

C. Use of Property. Borrower shall not allow Hazardous Substances or the occurrence of any Environmental Activity at the Property except as necessary to operate the type of business specified in the Loan Documents.

D. Compliance with Environmental Laws. Borrower shall not cause, commit, permit or allow non-compliance with any Environmental Law, Institutional Control or Engineering Control with respect to the Property and shall obtain, keep in effect and comply with all permits, registrations and authorizations required by Environmental Laws with respect to the Property and operations conducted thereon.

E. Environmental Insurance. Borrower shall include Lender as a loss payee on all environmental insurance policies held by Borrower relating to the Property.

F. UST Reimbursement Funds. If the Property securing the Loan is associated with the operation of a gas station, Borrower shall register for all participate in any available federal, state or local petroleum storage tank fund programs that Borrower is eligible to participate in, which permitting full or partial reimbursement of costs incurred for the assessment or Remediation of Contamination, even if such program is voluntary.

G. Control of Property. Prior to the Mortgage Release Date, Indemnitors shall not record or cause to be recorded any document containing a provision that could enable any Person to control the use or ownership of the Property, such as a right of first refusal; purchase option; repurchase option; deed restriction; or restrictive covenant such as one that limits the brand of fuel that can be sold on the Property.

V. REMEDIATION

A. Corrective, Preventive and Remedial Action. Indemnitors shall, at their own cost and expense, in a manner that is in compliance with all applicable laws, and at times that will not unreasonably interfere with Borrower's use of the Property, promptly undertake, continuously and diligently pursue and complete any and all Remedial Action that is necessary to: (1) Remediate any Contamination; (2) correct non-compliance with any Environmental Law, Institutional Control or Engineering Control concerning the Property; or (3) respond to any threatened or pending Environmental Claim regarding the Property.

B. Limitation on Third Party Indemnitor's Duty to Remediate. If Third Party Indemnitor is the seller or prior owner of the Property, Third Party Indemnitor's duty under this section of the Agreement shall be limited to Remedial Action: (1) necessitated by acts, omissions, events or conditions existing or occurring in connection with the condition, use or occupancy of the Property on or before the date title to the Property is transferred to Borrower under the Purchase and Sale Documents as disclosed in the Environmental Investigation Report; or (2) created or caused by Third Party Indemnitor, (including Third Party Indemnitor's employees, representatives, agents, contractors, or consultants), at any time after the date title to the Property is transferred to Borrower.

C. Remediation Standards. Remediation required under this Agreement shall, at a minimum, meet the applicable, relevant and appropriate requirements and standards in the Environmental Laws ("ARARs") that must be met before the responsible Government Entity will issue a No Further Action letter or the written equivalent thereof.

D. Duration of Responsibility to Remediate. Indemnitors' responsibility for Remediation under this Agreement shall continue until the earlier of: (1) the Mortgage Release Date; or (2) the responsible Governmental Entity issues a No Further Action Letter or equivalent written assurance that the applicable, relevant and appropriate requirements and standards in the Environmental Laws ARARs have been met. Provided, however, that Indemnitors' responsibility for Remediation shall resume if the responsible Governmental Entity thereafter determines that additional Remedial Action is necessary with respect to any Contamination covered by this Agreement.

VI. INDEMNIFICATION

A. SBA and Lender's Right to Indemnification. Except as provided below, upon demand by an Indemnified Party, Indemnitors agree to indemnify and defend (by counsel selected by Indemnitors and reasonably acceptable to SBA and Lender) Indemnified Parties from and against any and all "Environmental Risks." For purposes of this Agreement, "Environmental Risks" means and includes any and all actual or threatened losses, (including loss of use and diminution in value of the Loan or the Property), all direct and indirect costs associated with Remedial Action (including the repair, replacement or restoration of improvements and equipment; and monitoring and other closure requirements imposed by any Governmental Entity), liabilities, demands, claims and causes of action (including those asserted by third parties for personal injury, illness, death, and damage to real and personal property), damages (including natural resource damages, consequential damages and punitive damages), expenses (including experts' and consultants' fees and disbursements), reasonable attorneys' fees and disbursements for in-house and outside counsel (including those incurred at trial, on appeal, or in enforcing this Agreement, and regardless of the outcome), fines, assessments, penalties, forfeitures, judgments, settlements, orders, equitable relief of any kind, suffered, paid, incurred by, or sought from an Indemnified Party by any Person in connection with, in whole or in part, or arising or allegedly

arising, directly or indirectly out of: (1) the inaccuracy or breach of any representation, warranty or covenant contained in this Agreement; (2) the presence, suspected presence, or threat of Contamination; (3) non-compliance with any Environmental Law, Institutional Control or Engineering Control; (4) any Environmental Claim; or (5) the filing or imposition of any environmental lien against the Property.

1. **Limitation on Third Party Indemnitor's Duty to Indemnify.** If Third Party Indemnitor is the seller or a prior owner of the Property, Third Party Indemnitor's duty to indemnify and defend Indemnified Parties shall be limited to Environmental Risks arising from acts, omissions, events or conditions existing or occurring in connection with the condition, use or occupancy of the Property: (1) on or before the date title to the Property is transferred to Borrower; or (2) created or caused by Third Party Indemnitor, (including Third Party Indemnitor's employees, representatives, agents, contractors, or consultants), at any time after the date title to the Property is transferred to Borrower.

2. Duration of Indemnitors' Duty to Indemnify. Indemnitors' duty to indemnify and defend Indemnified Parties shall continue until the earlier of the following dates: (1) the Mortgage Release Date or (2) the date after which all pending and potential causes of action that could be asserted against any or all of the Indemnified Parties arising from Contamination or other matters addressed by this Agreement are finally resolved and satisfied in full, dismissed with prejudice and all appeal rights exhausted, or otherwise barred by the applicable statute of limitation.

B. Demand for Indemnification or Tender of Defense.

1. Procedure. In connection with any demand for indemnification or defense made pursuant to this Agreement, the Indemnified Party servicing the Loan shall notify the responsible Indemnitor(s) in writing as soon as reasonably practical and shall specify, to the best of Indemnified Parties' knowledge, the facts giving rise to the demand for indemnification or the need for legal defense.

2. Amounts Payable. Any amount to be paid to Indemnified Parties by Indemnitors under this Agreement shall be a demand obligation, immediately due and payable, which Indemnitors hereby promise to pay, and shall bear interest at the monetary default interest rate provided for in the Note. Payments under this Agreement shall not reduce Borrower's obligations and liabilities under the Note or other Loan Documents.

3. Subrogation. In the event Indemnitors pay Indemnified Parties any amount under this Agreement, Indemnitors shall be subrogated to any rights of Indemnified Parties relating thereto, provided, however, that such subrogation shall not be in derogation of any rights of Indemnified Parties under this Agreement, and shall not be construed to limit the obligations of Indemnitors hereunder.

VII. RELEASE AND WAIVER

A. Liability Related to Contamination. Each Indemnitor waives all known and unknown rights and releases all claims and causes of action whether now or hereafter in existence that Indemnitor may have against SBA and Lender related to Contamination at the Property including the right, if any, to indemnification in the event SBA or Lender acquires title to the Property.

B. Alteration of SBA or Lender's Legal Rights. If any document has been recorded that could alter SBA or Lender's legal rights, remedies or responsibilities such as provisions requiring lien subordination, special notice of default, or forbearance from initiating liquidation activities; or provisions requiring subsequent Property owners to waive legal rights and remedies, release claims or indemnify another Person, Indemnitors waive the right to enforce such provisions against SBA and Lender.

C. Buyout of Duty to Remediate. If any document gives Third Party Indemnitor the option to pay a lump sum or provide other consideration to Borrower, whether directly or indirectly, in lieu of Remediating the Property, Third Party Indemnitor waives the right to enforce such provision without the prior written consent of SBA and Lender, and Borrower waives the right to receive such consideration without the prior written consent of SBA and Lender.

VIII. SUBORDINATION

A. Priority of Mortgage. As set forth in greater detail in Exhibit "C", any lien to secure the performance of any of Borrower's monetary or non-monetary obligations to Third Party Indemnitor shall be unconditionally subordinate to the Mortgage.

B. Indemnitor's Consent to Subordination. Each Indemnitor independently represents and warrants that: (1) Lender has provided Indemnitor with the opportunity to examine the terms of the Mortgage and Loan Documents; and (2) Indemnitor understands that Lender has no obligation to Third Party Indemnitor to advance any funds under its Mortgage or see to the application of the Mortgage funds, and that any application or use of such funds for purposes other than those provided for in the Loan Documents shall not defeat, in whole or in part, the subordination of Third Party Indemnitor's rights and interests in the Property.

IX. LOAN DEFAULT

In the event of default on the Loan, SBA and Lender's obligation to Third Party Indemnitor shall not extend beyond complying with applicable law regardless of conflicting provisions, if any, in the Purchase and Sale Documents such as those requiring notice of Loan default, notice of Mortgage foreclosure, or forbearance prior to initiating liquidation activities on the Loan.

X. GENERAL PROVISIONS

A. Consideration. Indemnitors acknowledge that: (1) they will receive direct and indirect benefits from the Loan; (2) that SBA and Lender have relied and will rely on the representations, warranties, covenants and agreements herein in closing and funding the Loan; and (3) that the execution and delivery of this Agreement is an essential condition but for which SBA and Lender would not make the Loan.

B. Primary and Unconditional Nature of Obligations. Indemnitors' liability under this Agreement is direct and primary and not that of a guarantor or surety. Unless otherwise specified, the representations, warranties, covenants, agreements and other obligations set forth in this Agreement: (1) are not conditioned on fault or on any other event, occurrence, matter or circumstance; (2) are in addition to, and not in substitution for, any provisions regarding related matters in the Loan Documents; (3) shall not terminate on the Mortgage Release Date or be discharged or satisfied by payment or satisfaction of the Loan or foreclosure of the Mortgage; (4) shall continue in effect after any sale or transfer of the Loan or Property, including transfers pursuant to foreclosure proceedings or in lieu thereof; (5) shall apply regardless of whether or not a Governmental Entity issues an order requiring Remediation, indemnification or any other obligation of Indemnitors under this Agreement; and (6) shall not be affected or impaired by: (a) the voluntary or involuntary liquidation of all or substantially all of any Indemnitor's assets, including liquidation through a receivership, bankruptcy, reorganization or other similar proceedings; (b) SBA or Lender's failure to give any Indemnitor notice of any event or matter under this Agreement, the Loan Documents, or otherwise; (c) any finding or allegation that Lender or SBA is or was an "owner" or "operator" of the Property; (d) any extension of time for performance under any Loan Document; (e) any exculpatory provision in the Note, Mortgage or other Loan Documents limiting SBA or Lender's recourse to the Property or other security, or limiting SBA or Lender's right to a deficiency judgment; (f) the release of Borrower or any other Person from performance or observance of any agreement, covenant, term or condition in the Note, Mortgage, other Loan Documents or this Agreement; (g) the release or substitution in whole or in part of any collateral for the Loan; (h) the determination by a Governmental Entity that a third party is responsible for the Contamination or its Remediation; or (i) any other act or omission of SBA or Lender other than those specially found by a court of law to have arisen out of gross negligence or willful misconduct.

C. Exhibits Incorporated by Reference. All Exhibits hereto are deemed a part of this Agreement, incorporated and made a part of this Agreement, including: (1) Exhibit "A" – Legal Description of Real Property Securing Loan; (2) Exhibit "B" – Environmental Investigation Report; and (3) Exhibit "C" – Memorandum of SBA Environmental Indemnification Agreement.

D. Disclaimer. This Agreement constitutes neither a finding by SBA or Lender, nor knowledge on their part, as to the risks to human health or the environment posed by any Contamination; nor does it constitute a representation by SBA or Lender that the Property is fit for any particular purpose.

E. Headings and Font Style. The headings and font style (including bold lettering) used in this Agreement are for convenience of reference only and shall not be used to define the meaning of any provision.

F. Rights Not Exclusive. SBA and Lender's rights and remedies under this Agreement are in addition to any explicit or implied rights and remedies SBA and Lender may have against Indemnitors or any other Person under the Loan Documents, at law, or in equity.

G. No Waiver; Rights Cumulative. The rights and remedies available to SBA and Lender may be exercised separately or together, and as many times, and in any order that SBA or Lender choose. SBA and Lender may delay or forgo enforcing any of their rights without giving any up. Any waiver, consent or approval under this Agreement must be in writing and signed by all of the parties to be effective.

H. Assignment. Indemnitors shall not assign, transfer or delegate this Agreement or any obligation of Indemnitors hereunder without the prior written consent of SBA and Lender which shall not be unreasonably withheld. Any attempted assignment, transfer or delegation without SBA and Lender's prior written consent shall be null and void. SBA and Lender may assign or transfer, in whole or in part, conditionally or otherwise, any interest in this Agreement without impairing the indemnification granted to SBA and Lender, which shall continue to exist for the benefit of SBA and Lender notwithstanding any such assignment or transfer.

I. Notice. All notices, demands, consents and other communications required or that any party desires to give under this Agreement shall be in writing and delivered by fax, hand, courier, or by registered or certified United States mail, postage pre-paid, return receipt requested, to the appropriate address or, if applicable, facsimile number, specified at the end of this Agreement or to such other address or facsimile number as Indemnitors, SBA or Lender may designate in a written notice given to all parties to this Agreement. Notices that are delivered by facsimile, hand or courier shall be deemed received upon delivery or transmission. Notices that are deposited in the United States mail shall be deemed received three days after the date mailed. Notwithstanding the foregoing, a copy of any notice sent by facsimile shall also be delivered to the addressee by hand, overnight courier or United States mail, and any notice of change of address shall not be effective until actual receipt.

J. Consent to Jurisdiction. Indemnitors consent to the jurisdiction of the United States District Court for the Federal District in which the Property is located for all purposes in connection with any action or proceeding that arises out of or relates to this Agreement.

K. Construction. This Agreement shall be governed by and its provisions construed in accordance with federal law, and to the extent not inconsistent therewith, the laws of the state where the Property is located without regard to its choice of law principles. In the event a court of law or equity finds any provision of this Agreement, or the application thereof to any party or circumstance, to be invalid or unenforceable, the

remainder of this Agreement, or the application of such provision to parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and enforced to the fullest extent permitted by law or equity.

L. Modification or Termination. No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in writing signed by an authorized representative of each party.

M. Integration and Entire Agreement. This Agreement sets forth the entire understanding of the parties and supersedes and merges all other written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof among the parties including contradictory provisions that would otherwise apply to Indemnified Parties, if any, contained in the Purchase and Sale Documents.

N. Counterparts. The parties may sign this Agreement in identical counterparts. The signature pages from the separately signed counterparts may be attached to one copy of this Agreement to form a single document.

O. Memorandum of Agreement. Concurrently with the execution of this Agreement, the parties shall execute a Memorandum of SBA Environmental Indemnification Agreement (the "Memorandum"), in the form attached hereto as Exhibit "C." The executed Memorandum shall be immediately recorded in the official records of the appropriate county or other government office in the state where the Property is located. In the event of a conflict between the terms of the Memorandum and this Agreement, the terms of this Agreement shall control.

P. Intentional Omission or False Statement. Each party signing this Agreement acknowledges that intentionally falsifying or concealing any material fact with regard to the subject matter of this Agreement may result in prosecution under applicable laws including 18 U.S.C. 1344, which provides for fines up to \$1,000,000 and imprisonment for up to 30 years.

[Add additional signature blocks as necessary]

Borrower:

_____ [Insert name of Borrower]

By: _____

Name and Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

[Add notary acknowledgement]

Third Party Indemnitor:

_____ [Insert name of Third Party Indemnitor]

By: _____

Name and title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

[Add notary acknowledgement]

Lender:

_____ [Insert name of CDC or lending institution]

By: _____

Name and Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

[Add notary acknowledgement]

U. S. Small Business Administration

By: _____

Name and Title: _____

Address: _____

Phone Number: _____

Fax Number: _____

[Add notary acknowledgement]

A copy of each notice, demand and other correspondence with regard to this Agreement must include the SBA loan number and be sent to:

Associate General Counsel for Litigation
Office of General Counsel
U.S. Small Business Administration

409 3rd Street S.W.
Washington, DC 20416

And to:

Legal Counsel for _____ [Insert name of SBA District Office]

Name: _____

Address: _____

Phone Number: _____

Fax Number: _____

Exhibit "A"
Legal Description of Real Property Securing Loan
[To be inserted]

Exhibit "B"
Environmental Investigation Report
[To be inserted]

Exhibit "C"
Memorandum of SBA Environmental Indemnification Agreement

Sample Recording Information

Return Address:

Please print or type information

Document title(s) (or transactions contained therein): Memorandum of SBA Environmental Indemnification Agreement

Grantor(s):

[Insert names of Borrower(s) and Third Party Indemnitor(s). For individuals, type last name first, then first name and middle initial. Add additional lines as necessary.]

- 1.
- 2.
- 3.

Grantee(s):

1. [Insert name of Lender.]
2. U.S. Small Business Administration, an Agency of the United States Government

Legal Description:

[Insert legal description or abbreviated legal description of Property: i.e., lot, block, plat or section, township, range.]

Assessor's Property Tax Parcel or Account Number at the time of recording:

[Insert Property tax ID number.]

Reference Number(s) of subordinated document(s):

[Insert recording number(s) of Third Party Indemnitor's document(s) to be subordinated to Mortgage securing SBA Loan and other lien instruments.]

Reference Number(s) of Document subordinated to:

[Insert recording number(s) of Mortgage securing SBA Loan and other lien instruments]

EXHIBIT "C"

MEMORANDUM OF SBA ENVIRONMENTAL INDEMNIFICATION AGREEMENT

SBA Loan No. _____

This Memorandum of SBA Environmental Indemnification Agreement ("Memorandum") dated _____ [insert date of SBA Environmental Indemnification Agreement] is executed by _____ (whether one or more, "Borrower"), _____ [insert name of indemnitor(s) not obligated on the SBA Loan] (whether one or more, "Third Party Indemnitor"), _____ [Insert name of Certified Development Company or Lending Institution] ("Lender"), and the U.S. Small Business Administration ("SBA").

I. PURPOSE OF MEMORANDUM

The purpose of this Memorandum is to provide constructive notice of the un-recorded SBA Environmental Indemnification Agreement of even date with this Memorandum entered into by Borrower, Third Party Indemnitor, SBA and Lender (the "Agreement") pertaining to the real and personal property described therein including the land located at _____ [Insert address] and legally described in Exhibit "A" attached hereto (collectively, the "Property"). The Agreement contains, but is not limited to, the following provisions, which are addressed in greater detail therein:

A. **Indemnification and Remediation.** Borrower and Third Party Indemnitor agree to indemnify SBA and Lender against certain losses, liabilities, damages, etc., including attorney fees and costs, related to environmental contamination associated with the Property and other matters addressed and more fully set forth in the Agreement.

B. **Release and Waiver.** Borrower and Third Party Indemnitor release and waive all rights, claims and causes of action against SBA and Lender with regard to environmental contamination at the Property and other matters addressed in the Agreement including the right to enforce any provision recorded in the chain of title to the Property that alters SBA or Lender's legal rights, remedies or responsibilities.

C. **Warranties and Covenants.** Indemnitors warrant, among other things, that there are no documents recorded against the Property that would enable Third Party Indemnitor or its affiliates to control the use or ownership of the Property, such as a right of first refusal, purchase option, repurchase option, restrictive covenant, deed restriction, etc.; and covenant, among other things, not to record or cause to be recorded any such document before Borrower's SBA Loan has been paid in full.

D. **Subordination.** Third Party Indemnitor unconditionally subordinates to SBA and Lender's Mortgage recorded in volume _____ of _____, page _____, under auditor's file number

_____, records of _____ County, State of _____
any right, title or interest Third Party Indemnitor has with respect to the Property,
whether of record or not, including the following:

Third Party Indemnitor's _____ [Insert description of lien,
e.g., deed of trust, mortgage, UCC Financing Statement, etc.] dated _____,
recorded in volume _____ of _____, page _____ under auditor's file number
_____, records of _____ County, State of
_____.

[Add additional blocks as necessary.]

II. CONFLICTING TERMS OR PROVISIONS

Terms used in this Memorandum that are not defined herein, but are defined in the Agreement, shall have the meaning provided in the Agreement. To the extent any term or provision of this Memorandum conflicts with any term or provision of the Agreement, the terms and provisions of the Agreement shall control.

III. COUNTERPARTS

The parties may sign this Memorandum in identical counterparts. The signature pages from the separately signed counterparts may be attached to one copy of this Memorandum to form a single document.

[Add additional signature blocks as necessary.]

Borrower:

_____ [Insert name of Borrower]

By: _____

Name and Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

[Add notary acknowledgement]

Third Party Indemnitor:

_____ [Insert name of Third Party Indemnitor]

By: _____
Name and title: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

[Add notary acknowledgement]

Lender:

_____ [Insert name of CDC or lending institution]

By: _____
Name and Title: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

[Add notary acknowledgement]

U. S. Small Business Administration

By: _____
Name and Title: _____
Address: _____
Phone Number: _____
Fax Number: _____

[Add notary acknowledgement]

A copy of each notice, demand and other correspondence with regard to this Agreement must include the SBA loan number and be sent to:

Associate General Counsel for Litigation
Office of General Counsel
U.S. Small Business Administration
409 3rd Street S.W.
Washington, DC 20416

And to:

Legal Counsel for _____ [Insert name of SBA District Office]

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____

ATTACHMENTS:

Exhibit "A" - Legal Description of Real Property Securing Loan

APPENDIX 7 – CAPLINES PROGRAM DOCUMENTS

MONITORING, EXAMINATION, AND CONTROL STANDARDS

The administration of any Asset Based CAPLines account involves numerous activities to assure the required revolving feature of these loans is maintained and that sufficient value in the collateral exists to cover the outstanding balance. The principal activities include:

- a. **Monitoring and Financial Examination:** The continual review of the Borrowing Base Certificates and accompanying financial information to evaluate the borrower's management of the collateral.
- b. **Collateral Examination:** Conducting periodic examinations of the collateral to verify its value and ability to be converted to cash as well as analyzing the financial data and source documents to ascertain the validity of the statements, as well as conduct an analysis of in-depth point in time information on the collateral such as what is obtained during a field examination.
- c. **Funds Control:** Perpetual control of the proceeds generated by the business as a result of having the use of the Asset Based proceeds that limit a borrower's discretionary use of the cash receipts generated as a result of having the loan. Potential control of the accounts which secure the loan including the segregation of different classes and types of inventory.

The degree of Monitoring and Control required depends upon the mode of operation and financial capabilities of the business, the nature of the collateral and the risk assessment of these factors.

All applicants for an Asset Based CAPLines loan must complete an SBA Form AB-4, (Supplemental Information for Asset Based Lines of Credit) as part of their application documentation and the Lender will use this information to complete the Applicant Questionnaire in order to derive a score. The resulting score is used to determine the level of Monitoring and Control to be required on the loan. All Asset Based borrower's will be subject to certain minimum standards regardless of their score and can expect to be subject to more stringent requirements when the factors evaluated show higher risk or at the discretion of the lender and SBA.

The specific requirements for all Standard Asset Based sub-program loans are detailed on the following pages. These same items are available for use on any Small Asset Based CAPLines, even though they are not required. The requirements for the Small Asset Based CAPLines are detailed in the text of paragraph 20 of Subpart C in SOP 50-10(4).

The following standards represent the servicing requirements for any Standard Asset Based CAPLines. These requirements are divided between the functions of Monitoring, Examination, and Control. In addition, each requirement is divided between two levels of responsibility, which are called minimum or maximum for the monitoring and examination requirements and called medium and high for control requirements. The initial selection of the requirements depends upon the score obtained at the completion of the Applicant Questionnaire.

PROCEDURE: MINIMUM MONITORING AND FINANCIAL EXAMINATION

1. Prior to each disbursement and no less frequently than monthly, borrower shall submit a Borrowing Base Certificate to their lender who shall review for accuracy, adjust for ineligible items, and determine the value of collateral eligible for advancement of proceeds. Prior to released of funds, lender to indicate the report was satisfactory.
2. Prior to each disbursement, lender shall reconcile the Borrowing Base Certificate and establish the allowable Borrowing Base by multiplying the value of the eligible collateral derived from a newly submitted Borrowing Base Certificate times the applicable Advance Rate. The existing outstanding principal balance shall be subtracted from the Borrowing Base to determine the maximum allowable amount to be advanced.
3. On a monthly basis, lender shall receive selected operating reports from borrower including an aging of receivables & payables and an inventory schedule (when advances are made against inventory). Lender shall reviewed reports against actual borrowing base disclosures.
4. On a quarterly basis, lender shall receive selected operating reports from borrower including financial statements (of a quality of lender's choosing) within 60 days of the conclusion of each operating quarter.
 - 4a. On a quarterly basis, lender shall cross review the interim financial statements, current asset reports, and borrowing base reports for changes, inconsistencies and deterioration;
 - 4b. On a quarterly basis, lender shall conduct a review of bad debt, obsolete inventory, and accrual policies;
 - 5a. On a semi-annual basis, lender shall conduct a ratio analysis and compare a spread of key ratios to analyze and changed which may impacted turnover and dilution of current assets. Examples include: Days Sales Outstanding; Days Inventory on Hand; Accounts Payable; Allowances for Bad Debt; Allowance for or actual percentages of returns/credits; Current ratio; etc. Lender shall act on results as needed;

- 5b. On a semi-annual basis, lender shall conduct a covenant compliance review;
- 5c. On a semi-annual basis, lender shall compare the status of borrower's accounts payable, term debts and leases, with prior semi-annual periods. Lender shall act on results as needed;
- 6a. On an annual basis, lender shall review management information system and controls and make necessary remediation if required;
- 6b. On an annual basis, lender shall conduct a legal review for any actions, claims, tax deficiencies, and liens;
- 6c. On an annual basis, lender shall conduct a review of bad debt, obsolete inventory, and accrual policies;
- 6d. On an annual basis, lender shall modify loan agreements, advance rates and/or loan covenants, as necessary.
- 6e. On an annual basis, lender shall conduct an SIC peer group review on selective items in #5a;

PROCEDURE: MAXIMUM MONITORING AND FINANCIAL EXAMINATION

Increase the frequency of all activities other than those done monthly as follows: Annual to Semi-Annual, Semi-Annual to Quarterly, and Quarterly to Monthly.

NOTE: Regardless of the score obtained from the Applicant's Questionnaire, Lenders have unilateral authority to increase the frequency of any of the above stated monitoring and financial examination requirements with out SBA's concurrence. Reduction in the frequency beyond what is authorized requires lender justification and SBA concurrence.

Most of the required servicing can be conducted at the lender's office (off site), but selected requirements have to be done at the borrower's place of business (on site).

PROCEDURE: MINIMUM ACCTS RECEIVABLE EXAMINATION REQUIREMENTS

FREQUENCY: Prior to initial disbursement and not less than semi-annually:

Off Site

- 1. Compare aging statements with borrowing bases over the concluded semi-annual period to determine turnover and condition of receivables pool;

Increase the frequency of all activities other than those done monthly as follows: Annual to Semi-Annual, Semi-Annual to Quarterly, and Quarterly to Monthly.

PROCEDURE: MINIMUM INVENTORY EXAMINATION REQUIREMENTS

FREQUENCY: Prior to initial disbursement and not less than semi-annually

Off Site

1. Overview components of eligible inventory to determine items with most movement, credit/return potential; over-stocking; markdowns; obsolescence
2. Analysis by product lines and vendor support; including changes in vendors; offsets; reported Purchase Money liens; shifts in strategy or stocking; etc.
3. Test eligibility compliance issues for needed changes
4. Review for red flags: unusual turnover; changes in long standing supplier relationships; selective item or product group turnover changes; aging of certain items, or product groups; rise in returns or "bad orders," etc.;
5. Review any consignments or co-tenancy arrangements which might be pre-standing;
6. Interview other personnel generally for opinions or inconsistencies from what principals might have reported

On Site

7. Selectively review how borrower determines the carrying cost of inventory or raw materials and check same to the selected inventory accounting method disclosed;
8. Tie the inventory or stocking reports given lender by item or group concurrently, test counts of 20% of the dollars, or 10% of the items to determine compliance. If substantial variances exist, expand audit till reasons are determined. The results should weigh in advance rates, future eligibility or modification of the loan status and confirmation of asset in financial statements;
9. Confirm slow moving and obsolete items and integrate results in borrowing base and future adjustments in loan agreement if necessary;
10. Test reported pricing and gross margins during test counts by item or product groups;

11. When inspecting the inventories and raw materials, review care and custody issues; issues which might impact salability/marketability; rotation of stocks; contingent liabilities (environmental, zoning, employee safety, etc.);
12. Review covenants including insurance, etc.
13. Test and examine records for consignments and joint warehousing arrangements;
14. Interview other personnel generally for opinions or inconsistencies from what principals might have reported.

PROCEDURE: MAXIMUM INVENTORY EXAMINATION REQUIREMENTS

Increase the frequency of all activities other than those done monthly, to wit: Annual to Semi-Annual, Semi-Annual to Quarterly, and Quarterly to Monthly.

PROCEDURE: MEDIUM ACCOUNT CONTROL

If Borrower segregates its inventories that are subject to the lender's lien, provide lender both a landlord waiver and acknowledgement of conditional control, if not acquired previously. By covenant support, borrower agrees to grant lender, or its designee, management control of the area in which the collateral is kept, in the event of certain specific defaults, or deterioration of the credit.

PROCEDURE: HIGH ACCOUNT CONTROL

Medium Account Control is modified to provide that lender now either: contracts with a public warehouse to segregate or store collateral and release it upon instructions only; or it creates on site segregation using elements of bailment, wherein the collateral is released only from physical control upon instructions. This normally entails use of a third party servicer, or field warehouser.

PROCEDURE: MINIMUM FUNDS CONTROL

Lender to establish a Cash Collateral Account under their control for borrower's use to deposit all proceeds (cash and checks) received from the sale of any of borrowers inventory or services including all collections of all receivables resulting from such sales. Lender to clear or sweep the account including deposit funds at their discretion, but no less frequently than weekly, and apply all proceeds to the outstanding interest and principal of the Asset Based loan.

PROCEDURE: HIGH FUNDS CONTROL

Minimum Funds Control is modified to provide that lender now either: 1.) operates itself or by designee the borrower's postal box; or 2.) transfers collections to its own postal box (lock box). Lender to provide account debtors of borrower with instructions to remit all balances due borrower to the account they control.

Note:

The overriding test of control is that the lender only advances against any Borrowing Base after they have established a process to receive all of a borrower's cash or near cash receipts resulting from the sale of any of the assets included in the borrowing base, upon their arrival, as well as eliminate any borrower discretion to operate outside such a system.

**PILOT COMPENSATION AGREEMENT FOR ACTUAL SERVICES PROVIDED AND FEES
CHARGED IN CONNECTION WITH BASIC ASSET BASED SUB-PROGRAM
APPLICATION AND LOAN MADE IN PARTICIPATION WITH SBA**

<u>SBA LOAN NUMBER</u>

The Lender and the undersigned representatives (accountant, appraiser, attorney, engineer, service provider, etc.) hereby certify that they have charged the following fees in connection with the above referenced Basic Asset Based sub-program loan. A general description of the services performed, or to be performed, by the Lender or undersigned and the compensation paid or to be paid by the borrower shall be set forth below. If the compensation exceeds \$1,000, the service must be itemized on a schedule attached showing each date services were performed, time spent each day, and description of service rendered on each day listed.

The undersigned Borrower and representative hereby certify that no other fees have been charged or will be charged by the representative in connection with this loan, unless provided for in the loan authorization specifically approved by SBA.

Date Charged	General Description Of Services	Paid To	Date Paid	Amount Paid
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

REPRESENTATIVE: Section §13 of the Small Business Act (15 USC 642) requires disclosure concerning fees. Parts 103, 108, and 120 of Title 13 of the Code of Federal Regulations contain provisions covering appearances and compensation of persons representing SBA applicants. Whoever commits any fraud, by false or misleading statement or representation, or by conspiracy, shall be subject to the penalty of any applicable Federal or State statute.

Date: _____, 19 ____

Representative/Provider

By:

The participating LENDING INSTITUTION hereby certifies that the above representation of service rendered and amounts charged by the above representative are reasonable and satisfactory to it.

Date: _____, 19 ____

Lending Institution

By:

APPLICANT hereby certifies to SBA that the above representation, description of services and amounts are correct and satisfactory to applicant.

Date: _____, 19 ____

Borrower

By:

Attested:

SEAL

NOTE: The foregoing certification must be executed, if by a corporation, in the corporate name by duly authorized officer and duly attested; if by partnership, in the firm name, together with signature of a general partner.
SBA Form SAB-159B

LENDER'S SEMI-ANNUAL FUNDS DISBURSEMENT REPORT

FOR THE SIX MONTH PERIOD ENDING: _____ 19

This Report Shall Be Used To Provide SBA With A Synopsis Of Disbursement And Collection Activity For Every Revolving And CAPLines Loan On A Semi-Annual Basis Every April 30 & October 31 Over The Term Of The Loan. This Report Shall Be Sent To The SBA Office Servicing The Account. Lenders May Complete The Top Half For Every Disbursement And Collection Plus Provide The Summary Information Or Complete The Summary Information And Attach A Copy Of Their Transcript Of Account.

BORROWER'S NAME: _____

LOAN NUMBER: _____

LENDER'S NAME: _____

DATE: _____

TRANSACTION DATE	DOLLAR AMOUNT DISBURSED	DOLLAR AMOUNT COLLECTED	BALANCE OUTSTANDING
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DISBURSEMENT ACTIVITY SUMMARY FOR THE PERIOD COVERED BY THIS REPORT
Lenders To Complete This Summary For All Revolving And CAPLines Loans

TOTAL NUMBER OF DISBURSEMENTS (This Period): _____

TOTAL DOLLAR AMOUNT OF DISBURSEMENTS (This Period): _____

TOTAL NUMBER OF COLLECTIONS (This Period): _____

TOTAL DOLLAR AMOUNT OF COLLECTIONS (This Period): _____

HIGHEST OUTSTANDING LOAN BALANCE (This Period): _____

The provisions of 18 USC 1001 and 15 USC 645 provide certain criminal penalties for making false statements, willfully overvaluing collateral, or other prohibited acts. To induce SBA to directly or indirectly, to participate in this loan, the *Borrower*, subject to these provisions, acknowledges receipt of the above listed amounts on the above listed dates, and certifies: (1) that the proceeds of these disbursements will be, and all previous disbursements have been, used in accordance with the herein applicable Loan Authorization; (2) that there has been no substantial adverse change in the financial condition, organization, operation, or fixed assets since application for this loan was filed or since the previous disbursement; and (3) that there are no liens or encumbrances against the collateral securing this loan except those disclosed in the application for this loan. *Lender* certifies that disbursement of loan proceeds was made and the loan proceeds were used as set forth above and in accordance with the Loan Authorization (Any deviation from the Loan Authorization must be authorized in writing by SBA prior to expenditure of loan funds). Lender certifies that the Borrower's repayments were made and received as noted above. To further induce SBA to participate in the loan, *Lender* certifies that neither its Associates, Officers, Agents, Affiliates, or Attorneys have charged or will charge or receive, directly or indirectly, any bonus, fee, commission, or other payment or benefit, or require compensating balances, Certificate of Deposit, or other security in connection with making or servicing of this loan (other than those reported on SBA Form 4 "Application For Business Loan" or BAB-159 "Basic Asset Based Sub-Program Compensation Agreement"). This form must be properly executed and returned to the SBA when due. If there are additional disbursements, itemize on a separate sheet, sign, date, and attach hereto.

Signatures Of Lender And Borrower To Be Acquired With Each Report

LENDER: _____ AUTHORIZED SIGNATURE: _____ DATE: _____

BORROWER: _____ AUTHORIZED SIGNATURE: _____ DATE:

SBA REVIEW: _____ TITLE: _____ DATE:

SBA Form CAP-1050

BORROWING BASE CERTIFICATE & REPORT TO LENDER

FOR THE PERIOD ENDING _____, 19__

EFFECTIVE DATE OF LAST REPORT: _____

THIS FORM SHALL BE INITIALLY COMPLETED BY ALL ASSET BASED BORROWERS TO REPORT AND RECONCILE THEIR ACCOUNTS RECEIVABLE AND INVENTORY. THE VALUES HEREIN DO NOT PREVENT THE LENDER FROM MAKING THEIR OWN DETERMINATION OF APPROPRIATE VALUES.

ACCOUNTS RECEIVABLE (As of This Period)

1.	Accounts Receivable From Previous Report	\$
2.	(+) New Total Sales From Last Report	\$
3.	(-) Less Cash Sales From Last Report	\$
4.	(=) Total Credit Sales Since Last Report	\$
5.	(-) Account Receivable Collection Since Last Report	\$
6.	(+/-) Adjustments	
	(-) Non-Trade Receivables	\$
	(-) Affiliated Company Receivables	\$
	() Other: _____	\$
7.	(=) Net Accounts Receivable (As Of Period End)	\$
8.	(-) Accounts Receivable Over 90 Days	\$
9.	(=) Eligible Accounts Receivable (As Of Period End)	\$
10.	(X) ___% of Eligible Accounts Receivable	\$

INVENTORY (As of This Period)

11.	RAW MATERIAL INVENTORY	\$
12.	(+/-) Adjustments	
	() _____	\$
	() _____	\$
13.	(=) Total Eligible Raw Material Inventory:	\$
14.	(X) ___% of Raw Material Inventory	\$
15.	WORK IN PROGRESS INVENTORY	\$
16.	(+/-) Adjustments	
	() _____	\$
	() _____	\$
17.	(=) Total Eligible Work In Progress Inventory:	\$
18.	(X) ___% of Work In Progress Inventory	\$
19.	FINISHED GOODS INVENTORY	\$
20.	(+/-) Adjustments	
	() _____	\$
	() _____	\$
21.	(=) Total Eligible Finished Goods Inventory:	\$
22.	(X) ___% of Eligible Finished Goods	\$

RECONCILIATION

23.	Total Lines 10, 14, 18, & 22	\$
24.	Face Amount of Note:	\$
25.	Borrowing Base (Lesser of Line 23 or 24)	\$
26.	Loan Balance from Previous Report	\$
27.	(+) Plus Total Advances Since Last Report	\$
28.	(-) Less Total Payments Since Last Report	\$
29.	(=) Loan Balance Per Borrowers Books (Line 26 + 27 - 28)	\$

30. Approximate Amount Available To Borrower (Line 25 - 29)

\$

The Above Is Certified To Be In Accordance With The Revolving Line Of Credit Authorization (SBA Form 529B)

Borrower: _____ Loan Number:

Authorized Signature: _____ Date:

* A Current Listing And Aging Of Accounts Receivable And Accounts Payable Are Attached
** Description Of Inventory And Certification Of Values Are Attached.

SBA Form BBC-1

BORROWING BASE CERTIFICATE & REPORT TO LENDER

FOR THE PERIOD ENDING: _____, 19

DATE OF LAST REPORT: _____, 19

THIS FORM SHALL BE INITIALLY COMPLETED BY ALL CAPLINES ASSET BASED SUB-PROGRAMS BORROWERS TO REPORT AND RECONCILE THEIR ACCOUNTS RECEIVABLE AND INVENTORY. THE VALUES HEREIN DO NOT PREVENT THE LENDER FROM MAKING THEIR OWN DETERMINATION OF APPROPRIATE VALUES.

Pursuant to the Loan Authorization and the Note between undersigned (Borrower) and (Lender) dated (), the Borrower hereby requests an additional loan as follows:

- 1. Loan Balance on Previous Report \$
- 2. Advances Since Last Report \$
- 3. Total Payments Since Last Report \$
(agrees w/#4 on reverse as long as loan balance exceeds collections)
- 4. Loan Balance on Books \$
- 5. Amount Available to Borrow \$
(from Collateral Reconciliation)
- 6. Amount Requested (If #5 above is positive) \$
- 7. Check attached for balance (If #5 above id Negative) \$

BORROWING BASE

- a. Total Accounts Receivable \$
- b. Ineligible Accounts Receivable \$
- c. Eligible Accounts Receivable \$
- d. Accounts Receivable Advance Rate Percentage %
- e. Borrowing Level For Accounts Receivable \$
- f. Total Inventory \$
- g. Ineligible Inventory \$
- h. Eligible Inventory \$
- i. Inventory Advance Rate Percentage %
- j. Borrowing Level For Inventory \$
- k. Borrowing Base (e + i) \$

The Above Is Certified To Be In Accordance With The Revolving Line Of Credit Authorization (SBA Form 529B)

Borrower:

Loan Number:

Authorized Signature: _____ **Date:**

* A Current Listing and Aging of Accounts Receivable and Accounts Payable are Attached

** Description Of Inventory And Certification Of Values Are Attached.

SBA Form BBC-2

BORROWING BASE CERTIFICATE & REPORT TO LENDER

COLLATERAL RECONCILIATION

ACCOUNTS RECEIVABLE

1.	Accounts Receivable Last Report	\$
2.	Credit Sales Since Last Report	\$
3.	Total	\$
4.	Collections Since Last Report	\$
5.	Accounts Receivable Per Books	\$
6.	Ineligible Accounts Receivable	\$
7.	Eligible Accounts Receivable	\$

INVENTORY

8.	Inventory Per Books	\$
9.	Ineligible Inventory	\$
10.	Eligible Inventory	\$

RECONCILIATION

11.	Accounts Receivable Borrowing Base (_____ percent of 7 above)	\$
12.	Inventory Borrowing Base (_____ percent of 10 above)	\$
13.	Total	\$
14.	Face Amount of Note	\$
15.	Borrowing Base	\$
16.	Loan Balance on Books	\$
17.	Amount Available to Borrow (#15 minus 16)	\$

SBA Form BBC-2

BORROWING BASE CERTIFICATE & REPORT TO LENDER

LISTING OF INELIGIBLE ACCOUNTS RECEIVABLE AND INVENTORY

ACCOUNTS RECEIVABLE

A.	Accounts Receivable over 90 days	\$
B.	Contra Accounts	\$
C.	Foreign Accounts	\$
D.	Affiliate Accounts	\$
E.	Retention, Dated Sales, Consigned Sales	\$
F.	Credit Memo/Balances	\$
G.	Bonded Jobs	\$
H.	Pre-Billed Accounts	\$
I.	Total Ineligible Accounts Receivables	\$

INVENTORY

J.	Work in Progress	\$
K.	Other Ineligibles (specify)	\$
L.	Total Ineligible Inventory	\$

BORROWER: _____

LOAN NUM

AUTHORIZED SIGNATURE: _____

SBA Form CAP-ARA

D

BORROWER: _____

LOAN NUM

AUTHORIZED SIGNATURE: _____

D

SBA Form CAP-APA

U.S. SMALL BUSINESS ADMINISTRATION STANDARD ASSET BASED PROGRAM LENDER QUALIFICATION SURVEY

TO BE COMPLETED BY ALL POTENTIAL PARTICIPANTS IN SBA'S
STANDARD ASSET BASED PROGRAM PRIOR TO PARTICIPATION

IDENTIFICATION QUESTIONS

LENDER:

ADDRESS:

CITY:

STATE:

ZIP CODE:

HAVE YOU REVIEWED THE PROGRAM GUIDE MATERIAL FOR THE OPERATION OF SBA'S ASSET BASED PROGRAMS ?

YES: _____ NO:

IF NO, SBA RECOMMENDS YOU OBTAIN A COPY.

ARE YOU PRESENTLY A PARTICIPANT IN SBA GUARANTEED LENDING?

YES: _____ NO:

IF YES, FOR HOW MANY YEARS?

NAME AND TITLE OF BANK OFFICIAL SUPERVISING SBA TERM LENDING PROGRAMS:

_____ TITLE:

DOES YOUR INSTITUTION SUBMIT APPLICATIONS FOR SBA GUARANTY TO MORE THAN ONE SBA OFFICE?

YES: _____ NO:

IF YES, LIST EACH OFFICE BY ITS CITY DESIGNATION:

ARE YOU CURRENTLY A CLP DESIGNATED LENDER?

YES: _____ NO:

ARE YOU CURRENTLY A PLP DESIGNATED LENDER?

YES: _____ NO:

INDICATE EACH SBA OFFICE LISTED ABOVE WHICH PROVIDED YOU WITH THE CLP DESIGNATION BY A SINGLE ASTERISK AND PLP DESIGNATION BY A DOUBLE ASTERISK

THE DOLLAR AMOUNT OF COMMERCIAL & INDUSTRIAL LOANS OUTSTANDING AS OF YOUR LAST YEAR END REPORT EQUALS:

\$

THE DOLLAR AMOUNT OF SBA GUARANTEED LOANS OUTSTANDING AT YOUR INSTITUTION EQUALS:

\$

DOES YOUR INSTITUTION HAVE AN EXISTING ASSET BASED LENDING DEPARTMENT?

YES: _____ NO:

WILL YOUR ABL DEPARTMENT BE RESPONSIBLE FOR SUPERVISING SBA STANDARD ASSET BASED PROGRAM APPLICATIONS?

YES: _____ NO:

IF YES, PLEASE PROVIDE A COPY OF YOUR ABL DIVISIONS POLICY MANUAL - SBA WILL MAINTAIN ITS CONFIDENCE.

IF NO, DESCRIBE HOW YOUR INSTITUTION WILL MONITOR AND CONTROL SBA's STANDARD ASSET BASED CREDITS.

NAME AND TITLE OF BANK OFFICIAL SERVING AS SBA CONTACT FOR STANDARD ASSET BASED LOANS:

NAME: _____ TITLE:

VOICE TELEPHONE:

FACSIMILE NUMBER:

BANK ASSET SIZE: \$ _____

NUMBER OF BRANCHES:

Form LQS-2

PAGE 1

QUESTIONS

YOUR INSTITUTION'S EQUITY TO TOTAL ASSETS PERCENTAGE AS OF THE LAST REGULATORY AUDIT IS: _____%

DO YOU CURRENTLY PROVIDE LINES OF CREDIT TO SMALL AND MEDIUM SIZED BUSINESSES? YES _____ NO

IF YES, DO YOU CONTROL THE COLLECTION OF RECEIPTS? YES _____ NO

IF YES, DESCRIBE YOUR METHOD(S) FOR CONTROL OF THE RECEIPTS:

IF NO, ARE YOU WILLING TO COMMENCE CONTROLLING THE COLLECTION OF RECEIPTS? YES _____ NO

DO YOU CURRENTLY PROVIDE ASSET BASED, WORKING CAPITAL LOANS TO SMALL AND MEDIUM SIZED BUSINESSES? YES _____ NO

IF YES, DESCRIBE DIFFERENCES BETWEEN SERVICING ABL CREDITS FROM LINES OF CREDIT REFERENCED ABOVE:

IF YES, THE NUMBER IN THE LAST TWELVE MONTHS:

IF YES, AVERAGE DOLLAR AMOUNT IN LAST TWELVE MONTHS:

IF YES, FAILURE RATE EXPERIENCED IN LAST TWELVE MONTHS:

IF YES, DOLLARS CHARGED OFF IN LAST TWELVE MONTHS:

IF YES, DO YOU CONDUCT REGULAR FIELD EXAMS OF PLEDGED COLLATERAL? YES _____ NO

IF YES, WHAT IS THE AVERAGE FREQUENCY? (M, Q, SA, A):

IF YES, WHO PERFORMS THESE EXAMS? LIST ALL PERSONS OR ENTITIES WHO CONDUCT THESE EXAMS AND INCLUDE THEIR APPROXIMATE PERCENTAGE OF THE TOTAL EXAMS PERFORMED

DOES YOUR INSTITUTION UTILIZE A FORMALIZED BORROWING BASE DOCUMENT TO CONTROL DISBURSEMENTS OF LINES OF CREDIT? YES _____ NO

DOES THIS BORROWING BASE INCLUDE A SECTION TO RECONCILE THE REPORT WITH THE PRIOR REPORT? YES _____ NO

ON A PERCENTAGE BASIS, WHAT IS THE FREQUENCY YOUR INSTITUTION REQUIRES UPDATED FINANCIAL STATEMENTS?

- PERCENTAGE
- _____ MONTHLY
- _____ QUARTERLY
- _____ SEMI-ANNUALLY
- _____ ANNUALLY
- _____ OTHER (SPECIFY)

LENDERS QUALIFICATION SURVEY

ON A

PERCENTAGE BASIS, WHAT IS THE FREQUENCY YOUR INSTITUTION REQUIRES AN AGING OF ACCOUNTS RECEIVABLE AND PAYABLES REPORTS TO BE SUBMITTED FOR REVIEW ?

- PERCENTAGE
- _____ MONTHLY
- _____ QUARTERLY
- _____ SEMI-ANNUALLY
- _____ ANNUALLY
- _____ OTHER (SPECIFY)

INDICATE WHICH OF THE FOLLOWING METHODOLOGIES DESCRIBE YOUR INSTITUTION'S PROCEDURES TO CONTROL DISBURSEMENTS AND ASSIGN APPROPRIATE PERCENTAGES TO EACH.

- PERCENTAGE
- _____ INSTITUTION DISBURSES DIRECTLY TO BORROWER'S OPERATING ACCOUNT
- _____ INSTITUTION DISBURSES ON JOINT PAYEE BASIS
- _____ INSTITUTION DISBURSES TO BORROWER'S PAYROLL ACCOUNT
- _____ INSTITUTION DISBURSES TO BORROWER'S PAYROLL AGENT

INDICATE WHICH OF THE FOLLOWING METHODOLOGIES DESCRIBE YOUR INSTITUTION'S PROCEDURES TO CONTROL A BORROWER'S CASH GENERATED FROM INVENTORY SALES AND/OR ACCOUNTS RECEIVABLE COLLECTIONS AND ASSIGN APPROPRIATE PERCENTAGES TO EACH.

- PERCENTAGE
- _____ BORROWER COLLECTS, NO EXAMS
- _____ BORROWER COLLECTS, BUT WE CONDUCT EXAMS
- _____ BORROWER TELLS CUSTOMERS TO REMIT BY JOINT PAYEE CHECK TO BOTH THEMSELVES AND LENDER
- _____ BORROWER INSTRUCTS CUSTOMERS TO REMIT DIRECTLY TO LENDER'S CASH COLLATERAL DEPOSIT ONLY ACCOUNT
- _____ BORROWER'S COLLECTIONS DIRECTLY ASSIGNED TO LENDER
- _____ NONE OF THE ABOVE (DESCRIBE YOUR PROCEDURES ON SEPARATE PAPER)

ACCOUNTS RECEIVABLE QUESTIONS

DOES YOUR INSTITUTION LEND AGAINST ACCOUNTS RECEIVABLE? YES _____ NO

IF YES, WHAT IS YOUR AVERAGE ADVANCE RATE AGAINST RECEIVABLES? _____ %

IF YES, WHAT HAS BEEN YOUR INSTITUTION'S HIGHEST ADVANCE RATE AGAINST ACCOUNTS RECEIVABLE? _____ DESCRIBE THE

CIRCUMSTANCES ABOUT YOUR HIGHEST ADVANCE RATE: _____ IF YES, INDICATE WHICH

- OF THE FOLLOWING ARE ROUTINELY EXCLUDE FROM A BORROWER'S BORROWING BASE OF RECEIVABLES:
- _____ NO EXCLUSIONS
- _____ OVER AGED RECEIVABLES
- _____ CONTRA ACCOUNTS
- _____ INTERCOMPANY TRANSACTIONS
- _____ CONCENTRATED RECEIVABLES TO SINGLE CUSTOMER
- _____ OTHER(s):

LENDERS QUALIFICATION SURVEY

IF YOUR INSTITUTION LENDS AGAINST ACCOUNTS RECEIVABLE, WHAT LEVEL OF CONCENTRATION OF RECEIVABLES TO ONE CUSTOMER OF YOUR BORROWER IS CONSIDERED SIGNIFICANT IN DETERMINING ELIGIBILITY? _____ %

INVENTORY QUESTIONS

DOES YOUR INSTITUTION LEND AGAINST INVENTORY? YES _____ NO

IF YES, WHAT IS YOUR AVERAGE ADVANCE RATE AGAINST INVENTORY? _____ %

IF YES, THIS ADVANCE RATE IS BASED ON (circle) COST or RETAIL

IF YES, INDICATE YOUR GENERAL ADVANCE RATE POLICY ON THE FOLLOWING:

RAW MATERIAL _____ %

WORK IN PROGRESS _____ %

FINISHED GOODS _____ %

IF YES, WHAT HAS BEEN YOUR INSTITUTION'S HIGHEST ADVANCE RATE AGAINST INVENTORY? _____ %

WHAT WERE THE CIRCUMSTANCES OF THE HIGHEST A/R ADVANCE REFERENCED ABOVE?

CHECK ALL ITEMS YOUR INSTITUTION EXCLUDES FROM INVENTORY IN THE BORROWING BASE:

NO EXCLUSION

OBSOLETE ITEMS

LIENED (PMSI) INVENTORY

ITEMS SECURING OTHER LOC

ITEMS PER AGING REPORT

WHEN LENDING AGAINST INVENTORY, WHAT IS THE FREQUENCY THAT YOUR INSTITUTION REQUIRES ANY OF THE FOLLOWING?

INVENTORY SUMMARY:

ACTIVITY OF DEBITS & CREDITS:

INVENTORY LISTING:

BORROWER INVENTORY COUNTS:

OTHER (SPECIFY):

DOES YOUR INSTITUTION PERFORM A *QUANTITATIVE* REVIEW OF INVENTORY PRIOR TO INCLUSION IN THE BORROWING BASE? YES _____ NO

DOES YOUR INSTITUTION PERFORM A *QUALITATIVE* REVIEW OF INVENTORY PRIOR TO INCLUSION IN THE BORROWING BASE? YES _____ NO

ANTICIPATED STANDARD ASSET BASED PROGRAM PARTICIPATION

DOES YOUR INSTITUTION DESIRE TO SUBMIT A COPY OF YOUR TRANSCRIPT OF ACCOUNT TO REPORT DISBURSEMENTS & COLLECTIONS OF LOAN FUNDS IN LIEU OF A SEMI-ANNUAL DISBURSEMENT REPORT? YES _____ NO

IF YES, PROVIDE A SAMPLE COPY OF A TRANSCRIPT OF ACCOUNT ON AN EXISTING LINE OF CREDIT RECIPIENT WHERE THE LINE HAS BEEN OUTSTANDING FOR AT LEAST 12 MONTHS, AND AN INDEX/GLOSSARY EXPLAINING WHAT EVERY CODE (not just for the sample) OR SYMBOL ON YOUR INSTITUTION'S TRANSCRIPT OF ACCOUNT SIGNIFIES - SBA WILL MAINTAIN ITS CONFIDENCE.

LENDERS QUALIFICATION SURVEY

DOES YOUR INSTITUTION DESIRE TO UTILIZE ITS OWN BORROWING BASE CERTIFICATE IN LIEU OF THE SAMPLE SBA REPORT?

YES _____ NO

IF YES, PROVIDE A SAMPLE COPY OF YOUR INSTITUTION'S BORROWING BASE CERTIFICATE - SBA WILL MAINTAIN ITS CONFIDENCE.

QUESTIONS ON FEES

DESCRIBE ALL THE FEES AND EXPENSES YOUR INSTITUTION PRESENTLY CHARGES ITS BORROWING CUSTOMERS WHO RECEIVE ANY FORM OF LINES OF CREDIT STARTING WITH INITIATION, PACKAGING, AND FINDER FEES, THROUGH PROCESSING, APPROVAL, AND CLOSING FEES, TO SERVICING, UNUSED LINE, EXAMINATION, MONITORING, FLOAT AND FINAL PAYMENT FEES. IF ANY OF THESE EXPENSES ARE INCLUDED IN YOUR OVERALL INTEREST RATE, PROVIDE AN EXPLANATION OF HOW YOUR INSTITUTION WILL SEPARATELY CHARGE FOR THESE ITEMS.

USE ADDITIONAL PAPER IF NECESSARY

DESCRIBE ANY FEES THAT YOUR INSTITUTION DOES NOT PRESENTLY CHARGE ITS LINE OF CREDIT BORROWERS THAT YOU ANTICIPATE CHARGING CUSTOMERS WHO RECEIVE AN SBA STANDARD ASSET BASED PROGRAM GUARANTY SUPPORT.

USE ADDITIONAL PAPER IF NECESSARY

LQS-2

PAGE 5

**APPLICATION QUESTIONS FOR ASSET BASED SUB-PROGRAMS
TO BE INCLUDED WITH SBA FORM 4**

THIS FORM MUST BE COMPLETED AND INCLUDED WITH SBA FORM 4 TO APPLY FOR ALL SBA ASSET BASED PROGRAMS

NAME OF BUSINESS:

BUSINESS ADDRESS:

ACCOUNTS RECEIVABLES

1. DO YOU SELL PRODUCT(S) ON CREDIT? YES: _____ NO: _____
IF YES, ANSWER ALL PARTS OF QUESTION 1:
- 1A. WHAT PERCENTAGE OF YOUR TOTAL SALES IS FOR CREDIT? _____ %
- 1B. WHAT ARE THE CREDIT TERMS YOU PROVIDE YOUR CUSTOMERS?
- 1C. DESCRIBE THE PROCEDURES YOUR BUSINESS USES WHEN EXTENDING CREDIT/TERMS TO ITS CUSTOMERS:
- 1D. DO ANY OF YOUR CREDIT CUSTOMERS ACCOUNT FOR OVER 10% OF YOUR TOTAL CREDIT SALES?
YES _____ NO _____ IF YES, LIST THESE CUSTOMERS:
- 1E. DO YOU MAINTAIN CREDIT INSURANCE TO COVER YOUR RECEIVABLES? YES: _____ NO: _____
IF YES, WHAT PERCENTAGE OF TOTAL SALES ARE COVERED BY THIS INSURANCE? _____ %
- 1F. DESCRIBE THE DISCOUNT POLICY OF YOUR BUSINESS:
- 1G. THE TOTAL DOLLAR AMOUNT OF RECEIVABLES WRITTEN OFF LAST FISCAL YEAR WAS: \$ _____
2. DESCRIBE THE WARRANTIES, GUARANTIES, OR OTHER DEVICES PROVIDED BY YOUR BUSINESS TO SUPPORT PRODUCT QUALITY:
3. FOR YOUR BUSINESS' MOST RECENTLY COMPLETED FISCAL YEAR:
TOTAL CREDIT SALES WERE: \$ _____ TOTAL RETURNS WERE: \$ _____
TOTAL ALLOWANCES WERE: \$ _____ TOTAL CREDITS WERE: \$ _____
4. DO YOU SELL TO OTHER BUSINESSES ON CREDIT WHICH ALSO SELL TO YOU? YES: _____ NO: _____
5. DO YOU SELL OVERSEAS? YES: _____ NO: _____
6. DESCRIBE THE PRIMARY INDUSTRY(S) TO WHOM YOU SELL ON CREDIT:

SBA Form AB-4

INVENTORY

- 1. DESCRIBE THE METHOD OF ACCOUNTING FOR INVENTORY YOUR BUSINESS USES (LIFO, FIFO, WEIGHTED AVERAGE, ETC.):

- 2. HOW MANY DIFFERENT STOCK KEEPING UNITS (SKU) DO YOU MAINTAIN?
- 3A. DO YOU CARRY ITEMS FOR SALE THAT ARE CONSIGNED BY OTHERS? YES: _____ NO:
IF YES, WHAT PERCENTAGE? _____%
- 3B. DO YOU CONSIGN ANY OF YOUR ITEMS FOR SALE TO OTHERS? YES: _____ NO:
IF YES, WHAT IS ITS PERCENTAGE OF TOTAL SALES? _____%
- 4. DESCRIBE YOUR BUSINESS' PROCEDURE FOR MAINTAINING AND PHYSICALLY COUNTING ITS INVENTORY:

- 5. THE DOLLAR VALUE OF TOTAL SALES RETURNED LAST YEAR WAS: \$
- 6. DO YOU MAINTAIN PRODUCT LIABILITY INSURANCE? YES: _____ NO:
- 7. NAME ANY CREDITORS WHO HOLD PURCHASE MONEY LIENS AGAINST YOUR INVENTORY:

- 8. DO YOU MAINTAIN ANY INVENTORY OFF PREMISES WHICH YOU OWN? YES: _____ NO:
- 9. IN HOW MANY DIFFERENT LOCATIONS DO YOU MAINTAIN INVENTORY? _____ 10.HOW
FREQUENTLY DO YOU CONDUCT A PHYSICAL INVENTORY?

- 11. DO YOU SEPARATE "SECONDS" OR RETURNED INVENTORY FROM FIRST LINE MERCHANDISE?
YES: _____ NO:
- 12. DO YOU HOLD NON-OWNED GOODS/INVENTORY FOR OTHER INDIVIDUALS OR FIRMS?
YES: _____ NO:
IF YES, THE APPROXIMATE DOLLAR VALUE OF THE ITEMS IS: \$
- 13. EXPLAIN YOUR METHOD(S) FOR BILLING CUSTOMERS:

AUTHORIZED SIGNATURE: _____

DATE:

PRINTED NAME & TITLE:

**APPLICANT QUESTIONNAIRE (SBA Form AB-4I)
INSTRUCTIONS TO RESPONDING LENDERS**

This questionnaire is designed to assist Lenders in assessing the risk associated with the collateral of all SBA ASSET BASED PROGRAM applicants. Its use will yield a score which establishes the recommended servicing requirements for the proposed loan.

This Form is established for the exclusive use by the Participant, who shall be responsible for its completion, and for review by SBA. This Form is not intended to be provided Applicants as part of their application package.

A review of SBA Form AB-4, which is to be completed by the applicant to address the issues of the questionnaire, and an interview with the applicant should provide satisfactory answers to each question on this Form.

The questionnaire is divided into three sections, including General Questions which apply to all applicants, and questions on the applicant's Accounts Receivable and Inventory. All sections should be answered, even if the Borrowing Base will consist of only one asset type, since the other can be secondary collateral. The recommended levels of servicing to be required should be based on the score obtained from the General section and section(s) covering the assets included in the Borrowing Base.

NAME OF BUSINESS:

DATE COMPLETED:

GENERAL QUESTIONS

1. Length of time in business:

- a. Less than one year 4
- b. Between one and two years 3
- c. Between two and five years 2
- d. Over five years 1

2. The average Gross Profit margin is:

- a. Less than 15% 4
- b. 15% to 30% 3
- c. Between 30% and 40% 2
- d. Over 40% 1

3. The Debt/Worth ratio in relation to RMA comparable business is:

- a. Below the lower quartile 4
- b. Between the median and the lower 3
quartile
- c. Between the median and the upper 2
quartile
- d. Above the upper quartile 1

SBA Form AB-4I

APPLICANT QUESTIONNAIRE

4. Does the borrower have a new product or product line expected to provide 20% or more of revenues?

- a. Yes 2
b. No 1

5. The maturity of the SBA guaranty is:

- a. Five years 4
b. Between 3 and 5 years 3
c. Between 1 year and 3 years 2
d. One year or less 1

6. Does the borrower permit unconditional return of unsold merchandise?

- a. Yes
b. No 3
 1

7. Has the borrower experienced returns, warranty claims or credits totalling 5% or more of annual revenues?

- a. Yes
b. No 3
 1

8. Does the borrower have sales to affiliates?

- a. Yes
b. No 3
 1

RECEIVABLES QUESTIONS

9. The anticipated advances against eligible A/R's will be ___ percent different than the cost of goods sold percentage to sales:

- a. A positive five 2
b. Zero 0
c. A negative five 1
d. A negative ten 2

d. More than a negative ten 3

10. Does the borrower have credit insurance against receivables?

a. Yes

b. No

<input type="checkbox"/>	1
<input type="checkbox"/>	2

SBA Form AB-4I

APPLICANT QUESTIONNAIRE

11. What are the net credit terms of the borrower?
- a. Dating or more than 90 days
 - b. Between 60 and 90 days 4
 - c. Between 30 and 60 days 3
 - d. Less than 30 days 2
12. The accounts receivable collection period is:
- a. More than 90 days
 - b. Between 60 and 90 days 4
 - c. Between 30 and 60 days 3
 - d. Below 30 days 2
13. The maximum amount of sales to any one company and its affiliates is:
- a. More than 25%
 - b. Between 15% and 25% 4
 - c. Between 10% and 15% 3
 - d. Below 10% 2
14. Does the borrower progress invoice or bill partially from master contracts?
- a. Yes
 - b. No 3
15. Does the borrower hold sold products until the customer requests shipment?
- a. Yes
 - b. No 2
16. What is the level of contra accounts of the borrower with customers?
- a. More than 10% of revenues
 - b. Between 5% and 10% 4
 - c. Less than 5% 3
 - d. None 2

17. Does the borrower have export sales?

- a. In excess of 20% 4
- b. Between 10% and 20% 3
- c. Less than 10% 2
- d. None 1

SBA Form AB-4I

APPLICANT QUESTIONNAIRE

18. Bad debt expense has been:

- a. Greater than 5% of revenues
 - b. Between 3% and 5% 4
 - c. Between 1% and 3% 3
 - d. Less than 1% 2
- 1

INVENTORY QUESTIONS

19. The anticipated advances against eligible inventory will be:

- a. Above 50%
 - b. Between 40% and 50% 4
 - c. Between 30% and 40% 1
 - d. Below 30% 2
- 3

20. The current inventory turnover is:

- a. More than 120 days
 - b. Between 60 and 120 days 4
 - c. Between 30 and 60 days 3
 - d. Less than 30 days 2
- 1

21. The number of SKU's (items) in inventory are:

- a. More than 1000
 - b. Between 500 and 1000 4
 - c. Between 100 and 500 3
 - d. Less than 100 2
- 1

22. Does the borrower stock inventory for specific contracts with durations beyond six months?

- a. Yes
 - b. No 3
- 1

23. Does the borrower sell products which may harm the environment or health?

- a. Yes

b. No 3
 1

24. Does the borrower sell perishable products?

a. Yes
b. No 2
 1

SBA Form AB-4I

APPLICANT QUESTIONNAIRE

25. What are the inventory controls of the borrower?
- a. Informal system
 - b. Manual system 4
 - c. Computerized system 3
 - d. Computerized perpetual inventory 2
- 1
26. Does the borrower have product liability insurance for hazardous products?
- a. Yes
 - b. No 1
- 2
27. What method is used to conduct inventory review by the borrower?
- a. Estimates only
 - b. Annually 4
 - c. Quarterly to semi-annually 3
 - d. Less than quarterly 2
- 1
28. What type of inventory cost method is used?
- a. Retail method
 - b. Weighted Average 4
 - c. First-in, First-out 3
 - d. Last-in, First-out 2
- 1
29. Does the borrower place goods on consignment?
- a. Yes
 - b. No 2
- 1
30. Does the borrower have off premises inventory?
- a. Yes
 - b. No 2
- 1
31. The accounts payable turnover of the borrower compared to RMA standards is:
- a. Below the lower quartile
 - b. Between the lower quartile and the median 4
- 3

- c. Between the upper quartile and the median 2
- d. Above the upper quartile 1

32. Is any of the inventory acquired from suppliers subject to a Purchase Money Security Interest?

- a. Yes 3
- b. No 1

SBA Form AB-4I

APPLICANT QUESTIONNAIRE

SCORING SECTION

Maximum score, All Questions: 106
 Minimum score, All Questions 31

Maximum score, General and A/R Related: 61
 Minimum score, General and A/R Related: 17

Maximum score, General and Inv Related: 72
 Minimum score, General and Inv Related: 22

APPLICANT QUESTIONNAIRE SCORING MATRIX

STANDARD	ALL ELEMENTS	ACCT'S REC	INVENTORY
MINIMUM MONITORING	31 - 67	17 - 38	22 - 46
MAXIMUM MONITORING	68 - 106	39 - 61	47 - 72
MINIMUM EXAMINATION	31 - 67	17 - 38	22 - 46
MAXIMUM EXAMINATION	68 - 106	39 - 61	47 - 72
MEDIUM ACCOUNT CONTROL	68 - 86	39 - 50	47 - 59
HIGH ACCOUNT CONTROL	87 - 106	51 - 61	60 - 72
MEDIUM FUNDS CONTROL	68 - 86	39 - 50	47 - 59
HIGH FUNDS CONTROL	87 - 106	51 - 61	60 - 72

THIRD PARTY SERVICE PROVIDERS Qualification Criteria

The following standards have been formulated as guidelines for lenders participating in SBA's Asset Based Program for use when evaluating and selecting an outside or third party service provider (Provider) who may perform those examination, monitoring, or control functions required to prudently administer Asset Based loans guaranteed by the SBA: Experience; Competence; Character; Equal Opportunity; Financial Responsibility; Coverage; Business Authorities; and Confirmation.

These standards are numerically arranged from 1 to 8. Those standards noted by an "a" after the number are required for lender approval of Providers who will perform examination services. The standards noted with a "b" are required for lender approval of Providers who will perform monitoring or control services.

The lender shall have the responsibility for providing the required examination, monitoring, or control functions. Under this program, the lender may contract with a Provider who meets these standards to assist the lender with the examination, monitoring, or control functions. SBA takes no position on the approvability or quality of any Provider.

Providers Who Will Perform Examination Services.

1a. Experience

Provider must demonstrate that it has successfully been in business continuously as an individual, partnership, or corporation for not less than three (3) years. This experience must substantially consist of examining, auditing, analyzing or reviewing supporting documents and physical quantification of accounts receivable, inventory or their equivalents. Experience is not limited to accounting firms, collateral control companies or asset based lenders, provided however, the applicant's experience has been directly related to asset based lending.

2a. Competence

Provider must be capable of submitting a description or outline of services offered, methodology in delivering and documentation supporting, together with at least two (2) examples of past engagements performed in the last two (2) years.

3a. Character

Provider shall certify in writing to the lender that:

- During its business career it or its parent organizations, partnerships or venture partners, have not been convicted of violations of any federal/state criminal laws.
- It has never been in litigation with the SBA or with any SBA participating lender in connection with SBA lending.
- It is in compliance with Internal Revenue Service (IRS) reporting requirements and not subject to IRS enforcement procedures when it applies to become a Provider.

4a. Equal Opportunity

Provider must certify in writing that:

- It does not discriminate, nor will it discriminate, in its hiring practices with respect to race, creed, age, gender, or national origin.
- It is in compliance with all federal, state and local regulations governing employee safety and workman's compensation, as applicable.

5a. Financial Responsibility

Provider must furnish proof that:

- It maintains at least \$500,000 of unencumbered professional liability coverage from a reputable insurance carrier, or financially provided by an equivalent source. Coverage amount must insure each incident and on an aggregate annual basis.
- Such insurance covers employees, agents and subcontractors for principal loss as a result of errors, omissions or negligence in quantifying accounts receivable, or inventory.
- Coverage extends to the geographic area Provider is requesting to service.

6a. Coverage

Provider must indicate whether it is applying for a specific state[s], region[s], or locale[s] and support this by explanation of staffing.

7a. Business Authorities

Provider must be legally permitted to conduct its services in whatever area it is applying to serve. Such legal authority may be evidenced by, but is not limited to, occupational permits, federal or state registration, or any other legal requirements to conduct business.

8a. Confirmation

Provider shall submit the company names, addresses, and authorized phone contacts of not less than three (3) references which can support the Approved Examination Servicer (AES) by offering opinions relating to present or past services rendered. The services must generally equate to those for which the applicant seeks AES status.

Providers Who Will Perform Monitoring & Control Services

1b. Experience

Provider must demonstrate that it has successfully been in business continuously as an individual, partnership, or corporation for not less than three (3) years. The experience must substantially consist of examining, auditing, analyzing or reviewing documents supporting, and physical quantification of, accounts receivable, inventory or their equivalents. Experience is limited to providers which can further demonstrate experience in obtaining actual or contingent dominion

over collateral assets including: bank lock boxes, postal block boxes, segregation of inventories and raw materials utilizing elements of, or actual use of legal bailment in connection with asset based lending. Further, applicant should also demonstrate experience in supervising movement of accounts receivable and inventory in and out of the borrowing base, independent of the borrower or its physical location.

2b. Competence

Provider must be capable of submitting a description or outline of services offered, methodology in delivering and documentation supporting, together with at least two (2) examples of past engagements performed in the last two (2) years. An Approved Monitoring & Control Servicer (AMCS) Contractor must offer examples covering: 1.) Examinations; 2.) Information Monitoring with Examinations and 3.) Collateral Control Services performed. This includes administration of lock boxes, postal block boxes, bailment, or its elements and continuous monitoring of collateral assets, independent of borrower or its physical location.

3b. Character

Provider shall certify in writing to the lender that:

- Since its inception, Provider and its parent (if any), affiliated partnerships or venture partners, have not been convicted of a violation of any federal or state criminal laws.
- It has not been engaged in litigation with the SBA or with any SBA participating lender in connection with SBA lending.
- It is in compliance with Internal Revenue Service (IRS) reporting requirements and must not be subject to IRS enforcement procedures when it applied to become a Provider.

4b. Equal Opportunity

Provider must certify that:

- It has not discriminated, nor will it discriminate, in its hiring practices with respect to race, creed, age, gender, or national origin.
- It is presently in compliance with all federal, state and local regulations governing employee safety and workman's compensation, as applicable.

5b. Financial Responsibility

Provider must provide proof that it maintains at least \$1,000,000 of unencumbered professional liability coverage from a reputable insurance carrier, or financially provided by an equivalent source. Coverage amount would insure each incident and on an aggregate annual basis. It must cover employees, agents and subcontractors for principal loss as a result of errors, omissions, or negligence in examining, monitoring and controlling collateral assets such as accounts receivable, inventory and their equivalents. Moreover, coverage should extend to the establishment of any aspect of bailment, in controlling borrower inventories. All coverage must extend to the geographic area the Provider is requesting to service.

6b. Coverage

Provider must indicate whether it is applying for a specific state[s], region[s], or locale[s] and support this by explanation of staffing. Coverage in foreign markets must be specified, including an explanation of staffing and methods of quality control.

7b. Business Authorities

Provider must be legally permitted to conduct its services in whatever area it is applying to serve. Such legal authority may be evidenced by, but is not limited to, occupational permits, federal or state registration, or any other legal requirements to conduct business.

8b. Confirmation

Provider shall submit the company names, addresses, and authorized phone contacts of not less than three (3) references which can support the AMCS application by offering opinions relating to present or past services rendered. The services must generally equate to those for which the applicant seeks AMCS status.