SOP 50 10 5(F)

Lender and Development Company Loan Programs

U.S. Small Business Administration
Office of Financial Assistance

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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.

When the policy set forth in this Subpart does not adequately address the unique circumstances regarding a particular matter, an exception to policy may be approved by the Director of the Office of Financial Assistance (D/FA). For Export Working Capital Program (EWCP) and International Trade (ITL) loans, an exception to policy may be approved by the Director, International Trade Finance (D/ITF). For Export Express loans, an exception to policy may be approved by the D/ITF with the concurrence of the Director, Office of Credit Risk Management (D/OCRM). The D/FA or D/ITF may not approve an exception to policy if such exception would be inconsistent with a statute or regulation. A request for an exception to policy must be submitted to the Loan Guaranty Processing Center (LGPC) for 7(a) applications, including EWCP, ITL and Export Express loan applications, and to the Sacramento Loan Processing Center (SLPC) for 504 applications. The processing center will analyze the request and make a recommendation to the D/FA or D/ITF, as applicable or an individual acting in that capacity, who will make the final decision (with the concurrence of the D/OCRM for Export Express loans). The decision must be documented in the appropriate Agency loan file. This procedure may only be used in situations where a minor deviation from standard policy is necessary for the specific situation. Exceptions to policy will be considered on a case-by-case basis and the decision will only apply to the specific request.

CHAPTER 1: 7(A) LENDERS

I. 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).

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.

II. BECOMING A 7(A) LENDER

A. <u>The following lenders may apply to participate with SBA as a 7(a) lender:</u>

1. Federally Regulated Lenders, including those lenders regulated by Federal Financial Institution Regulators (e.g., the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration); and

2. SBA Supervised Lenders:

a) Non-Federally Regulated Lenders (NFRLs), including State regulated lenders without federal deposit or share insurance protection; and

b) Small Business Lending Companies (SBLCs)

B. The following lenders may not apply to participate with SBA as a 7(a) lender:

1. SBA-licensed Small Business Investment Companies (SBICs);

2. Certified Development Companies (see 13 CFR §§120.852, except with respect to the Community Advantage Pilot Program);and

3. Bank holding companies

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

1. Federally Regulated Lenders

a) 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.

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

1. If the credit union has federal deposit or share insurance protection, it must send its application to the SBA field office servicing the geographic area where its principal office is located.

2. If the credit union does not have federal deposit or share insurance protection, it must send to the SBA field office the items required in paragraph 2.b) below for Non-Federally Regulated Lenders.

3. 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.

4. The District Counsel must review the application for legal sufficiency. As part of that review, District Counsel must 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.

c) A lender must be in good standing with its state regulator and Federal Financial Institution Regulator (FFIR) as determined by SBA. For purposes of participation in the 7(a) program, SBA considers a lender to be in good standing with its state/FFIR if it has satisfactory financial condition and satisfactory small business credit administration and servicing policies, procedures and practices. Accordingly, the lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significant" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist

Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

Comment [D1]: In this section and throughout the document SBA has defined "good standing" requirements

d) The SBA field office must determine whether the lender meets the requirements of 13 CFR §§120.410 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, and/or a Loan Guaranty Agreement (Deferred Participation) for Short-Term Loans, SBA Form 750B. Once the SBA Form 750 is executed, the SBA field office will add the lender to the SBA Partner Information Management System (PIMS) which identifies the lender as an SBA participating lender.

2. Non-Federally Regulated Lenders

a) Non-Federally Regulated Lenders (NFRLs), including State regulated lenders without federal deposit or share insurance protection (such as Business and Industrial Development Companies (BIDCOs)) 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. NFRLs are authorized by the Administrator to make loans pursuant to section 7(a) of the Small Business Act. NFRLs are subject to additional regulations specific to SBA Supervised Lenders (see 13 C.F.R. §§ 120.460-120.465) as well as all other 7(a) regulations specific to loan processing, servicing, and liquidation. NFRLs must have internal controls that meet the requirements set forth for SBLCs in Chapter 2, Paragraph 1.F.3 of this Subpart.

Comment [D2]: See specific SBLC guidance in Subpart A Chapter 2

b) The lender's application must include:

1. Lender's name, address, telephone number and email address;
2. A copy of lender's Articles of Incorporation and by-laws certified by an appropriate officer;
3. Amount of the lender's capital and additional paid-in capital;
4. The lender's proposed geographical area of operations;
5. A list of officers, directors, associates and holders of 10 percent or more of any class of the lender's capital stock. "Associates" are defined in 13 CFR §§120.10.
6. A copy of the most recent audited financial statements on any entity, other than natural persons, holding 10 percent or more of any class of the lender's stock.
7. An organizational chart showing the relationship of the lender to any Associates.
8. A copy of "Statement of Personal History," SBA Form 1081, signed and dated within 90 days of submission to SBA, for each person listed under above item (5).
9. A copy of the lender's policies and procedures governing business loan origination, servicing, and liquidation.
10. A certification that the lender will not be engaged primarily in financing the operations of an Affiliate, as defined in 13 CFR §§121.103.
11. 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.
12. 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.
13. A copy of the most recent audited financial statements of the lender.

14. A copy of the license, if any, issued to the lender by a regulatory authority.

15. 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.

16. 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.)

c) Once submitted to the SBA Field Office, SBA must perform the following steps in evaluating the lender's application:

1. Review and comment on the sufficiency of all of the requested items in the application.

2. Comment on the qualifications of the lender, including SBA's participation requirements in 13 CFR §§120.410; and

3. Make a recommendation to approve or decline the lender's application.

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

e) The D/FA or designee, in consultation with the Director, Office of Credit Risk Management (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.

f) Change of Ownership or Control: SBA's prior written consent is required for any change of ownership or control of [10%] or more of any class of an NFRL's stock or ownership interests. SBA's prior written consent is also required for any proposed transaction or event that results in Control by any entity or person(s) not previously approved by SBA. Control as defined in this paragraph means the possession, direct or indirect, or the power to direct or cause the direction of the management or policies of an NFRL, whether through the ownership of voting securities, by contract, or otherwise.

g) A new application in accordance with subparagraph 2(b) above must be submitted for SBA's prior written consent with respect to any change of ownership or control transaction set forth in subparagraph 2(f) above. The lender will also have to reapply for any delegated authorities.

3. Small Business Lending Companies ("SBLCs"). 13 C.F.R. §§ 120.460 – 120.490)

A Small Business Lending Company (SBLC) is a nondepository lending institution that is SBA licensed and is authorized by SBA to only make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. See Chapter 2 of this Subpart for more information on SBLCs and becoming an SBA licensed SBLC.

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

1. 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. (13 CFR §§120.400) This agreement is subject to SBA's rules and regulations as amended from time to time.

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

E. Responsibilities of 7(a) lenders

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

a) Submit applications for guaranty with all required forms, documentation and credit analyses, to the designated SBA processing center for review.

b) Execute the Authorization, which is prepared by SBA.

c) Close the loan in accordance with the Authorization, all policy and regulations.

d) Maintain complete loan files.

e) Service the loan in accordance with SOP 50 57 and regulations.

f) Liquidate the loan in accordance with SOP 50 57 and regulations.

g) Comply with SBA Loan Program Requirements for the 7(a) program (13 CFR §§120.10.), as such requirements are revised from time to time. 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. (13 CFR §§120.180)

h) SBA Loan Program Requirements, center contacts and other information can be found at http://www.sba.gov/for-lenders.

i) Individuals and entities suspended, debarred, revoked, or otherwise excluded under the SBA or Government-wide debarment regulations are not permitted to conduct business with SBA, including participating in an SBA-guaranteed loan. Lenders are responsible for consulting the System for Awards Management (SAM) Excluded Parties List System (EPLS) or successor system to determine if an employee or Agent has been debarred, suspended or otherwise excluded by SBA or other federal agency. (http://www.epls.gov.) Additionally, lenders are responsible for reviewing SBA's webpage list of Agents that have been subject to an enforcement action or have been otherwise excluded from the privilege of conducting business with SBA and must refrain from doing business with any Agent appearing on the list during the time that an Agent is suspended or revoked from SBA programs. See http://www.sba.gov/about-sba-services/18351.

Comment [D3]: Debarment further defined and System for Awards Management replaces EPLS

2. To participate in the Export Working Capital Program (EWCP):

a) An existing SBA lender may contact the local United States Export Assistance Center (USEAC) or the local SBA field office to request authority to participate in the EWCP. (A complete listing of USEAC locations and personnel may be found at www.sba.gov/oit.) The USEAC or field office staff will provide the lender with the Supplemental Guarantee Agreement Export Working Capital Program (SBA Form 750EX), which the lender must execute and return to the USEAC.

b) Non-SBA lenders must be approved by SBA to participate in the 7(a) loan guaranty program before they can participate in EWCP. Such lenders also may contact the local USEAC or local SBA field office to request authority to participate in SBA lending. If the lender meets the criteria set forth in paragraph II above, the USEAC or field office staff will provide the lender with SBA Form 750 and/or SBA Form 750B, as appropriate, and SBA Form 750EX, which the lender must execute and return to the USEAC.

c) The Regional Manager of SBA's Export Solutions Group located at each USEAC will consult, advise and train lenders and small business exporters on the procedures and benefits of SBA's EWCP.

d) To request authority to participate in the Preferred Lender Program (PLP) for EWCP, see paragraph IV.B.5 of this Chapter.

3. Preferences

a) A lender may not take any action in connection with an SBA-guaranteed loan that establishes a preference in favor of the lender. (13 CFR §§120.411) A lender must be particularly careful to avoid establishing a preference when using its delegated authority (for example, reducing its existing exposure to the borrower through the use of an SBA guaranteed loan).

b) A lender must not:

1. Take any side collateral or guaranty that would secure only its own interest in a loan;
2. Obtain a separate guaranty on the unguaranteed portion of the 7(a) loan without SBA's approval, such as through a co-guaranty program or arrangement;
3. Require a borrower to purchase certificates of deposit;
4. Maintain a compensating balance not under the control of the borrower;
5. Take a side loan which would have the effect of ensuring a risk-free or limited-risk investment on the participant's share; or
6. Have an SBA-guaranteed loan in a "piggyback" structure.

(a) Piggyback financing occurs when one or more lenders provide more than one loan to a single borrower at or about the same time, financing the same or similar purpose, and where the SBA-guaranteed loan is secured with a junior lien position or no lien position on the collateral securing the non-guaranteed loan(s).

(b) SBA does not consider a scenario where both loans are for working capital and the non-SBA guaranteed loan is secured only by working capital assets to be a piggyback structure.

(c) SBA does not consider a shared lien position with the lender (pari passu) as a piggyback structure.

c) 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):

1. The enabling authority of the lender requires the purchase as a condition for making the loan.
2. 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.
3. 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.
4. 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. (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.

a) Conflicts of Interest

1. A lender or its Associates may not have a real or apparent conflict of interest with a small business or SBA. (13 CFR §§120.140 and 13 CFR §Part 105)

2. 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:

(a) Has a direct or indirect financial or other interest in the Small Business Applicant; or

(b) Had such interest within 6 months prior to the date of application.

SBA reserves the right to deny liability on its guaranty in the event that the borrower defaults, if the lender, its Associates, partner or a close relative acquires such an interest at any time during the term of the loan.

b) The Standards of Conduct Counselor for the Agency is the Designated Agency Ethics Official. (13 CFR §§105.402(a))

c) Standards of Conduct ("Conflict of Interest") Approvals

1. If a Small Business Applicant has, as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, an individual who, within 1 year prior to the loan application, was an SBA Employee (as defined by 13 CFR §§105.201(a)), the loan application must be approved by the Standards of Conduct Counselor. (13 CFR §§105.203(a))

2. If a Small Business Applicant has, as its sole proprietor, partner, officer, director, or stockholder with a 10% or more interest, an individual who is an SBA Employee (as defined by 13 CFR §§105.201(a)) or a Household Member of an SBA Employee, the loan application must be approved by the Standards of Conduct Committee at SBA Headquarters. (13 CFR §§105.204) A "Household Member" of an SBA Employee includes:

(a) The spouse of the Employee;

(b) The minor children of the Employee; and

(c) The blood relatives of the Employee, and the blood relatives of the Employee's spouse, who reside in the same place of abode as the Employee. (13 CFR §§105.201(d))

3. If a Small Business Applicant has, as its sole proprietor, general partner, officer, director, or stockholder with a 10% or more interest, or a household member of such individual, an individual who is a Member of Congress, an appointed official of the legislative or judicial branch of the Federal Government, a member or employee of a Small Business Advisory Council, or a SCORE volunteer, the loan application must be approved by the Standards of Conduct Committee. (13 CFR §§105.301(c) and 105.302(a))

d) When a Standards of Conduct approval is required, the application should be processed by the appropriate processing center and, if appropriate, be conditionally approved and forwarded to the Standards of Conduct Counselor or Standards of Conduct Committee (through the Standards of

Conduct Counselor). The Standards of Conduct Counselor will notify the processing center of the final Agency decision and the processing center will notify the lender accordingly.

e) Other Government Employees

A Small Business Applicant must submit a statement of no objection from the pertinent department or military service if its sole proprietor, partner, officer, director, or stockholder with a 10% or more interest, or a household member of such individual, is an employee of another department or agency of the Federal Government (Executive Branch) having a grade of at least GS-13 (or its equivalent) or higher.

(13 CFR §§105.301(a))

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 (13 CFR §§120.413)

a) Generally. A lender may publicize its relationship with SBA, including identifying itself as an SBA participating lender, by placing the appropriate SBA-approved decal on the window of the lending institution or placing identical decal icons on its website. A lender may not use the SBA logo in any manner in any advertisement, brochure, publication or promotional piece, or state or imply that the lender or its borrowers will receive any preferential treatment by SBA.

b) Use of Window Decals. The SBA-approved lender decal may only be used to inform the public of the lender's relationship with SBA and may not be used to promote, or appear to promote, the lender's non-SBA products or services. Window decals are available from SBA district offices.

c) Use of Decal Icons on Website. The SBA-approved lender decal icon is an exact replica of the window decal and may only be used to inform the public of the lender's relationship with SBA and may not be used to promote, or appear to promote, the lender's non-SBA products or services.

1. When using the SBA-approved lender decal icon on a website, the lender must include the following public statement, "Approved to offer SBA loan products under SBA's Preferred Lender Program" (or SBA Express Program, etc.).

2. The lender decal icon may be downloaded from, and must be used in accordance with SBA's lender decal guidelines found at http://www.sba.gov/content/advertising-sba-relationship.

d) Oversight. A lender's usage of the window/building decal and any identical decal icons on its website may be reviewed as part of the Agency's lender oversight activities.

III. 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 historical data and 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 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:

a) $100,000,000 or more

b) $10,000,000 - $99,999,999

c) $4,000,000 - $9,999,999

d) $1,000,000 - $3,999,999

e) $0 - $999,999 (with at least one loan disbursed in past 12 months)

f) $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. (*See* 13 CFR §120.10 (definitions related to Risk Rating), 13 CFR §13 CFR §§120.1015 (Risk Rating System), and 75 FR 9257, March 1, 2010 and 75 FR 13145, March 18, 2010 (Risk Rating Notices).)

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, but not limited to, its current composite risk rating and 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:

a) Request must be made by a senior officer with proper authority of the 7(a) lender (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 7(a) lender's stationery;

d) Request must include the user's business card;

e) The stationery and business card should include the 7(a) lender'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 7(a) lender;
4. Requesting officer's name and title; and
5. Requesting officer's mailing address, telephone number and email address at the 7(a) lender.

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) 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 and confidential information and for ensuring the security of the data. See 13 CFR §13 CFR §§120.1060.

C. Off-site monitoring and on-site reviews (13 CFR §13 CFR §§120.1025 and 120.1050 - 1060).

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.

1. 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) To monitor lenders between on-site reviews or examinations. Additional information regarding on-site reviews and examinations can be found in 13 CFR §13 CFR §§120.1050-1060 and SBA's SOP 51 00.

2. Additionally, in accordance with 13 CFR §13 CFR §§120.1010, 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 or as requested for SBA oversight.

3. SBA may request reports on a case by case basis.

4. 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. (13 CFR §13 CFR §§120.1070)

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 (a) and (b) 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 (c) above, and other lender oversight expenses incurred under (d) 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 (c) 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, including but not limited to, a participant's delegated authority. (13 CFR §13 CFR §§120.1070).

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. (For further guidance on Lender Supervision and Enforcement, see SOP 50 53.)

Comment [D4]: Removed paragraph D.2 and D.3. Details of oversight responsibility contained in SOP 50 53 from the Office of Credit Risk Mangaement.

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 §13 CFR §§120.1400-1600.

Examples of circumstances that may result in suspension or revocation under the above cited regulation include but are not limited to:

a) Failure to comply materially with any requirement imposed by Loan Program Requirements including but not limited to, lender eligibility requirements and prudent lending requirements;

b) Repeated failure to properly report on loan disbursements and status; or

c) Less Than Acceptable examination/review assessment or repeated Less Than Acceptable Risk Rating, the latter generally in conjunction with other grounds.

2. SBA will notify the lender of a proposed suspension or revocation in accordance with 13 CFR §13 CFR §§120.1600. The lender will be provided an opportunity to respond prior to final action.

IV. TYPES OF 7(A) LENDERS WITH DELEGATED AUTHORITY

A. Certified Lenders Program (13 CFR §13 CFR §§120.440)

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 demonstrate to SBA's satisfaction that it:

a) Can effectively process, close, service and liquidate loans; and

b) Has a satisfactory performance history with SBA, including the submission of complete and accurate loan guaranty application packages;

1. Packages demonstrate strong knowledge of SBA forms and procedures;
2. Credit analyses demonstrate solid working knowledge of SBA's eligibility and credit criteria; and

c) Has been current in filing SBA required 1502 reports and in remitting required guaranty, servicing and review fees.

2. Process to become a CLP Lender or to renew CLP status (13 CFR §13 CFR §§120.441)

a) 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. A lender's written request to participate must include a regulatory good standing statement; a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

Comment [D5]: Good standing

b) The local SBA District Director will consider whether the lender continues to meet the requirements of 13 CFR §13 CFR §§120.410 to be a 7(a) participant and meets the qualifications identified above in initially approving or renewing a lender's CLP status.

3. Supplemental Guaranty Agreement

a) When CLP status is initially approved or renewed, the field office notifies the lender that it has been initially 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 update PIMS with the lender's CLP status and term. The term of CLP status may not exceed 2 years.

b) If the District Director declines a request for initial CLP status or renewal of CLP status, 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.

a) Eligibility Requirements for CLP Processing

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

1. Loans not eligible for CLP processing:

(a) Any pilot program unless SBA specifically authorizes use of CLP for the pilot; and

(b) Export Working Capital Program (EWCP).

2. Additional Restrictions Specific to CLP

(a) 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.

(b) Reconsiderations of declined loan applications must not be submitted under CLP procedures, but may be submitted under Standard 7(a) procedures.

3. 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.

4. 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 email subject line.

Comment [D6]: Submission by mail or fax no longer available.

5. 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.

6. 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 57.

5. Affiliation Issues/Change of Lender Authority

a) 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:

1. Acquisition by another entity;
2. Merge into another legal entity;
3. A change of name;
4. Substantial changes in management;
5. Substantial changes in how the lender handles SBA loans; or
6. Takeover or closure of the lender by a regulatory agency.

If a CLP Lender continues as the same legal entity that signed the CLP agreement and. . .	**Then . . .**
(1) The CLP Lender changes its name.	OCRM records the name change. The lender's CLP authority is not changed. A new CLP agreement is not needed.
(2) The CLP Lender is acquired by another entity. The CLP lender continues as a separate legal entity.	OCRM records the holding company name. The lender's CLP authority is not changed. A new CLP agreement is not needed.
(3) The CLP Lender acquires another lender. The acquired lender does not continue as a separate legal entity.	The CLP lender may continue to make CLP loans under its CLP authority unless there is a substantial change in its ability to make CLP loans.
(4) The CLP Lender acquires another lender. The acquired lender continues as a separate legal entity.	The acquired lender may not make CLP loans. The acquired lender may apply for CLP authority.
(5) The lender is closed or taken over by a regulatory authority.	The lender's CLP authority terminates automatically and the lender must cooperate with SBA to transfer responsibility for servicing and liquidating its CLP loan portfolio. OCRM notifies the lender, SBA field office(s), and the LGPC that the lender may not make any new loans.
(6) The lender changes its operations so that it cannot process SBA loans as required by the CLP Program.	The SBA will not renew the lender's CLP authority or will suspend or revoke the lender's CLP authority.
If a CLP Lender does not continue as the same legal entity that executed the CLP agreement and . . .	**Then . . .**
(1) The CLP Lender is merged into a non-CLP Lender. The original CLP Lender's SBA operations are unchanged.	The original CLP lender no longer has the authority to make CLP loans. The surviving lender may apply for CLP authority and execute a CLP agreement.
(2) The CLP Lender is merged into another CLP Lender.	The original CLP Lender no longer has the authority to make CLP loans under its agreements with SBA. However, CLP loans can be made under the surviving CLP Lender's agreements and the surviving CLP Lender is responsible for servicing and liquidating the original CLP Lender's CLP loan portfolio.

(3) The CLP Lender is dissolved.	The lender's CLP authority to make CLP loans automatically terminates and the lender must cooperate with SBA to transfer responsibility for servicing and liquidating its CLP loan portfolio. OCRM notifies the lender, SBA Field Office(s) and the LGPC that the lender may not make any new loans.

6. Monitoring and reviews

   See Paragraph III.A through C of this Chapter for further information on monitoring and reviews.

7. Supervision and enforcement

   See Paragraph III.D of this Chapter for further information on supervision and enforcement.

8. Suspension and revocation

   SBA may suspend or revoke a lender's CLP authority in accordance with 13 CFR §13 CFR §§120.1400-1600.

B. Preferred Lenders Program (PLP) (13 CFR §13 CFR §§120.450)

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 Initial PLP Consideration

a) The lender must demonstrate to SBA's satisfaction that it:

   1. Has disbursed at least 5 SBA loans within the past 24 months;
   2. Can effectively process, close, service and liquidate SBA loans;
   3. Is in compliance with applicable SBA Loan Program Requirements (as defined in 13 CFR §13 CFR §§120.10);
   4. Has satisfactory SBA performance as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA's mission)
   5. Has been current in filing SBA required 1502 reports and in remitting required guaranty, servicing and review fees;
   6. Is in good standing with its state/FFIR. The lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies,

Comment [D7]: Good standing.

procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

7. Is not subject to any SBA enforcement actions; and
8. Has not received a major substantive objection from its Lead SBA Field Office.

b) SBA, in its discretion, also will consider other risk related or program integrity information (e.g., rapid growth, inadequate capital, formal supervisory actions outstanding filed by the lender's federal or state regulator, inadequate governance and management).

Comment [D8]: Language added

Comment [D9]: Language added

3. Process to obtain PLP status

A lender must submit its request for PLP status to its local SBA office with a copy to OCRM. For multi-state lenders, the request will go to the District where the lender is headquartered.

a) The lender's request should include:

1. Legal name and address of lender;
2. Legal name of any holding company of lender;
3. Name, title, address, phone number, e-mail address and fax number for contact person at lender for nomination process;
4. Lender's Lead SBA Field Office (the SBA field office serving the area in which the lender's headquarters is located);
5. A copy of the lender's SBA Form 750 and SBA Form 750B, if applicable;
6. If lender is or ever was a CLP Lender, state how long the lender has been CLP;
7. If lender was previously a PLP Lender, an explanation of why the lender left the Preferred Lenders Program;
8. A description of the lender's history, organization, and management, including:
   (a) When the lender was chartered; and
   (b) Any recent mergers or acquisitions;
9. Personnel who will:
   (a) Be in charge of PLP loans for the lender and their experience with the lender, in the industry, and with SBA loans; and
   (b) Have PLP loan approval authority;
10. Where and how PLP loans will be processed, closed, serviced and liquidated;
11. A good standing statement (as described in paragraph 2.a)(6) above).

b) Field Office's Nomination should include the field office's opinion of:

1. The lender's rapport with the field office; and
2. The lender's commitment to SBA lending.

c) The SBA field office sends the lender's request and the field office's recommendation to OCRM.

d) OCRM's Role: OCRM 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. OCRM performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies OCRM. OCRM then informs the lender of SBA's decision.

e) Upon approval, OCRM notifies the lender and the SBA field office:

1. That the nomination is approved; and
2. The length of the preferred status, not to exceed two years. 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 preferred status 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) should contact OCRM.

f) OCRM sends the lender a Supplemental Guaranty Agreement, Preferred Lenders Program (SBA Form 1347) signed by the appropriate SBA official. The lender must sign and return the SBA Form 1347 to OCRM before the lender's PLP status is effective. (Agreements must be signed and returned to the Center within 30 days of receipt or a new application to the program will be required.)

g) OCRM sends the appropriate field offices copies of the approval letter. OCRM will enter the effective term of the lender's PLP status on the PIMS. This is an essential step for lenders processing PLP loans.

h) If a lender is approved as a PLP Lender, it will automatically be approved as a CLP Lender. OCRM 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).

i) Decline of PLP application:

If the PLP application is declined, OCRM 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 OCRM and must show how it has overcome the reasons for decline. OCRM will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. OCRM will notify the lender in writing of SBA's final decision.

4. Process for Renewal of PLP Status (13 CFR §13 CFR §§120.451(e))

a) OCRM automatically starts the renewal process just prior to the expiration of a lender's PLP status. OCRM asks for comments from the Lead SBA Field Office and the SBA's processing, servicing and liquidation centers. The comments should pertain to the lender's most recent PLP term and must include:

1. Whether they recommend renewal;
2. If they do not recommend renewal, why not;
3. Whether the lender can process, close, service and liquidate SBA loans;
4. Changes in lender's organization or management;
5. Any recurring denial of liability or repair situations with the lender;
6. Reasons for any unfavorable loan volume or repurchase rate data;

7. Identification of any areas of concern; and
8. An explanation of any discussions with the lenders that may impact the PLP decision.

b) OCRM contacts the lender to obtain a good standing statement.

Comment [D10]: Language added

c) OCRM gathers the information relevant to a lender's renewal. OCRM performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies OCRM. OCRM then informs the lender of SBA's decision.

1. For renewal of its PLP status, the lender must demonstrate to SBA's satisfaction that it:

(a) Can effectively process, close, service, and liquidate SBA loans;

(b) Is in compliance with SBA Loan Program Requirements (as defined in 13 CFR §120.10);

(c) Has satisfactory SBA performance as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

(d) Is in good standing with its state/FFIR. The lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

Comment [D11]: Good standing

(e) Is not subject to any SBA enforcement actions; and

(f) Has been current in filing SBA required 1502 reports and remitting required guaranty, servicing and review fees.

2. SBA, in its discretion, also will consider other risk-related or program integrity information (e.g., rapid growth, inadequate capital, formal supervisory actions outstanding filed by the lender's federal or state regulator, inadequate governance and management.).

Comment [D12]: Language added

d) Notification of Renewal

OCRM notifies the lender and Lead SBA Field Office that:

1. The renewal is approved; and
2. The term of the renewal.

OCRM sends the lender a new SBA Form 1347 signed by OCRM on behalf of the appropriate SBA official. The lender must sign and return the SBA Form 1347 to OCRM before the lender's PLP renewal is effective.

e) CLP Status for PLP Lenders

OCRM renews the lender's CLP status to match the term of the lender's PLP renewal. OCRM sends the lender a new SBA Form 1186 signed by OCRM on behalf of the appropriate SBA official. The lender must sign and return the SBA Form 1186 to OCRM before the lender's CLP renewal is effective. When the signed SBA Form 1186 is received, OCRM updates PIMS to reflect the new expiration date.

f) If Renewal is Declined

OCRM 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. If the lender's PLP status is not renewed prior to the termination of its CLP status, then the lender must follow the procedures described above to request renewal of its CLP status from the local SBA field office.) 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 OCRM and must show how it has overcome the reason(s) for decline. OCRM will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. OCRM will notify the lender in writing of SBA's final decision.

g) Temporary Extension of PLP Status

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

h) Non-Renewal and Shortened Renewals

Comment [D13]: Clarifies shortened renewal period. Addresses reinstatement period.

If SBA determines in its discretion that a lender does not meet delegated authority criteria or increased supervision may be necessary, SBA may not grant or renew delegated authority or may only grant a shortened renewal period. See SOP 50 53 A, Chapter 3 on Increased Supervision.

(i) Reinstatement

If a lender's PLP status was revoked, declined or voluntarily terminated, the lender may ask SBA to reinstate its PLP status. However, the lender must generally wait 5 months before requesting reinstatement and follow paragraph B.III of this section.

5. PLP-Export Working Capital Program Authority

a) This program offers the opportunity for SBA 7(a) lenders with experience making EWCP loans or who are participants in the Delegated Authority Lender Program of the Export-Import Bank to apply for PLPstatus to underwrite EWCP loans. Lenders with PLP-EWCP status are delegated the same level of authority to process, close, service, and liquidate EWCP loans as is granted to approved 7(a) lenders with PLP authority.

b) Application requests include the following elements:

1. Legal name and address of lender;
2. Address, city and state where lender's EWCP underwriting will be performed;

3. Name, title, telephone and fax numbers and e-mail address of the lending unit's primary contact for the EWCP program;

4. A copy of the lender's SBA Form 750EX;

5. Identification of the USEAC offices the lending unit works through on EWCP loans;

6. 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;

7. Identification of personnel in charge of EWCP lending, their experience in export trade finance for small concerns, and

8. Documentation supporting the bank's delegation of authority to the contact person filing this PLP expansion request.

c) Completed applications should be directed to the Office of International Trade ("OIT") at SBA. OIT staff will be responsible for screening and collecting information from the applicable SBA offices on the current regulatory status of the lender and the lender's unit's capabilities as an EWCP participant. OIT will forward its recommendation and the comments of the other offices to OCRM for a final decision. The lender must demonstrate to SBA's satisfaction that it:

1. Has a satisfactory history of providing trade finance to exporters (both the lender and the lender's loan officers);

2. Has the ability to develop and analyze complete loan application packages;

3. Has been an active participant in the EWCP with SBA and/or with Ex-Im Bank for at least six consecutive months immediately prior to the SBA field office's recommendation and, if not an Ex-Im Bank delegated lender, has booked no fewer than three (3) SBA EWCP loans during the 24 months prior to application;

Comment [D14]: Loan booking requirements for EWCP.

4. Is in compliance with SBA Loan Program Requirements (as defined in 13 CFR §120.10);

5. Has satisfactory SBA performance as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

6. Is in good standing with its state/FFIR. The lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

Comment [D15]: Good standing.

7. Is not subject to any SBA enforcement actions; and

8. Has been current in filing SBA required 1502 reports and remitting required guaranty, servicing and review fees.

9. SBA may also consider other risk-related or program integrity information (e.g., rapid growth, inadequate capital, formal supervisory actions outstanding filed by the lender's federal or state regulator, inadequate governance and management).

Comment [D16]: Additional Requirement

d) Lenders are notified of the final decision by written letter from OCRM with a copy to OIT and the appropriate SBA Field Office. If approved, OCRM will provide the lender with the Supplemental Guaranty Agreement – Preferred Lender Program (PLP) for Export Working Capital Program (EWCP) Loans (SBA Form 2310), which the lender must execute and return to SBA before the lender can submit any loan applications under its PLP-EWCP authority. (Agreements must be signed and returned within 30 days of receipt or a new application to the program will be required.)

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

f) All PLP-EWCP expansion approvals will be for a period not to exceed the existing term of the lender's PLP authority. The succeeding PLP renewal of the lender will include a section on the lender's EWCP lending, with comment requests from OCRM directed to the OIT in the same manner as requests for comment from SBA loan servicing or loan liquidation centers.

g) Lenders that are participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (Ex-Im Bank) (or any successor Program) are eligible to participate in the PLP-EWCP program. Lenders should be aware that they must comply with 13 CFR §120.410(d), which requires SBA lenders to "be supervised and examined by either a Federal Financial Institution Regulator or a state banking regulator satisfactory to SBA." Ex-Im Bank Delegated Authority Lenders must comply with the PLP-EWCP application procedures described above, however, such lenders are not required to have prior experience with SBA 7(a) lending and are deemed to be an active participant with Ex-Im Bank for purposes of the application.

6. Authority and Responsibilities

a) 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.

1. 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.

2. Types of Loans Not Eligible under PLP – these types of loans are not eligible under PLP processing:

(a) Disabled Assistance Loans (DAL);

(b) Qualified Employee Trusts (ESOP) (loans made to an ESOP under 13 CFR §120.350 through 120.354);

(c) Pollution Control program; and

(d) International Trade Loans not secured by a first lien position on the assets being financed.

Revolving credits are not eligible for PLP except under CAPLines and, if the lender has authority from SBA to make PLP-EWCP loans, under the EWCP.

3. 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.

b) Additional Restrictions Specific to PLP (13 CFR §120.452).

1. Refinancing – See Subpart B, Chapter 2 of this SOP.

2. 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.

c) PLP Lenders' Processing Responsibilities - (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.

1. Lender's Eligibility Review

(a) 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 Subpart B, Chapter 2 of this SOP. SBA will not conduct an eligibility review prior to issuing a loan number. SBA may review the lender's documentation supporting its eligibility determination as part of any guaranty purchase request or when conducting lender oversight activities.

(b) 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.

2. 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, Chapter 4 of this SOP for specific guidance on processing loan guaranty requests.

3. 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.

4. Closing Requirements

(a) 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 7 of this SOP.

Comment [D17]: Language modified to clarify use of forms.

(b) After closing the loan, the PLP Lender must send to the appropriate CLSC a copy of the executed Authorization. The lender should not send SBA any other closing documentation, including disbursement information, except through the required periodic loan status reports (SBA Form 1502).

5. Servicing and Liquidation Responsibilities

See SOP 50 57 and 13 CFR §120.453 and 13 CFR Part 120, Subpart E for guidance.

7. Change of PLP Lender's Structure

a) To determine the effect on a lender's delegated authority due to a change in the lender's structure, please see the chart below.

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

1. The lender is acquired by another lender;
2. The lender is merged into another legal entity;
3. The lender changes its name;
4. The lender substantially changes the management of its SBA business;
5. The lender substantially changes how it handles SBA loans; or
6. A regulatory agency takes over or closes the lender.

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

c) Requests for New SBA Guaranty Agreements

The lender may obtain:

1. A new SBA Form 750 from the SBA field office; and
2. New SBA Forms 1186 and 1347 from OCRM.

If a PLP Lender continues as the same legal entity that signed the SBA Forms 1347 (PLP) and 1186 (CLP) and. . .	**Then . . .**

If a PLP Lender continues as the same legal entity that signed the SBA Forms 1347 (PLP) and 1186 (CLP) and. . .	**Then . . .**
(1) The PLP Lender changes its name.	OCRM records the name change. The lender's PLP and CLP authority is not changed. A new SBA Form 1347 (PLP) or SBA Form 1186 (CLP) is not needed.
(2) The PLP Lender is acquired by another entity. The PLP Lender continues as a separate legal entity.	OCRM records the holding company name. The lender's PLP and CLP authority is not changed. A new SBA Form 1347 (PLP) or SBA Form 1186 (CLP) is not needed.
(3) The PLP Lender acquires another lender. The acquired lender does not continue as a separate legal entity.	The PLP lender may continue to make PLP loans under its PLP authority unless there is a substantial change in its ability to make PLP and/or CLP loans.
(4) The PLP Lender acquires another lender. The acquired lender continues as a separate legal entity.	The acquired lender may not make PLP loans. The acquired lender may apply for PLP authority.
(5) The lender is closed or taken over by a regulatory authority.	The lender's PLP and CLP authority automatically terminates and the lender must cooperate with SBA to transfer responsibility for servicing and liquidating its PLP and CLP portfolio. OCRM notifies the lender, SBA field office(s) and appropriate centers that the lender may not make any new loans.
(6) The lender changes its operations so much that it cannot show that it handles SBA loans appropriately.	SBA will not renew the lender's PLP authority or will suspend or revoke the lender's PLP s authority.
If a PLP Lender does not continue as the legal entity that executed the SBA Forms 1347 (PLP) and 1186 (CLP) and . . .	**Then . . .**
(1) The PLP Lender is merged into a non-PLP Lender. The original PLP Lender's SBA operations are unchanged.	The original PLP Lender no longer has the authority to make PLP loans. The surviving lender may apply for PLP authority and execute a PLP agreement.

If a PLP Lender continues as the same legal entity that signed the SBA Forms 1347 (PLP) and 1186 (CLP) and. . .	**Then . . .**
(2) The PLP Lender is merged into another PLP Lender.	The original PLP Lender no longer has the authority to make PLP loans under its agreements with SBA. However, PLP loans may be made under the surviving PLP Lender's agreements and the surviving PLP Lender is responsible for servicing and liquidating the original PLP Lender's PLP loan portfolio.
(3) The PLP Lender is dissolved. It does not merge into another lender.	Both PLP and CLP authority terminates automatically and the lender must cooperate with SBA to transfer responsibility for servicing and liquidating its PLP and CLP loan portfolios. OCRM notifies the lender, SBA field office(s) and appropriate centers that the lender may not make any new loans.

8. Monitoring and reviews

   See Paragraph III.A through C of this Chapter for further information on monitoring and reviews.

9. Supervision and enforcement

   See Paragraph III.D of this Chapter for further information on supervision and enforcement.

10. Suspension and revocation

    SBA may suspend or revoke a lender's PLP authority in accordance with 13 CFR §120.1400-1600.

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 practicable, 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

   To the maximum extent practicable, SBA Express lenders can use their own forms, internal credit memoranda, notes, collateral documents, servicing 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. See Subpart B, Chapter 6 for a listing of the forms SBA requires for SBA Express.

2. Qualifications for Initial SBA Express Lender Status

Lenders can find information about how to apply for SBA Express status on SBA's website at www.sba.gov/for lenders.

a) Existing SBA Lenders

1. An existing SBA lender must demonstrate to SBA's satisfaction that it:

(a) Can effectively process, close, service, and liquidate SBA loans;

(b) Is in compliance with applicable SBA Loan Program Requirements (as defined in 13 CFR §120.10);

(c) Has satisfactory SBA performance as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

(d) Has been current in filing SBA required 1502 reports and in remitting required guaranty, servicing and review fees;

(e) Is in good standing with its state/FFIR. The lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

Comment [D18]: Good standing.

(f) Is not subject to any SBA enforcement actions; and

(g) Has not received a major substantive objection from its Lead SBA Field Office.

2. SBA, in its discretion, also will consider other risk related or program integrity information (e.g., rapid growth, inadequate capital, formal supervisory actions outstanding filed by the lender's federal or state regulator, inadequate governance and management).

b) 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 OCRM.

c) Lenders that do not currently participate with SBA

In addition to meeting the Agency's lender requirements as set forth in Paragraph II.C. of this chapter, a lender that does not currently participate with SBA also must demonstrate to SBA's satisfaction that it:

1. Is in good standing with its state/FFIR. The lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

2. Has at least 20 commercial or business loans for $350,000 or less at their most recent fiscal year end;

3. 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

4. Has no major substantive objections from the D/OCRM (e.g., relating to risk or program integrity).

3. Process to become an SBA Express Lender

a) A lender may send a written request to its local SBA Field Office with a copy to the OCRM. For multi-state lenders, the lender may send a written request to the SBA Field Office where the lender is headquartered.

b) As noted above, lenders not currently participating with the SBA must meet the Agency's lender requirements as set forth in Paragraph II.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.)

c) An SBA field office may nominate a lender for SBA Express status by sending a written nomination to OCRM. When an SBA field office nominates a lender for PLP status, it also may nominate the lender for SBA Express status.

d) OCRM gathers the information relevant to a lender's participation request. OCRM performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies OCRM. OCRM then informs the lender of SBA's decision.

e) 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

a) If the lender's request for SBA Express status is approved, OCRM notifies the lender of the decision and sends the lender an SBA Express Supplemental Loan Guaranty Agreement to sign and return. OCRM also sends the lender instructions for submitting SBA Express applications.

b) The lender must sign and return the agreement to OCRM before the lender's SBA Express status is effective. (Agreements must be signed and returned to the Center within 30 days of receipt or a new application to the program will be required.)

c) 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.

d) 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 for nomination for SBA Express status, OCRM 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 OCRM and must show how it has overcome the reason(s) for decline. OCRM will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. OCRM will notify the lender in writing of SBA's final decision.

6. Renewals of SBA Express Status

a) OCRM will automatically start the renewal process a few months prior to the expiration of a lender's SBA Express status. OCRM contacts the lender to obtain a good standing statement (as described in paragraph 2 above).

Comment [D19]: Revised to state OCRM contacts lenders.

b) OCRM will also contact the lender's Lead SBA Field Office and the SBA's processing, servicing and liquidation centers. The comments of those offices should pertain to the lender's most recent SBA Express term and must include:

1. Whether they recommend renewal;
2. If they do not recommend renewal, why not;
3. Whether the lender can effectively process, close, service and liquidate SBA loans;
4. Changes in lender's organization or management;
5. Any recurring denial of liability or repair situations with the lender;
6. Reasons for any unfavorable loan volume or repurchase rate data;
7. Identification of any areas of concern; and
8. An explanation of any discussions with the lenders that may impact the SBA Express decision.

c) OCRM gathers the information relevant to a lender's renewal. OCRM performs an analysis, makes a recommendation and sends it to the appropriate SBA official who makes a decision and notifies OCRM. OCRM then informs the lender of SBA's decision.

d) 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.

e) For renewal of a lender's SBA Express status and to determine its renewal term for SBA Express:

1. The lender must demonstrate to SBA's satisfaction that it:

(a) Can effectively process, close, service, and liquidate SBA loans;

(b) Is in compliance with applicable SBA Loan Program Requirements (as defined in 13 CFR §120.10);

(c) Has satisfactory SBA performance as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in

determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

(d) Has been current in filing SBA required 1502 reports and in remitting required guaranty, servicing and review fees;

(e) Is in good standing with its state/FFIR. The lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

Comment [D20]: Good standing

(f) Is not subject to any SBA enforcement actions; and

(g) Has not received substantive objections from its Lead SBA Office.

2. SBA, in its discretion, also will consider other risk related or program integrity information (e.g., rapid growth, inadequate capital, formal supervisory actions outstanding filed by the lender's federal or state regulator, inadequate governance and management).

f) OCRM notifies the lender of SBA's decision and, if the renewal is approved, OCRM sends the lender a new SBA Express Supplemental Guaranty Agreement to sign.

g) 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 30 days of receipt or a new application to the program will be required.)

h) 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 OCRM and must show how it has overcome the reason(s) for denial. OCRM will review the request, make a recommendation and send it to the appropriate SBA official for a final Agency decision. OCRM will notify the lender in writing of SBA's final decision.

i) If a lender's SBA Express status was revoked, declined or voluntarily terminated, the lender may ask SBA to reinstate its SBA Express status. However, the lender must follow paragraph C.3 of this section.

7. Authority and Responsibilities

a) SBA Express lenders may make SBA Express loans in any area of the country.

b) SBA Express lenders must apply and comply with all of SBA's Loan Program Requirements.

c) 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.

1. Lenders may not use SBA Express for any pilot program unless SBA authorizes use of SBA Express for the pilot.

2. Types of Loans Not Eligible under SBA Express – these types of loans are not eligible under SBA Express processing:

(a) Disabled Assistance Loans (DAL);

(b) Qualified Employee Trusts (ESOP) (loans made to an ESOP under 13 CFR §120.350 through 120.354);

(c) Pollution Control program; and

(d) CAPLines program.

3. 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.

4. Additional Restrictions Specific to SBA Express

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

(b) 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.

(c) 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. .

d) SBA Express Lender's Processing Responsibilities

1. Lender's Eligibility Review

(a) 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.

(b) 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.

(c) 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.

(d) Lenders must carefully review and screen SBA Express applicants and loans to ensure they meet SBA's eligibility requirements before transmitting to the LGPC the SBA Express guaranty request and supplemental information via E-Tran.

(e) Lenders 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.

2. Credit Analysis

(a) 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 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. SBLCs are required to provide credit scoring model validation to SBA on an annual basis. In addition, the credit scoring results must be documented in each loan file and available for SBA review.

Comment [D21]: Modified from "must generally be consistent" to "must be consistent"

Comment [D22]: SBLC specific guidance.

(b) 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.

(c) 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 50-57.

3. Application Documents and Authorization

(a) 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.

(b) 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.

e) 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.

Comment [D23]: Deleted Affiliation issues/Change of Lender Status paragraph

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 III.A through C of this Chapter for further information on monitoring and reviews.

9. Supervision and enforcement

See Paragraph III.D of this Chapter for further information on supervision and enforcement.

10. Suspension or revocation

See Paragraph III.E of this Chapter for further information on suspension and revocation.

D. 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.

1. 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 and SBA Express authority simultaneously. An existing SBA lender must demonstrate that it meets the criteria to participate in SBA Express set forth in Paragraph IV.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 OCRM 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.

Comment [D24]: Deleted paragraph on holding company with PLP request for extension.

(c) If the lender's request is approved, OCRM will send the lender a Patriot Express Supplemental Loan Guaranty Agreement to be signed by the lender.

(d) Agreements must be signed and returned to OCRM before the lender's Patriot Express status is effective. (Agreements must be returned within 30 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 II of this Chapter and must become an approved SBA Express before participating in Patriot Express. (An application for SBA Express/Patriot Express authority may be made simultaneously with the application for SBA lender authority. See paragraph II of this Chapter.) In order to become an approved SBA Express, the lender must demonstrate that it meets the criteria set forth in Paragraph IV.C.2 (SBA Express) 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.

2. Renewing Patriot Express Lender Status

a) OCRM will automatically start the renewal process a few months prior to the expiration of a lender's Patriot Express status. OCRM will contact the lender to obtain a good standing statement: a written statement that to the best of its knowledge, the lender has satisfactory: i) financial condition (e.g., capital and liquidity); ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. "Significance" may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (e.g., Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators.

Comment [D25]: Good standing.

b) OCRM will also contact the lender's Lead SBA Office and the SBA's Servicing and Purchase Centers as applicable for information on the lender's policies, procedures and any other relevant information. OCRM 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..

c) 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.

d) 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 IV.C.6 of this Chapter.

e) OCRM notifies the lender of the SBA's decision and, if the renewal is approved, OCRM sends the lender a new Patriot Express Supplemental Guaranty Agreement to sign. The lender must sign and return the agreement to OCRM before the lender's Patriot Express renewal is effective. (Agreements must be signed and returned to OCRM within 30 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.

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

g) If the lender's Patriot Express status was revoked, declined or voluntarily terminated, the lender may ask SBA to reinstate its Patriot Express status. However, the lender must follow paragraph D.1 of this section.

3. Authority and Responsibilities

Patriot Express lenders have all of the same authority and responsibilities set forth in Paragraph IV.C.7 of this Chapter.

4. 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 III.A through C of this Chapter for further information on monitoring and reviews.

5. Supervision and enforcement

See Paragraph III.D of this Chapter for further information on supervision and enforcement.

6. Suspension or revocation

See Paragraph III.E of this Chapter for further information on suspension and revocation.

E. Export Express Program

The Export Express 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 of this SOP.)

1. Becoming an Export Express Lender

a) Lenders must have a signed Export Express Supplemental Guaranty Agreement to make Export Express loans.

b) The procedures for receiving Export Express authority are different based on the lender's existing authority:

1. Active SBA Express Lenders

Lenders that currently have SBA Express authority that would like to make Export Express loans must submit a request to SBA. The request should be submitted to the lender's local SBA District Office or U.S. Export Assistance Center (USEAC). These offices should submit lenders' requests to the OCRM, at 7aDeleAuthNomination@sba.gov. OCRM will send the

Comment [D26]: New link for requests to be submitted to OCRM

lender the Export Express Supplemental Guaranty Agreement (Agreement) and the lender will have 30 days to execute and return the Agreement to OCRM.

2. Existing 7(a) Lender that Does Not Participate in the SBA Express Program
An existing 7(a) lender that would like to participate in the Export Express Program must submit a nomination request to its local SBA District Office. The local SBA District Office will submit the request to OCRM. OCRM will contact the local SBA USEAC for comments and process the request in accordance with the procedures and process for the SBA Express Program, as described in Paragraph IV.C. above. Lenders can request SBA Express and Export Express authority simultaneously, but are not required to do so. OCRM will send the lender the Export Express Supplemental Guaranty Agreement and the lender will have 30 days to executed and return the Agreement to OCRM.

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

1. Effectively process, make, close, service, and liquidate Export Express loans;
2. Remain in substantial compliance with applicable SBA Loan Program Requirements;
3. 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
4. Received acceptable review results on the Export Express portion of any SBA administered lender reviews.

d) SBA will generally grant lenders Export Express loan authority for a term that coincides with the lender's SBA Express and/or PLP term, unless the D/OCRM or designee determines a shorter term is appropriate. For 7(a) lenders that do not participate in SBA Express or PLP, the maximum term will be 2 years.

2. 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 III.A through C of this Chapter for further information on monitoring and reviews.

3. Supervision and enforcement

See Paragraph III.D of this Chapter for further information on supervision and enforcement.

4. Suspension or revocation

See Paragraph III.E of this Chapter for further information on suspension and revocation.

CHAPTER 2: SMALL BUSINESS LENDING COMPANIES

I. A SMALL BUSINESS LENDING COMPANY ("SBLC") IS: 13 CFR §120.460-120.490

A. Licensed and authorized by the Administrator to only make loans pursuant to section 7(a) of the Small Business Act;

B. Regulated, supervised and examined solely by SBA;

C. Subject to additional SBA regulations specific to SBLCs regarding the formation, capitalization, and enforcement actions;

D. Subject to all other 7(a) regulations specific to loan processing, servicing and liquidation; and

E. As required of all Lender Participants, SBLCs must analyze each application in a commercially reasonable manner, consistent with prudent lending standards

F. SBLCs are required to:

1. Submit to the D/OCRM for review and approval a credit policy that demonstrates the SBLC's compliance with Title 13 of the CFR and SBA's Standard Operating Procedures (SOPs) for origination, servicing and liquidation of 7(a) loans.

2. Submit to the D/OCRM for review and approval annual validation, with supporting documentation and methodologies demonstrating that any scoring model used by the SBLC is predictive of loan performance.

3. Each SBLC's board of directors must adopt and fully implement an internal control policy which provides adequate direction to the institution for effective control over and accountability for operations, programs, and resources. The board adopted internal control policy must, at a minimum, comply with 13 CFR §120.460. For example:

a) The internal control policy implemented must ensure satisfactory monitoring and management of the SBA loan portfolio, including but not limited to, providing for a periodic loan review function to be performed at least annually by a person that is not directly or indirectly responsible for loan making or by outside contractors.

b) It must include a list of monthly reports provided by the SBLC's management for Board review to support adequate Board oversight.

c) It must provide for internal controls for loan making, servicing and liquidation.

d) It must provide for a risk rating system to risk classify SBA loan assets satisfactory to SBA.

e) Internal control policies and procedures must include provisions to ensure compliance with SBA's Loan Program Requirements on eligibility.

f) SBLCs must provide documentation demonstrating that the internal control policies and procedures are fully implemented and followed.

G. In accordance with Paragraphs A through F above, SBLCs must adhere to their internal policies and procedures, including credit policies, as approved by SBA for originating, closing, servicing, and when necessary liquidating SBA loans. When this SOP states that lenders are to follow their own policies and procedures on their similarly-sized, non-SBA guaranteed loans, SBLCs must follow the policies and procedures that have been reviewed and approved by SBA.

Comment [D27]: Specific guidance for obtaining approvals on credit policy, scoring policy, reporting and internal controls from OCRM.

Comment [D28]: Specific guidance added as to SBLC requirements in areas where this policy permits regulated lenders to follow their non-SBA policies.

II. PROCESS FOR ACQUIRING AN SBLC

A. SBA regulations restrict the issuance of the SBA lending authority to operate as an SBLC to 14 entities. To acquire 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, signed and dated within 90 days of submission to SBA, for each individual and entity identified in 5 above.
8. Proof of fidelity insurance coverage as detailed in 13 CFR §120.470(e).
9. A comprehensive business plan that details:

a) 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;

b) The level of prospective lending activity for the first three years of operation;

c) The identification of all sources of capital used to finance lending operations; and

d) 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.

10. All documents associated with any type of external financing expected to be undertaken by the proposed SBLC;
11. 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 CFR §121.103.
12. 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.

13. 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;

14. A written opinion of independent counsel that addresses:

a) Whether the acquiring concern is duly formed and organized and in good standing;

b) Whether the acquiring concern is qualified to enter into this transaction; and

c) The qualifications of the individual or official to submit the application.

15. 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.

F. SBA's prior written consent is required for any proposed transaction or event that results in Control by any entity or person(s) not previously approved by SBA. Control as defined in this paragraph means the possession, direct or indirect, or the power to direct or cause the direction of the management or policies of an SBLC, whether through the ownership of voting securities, by contract, or otherwise.

G. A new application in accordance with IID above must be submitted for SBA's prior written consent with respect to any change of ownership or control transaction as specified in 13 C.F.R. § 120.475.

Comment [D29]: Language added for change in control and requirement for new applications in change of ownership or control.

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

CHAPTER 3: CERTIFIED DEVELOPMENT COMPANIES

I. 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. These 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. The provisions of this SOP apply to the non-profit and the for-profit CDCs in accordance with the terms of the regulations.

C. Terms and definitions specific to the 504 program can be found at 13 CFR §120.802

II. BECOMING A CDC

A. A CDC must provide evidence of the following in its application 13 CFR §120.810:

1. Non-Profit Status 13 CFR §120.820 - A CDC must be a non-profit corporation and must:

a) Be in good standing in the State in which the CDC is incorporated;

b) 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

c) Provide a copy of their IRS tax exempt status.

2. Area of Operations 13 CFR §120.821–

The Area of Operations is the state of the CDC's incorporation.

3. CDC Membership 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 (whether active or retired but still actively supporting economic development) must represent the following 4 Membership groups:

a) Government organizations;

b) Financial institutions (lenders);

c) Community organizations such as chambers of commerce, foundations, trade associations, colleges, universities, or small business development centers; and

d) Businesses in the Area of Operations.

4. Other Membership requirements are:

a) CDC membership must meet annually.

b) 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.

c) No person or entity can own or control more than 10% of the CDC's voting membership.

d) 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 13 CFR §120.823 - The CDC must have a Board of Directors chosen from the membership by the members. In addition:

a) There must be at least 3 of the 4 membership groups represented on the Board.

b) No single membership group shall control the Board.

c) No person who is a member of a CDC's staff may be a voting member of the Board except for the CDC manager.

d) At least 1 member other than the CDC manager must possess commercial lending experience.

e) The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions.

f) 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.

g) 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.

h) 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.

i) 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.

j) There must be no actual or apparent conflict of interest with respect to any actions of the Board.

k) 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 but may be appointed by the Board of Directors.

6. Committees 13 CFR §120.823(a) – The Board may establish a Loan Committee comprised of members of the CDC who may or may not be on the CDC's Board of Directors. The Loan Committee reports to the Board, and members must include:

a) At least 1 member with commercial lending experience acceptable to SBA;

b) 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;

c) No CDC staff may serve on a Loan Committee;

d) A quorum must have at least 5 committee members authorized to vote;

e) The CDC's Board must ratify the actions of any Loan Committee; and

f) There must be no actual or apparent conflict of interest with respect to any actions of the Loan Committee.

g) For multi-state CDCs there must be a separate Loan Committee for each state into which the CDC expands. 13 CFR §120.823(b)

7. CDC Staff 13 CFR §120.824 -

a) A CDC must directly employ full-time professional management, including an Executive Director (or the equivalent) managing daily operations. 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 to the management of the CDC; or

2. The petitioning CDC is rural and has insufficient loan volume to justify having management employed directly by the CDC.

b) A CDC must have qualified full-time professional staff to market, package, process, close and service loans.

c) When any of the functions referred to in 7.a) and b) above are not performed by an employee directly employed by the CDC, the CDC must use a written professional services contract.

d) Professional services contracts, with the exception of those for accounting and legal services, must be pre-approved by SBA. 13 CFR §120.824(b)-(f). The District Office receives the contract request, reviews the contract, and sends its recommendation to the 504 Program Office in Headquarters. The 504 Program Office reviews the contract and provides its recommendation to the D/FA, who makes the final decision.

Comment [D30]: Additional guidance for approval of professional services contracts.

e) The professional services 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, 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. 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 any time 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;

f) A Board of Director's Resolution must accompany the contract and contain a statement:

1. That the contract is in compliance with 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.

g) Financial Ability to Operate 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. For example:

1. A CDC must have financial statements evidencing that it maintains adequate capital.

2. A CDC should exhibit positive net cash flow trends.

3. A CDC must maintain sufficient loan loss reserves, if required.

4. A CDC must be solvent.

5. A CDC must be solvent. For this purpose, "solvent" is defined as having assets in excess of liabilities sufficient to pay its debts when they become due.

6. If a CDC receives a going concern opinion from its auditors, the CDC will be referred to OCRM for review.

7. Other factors as determined by SBA.

Comment [D31]: Language added to provide requirements on evidence that a CDC can sustain operations.

B. Basic Operating and Ethical Requirements for CDCs

1. 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. 13 CFR §120.826 and 13 CFR §120.830

a) Each CDC's board of directors must adopt and fully implement an internal control policy which provides adequate direction to the institution for effective control over and accountability for operations, programs, and resources. The board adopted internal control policy must, at a minimum, comply with 13 CFR §120.826(b). For example:

1. The internal control policy implemented must ensure satisfactory monitoring and management of the SBA loan portfolio, including but not limited to, providing for a periodic loan review function to be performed at least annually by a person that is not directly or indirectly responsible for loan making or by outside contractors.

2. It must include a list of monthly reports provided by the CDC's management for Board review to support adequate Board oversight.

3. It must provide for internal controls for loan making, servicing and liquidation.

4. It must provide for a risk rating system to risk classify SBA loan assets satisfactory to SBA.

5. Internal control policies and procedures must include provisions to ensure compliance with SBA's Loan Program Requirements on eligibility.

6. CDCs must provide documentation demonstrating that the internal control policies and procedures are fully implemented and followed.

Comment [D32]: Language added to provide specific requirements on control and reporting.

b) This includes timely submission of financial statements audited in accordance with Generally Accepted Accounting Principles (GAAP) by an independent CPA 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. The auditor's opinion must state that the financial statements are in conformity with GAAP. See 13 CFR §120.826(d) for further guidance on auditor qualifications.

c) For further guidance on the preparation of the annual report, refer to 13 CFR §120.830, the Operational Review Guide for the Annual Report and the Operational Review Example Format. Within 60 days of receipt of the CDC annual report, the SBA field office must forward a copy to the D/FA along with the field office's analysis and review of the annual report and a CDC operational review. If the annual report is incomplete, the SBA field office must notify the CDC in writing and within 30 days of receipt of SBA's notice, the CDC must resubmit a complete annual report.

d) A CDC that is certified by SBA within 6 months of its fiscal year-end will not have to submit financial statements or its Annual Report for that year.

e) A CDC must have satisfactory SBA performance as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA's mission).

2. Regulations regarding the ethical requirements for CDCs may be found at 13 CFR 120.140 and 13 CFR §120.851.

a) The Standards of Conduct Counselor for the Agency is the Designated Agency Ethics Official. (13 CFR §105.402(a))

b) Standards of Conduct ("Conflict of Interest") Approvals

1. If a Small Business Applicant has, as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, an individual who, within 1 year prior to the loan application, was an SBA Employee (as defined by 13 CFR §105.201(a)), the loan application must be approved by the Standards of Conduct Counselor. (13 CFR §105.203(a))

2. If a Small Business Applicant has, as its sole proprietor, partner, officer, director, or stockholder with a 10% or more interest, an individual who is an SBA Employee (as defined by 13 CFR §105.201(a)) or a Household Member of an SBA Employee, the loan application must be approved by the Standards of Conduct Committee at SBA Headquarters. (13 CFR §105.204) A "Household Member" of an SBA Employee includes:

(a) The spouse of the Employee;

(b) The minor children of the Employee; and

(c) The blood relatives of the Employee, and the blood relatives of the Employee's spouse, who reside in the same place of abode as the Employee. (13 CFR §105.201(d))

3. If a Small Business Applicant has, as its sole proprietor, general partner, officer, director, or stockholder with a 10% or more interest, or a household member of such individual, an individual who is a Member of Congress, an appointed official of the legislative or judicial branch of the Federal Government, a member or employee of a Small Business Advisory Council, or a SCORE volunteer, the loan application must be approved by the Standards of Conduct Committee. (13 CFR §105.301(c) and 105.302(a))

c) When a Standards of Conduct approval is required, the application should be processed by the appropriate processing center and, if appropriate, be conditionally approved and forwarded to the Standards of Conduct Counselor or Standards of Conduct Committee (through the Standards of Conduct Counselor). The Standards of Conduct Counselor will notify the processing center of the final Agency decision and the processing center will notify the lender accordingly.

d) Other Government Employees

A Small Business Applicant must submit a statement of no objection from the pertinent department or military service if its sole proprietor, partner, officer, director, or stockholder with a 10% or more interest, or a household member of such individual, is an employee of another department or agency of the Federal Government (Executive Branch) having a grade of at least GS-13 (or its equivalent) or higher.

(13 CFR §105.301(a))

3. Restrictions regarding CDC participation in SBIC and 7(a) programs may found at 13 CFR §120.852.

4. The CDC's place of business:

a) Must be accessible and open to the public during regular business hours with an adequate staff to perform normal business transactions;

b) May be located with a sponsoring organization if it is clearly evident to the public that the CDC is a separate entity; and

c) Must have:

1. A separately listed telephone number; and

2. At least one qualified professional staff member available full-time as described in paragraph II.A.7 above.

5. CDC Loan files:

a) All loan case files and collateral documents must be either at the principal office of the CDC or maintained in a manner acceptable to SBA that permits their immediate access.

b) A CDC must provide, at its own expense, documents or copies when requested by SBA.

c) CDCs maintaining computer-stored documents must ensure that the documents are actual reproductions of original documents.

d) File Retention Guidelines:

1. Inquiries, partial applications, and applications withdrawn, canceled or denied by the CDC or SBA must be kept for 2 years after notification of incomplete application, withdrawal, cancelation or decline. After 2 years, the files may be destroyed.

2. General correspondence must be kept for 1 year. Case-specific correspondence should be filed in the case file.

3. Paid off loan files (including the original application file, servicing file and closing file), must be kept for 9 years after the loan was paid in full.

4. Files from liquidated loans (including the original application file, closing and servicing files), must be kept for 10 years after the loan was charged off.

6. CDC financial and organizational records:

a) The CDC must maintain its own financial records including books of account and signed minutes of all meetings of members, stockholders, directors, executive committees, and other officials. The CDC financial reports furnished to SBA must contain complete disclosure of matters relevant to the act and regulations. Records and documents which are the basis for or related to its financial statements or loans must be maintained in a manner that permits their immediate availability.

b) All organizational files must be accessible to SBA.

7. CDC fiscal year: The CDCs choose their own fiscal year. The CDC must notify its Lead SBA Office of any change.

C. Operational changes the CDC must report to SBA

1. Any changes in a CDC's address, telephone number, officers, directors, professional staff, bylaws, or articles of incorporation must be reported to its Lead SBA Office not later than 30 days after the change takes place. "Statements of Personal History," (SBA Form 1081), and fingerprint cards (FD 258), must be filed on new officers, directors, and professional staff as required in paragraph III.A below. Requests for name changes must be submitted to the Lead SBA Office prior to filing an amended Articles of Incorporation as noted in subparagraph 4 below.

2. The CDC must submit notice of all changes to its Lead SBA Office by certified mail or other form of delivery from which a receipt of acceptance is obtained. All changes are subject to post-approval by SBA.

3. If the CDC works with multiple SBA district offices, the CDC is responsible for updating all SBA offices about any changes in the CDC's name, address, telephone number and professional staff.

4. CDC legal name changes must be submitted to the D/FA for prior approval. After approval, the CDC must send a copy of the board resolution authorizing the change and a copy of the Amendment to the Articles of Incorporation approved by the State acknowledging the legal name change to all the appropriate SBA field offices, the SLPC, appropriate SBA CLSC, and to the D/FA. The Lead SBA Office will notify the Central Servicing Agent (CSA). Note: the CDC must use its legal name, not a "dba" name on all correspondence.

5. Within 10 business days of the date a CDC becomes a party to litigation or other legal proceedings, it must submit a written report, by certified or overnight mail, to its Lead SBA Office and must notify all appropriate SBA field offices. The report must describe the proceedings, the CDC's identity and relationship to other parties involved. Once proceedings are terminated by settlement or final judgment, the CDC must promptly advise SBA of the terms.

6. Any change affecting the perception of the CDC's "good character" must be reported immediately to the CDC's Lead SBA Office.

D. Other CDC Services 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 13 CFR Part 103 when providing such assistance. See Subpart B, Chapter 3 of this SOP when providing such assistance on a 7(a) loan.

E. Minimum Level of Activity and Restrictions on Portfolio Concentrations 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.

F. Job Opportunity Average 13 CFR §120.829

1. 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.

2. 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.

III. THE PROCESS OF APPLYING TO BECOME A CDC

A. The Application 13 CFR §120.810

The Application for Certification as a Certified Development Company, SBA Form 1246, outlines the requirements for an application. CDCs must also comply with all of the requirements prescribed in 13 C.F.R. §§ 120.810 – 120.830. The applicant must demonstrate that it satisfies the CDC certification and operational requirements in §§ 120.820, and 120.822 through 120.824. The applicant also must include an operating budget, approved by the applicant's Board of Directors, which demonstrates the required financial ability (as described in § 120.825), and a plan to meet CDC operational requirements in §§ 120.821, and 120.826 through 120.830. The following documents must accompany the application:

Comment [D33]: Language added to provide specific regulatory references for completing application for CDC license.

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, signed and dated within 90 days of submission to SBA, for each Board Member (any Board member that answers "yes" to question numbers 10a, 10b, 10c, or 11 on SBA Form 1081 must also submit fingerprint cards or Electronic Fingerprint Submissions). **"Electronic Fingerprint Submission"** means a digital reader and fingerprint scanning system which either prints out a document with scanned fingerprints or submits digital fingerprint scans. Electronic scanned fingerprint technology may be used where locally available through law enforcement offices. If this technology is not available locally, paper and ink fingerprint cards may be used.)(Electronic Fingerprint Submission as defined in Subpart B, Chapter 2 Paragraph III.);

Comment [D34]: Language modified to include use of electronic fingerprint guidelines.

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, signed and dated within 90 days of submission to SBA, for each officer and paid employee and fingerprint cards for paid employees and contractors (any officer that answers "yes" to question numbers 10a, 10b, 10c, or 11 on SBA Form 1081 must also submit fingerprint cards or Electronic Fingerprint Submissions);

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 authorizing 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 or Electronic Fingerprint Submissions to OIG. If the application is complete and eligible, the field office will forward to the appropriate SBA official for a final decision:

a) The application;

b) Copies of SBA Forms 1081 with attachments;

c) A notation that the SBA Forms 1081 and fingerprint cards or Electronic Fingerprint Submission have been forwarded to OIG; and

d) Its recommendation.

2. 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.

3. 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 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 its Lead SBA Office with:

a) A current Membership List;

b) A current Board of Directors List;

c) A list of all members of all committees;

d) Current By-Laws, including any amendments; and

e) Current Articles of Incorporation, including any amendments.

2. The Lead SBA 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 determine permanent CDC status or an extension of probation, in part, based upon the CDC's compliance with the certification and operational requirements in 120.820 through 120.830. Also, the CDC must have satisfactory SBA performance, as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review; examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

4. 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, including all related servicing fees.

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

IV. SBA OVERSIGHT OF CDCS

A. CDCs must submit to SBA the reports listed in 13 CFR §120.830

B. SBA oversees CDCs through:

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

a) L/LMS is an internal SBA data system that includes use of historical data and 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.

b) 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.

c) 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:

1. $100,000,000 or more
2. $30,000,000 - $99,999,999
3. $10,000,000 - $29,999,999
4. $5,000,000 - $9,999,999
5. $0 - $4,999,999

d) 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. (*See* 13 CFR §120.10 (definitions related to Risk Rating), 13 CFR §120.1015 (Risk Rating System), and 75 FR 9257, March 1, 2010 and 75 FR 13145, March 18, 2010 (Risk Rating Notices).)

2. Lender Portal

a) 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, but not limited to, its current composite risk rating and 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.

b) 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:

1. Request must be made by a senior officer of the CDC with proper authority (Senior Vice President or higher);

2. 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;

3. Request must be made using the CDC's stationery;

4. Request must include the user's business card;

5. The stationery and business card should include the CDC's name and address;

6. 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 CDC;

(d) Requesting officer's name and title; and

(e) Requesting officer's mailing address, telephone number and email address at the CDC.

7. 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.

8. 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 and confidential information and for ensuring the security of the data. See 13 CFR §120.1060.

3. Off-site monitoring and on-site reviews (13 CFR §120.1025 and 120.1050-1060)

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; however, 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 13 CFR §120.1050-1060 and SBA's SOP 51 00.

b) Additionally, in accordance with 13 CFR §120.1010 , 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 or as requested for SBA oversight.

c) SBA may request reports on a case by case basis.

C. Supervision and Enforcement

1. An integral part of overseeing the CDC program is SBA's authority to supervise and take enforcement actions as necessary. (For further guidance on Lender Supervision and Enforcement, see SOP 50 53.)

Comment [D35]: Reference to SOP 50 53

D. Oversight and enforcement actions 13 CFR §120.1400-1600

1. SBA may take enforcement actions against a CDC if the CDC (for example):

a) Fails to receive approval for at least 4 loans during last 2 consecutive fiscal years;

b) Fails to comply materially with SBA Loan Program Requirements;

c) Makes a material false statement or fails to disclose a material fact to SBA;

d) Performs actions with respect to the 504 loans in a commercially imprudent or unreasonable manner;

e) Fails to correct a deficiency after receiving notice of same from SBA; or

f) 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 (for example):

a) Does not continue to meet the requirements for eligibility;

b) Fails to follow SBA Loan Program Requirements; or

c) Fails to maintain a LLRF as required (PCLP only).

3. SBA identifies the types of enforcement actions in 13 CFR §120.1500. SBA, in its discretion, may undertake (for example):

a) Immediate suspension, upon written notice, when SBA determines that one or more grounds set forth in 13 CFR §120.1400(c)(11) exist and such action is necessary to prevent significant loss to SBA or significant impairment of program integrity;

b) Suspension or termination of the CDC's authority to:

1. Participate in the 504 program or any pilot or other program within the 504 program; or
2. Perform any function under the program (processing, closing, servicing, liquidation or litigation).

c) Transfer of some or all of the CDC's portfolio to another CDC or any other entity (13 CFR §120.1500(e)(1)) including all pending 504 loan applications and all rights associated with the foregoing including any and all processing, closing, servicing and other fees associated with the portfolio due and payable to the CDC going forward;

Comment [D36]: Language added to clarify specific requirements of 13 CFR 120.1500 (e)(1)

d) Instruct the Central Servicing Agent (CSA) to withhold payments to CDC; or

e) For ALP or PCLP CDCs, suspension or termination of the CDCs authority to participate as an ALP or PCLP CDC.

f) The term of any suspension will be determined by SBA in its discretion.

4. Enforcement Procedures 13 CFR §120.1600

a) For all enforcement actions other than immediate suspension, SBA will issue a written notice to the CDC:

1. Identifying the proposed action;

2. Outlining the reasons for the action; and
3. Stating the term and scope of the any suspension proposed.

b) For immediate suspension, the written notice will contain the:

1. Reasons for the action; and, if from a third party, the
   (a) Name of the third party, or
   (b) Documentation received from that party; or
   (c) If there are compelling reasons not to release that information, a summary of same.
2. Term and scope of the suspension.

c) A CDC proposing an objection to the action must file a written objection to the appropriate SBA official or other person identified in the notice within 30 calendar days of its receipt of the notice from SBA as provided in 13 CFR §120.1600.

d) Upon CDC's request, SBA, in its discretion may extend the time to object.

e) If CDC timely files a written objection, SBA will:

1. Issue a written notice of decision to the CDC within 90 days of either receiving the objection or from when additional information is provided, whichever is later, unless SBA provides notice that it requires additional time; and
2. For immediate suspension, the notice must be issued within 30 days of receiving the objection advising if SBA is continuing with the suspension, unless SBA provides notice that it requires additional time.

f) SBA, in its discretion, may:

1. Seek additional information; or
2. Consider an untimely objection.

g) SBA may then issue a notice of final agency decision.

h) CDC may appeal the final agency decision in accordance with SBA regulations.

5. Mergers

CDCs wishing to merge must notify the SBA in writing of their desire to merge. A letter signed by a responsible management official accompanied by a Board of Directors resolution from each of the CDCs wishing to merge must be sent to the District Office. The request should include the following:

a) The name of the proposed merged entity;

b) A listing of the proposed Membership of the merged entity;

c) A listing of the proposed Board of Directors of the merged entity;

d) An explanation of the purpose of the merger and how the merged entity will service its area of operations;

e) Copies of the proposed merger documents and any proposed amendments to the Articles of Incorporation and By-Laws; and

f) A pro forma balance sheet and income statement for the merged entity.

The District Office should prepare a recommendation that should include, but not be limited to, an evaluation of the historical performance of the surviving CDC regarding the:

a) Quality and completeness of the CDC's loan packages;

b) CDC's credit analysis abilities as well as knowledge of SBA's policies and procedures;

c) CDC's capability and performance related to loan closing; and

d) CDC's servicing capability and performance (include comments from the appropriate servicing center(s)).

The decision process is a two-step process:

a) The CDC's request and the District Office's recommendation should be sent by email to the Chief, 504 Program Branch who will forward it to the D/FA for a final decision.

b) If SBA approves the merger, SBA will notify the CDC which must provide SBA with:

(1) Copies of the documents for the merger filed with the state;

(2) Any executed amendments to the Articles of Incorporation and By-Laws; and

(3) Revised list of the Members of the CDC and Board of Directors, along with the corresponding Minutes of the meetings for the Members and Board Resolution reflecting the approval of the changes.

Upon receipt, review and approval of the merger documents, SBA will take the steps necessary to merge the portfolios.

6. Voluntary Transfer and Surrender of CDC Certification

SBA regulations at 13 CFR §120.857 discuss the circumstances under which a CDC can voluntarily transfer and surrender its certification.

The process for voluntary withdrawal and surrendering a CDC certification requires the following:

a) The CDC must notify the SBA in writing of the intent to withdraw from the program. The letter must be signed by a responsible management official and accompanied by a Board of Directors resolution stating the intent to withdraw from the program. If the Board of Director is no longer functioning, a responsible management official may execute a Voluntary Withdrawal Agreement which includes a certification as to Board status.

Comment [D37]: Language added to address voluntary withdrawal methods.

b) Upon receipt of the letter of intent to withdraw and approval by SBA, the CDC must surrender to SBA all active loans files for review and transfer.

c) The District will make a recommendation to transfer the files of the withdrawing CDC to one or more CDCs. In order to make a determination that the recipient CDC(s) is/are capable and have the capacity to take on the additional responsibility of an increased portfolio, the District Office should prepare a recommendation on behalf of the recipient(s) that should include, but not be limited to, an evaluation of the CDC's:

(1) Quality and completeness of loan packages;

(2) Credit analysis abilities as well as knowledge of SBA's policies and procedures;

(3) Capability and performance related to loan closing; and

(4) Servicing capability and performance (include comments from the appropriate servicing center(s).

d) The CDC's request and the District Office's recommendation for transfer of the portfolio should be emailed to the Chief, 504 Program Branch who will forward it to the D/FA. Upon receipt and review, SBA will notify the CDC of SBA's acceptance of their request to surrender its certification and the District Office will be notified of by the 504 Program Branch of the steps necessary to complete the transfer of the portfolio to another CDC.

e) A CDC that has completed a voluntary decertification, the CDC may not apply to reactivate the inactive CDC or apply for certification as a new CDC in the future.

Comment [D38]: Language added to preclude reactivation or re-application for a license if voluntarily decertified.

V. 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 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:

a) At least one 504 closing attorney, designated as provided below;

b) Adequate experience and expertise in 504 loan closings;

c) A history of presenting complete and accurate closing packages;

d) Satisfactory SBA performance as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA's mission).

e) A qualified and knowledgeable staff;

f) A satisfactory working relationship with its Lead SBA Office; and

g) Directors' and officers' liability insurance in form and substance satisfactory to SBA with:

1. An endorsement covering CDC committees and staff engaged in the closing process;
2. Limits of at least $1,000,000/$1,000,000;
3. A deductible not more than $10,000; and
4. A declaration that SBA will receive at least 20 days prior notice of any lapse of coverage, failure to renew, or cancellation.
5. The CDC must submit to SBA annually a certificate from its insurance carrier confirming this coverage.

2. Application Process

a) Application by the CDC

1. The CDC submits a written application to the Lead SBA Office. The application must address each of the items in the previous paragraph, the items identified in paragraph III.A.1, 2 and 5 above (to assure that the CDC remains in compliance with these requirements), and must include a copy of the CDC's insurance policy or a certificate of insurance or declarations page showing:

(a) The amount of coverage;

(b) The amount of the deductible;

(c) The premium; and

(d) A declaration from the insurance company that SBA will receive the required 20-day notice of cancellation.

2. The Lead SBA Office forwards the application to the D/FA with the recommendations of the district director, district counsel and other field offices, if applicable.

b) Nomination by the Lead SBA Office

1. The Lead SBA Office sends a nomination to the D/FA 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.

2. 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/FA, who will forward the attorney information to Office of General Counsel (OGC).

c) Notification to the CDC

The D/FA 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 . To become a Designated Attorney, an attorney must submit evidence of:

a) A degree from a recognized law school;

b) Membership in the bar of the state in which the attorney's 504 closing practice is or will be primarily located;

c) Professional malpractice insurance coverage:

1. With limits of at least $1,000,000/$1,000,000; and

2. A deductible not to exceed $20,000 for individuals and firms with 3 or fewer attorneys, $50,000 for law firms with more than 3 attorneys or $100,000 for large law firms with more than 25 attorneys.

3. 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.

4. 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.

d) Attendance at 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

e) Adequate expertise in 504 loan closings.

4. Process to request Designated Attorney status

a) 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:

1. A submission on the attorney's letterhead addressing each of the conditions in the previous paragraph;

2. A copy of the attorney's malpractice insurance policy, or a certificate of insurance or declarations page showing the:

(a) Amount of coverage and deductible;

(b) Premium; and

(c) Name of the attorney insured.

3. 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:

(a) The amount of the policy limits or deductible; and

(b) The current premium;

(c) The quote obtained for the increased premium;

(d) The size of the firm;

(e) The firm's arrangement for covering the deductible, such as a loss reserve or escrow; and

(f) Evidence of the firm's history and financial strength.

b) Other Restrictions/Requirements

1. A designated attorney cannot be:

(a) An employee of the CDC or of an associate of the CDC.

(b) On the board of the CDC, participate in its lending decisions, or otherwise be too closely associated with the CDC.

2. 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:

(a) The degree of control exerted by the attorney on the CDC's decision-making;

(b) Any benefits accruing to the attorney through the attorney's association with the CDC; and

(c) Any appearance of conflict of interest.

c) 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.

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

e) The district office must allow a CDC to use a non-designated attorney for a reasonable time to develop an additional designated attorney or to replace a designated attorney. In either event, SBA counsel will accept the closing package from a non-designated attorney and conduct a non-priority closing review.

5. To retain Designated Attorney status an attorney must:

a) 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.

b) Notify SBA immediately if there is a change of status (e.g., new address, new law firm or change in malpractice coverage).

c) Submit evidence of attendance at an SBA-approved closing update course every 2 years. The attorney may take the course any time within the year their status would expire to maintain their status.

6. Termination of Priority CDC Status

The D/FA or designee may terminate a CDC's priority designation for good cause, including, but not limited to, the CDC's failure to use a designated attorney, failure to maintain adequate insurance coverage, submission of unsatisfactory closing packages or failure to maintain a good working relationship and good communications with SBA field office personnel.

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

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

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

1. CDC staff experience;
2. Number of 504 loans approved and size of portfolio;
3. Satisfactory SBA performance as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA's mission).;
4. Record of compliance with SBA Loan Program Requirements;
5. Priority CDC status; and
6. Record of cooperation with all SBA offices, including field offices and SBA's loan processing and servicing centers.

c) See 13 CFR §120.840 and 120.841.

2. Lead SBA Office Review

a) 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:

1. An evaluation, in conjunction with the SLPC and the appropriate CLSC, of the:
   (a) Quality of the CDC's loan packages;
   (b) CDC staff's knowledge of SBA policies and procedures;
   (c) CDC staff's credit analysis abilities;
   (d) CDC staff's capability and performance related to loan closing; and
   (e) CDC staff's servicing capability and performance.
2. Evidence that the CDC is in compliance with 13CFR 120.840 & 120.841;

3. 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);

4. Comments from the CDC and the Lead SBA office on any outstanding issues on the CDC's most current CDC Management Report including:

(a) Any failed benchmarks;

(b) Any loans in the "90 day or more past due" category or in the "Catch-Up" category; and

(c) Any past due Annual Reports;

5. Verification that the CDC's employees are either hired directly by the CDC or are under a contract that has been approved by SBA;

6. A copy of the contract and the Board of Directors (BOD) resolution must be provided (if applicable);

7. Verification that the CDC is in compliance with 13 CFR §120.824, 120.825 and 120.826 ;

8. 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;

9. Evidence of compliance with the requirements of a Priority CDC, including Board of Directors' liability insurance and Designated Attorney requirements (see paragraph V.A above); and

10. Current list of the CDC's Membership, Board of Directors, staff and any committees.

b) 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 periods of up to two years.

4. Renewal of an ALP-CDC's designation

a) 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 and submit the required items noted in paragraphs V.B.1 and 2 above.

b) 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 IV 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 SBA also may give PCLP CDCs increased authority to litigate 504 loans. 13 CFR §120.845 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 V.B.1 and 2 above and the following:

a) 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

b) Evidence that the CDC:

   1. Is in compliance with its Loan Loss Reserve Fund (LLRF) requirements;
   2. Has established a PCLP processing goal of 50%; and
   3. Has a demonstrated ability to process, close, service and liquidate 504 and/or PCLP loans; and
   4. Has satisfactory SBA performance as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA's mission).

2. Lead SBA Office Review

a) 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.

b) 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). 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)

a) 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.[1] Each Loss Reserve must equal 1% of the original principal amount of each PCLP debenture.

[1] For PCLP debentures issued while a PCLP CDC elected to participate in the Alternative Loan Loss Reserve Pilot Program (ALLR) authorized under Section 508(c)(7) of the Small Business Investment Act of 1958, the PLCP CDC is required to reimburse SBA for 15

b) 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.

c) 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 and a Security Agreement SBA Form 2229 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.

d) 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.

e) For further guidance on the LLRF, see the table at the end of this chapter and 13 CFR §120.847.

8. Renewal of a PCLP-CDC's designation

A PCLP CDC requesting renewal of its PCLP CDC designation must submit the required information and documentation to the CDC's Lead SBA office. The required information and documentation should be submitted at least 120 days prior to expiration of the CDC's PCLP status to ensure sufficient processing time. After receipt of the required information and documentation, the CDC's Lead SBA office will ask for comments from SBA's processing, servicing and liquidation centers, and will forward all of the information, documentation and comments to OCRM for SBA's review. SBA's review will address all of the requirements found at 13 CFR §120.846 and the items noted in paragraph V.C.1 above.

Comment [D39]: Language added to provide additional requirements for requesting PCLP CDC designation.

D. Oversight and Enforcement Actions

See Paragraph IV of this Chapter above.

What Each PCLP CDC Must Do	Deadline For Activity
Establish LLRFs	180 days after becoming a PCLP CDC
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

percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on those PCLP debentures. The statutory authority for the ALLR lapsed on July 31, 2011. As a result of the statutory lapse, PCLP CDCs that had elected to participate in the ALLR are now required to maintain a Loan Loss Reserve Fund in an amount sufficient to meet the Standard Loan Loss Reserve Requirement set forth in 13 C.F.R. § 120.847(b), which is one percent of the original principal amount of the PCLP Debenture for the life of the loan.

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

What Lead SBA Office Must Do	**Deadline For Activity**
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

VI. AREA OF OPERATIONS

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

1 - Case-by-case requests based on particular circumstances

2 - Expanding based on a Local Economic Area (LEA)

3 - Becoming a Multi-State CDC

A. Case-by-case 13 CFR §120.839

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 the CDC has satisfactory SBA performance as determined by SBA in its discretion and either:

a) The applicant CDC has previously assisted the business to obtain a 504 loan; or

b) The existing CDC or CDCs serving the area agree to permit the applicant CDC to make the 504 loan; or

c) There is no CDC within the Area of Operations.

B. Local Economic Area (LEA) Expansion 13 CFR §120.835

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:

a) In a State other than the State in which an existing CDC, or an applicant applying to become a CDC, is incorporated,

b) Is contiguous to the CDC's existing Area of Operations, or the applicant's proposed Area of Operations, of its State of incorporation, and

c) 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

a) The CDC must submit the items listed below to its Lead SBA Office (13 CFR §120.802, Definitions). A CDC may submit its LEA request in combination with its Annual Report or in combination with an initial or renewal ALP application in order to avoid duplication.

Comment [D40]: Language added to provide alternative for submitting LEA request.

1. 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 (13 CFR §120.802, Definitions).

2. 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.

3. Documentation showing that the CDC currently meets the requirements of an ALP CDC. (This includes those CDCs that are ALP CDCs already.) (13 CFR 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.

4. 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 SBA Form 1081, signed and dated within 90 days of submission to SBA, and fingerprint card for each person or the Electronic Fingerprint submission. If the new employees will be provided under contract, submit a contract for their services that meets the regulations governing contracts. (13 CFR §120.824) In addition, identify the CDC's Designated 504 Closing Attorney who is licensed to practice in that jurisdiction. If a CDC does not have a designated attorney in that jurisdiction at the time of application, then:

(a) The CDC may request a waiver for a period of up to 2 years of the requirement of a designated 504 Closing Attorney through the District Office in the new jurisdiction as part of the LEA or Multi-State expansion request.

(b) If a waiver is granted under (a) above, the LEA or Multi-State expansion will also be limited to the period of the waiver. If the CDC does not have a Designated 504 Closing Attorney at the end of 2 years, the CDC's LEA or Multi-State expansion will expire.

(c) The CDC may not close loans as a Priority CDC in the area of expansion until such time as they have a Designated 504 Closing Attorney licensed to practice in that state.

Comment [D41]: Deleted paragraph on CDC management report requirement.

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

1. Comments on whether the CDC is in compliance with SBA's regulations and policies;

2. Comments on whether the Lead SBA Office agrees that the areas requested meet the definition of a Local Economic Area;

3. Confirmation that the Lead SBA Office has reviewed any new contracts to determine if they meet the requirements set forth in 13 CFR §120.824 and a note that the contracts have been approved by SBA;

4. Comments on the CDC's ability to manage an increase in loan servicing activity resulting from the expansion; and

5. Any other pertinent comments regarding the CDC's application or operations.

(a) 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.

(b) 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.

(c) 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.

6. 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.

c) 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/FA. The CDC has 60 days to appeal the decline to the Lead SBA Office for action by the D/FA.

d) SBA will consider whether the CDC has satisfactory SBA performance as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA's mission).

e) 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

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 13 CFR §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 13 CFR §120.823. For states or territories not directly connected to the 48 contiguous states, the following are deemed to be contiguous: Alaska and Washington; Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands, and California; Puerto Rico and the U.S. Virgin Islands and Florida.

Comment [D42]: Language added to clarify contiguous designation.

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:

a) Demonstration that the state that the CDC seeks to expand into is contiguous to the state of the CDC's incorporation. [13 CFR §120.802, Definitions]

b) A listing of the 25 new members that meets the requirements contained in 13 CFR §120.822 (a). [13 CFR §120.835(c)(2)]

Comment [D43]: Added requirement for multi - state applications

c) A listing of the new members of the loan committee that meets the requirements contained in 13 CFR120.823. [13 CFR §120.835(c)(3)] For loan committee members, provide SBA Form 1081 for each member and if necessary fingerprint cards.

d) 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 [13 CFR §120.835(c)].

e) 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).

f) 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.

g) Evidence that the CDC currently meets the requirements of an ALP CDC. (This includes those CDCs that are ALP CDCs already.) [13 CFR §120.840 and 120.841, Qualifications for the ALP, and earlier in this chapter].

h) 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.

i) 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. [13 CFR §120.841(e)]

j) A copy of the CDC's most recently published CDC Management Report demonstrating that:

1. The CDC's portfolio performance passes 4 of the 5 the SBA established risk benchmarks.
2. All statuses are current or in compliance;
3. There are no loans listed under the "Loans 90 or More Days Past Due" category;
4. There are no loans listed under "Loans in Catch-Up That Missed At Least 3 Consecutive Payments."
5. 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.
6. The CDC's Annual Report submission is current and the Annual Report is in compliance.

k) The CDC must demonstrate that it has satisfactory SBA performance as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance and risk-related measurements and information (such as contribution toward SBA's mission).

l) 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 [13 CFR §120.824].

2. Analysis by the SBA Office 13 CFR §120.837

a) The Lead SBA Office conducts a review and comments on:

1. 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.
2. The CDC's compliance with SBA's regulations, policies, and performance benchmarks, including the timely submission of all annual reports.
3. Compliance of any new contracts with SBA regulations [13 CFR §120.824].
4. Comments from other field offices that have dealings with the applicant, including Servicing Centers.
5. Any other pertinent comments regarding the CDC's operations.

b) 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/FA.

c) 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

a) 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.

b) 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

c) 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

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, SBA Express and the Agency's Pilot Loan Programs.

When the policy set forth in this Subpart does not adequately address the unique circumstances regarding a particular matter, an exception to policy may be approved by the D/FA. For Export Working Capital Program (EWCP) and International Trade (ITL) loans, an exception to policy may be approved by the Director, International Trade Finance (D/ITF). For Export Express loans, an exception to policy may be approved by the D/ITF with the concurrence of the Director, Office of Credit Risk Management (D/OCRM). The D/FA or D/ITF may not approve an exception to policy if such exception would be inconsistent with a statute or regulation. A request for an exception to policy must be submitted to the LGPC. The LGPC will analyze the request and make a recommendation to the D/FA or D/ITF, as applicable or an individual acting in that capacity, who will make the final decision (with the concurrence of the D/OCRM for Export Express loans). The decision must be documented in the appropriate Agency loan file. This procedure may only be used in situations where a minor deviation from standard policy is necessary for the specific situation. Exceptions to policy will be considered on a case-by-case basis and the decision will only apply to the specific request.

CHAPTER 1: 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. (13 CFR Part 120)

I. VARIOUS DELIVERY METHODS

The Agency guarantees 7(a) Program Loans through various methods including:

1. Standard 7(a) Guaranty
   a) Small Loans up to and including $350,000 ("Small Loan Advantage (SLA)")
   b) Loans over $350,000 to $5,000,000
2. Certified Lenders Program (CLP)
   a) Small Loans up to and including $350,000 ("SLA")
   b) Loans over $350,000 to $5,000,000
3. Preferred Lenders Program (PLP)
   a) Small Loans up to and including $350,000 ("SLA")
   b) Loans over $350,000 to $5,000,000
4. SBA Express (delegated)
5. Patriot Express (delegated –Pilot Program)
6. Export Express (delegated)
7. Community Advantage (Pilot Program)
   a) Loans up to and including $250,000 (covered by a separate Community Advantage Participant Guide)

Comment [D44]: Language added to provide delivery method detail.

II. USE OF LOAN PROCEEDS

SBA loan proceeds may be used to finance any of the following:

A. Permanent working capital;
B. Revolving working capital;
C. Furniture and fixtures;
D. Machinery and equipment;
E. Purchase of land and building including construction and renovations;
F. Business Acquisition; and
G. Refinancing of existing debt.

Comment [D45]: Split the working capital use of proceeds to both revolving and permanent.

III. SPECIAL PURPOSE LOANS

Certain special purpose loan programs are subject to separate or special funding under SBA's budget.

A. Community Adjustment and Investment Program (CAIP)

CAIP was established in 1993 to assist U.S. companies doing business in areas of the country that have been negatively affected by the North American Free Trade Agreement (NAFTA). CAIP loans allow for the reimbursement of the guaranty fee on eligible 7(a) loans.

1. Eligibility

To be eligible for CAIP, the small business must reside in a county, or a defined area within a county, noted as being negatively affected by NAFTA based on job losses and the unemployment rate of the county. There is also a job creation component of one job created for every $70,000 of the guaranteed portion of the 7(a) loan.

2. Eligible CAIP Communities

To find out if the business is in an eligible area, go to the listing of the counties at www.sba.gov/content/caip. This listing is updated several times a year.

3. Debt Refinancing and Change of Ownership under CAIP

a) No more than 49% of loan principal made available under CAIP may be used to refinance existing long-term debt (i.e., debt with a remaining term of more than 24 months) or to finance a change of ownership.

b) For purposes of this limitation, the following are not considered to be long-term debt refinancing and, accordingly, are not subject to the limitation:

1. Converting short-term debt (i.e., debt with a remaining term of 24 months or less) to long-term debt;
2. Converting interim debt (i.e., a bridge loan) to long-term debt;
3. Converting line of credit or revolving credit debt to long-term debt;
4. If the debt was incurred to open a new facility, expand operations at an existing facility, enter new markets, or improve a small business's competitive position;
5. Bringing trade payables to a current status or buying out a factor; and

c) A change of ownership (e.g., acquisition, merger or consolidation) that is essential to sustain the existence of the business is not subject to the limitation.

4. Application Process

Once the 7(a) loan is approved by SBA (as evidenced by an SBA loan number), the lender must submit a completed Form 2021 to the Standard 7(a) Loan Guaranty Processing Center (LGPC). The LGPC will review the form and, if it meets all eligibility requirements, will forward it to the Office of Financial Assistance (OFA). In addition to the completed form, SBA's loan accounting information must reflect that the guaranty fee has already been paid. (The CAIP request is for reimbursement.)

OFA then prepares a package to be submitted to and considered by the CAIP Finance Committee, which is comprised of officials from the Departments of Agriculture and Treasury and the North American Development Bank.

If the CAIP Finance Committee approves the application, SBA will refund the guaranty fee to the lender who, in turn, refunds any fee paid by the borrower to the borrower. (Note: The CAIP Finance Committee meets infrequently, and funds for this initiative are limited and may not always be available.)

B. The following special purpose loan programs as of the date of this SOP are not funded:

1. Disabled Assistance Loan (DAL)
2. Loan Program for Low Income Individuals
3. The Veterans Loan Program (not to be confused with Patriot Express)
4. The 8(a) Participant Loan Program
5. Defense Economic Transition Loan Program
6. 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.

IV. 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.

CHAPTER 2: ELIGIBILITY FOR 7(A) GUARANTY LOAN PROGRAM

I. 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.

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.

An Eligibility Checklist is included in the lender application (SBA Form 1920SX, Part C) to identify eligibility issues.

Comment [D46]: The conversion to the use of Form1920SX Lenders Application for all loans covers the eligibility checklist requirement.

II. SUMMARY OF ELIGIBLITY REQUIREMENTS

A. The Small Business Applicant must: (13 CFR §120.100)

1. Be an operating business;
2. Be organized for profit;
3. Be located in the United States (includes territories and possessions);
4. Be small (as defined by SBA); and
5. Demonstrate a need for the desired credit.

B. Lender must certify that credit is not available elsewhere on reasonable terms; (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; (13 CFR §120.102)

D. The following businesses are not eligible: (13 CFR §120.110)

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;
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 5% of their 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).

III. ELIGIBILITY REQUIREMENTS

A. <u>The Small Business Must be Organized for Profit.</u>

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 percent 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 loan proceeds 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:

a) Articles of Incorporation-- filed with Secretary of State or similar department in the state where the applicant is organized or conducts operations;

b) 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;

c) Corporate By-Laws and any amendments;

d) Partnership Agreements;

e) Association By-laws; and

f) Tax Returns.

B. The Applicant Must Be Small Under SBA Size Requirements (13 CFR Part 121)

1. The applicant business alone (without affiliates) must not exceed the size standard for the industry in which the applicant is primarily engaged AND the applicant business combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher. Affiliation exists when one individual or entity controls or has the power to control another or a third party or parties controls or has the power to control both. SBA considers factors such as ownership, management, previous relationships with or ties to another entity, and contractual relationships when determining whether affiliation exists. The complete definition of affiliation is found at 13 CFR §121.103. (See also, 13 CFR §121.107 and 121.301)

2. The applicable size standards are increased by 25% 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. (13 CFR §121.301(e))

3. For most retail businesses, the applicant and its affiliates cannot exceed $7.0 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. The applicant business may qualify under either the industry size standards discussed above or the alternative size standard. To qualify under the alternative size standard, the applicant business including any affiliates must meet the following:

a) The maximum tangible net worth of the applicant and its affiliates is not more than $15,000,000; and

b) The average net income after Federal income taxes (excluding any carry-over losses) of the applicant and its affiliates for the 2 full fiscal years before the date of the application is not more than $5,000,000.

7. When size status of an applicant is determined: (13 CFR §121.302)

a) 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.

b) If the Small Business Applicant is an existing business and is using the proposed loan proceeds to acquire another business, the sizes of the two businesses are combined to determine if the application is size eligible.

c) For applications processed under a lender's delegated authority, (PLP, SBA Express, Export Express, Patriot Express, etc.), size is determined as of the date of approval of the loan by the lender.

8. Formal size determinations (13 CFR §121.303)

a) 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.

b) 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.

9. Review of Franchise/License/Dealer/Jobber or Similar Agreements

Comment [D47]: Affiliation guidance regarding Franchises has been substantially updated, and lenders are advised to thoroughly review this section.

The discussion in this section applies to franchise agreements, license agreements, dealer agreements (with the exception of dealer agreements from new car manufacturers which are not reviewed for affiliation), jobber or similar agreements. *All such franchise, license, dealer, jobber or similar agreements are referred to in this section as "franchise agreements" and the two parties to any such agreement are referred to as "franchisor" and "franchisee."*

Comment [D48]: Language modified to specify the review is for affiliation only, not eligibility entirely, and to define terminology

A finding that the agreement is acceptable 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 acceptable does not mean that the Small Business Applicant is eligible; therefore, lender must consider all other size, eligibility and underwriting requirements specific to a respective loan applicant/application in accordance with this SOP.

Comment [D49]: Restatement of other eligibility requirements.

Applicants who operate or propose to operate under franchise development agreements (often referred to as Master Franchise Agreements) are ineligible as such agreements have been determined to be inherently speculative and are considered to be passive investments. Development agreements may include, but are not limited to: (a) agreements which provide the developer a geographic area with which to grow additional franchise units; and (b) agreements where the developer's income is derived from the royalty payments of each franchise unit in the developer's geographic territory.

Applicants who operate or propose to operate under an agreement containing area development rights, which allow a specific franchisee to operate a number of franchises within a specified geographic area, may be eligible if it complies with the guidance in this section.

a) Affiliation can exist through:

1. Common ownership,
2. Common management,

3. Excessive restrictions upon the sale/transfer of the franchise interest, or

4. Control by a franchisor either directly or through an affiliated entity or agent such that the franchisee does not have the independent right to profit from its efforts and bear the risk of loss commensurate with ownership. (13 CFR §121.103 (i))

b) Review of Franchise Agreements and Related Documents

SBA requires, in all cases, a determination as to whether affiliation exists when the applicant has or will have a franchise, license, dealer, jobber or similar relationship and such relationship (or product, service or trademark covered by such relationship) is critical to the Small Business Applicant's business operation. In such case, the agreement governing the relationship (or product, service or trademark), and any related documents must be reviewed.

Comment [D50]: Language revised for clarity

c) Review and determination must be conducted by:

1. SBA--for all loans processed through the LGPC, including CLP.

2. Lender--for PLP, SBA Express, or any other delegated processing method, except that delegated lenders also have the option of submitting franchise agreement documentation to SBA for an affiliation determination. In such case, the documentation must be sent to DelegatedFranchiseReviews@sba.gov. SBA will notify the lender of its determination after completing its review. If SBA determines that the parties are not affiliated based on the agreement and any supplemental documentation, the lender may continue to process the application under its delegated authority.

3. In all cases, the franchise agreement, including any amendments and/or addendums must be executed by all parties prior to first disbursement. If the application is submitted to the LGPC for processing, the lender must also submit a certification signed by the franchisor that it will provide the franchisee with any approved SBA addendum which, upon execution by the franchisee, will supplement the Franchise Documents and be binding on the franchisor. If lender disburses the proceeds without obtaining the necessary executed franchise documents, including any amendments and/or addendums, SBA may deny liability on its guaranty.

Comment [D51]: Language added to permit PLP and other delegated lenders to submit franchise agreement to SBA for affiliation determination.

Comment [D52]: Removed paragraph on Franchise Information Assistance.

d) Registry of approved franchise agreements

1. To facilitate the review of these agreements, SBA makes available a list of franchise agreements (the "Registry") that have been approved by the SBA Franchise Committee for size/affiliation and control issues. This information is currently available to the public at no cost at www.franchiseregistry.com. (SBA also posts a list of approved agreements by year on SBA's website at www.sba.gov/for-lenders.) Lender must ensure that they have the correct date of the agreement that the applicant/franchisee is operating under in order to access the correct Registry documents. If lender is unable to determine the date from the documents, it should contact the franchisor directly. SBA will accept the

executed Certification of Franchise Documents (available on the Registry website) matching the correct year of the agreement as conclusive evidence that the franchisee is not affiliated with the franchisor based upon the agreement. (Affiliation may nevertheless exist based on other factors.)

2. In order to rely on the Registry for its determination, the lender's loan file must include the following:

i. Executed franchise agreement and any approved attachments and exhibits;

ii. Executed Addendum (if required);

iii. Executed Certification of Franchise Documents; and

iv. Compliance with any required eligibility notes.

e) *Process if Not Listed on Registry or Lender is Not Using the Registry*

If the franchise agreement is not listed on the Registry or the lender chooses not to use the Registry, a review must be made of the agreement and all related documents.

1. *Franchise Findings*

(a) Lenders should consult the SBA Franchise Findings List at http://www.sba.gov/content/franchise-findings to see if there have been any findings for a particular franchise agreement, which if still in the agreement, would result in a determination of affiliation. The information provided by the SBA Franchise Findings List should be used by Lenders to ensure they are making informed affiliation determinations. Lenders should consult the "fix available" category on the findings list to see if there is a fix to remedy the specific issues noted on the findings list.

(b) If a franchise agreement has no negotiated fix available and the noted findings remain in the agreement, then the agreement should be determined to result in affiliation.

(c) Lenders may contact SBA counsel in the District Office or the SBA Chief Franchise Counsel for specific questions regarding franchise affiliation determinations.

(d) Franchisors may contact the SBA Chief Franchise Counsel at franchiseappeals@sba.gov for questions regarding the franchise registry approval process.

2. Affiliation Issues to Consider if Reviewing a Franchise Agreement that is Not Listed on the Registry or if the Lender is Not Using the Registry.

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

(a) Control

Any of the following provisions are considered conclusive evidence of control:

1. Including a transfer provision that requires a franchisor's consent must state "Consent must not be unreasonably withheld or delayed" or its equivalent. SBA will not infer this into a Franchise Agreement. Reasonable Business Judgment is not an acceptable substitute;
2. Setting the Applicant's net profit;
3. Requiring the payment of excessive franchise continuing fees;
4. Directly controlling the applicant's employees including hiring or terminating.
    a. Short term step-in agreements for 90-120 days are acceptable, provided the period of control by the franchisor does not exceed 365 days in the aggregate over the term of the agreement;
    b. In the temporary personnel industry, temporary employees paid by the franchisor are acceptable as long as the franchisee makes all employment determinations.
5. Requiring that the billing activities, deposit receipts or revenues for the applicant be handled by the franchisor or a Third Party chosen by the franchisor (Exception: automatic debits from a franchisee account are acceptable);
6. Including an option to purchase the applicant's personal property upon expiration or breach of the agreement, where the franchisor has the ability to control the price at the time of purchase (Exception: right of first refusal is allowed provided it is on commercially reasonable terms);
7. Requiring the franchisee (or EPC owner, if applicable) to sell the real property to the franchisor upon expiration, breach or termination of the agreement. (This type of provision may be found in the agreement itself or recorded against the real estate as a purchase option.) Exception: The franchisor may, however, require a lease of the property upon termination for a period up to the remaining term of the original franchise agreement; or

8. Including a Right of First Refusal on a partial transfer of ownership between existing owners of a franchise entity or their close relatives.

(b) Insurance Industry

SBA's Office of Hearings and Appeals has determined that, in the insurance industry, it does not create affiliation for the franchisor to own the Insurance Policies as well as receive the payments on the policy.

(c) Fitness Industry

Fitness centers that target one gender are not ineligible if they permit both men and women to join and/or use the facility. Lenders must document the file with the following:

i. Affidavit signed by the Small Business Applicant that both men and women are allowed to join and/or use the facility; and

ii. Evidence that the facility is open to both men and women, such as two single-sex bathrooms or locker rooms, brochures/flyers stating that both men and women are welcome, or actual membership demographics.

(d) Gasoline Industry

Based on the Industry standard established by the Gasoline Industry, it is common practice for the oil company to install a credit card system to provide for payment of gasoline products. This type of arrangement, by itself, does not create excessive control or affiliation.

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.

i. Eligibility Determination. The eligibility determination for all Gas Station Loans must include a review of the relevant documents. The

documentation associated with Gas Station Loans is voluminous, complex and frequently contains provisions that (1) enable an oil company or another non-small Person to exert significant control over the small business loan applicant resulting in affiliation (13 CFR §121.103); (2) have a significant negative impact on the marketability and collateral value of the Property; and (3) impair the applicant's repayment ability. Therefore, all "Relevant Documents" must be reviewed to determine whether a single provision or based on the "totality of the circumstances" (13 CFR §121.103(a)(5)) execution of the Relevant Documents by the small business would render it ineligible for SBA financial assistance.

(a) Relevant Documents. For purposes of this paragraph, the term "Relevant Documents" includes but is not limited to (1) 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"), (2) the small business concern's oil company supply agreement and convenience store franchise agreement, if any, and (3) 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"). 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.

(b) 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 small business concern from selling the gas station as a going concern and significantly diminish SBA's recovery in the event of default.

(c) Examples of Unacceptable Document Review Findings:

(i) Affiliation. Provisions in the Relevant Documents that give an oil company or another non-small Person significant control over the small business applicant are not acceptable. (See 13 CFR §120.100 (d).) Examples include: (1) Purchase or Repurchase Options. Purchase or repurchase options that allow an oil company or other Person to acquire the small business concern's primary business asset (e.g. real estate) if the small business concern violates a condition, covenant, restriction or other provision. (Distinction: A "purchase option" is different from a

"right of first refusal". A right of first refusal that allows an oil company or other Person to match a third party's offer is generally acceptable to SBA.) Please note that a right of first refusal on a partial transfer of an interest in the small business concern is NOT acceptable.; (2) Deed/Use Restrictions. Provisions that give an oil company or other Person the right to record deed or use restrictions that enable the oil company or other Person to control the use of the Property thereby preventing the small business owner from fully benefiting commensurate with ownership. Note that certain deed restrictions pertaining to the use of the property, which are intended to protect the health and safety of occupants, may be acceptable. Examples of uses in deed restrictions based upon environmental concerns which may be acceptable may include: residential use, use as a day care center for children or seniors, use as a school, or use as a hospital.

(ii) Significant Impairment of Collateral Value or Repayment Ability. Provisions in the Relevant Documents that impose requirements, restrictions or consequences that could significantly impair (1) the collateral value and marketability of the Property or (2) the small business concern's repayment ability are not acceptable. The fact that the collateral will consist solely of personal property, such as buildings and trade fixtures located on leased land, is irrelevant since they would ordinarily be sold in-place in the event of foreclosure, e.g., a carwash, mini-mart, or fuel pumping equipment. Examples 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 require subsequent owners of the Property to indemnify an oil company or other Person; and (2) Engineering Controls that require the small business concern or subsequent owners to install costly devices or structures such as extraction wells or subsurface barrier walls prior to constructing a building, remodeling, or otherwise improving the Property.

(iii)Alteration of SBA/Lender's Legal Rights, Remedies or Responsibilities. Provisions in the Relevant Documents that alter SBA or Lender's legal rights, remedies or responsibilities or impose additional duties are not acceptable. Examples include provisions that require SBA/Lender to: (1) Release or Waive their legal rights, remedies or claims against the seller, an oil company or other Person; (2) Subordinate the SBA/Lender lien; (3) Indemnify the seller, an oil company or any other Person; (4) Notice. Provide the seller, an oil company or any other Person with special notice of default or foreclosure; or (5) Forbearance. Provide the oil company or another Person with an exclusive period of time

in which to decide what action to take before SBA/Lender can initiate liquidation activities in the event of default on the SBA loan.

f) Questions on SBA's Franchise Policy, Requests for Reconsideration and Appeals

1. Questions on SBA's Franchise Policy should be directed to local field counsel, center counsel, SBA Chief Franchise Counsel.

2. Lenders that believe that a franchise decision that has been rendered by SBA 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 FranchiseAppeals@sba.gov. Franchise appeals will be reviewed by the SBA Franchise Committee comprised of OGC attorneys appointed by the Associate General Counsel for Financial Law & Lender Oversight. For purposes of franchise appeals, the D/FA or designee will be an ex officio member of the SBA Franchise Committee. The Associate General Counsel for Financial Law & Lender Oversight will retain the authority to overrule decisions rendered by the SBA Franchise Committee.

3. Franchisors that would like to appeal SBA's decision not to place them on the Registry may do so following the procedures set forth in subparagraph (2) immediately above.

4. Certain issues involving businesses that may be engaged in promoting religion or that may have activities of a prurient nature may be referred to the Associate General Counsel for Litigation for a decision.

Comment [D53]:

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. (13 CFR §120.101)

2. The lender must determine that:

a) The Small Business Applicant is unable to obtain the loan on reasonable terms without a Federal government guaranty, and

b) Some or all of the loan is not available from any of the following sources:

1. The resources of the applicant business; or

2. 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 their loan file. The file must contain documentation that specifically identifies the factors in the present financing that meet the Credit Elsewhere Test.

4. Acceptable factors that demonstrate an identifiable weakness in the credit or exceed policy limits of the lender include, among others:

a) 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);

b) The requested loan exceeds either the lender's legal lending limit or policy limit regarding the amount that it can lend to one customer;

c) The lender's liquidity depends upon selling the guaranteed portion of the loan on the secondary market;

d) The collateral does not meet the lender's policy requirements;

e) The lender's policy normally does not allow loans to new businesses or businesses in the applicant's industry; and/or

f) Any other factors relating to the credit that, in the lender's opinion, cannot be overcome except for the guaranty. These other factors must be specifically documented in the loan file.

5. Unacceptable factors include:

a) To address the lender's Community Reinvestment Act (CRA) compliance; or

b) 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% or more of the Small Business Applicant be reviewed. (13 CFR §120.102)

a) The rule also applies to each person when the combined ownership of the spouses and dependent children is 20% or more.

b) If the Small Business Applicant is owned by a Trust, the rule applies to the Trustor. All donors to the trust will be deemed to have Trustor status for eligibility purposes.

c) The utilization of personal resources rule does not apply to the business resources of an associate or affiliated business.

d) 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

a) The SBA's lending programs qualify as "Special-Purpose Credit Programs" under 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 or credit instrument if it is required by Federal or State law.

b) 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, six months or older, or legal separation adjudicated by a court, the applicant is presumed to have access to the personal resources of his/her spouse and minor children. Pre-nuptial agreements are not considered a legal impediment. 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.

c) SBA or the lender can require injection of the available personal resources of the individual's minor children.

d) 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

a) Only liquid assets are subject to being injected into the project (this includes liquid assets held in a revocable trust). Liquid assets include:

1. Cash;
2. Certificates of deposit;
3. Marketable securities and bonds;
4. Cash surrender value of life insurance; and
5. 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.

b) Liquid assets do not include:

1. Closely held non-marketable stocks or bonds;
2. Individual retirement accounts (IRAs), 401(k), 403(b), Keoghs, or other established retirement accounts subject to withdrawal restrictions or penalties; Health Savings Accounts, tax-advantaged Educational Savings Accounts, such as 529 accounts, and other similar assets;
3. Equity in real estate or other fixed assets; or
4. 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 (13 CFR §120.102)

a) 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.

b) If the total financing package:

1. Is $250,000 or less, the exemption is two times the total financing package or $100,000, whichever is greater;
2. 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

3. Exceeds $500,000, the exemption is one times the total financing package or $750,000, whichever is greater.

c) 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.

d) Liquid assets required to be injected into the business under the utilization of personal resources rule cannot be pledged as an alternative to injection.

e) 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:

a) 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);

b) Determine the value of the liquid assets subject to the rule for each individual; and

c) 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

a) 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%.

b) 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:

a) Determine the primary business industry of the Small Business Applicant. (13 CFR §121.107)

b) Determine whether the Small Business Applicant is one of the types of business listed as ineligible in SBA regulations. (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:

a) Businesses organized as a non-profit (for-profit subsidiaries are eligible) (13 CFR §120.110 (a))

b) Businesses Engaged in Lending (13 CFR §120.110 (b))

1. 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:

(a) Banks;

(b) Life Insurance Companies (but not independent agents);

(c) Finance Companies;

(d) Factors;

(e) Investment Companies;

(f) Bail Bond Companies; and

(g) Other businesses whose stock in trade is money and which are engaged in financing.

2. The following are exceptions to this regulation:

(a) A pawn shop that provides financing is eligible if more than 50% of its revenue for the previous year was from the sale of merchandise rather than from interest on loans.

(b) 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 revenue is from financing its sales.

(c) A mortgage servicing company that disburses loans and sells them within 14 calendar 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.

(d) A check cashing business is eligible if it receives more than 50% of its revenue from the service of cashing checks.

(e) A business engaged in providing the services of a financial advisor on a fee basis is eligible provided they do not use funds to invest in their own portfolio of investments.

Comment [D54]: Guidance added for fee for service financial advisors.

c) Passive Businesses (13 CFR §120.110 (c))

1. 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 under 120.111) are not eligible.

2. Businesses primarily engaged in subdividing real property into lots and developing it for resale on its own account are not eligible.

3. Businesses that are primarily engaged in owning or purchasing real estate and leasing it for any purpose are not eligible. For example, shopping centers are not eligible and businesses that lease land for the installation of a cell phone

tower or wind turbine also are not eligible; however, the business operating the cell phone tower or wind turbine is eligible.

4. Apartment buildings and mobile home parks are not eligible. But, hotels, motels, recreational vehicle parks, marinas, campgrounds, or similar types of businesses are eligible if more than 50% of the business's revenue for the prior year is derived from transients who stay for 30 days or less at a time. If the applicant is a start-up, the applicant's projections must show that more than 50% of the business's revenue will be derived from transients who stay for 30 days or less at a time.

5. Residential facilities that are licensed as nursing homes or assisted living facilities are eligible.

6. Businesses that are engaged in leasing equipment, household goods or other items are eligible. (See subparagraph b) above regarding the eligibility of businesses engaged in lending.)

7. Businesses such as barber shops, hair salons, nail salons, and similar types of businesses are eligible, regardless of whether they have employees or contract with individuals to provide the services.

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

d) Life Insurance Companies (13 CFR §120.110 (d))

1. Life insurance companies are not eligible.

2. 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:

(a) 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;

(b) If the insurance agent hires, supervises and pays employees he or she needs to help perform his or her services;

(c) 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;

(d) If the insurance agent is paid by the job or on a commission basis, rather than by the hour, week or month;

(e) If the insurance agent is responsible for paying his or her own business expenses;

(f) 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;

(g) 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

(h) If the insurance agent can realize a profit or incur a loss as a result of his or her services.

e) Business Located in a Foreign Country or Owned by Undocumented (Illegal) Aliens (13 CFR §120.110 (e))

1. Businesses are not eligible if the business is:

(a) Located in a foreign country with no activities in the United States; or

(b) Owned in whole or in part by undocumented (illegal) aliens.

2. Businesses are eligible if the business:

(a) Is located in the U.S.;

(b) Operates primarily in the U.S.; and

(c) Is authorized to operate in the state or territory where they seek SBA financial assistance; OR

(d) Makes a significant contribution to the U.S. economy through the:

i. Payment of taxes to the U.S.; or

ii. Use of American products, materials, and labor.

3. 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.

4. Businesses involved in international trade are subject to U.S. trade restrictions.

5. Businesses owned by legal permanent residents are eligible. See Paragraph III.E. of this Chapter.

f) Businesses Selling Through a Pyramid Plan (13 CFR §120.110 (f))

Pyramid or multilevel sales distribution plans are not eligible for SBA assistance.

g) Businesses Engaged in Gambling (13 CFR §120.110 (g))

1. Small businesses that obtain more than one-third of their annual gross revenue for the prior year, including rental income, from legal gambling activities are not eligible.

2. Small businesses are eligible if they obtain one-third or less of their annual gross revenue, including rental income, from:

(a) Commissions from official State lottery ticket sales under a State license; or

(b) 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-mutual betting racetrack or a gambling casino, it is not eligible, regardless of the percentage of gross revenue derived from gambling.

Comment [D55]: Clarifies ineligibility of casinos and para mutual betting establishments.

h) Businesses Engaged in any Illegal Activity (13 CFR §120.110 (h))

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.

i) Businesses Which Restrict Patronage (13 CFR §120.110 (i))

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.

j) Government-Owned Entities, Excluding Native American Tribes (13 CFR §120.110(j))

1. Municipalities and other political subdivisions are not eligible.
2. Special Requirements Applicable to Native American Businesses
3. 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:

(a) It establishes that it is a separate legal entity from the tribe and submits the documents authorizing its existence; and

(b) 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.

k) Businesses Engaged in Promoting Religion (13 CFR §120.110 (k))

1. In evaluating the eligibility of a Small Business Applicant, if it appears that the Small Business Applicant may be connected, associated or affiliated with a religious organization or may have a religious component, the lender must complete the Religious Eligibility Worksheet (SBA Form 1971), attached to this SOP as Appendix 8. Any questions regarding this worksheet may be addressed to local SBA Counsel or Center Counsel.

2. A delegated lender must retain the worksheet and any information obtained in connection with the lender's religious eligibility decision in the loan file, and must submit the worksheet and such information to SBA with any request for guaranty purchase. SBA also may review the worksheet and such information when conducting lender oversight activities.

3. A non-delegated lender must submit the completed worksheet and any information obtained in connection with that worksheet to the LGPC with the application. Center Counsel will then review the matter. If Center Counsel recommends that the Small Business Applicant be found ineligible for financial assistance based on a religious aspect, the matter must be referred to the Associate General Counsel for Litigation for a decision. If Center Counsel finds the Small Business Applicant eligible for financial assistance, the LGPC will notify the lender of that decision.

4. A Small Business Applicant is not ineligible merely because it offers religious books, music, ceremonial items and other religious articles for sale.

Comment [D56]: Revised guidelines on Businesses engaged in promoting religion along with worksheet as Appendix 8 hereto.

l) Cooperatives (13 CFR §120.110(l))

1. Consumer and marketing cooperatives are not eligible. For agricultural marketing cooperatives, see (3) below.

2. Producer Cooperatives.

A producer cooperative is eligible if:

(a) It is engaged in a business activity;

(b) The purpose of the cooperative is to obtain financial benefit for itself as an entity AND its members in their capacity as businesses; and

(c) It is small and each member of the cooperative is small.

3. Agricultural Marketing Cooperatives. An agricultural cooperative acting pursuant to the provisions of the Agricultural Marketing Act (12 USC 1141j) is considered to be a producer cooperative and is eligible if it meets the requirements for eligible producer cooperatives in (2) above.

4. Worker Cooperatives. A worker cooperative, in which the employees of the small business cooperatively own the company, is eligible if it meets all other SBA eligibility requirements.

m) Businesses Engaged in Loan Packaging (13 CFR §120.110(m))

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

n) Businesses with an Associate of Poor Character (13 CFR §120.110 (n))

Comment [D57]: Readers/Users are advised to fully review this section covering SBA Form 912. Language has been modified to reflect the questions on the new Form 912 and 1919.

1. The SBA cannot provide financial assistance to businesses with Associates who are incarcerated, on probation, on parole, who are currently under indictment for a felony or a crime of moral turpitude, or who are presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction..

2. 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.

3. An individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an applicant is not eligible.

4. To determine eligibility under this section, the Agency requires that every proprietor, general partner, officer, director, managing member of a limited liability company (LLC), owner of 20% or more of the equity of the Applicant, Trustor (if the Small Business Applicant is owned by a trust), and any person hired by the Applicant to manage day-to-day operations ("Subject Individual") must be of good character. Part of the character evaluation process involves answering the applicable questions on SBA Form 1919, Borrower Information Form.

5. Generally, loans submitted under any program(including CAPLines,) ITL, Export Working Capital, Export Express, SBA Express and Patriot Express may be made only if questions 1, 2, and 3 on SBA Form 1919 are all answered "no".

(a) **If a Subject Individual answers "yes" to question 1, then the Small Business Applicant is not eligible.**

(b) If a Subject Individual's response to question 3 reveals that he/she is currently on parole or probation, then the Small Business Applicant is not eligible.

(c) If a Subject Individual answers "yes" to question 2 or 3, that individual must complete SBA Form 912 Statement of Personal History within 90 days of submission to accomplish 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 attached to the SBA Form 912 and maintained in the lender's loan file.) 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, and that individual must complete, sign, date, and submit SBA Form 912 to the Lender for processing.

Comment [D58]: Specific new guidance on use of Form 1919 and when Form 912 is to be used.

i. 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:

(a) Date of the offense(s).

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

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

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

(i) Any fines imposed;

(ii) Any class or workshop to be attended;

(iii)Any jail time served;

(iv)If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation); or

(v) Any other court conditions (such as registration as a sex offender).

(e) 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.

(f) The borrower's dated signature on the explanation.

ii. When an applicant discloses a felony arrest a Fingerprint Check is required and a Fingerprint Card (FD 258) must be completed. "Electronic Fingerprint Submission" means fingerprints taken and reproduced in a machine-readable format by a fingerprint capture system that complies with the Federal Bureau of Investigation's Electronic Biometric Transmission Specifications. An Electronic Fingerprint Submission must be compatible with the Federal Bureau of Investigation's Automated Fingerprint Identification System, or any successor system in place for biometric identification. The Electronic Fingerprint Submission will generally be a piece of paper produced by the fingerprint capture system, which an individual may attach to SBA Form 912 to expedite character check procedures. Where an Electronic Fingerprint Submission is not locally available, paper and ink fingerprint cards may still be used. Local law enforcement agencies will usually assist the individual with the fingerprinting. Lenders may obtain the FD 258 from their local District Office.

iii. 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. A Fingerprint Card (FD 258) or the Electronic Fingerprint Submission (as defined above) must be completed.

iv. Regardless of whether the past offense was a felony or a misdemeanor, the lender must submit the complete 912 package to the local SBA 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.

v. 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.)

vi. Clearing an Application with a "Yes" response to questions 2 or 3, the SBA Field Office (for non-delegated loans) or the delegated lender (for loans processed under delegated authority) may process, submit and disburse the loan only when the subject's affirmative activity meets the criteria set forth below:

(a) A single minor (misdemeanor) offense or arrest; OR

(b) 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

(c) 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.

vii. If the subject's affirmative activity meets the criteria above, 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:

(b) Applicant's Social Security number;

(c) Applicant's date of birth;

(d) Applicant must provide specific information about each charge including the date, city and state where charged;

(e) 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;

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

(g) Lender must insert the SBA Servicing Office that will service the loan after it is processed by the LGPC;

(h) Include the lender's address, telephone number, and contact person;

(i) Lender must check, sign, and date the "Fingerprints waived" box and the "Clear For Processing" box;

(j) Lender must submit one copy of the 912 to the OIG/OSO at 409 3rd Street, SW, Washington DC 20416 and retain the original copy of the 912 in the loan file.

viii. A Delegated lender or SBA Field Office Cannot Clear Fleony Arrests or Convictions for Loan Processing.

ix. non-delegated lender or a delegated lender unable to or choosing not to exercise its authority to clear a 912 with a "yes" response must:

(a) Submit a cover letter with the lender's contact information, a brief description of the business and the complete 912 package to the local SBA field office before loan processing can proceed. The lender must submit copies to the field office and retain the originals in its loan file. SBA recommends that the lender submit the 912 package as soon as possible.

(b) 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.)

(c) When a 912 with a "yes" response is forwarded to the OIG/OSO, a lender must:

(i) Obtain from the Subject Individual a Form FD 258, SBA Fingerprint Card, and submit it to the field office to forward to OIG/OSO for a Fingerprint Check. 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.

(d) 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.

(e) OIG/OSO may decline the application because the information supplied on the Subject Individual shows the offense is open and has not been adjudicated or the Subject Individual is on probation or parole.

(f) For all Form 912s submitted, SBA's OIG/OSO will request a "Name Check" (a/k/a background check) from the FBI.

1. 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.
2. 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.

3. 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, and directed to immediately cease further loan disbursements and seek immediate repayment. If the loan has been disbursed, the Agency will cancel its guaranty.

4. The lender may be responsible for any funds that are uncollected in the event that the Name Check reveals additional undisclosed offenses or fraud.

x. 912 Decision Appeals.

(a) 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.

(b) 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.

(d) 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).

o) Equity Interest by Lender or Associates in Applicant Concern (13 CFR §120.110(o))

1. 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 apply. See also 13 CFR §120.140 for a list of ethical requirements that apply to lenders.

p) Businesses Providing Prurient Sexual Material (13 CFR §120.110 (p))

1. 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.

2. 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 to be prurient.

3. If a delegated lender finds that the Small Business Applicant may have a business aspect of a prurient sexual nature, the lender must document its analysis and eligibility decision in the loan file, and must submit that documentation to SBA with any request for guaranty purchase. SBA also may review such documentation when conducting lender oversight activities.

4. If a non-delegated lender finds that the Small Business Applicant may have a business aspect of a prurient sexual nature, the lender must include an analysis of the issue with its application to the LGPC. Center Counsel will then review the matter. If Center Counsel recommends that the Small Business Applicant be found ineligible for financial assistance, the matter must be referred to the Associate General Counsel for Litigation for a decision. If Center Counsel finds the Small Business Applicant eligible for financial assistance, the LGPC will notify the lender of that decision.

Comment [D59]: Additional language added to clarify responsibility of delegated and non-delegated regarding disclosure and decisions on this issue.

q) Prior Loss to the Government (13 CFR §120.110 (q)) and Delinquent Federal Debt (31 CFR 285.13)

1. Unless waived by SBA for good cause, SBA cannot provide assistance to a Small Business Applicant if there has been a Prior Loss to the Government. "Prior Loss" means the dollar amount of any deficiency on a Federal loan or Federally assisted financing 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 including the following:

(a) Loss on the sale or other disposition of collateral acquired after default;

(b) Compromise, i.e., resolution or settlement of a loan balance for less than the full amount due;

(c) Bankruptcy by a borrower and/or any guarantors; and

(d) Any unreimbursed advance payments by a Federal agency.

2. Unless waived by SBA for good cause, SBA cannot provide assistance to a Small Business Applicant if there is a Delinquent Federal Debt:

(a) A debt is considered "delinquent" when any Federal loan or Federally assisted financing has not been paid within 90 days of the payment due date. A debt is considered "delinquent" even if the creditor agency has suspended or terminated collection activity with respect to such debt.

(b) A debt is not considered "delinquent" if:

i. The creditor agency has released the obligor from paying the debt;

ii. The obligor is subject to, or has been discharged in, a bankruptcy proceeding;

iii. The obligor has entered into a satisfactory written repayment agreement and is current; or

iv. The debt is in an administrative or judicial appeal process.

(Note: If there was a loss associated with any of these debts, however, the loan remains subject to the rules governing a Prior Loss to the Government under paragraph q)(1) above.)

3. "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, and federally-backed student loans and disaster loans (excluding any amount forgiven as a condition of the loan at the time of origination). It does not include unpaid/delinquent taxes, any loss incurred by the Federal Deposit Insurance Corporation (FDIC) when it sells a loan at a discount, or any loan purchased, held or securitized by Fannie Mae or Freddie Mac.

Comment [D60]: Language added to exclude losses on Fannie Mae and Freddie Mac loans as they do not provide federal guarantees of single mortgages, but rather securitized pools of mortgages.

4. These rules apply to:

(a) The Small Business Applicant;

(b) Any business owned, operated or controlled by an Associate of the Small Business Applicant that incurred the Delinquent Federal Debt or caused the Prior Loss; and

(c) Any guarantor who has (or guaranteed) a Delinquent Federal Debt or a caused Prior Loss (either directly or as a guarantor).

Comment [D61]: Associate language deleted.

5. Delegated lenders are responsible for accessing the records in E-Tran to determine if any of the individuals or businesses identified in paragraph (4) above experienced a Prior Loss.

(a) CAIVRS allows the lender to enter multiple tax id numbers (either SSN or EIN) to search for an outstanding Delinquent Federal Debt or Prior Loss in connection with a loan application.

(b) Lenders may obtain instructions for accessing CAIVRS at http://www.hud.gov/offices/hsg/sfh/sys/caivrs/caivrs_faq.cfm.

6. Delegated lenders are responsible for accessing via E-Tran SBA prior loss records for any of the owners (20% or greater), the subject business, or any businesses owned by the principals of the small business applicant to determine if SBA has experienced a prior loss.

Comment [D62]: Added language.

7. Waiver Requests:

(a) When there are compelling circumstances, the lender may send a written request for a waiver to the LGPC. The lender must identify the Delinquent Federal Debt or Prior Loss to the Government, explain the relationship of the Small Business Applicant to the individual or business causing the delinquency or prior loss and the circumstances.

(b) For Delinquent Federal Debt, the Chief Financial Officer (CFO) (who may only delegate this authority to the Deputy Chief Financial Officer) will make the final decision on the request.

(c) For Prior Loss to the Government, the D/FA or designee will make the final decision on the request.

8. If the Delinquent Federal Debt or Prior Loss to the Government is fully satisfied, the application can be processed without a waiver from the CFO or D/FA, including under a lender's delegated authority. The lender must document its file as to how the debt or loss has been fully satisfied.

r) Businesses primarily engaged in political or lobbying activities (13 CFR §120.110 (r))

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

s) Speculation (13 CFR §120.110 (s))

1. Speculative businesses are not eligible. This prohibits loans to a Small Business Applicant for:

(a) The sole purpose of purchasing and holding an item until the market price increases; or

(b) Engaging in a risky business for the chance of an unusually large profit.

2. Speculative businesses include:

(a) Wildcatting in oil;

(b) Dealing in stocks, bonds, commodity futures, and other financial instruments;

(c) Mining gold or silver in other than established fields;

(d) Research and Development; and

(e) Building homes for future sale (except under the Builders CAPLine program).

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

3. Non-speculative businesses which are eligible include:

(a) A business, such as a grain elevator, that uses a commodity contract to lock in a price;

(b) A farmer who uses a commodity contract to lock in the sale price of his or her harvest;

(c) A business engaged in drilling for oil in established fields; and

(d) 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).

SBA requires all participating lenders, including SBLCs, to comply with the U.S. Department of the Treasury regulations for Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks found at 31 CFR 1020.220.

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 Lawful Permanent Residents (LPRs) are eligible. LPRs are persons who may live and work in the U.S. for life unless their status is revoked through an administrative hearing.

a) The USCIS Form I-551 (551) is evidence of LPR status. USCIS has two versions of the 551:

1. Resident Alien Card; and
2. Permanent Resident Card. (This is the most recent version.)

b) 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:

1. A temporary stamp by USCIS on the individual's passport that says "Processed for I-551 – Temporary Evidence of Lawful Permanent Residence;"

2. USCIS Form I-327, "Re-entry Permit," issued to LPRs in lieu of a visa, which is valid for only 2 years;

3. 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).

4. 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, SBA Express 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:

a) 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.

1. They must have current/valid USCIS documentation permitting them to reside in the U.S. legally; and

2. The documentation/status of each alien must be verified with USCIS.

b) 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.

a) IRCA vests USCIS with the authority to grant illegal aliens lawful temporary resident status. IRCA prohibits financial assistance to businesses owned 20% or more by such individuals for a period of 5 years after USCIS grants lawful temporary resident status.

b) This disqualification does not apply to Cuban or Haitian entrants or alien entrants subject to IRCA who are 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.

c) All applicants self-certify that they are eligible under IRCA by signing SBA Form 1919, which includes the "Statements Required by Law and Executive Orders." This includes a certification that IRCA does not apply to them or if it does apply, more than five years have elapsed since they were granted lawful temporary resident status pursuant to the 1986 legislation.

Comment [D63]: Modified language to reference SBA Form 1919 and reference to the time period for lawful temporary resident status as part of the Certifications by applicant.

5. Documentation to evidence and verify an alien's status.

a) At time of application, for any alien required to complete SBA Form 1919, the following applies:

1. Aliens must provide their alien registration number on SBA Form 912, "Statement of Personal History" (for EWCP loans, aliens must provide their alien registration number on EIB-SBA Form 84-1 and for SBA Express, Patriot Express and Export Express loans, aliens must provide their alien registration number on SBA Form 1919).

2. Lenders must obtain a copy of the individual's USCIS documentation and maintain in the case file.

3. All lenders must register designated personnel with the SLPC at Sacramento504Register@sba.gov. The SLPC will respond to such requests by providing instructions on how to complete registration and to use the electronic verification process. The lender submits a USCIS Form G-845 (845), "Document Verification Request," with supporting information to the SLPC. The lender must state on the 845 that the request is for an SBA-guaranteed loan.

4. As required by USCIS, SBA will release 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.

(a) As required by USCIS, SBA accepts either of the following authorization statements:

i. I authorize the U.S. Citizenship and Immigration Services to release information regarding my immigration status to [name of lender], because I am applying for a U.S. Small Business Administration loan.

ii. I authorize the U.S. Citizenship and Immigration Services to release alien verification information about me to [name of lender], because I am applying for a U.S. Small Business Administration loan.

(b) As required by USCIS, all verification requests must include an authorization with the original signature of the alien for SBA to release information to lenders on the status of a verification. The original Document Verification Request (Form G-845) and authorization for release must be maintained by the lender in the borrower's file for review by SBA and USCIS, if requested.

(c) The information provided to SBA by the USCIS system is intended solely for the purpose of determining eligibility for SBA financial assistance. This information is governed by the Privacy Act, 5 U.S.C. 552(a)(i)(1), and any person who obtains this information under false pretenses or uses it for any purpose other than for determining eligibility may be subject to criminal penalties.

(d) The authorization statement must not be on SBA or lender stationery.

b) Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application to SBA or, for delegated processing, prior to submission of the request for loan number. The lender must document the findings in the loan file.

c) Verification of the status of an LPR is required if 6 months has elapsed since the last verification with one exception: if the individual reported an offense on SBA Form 912, then verification would be required even if 6 months had not elapsed, as the offense may put their status at risk. For non-LPRs, verification is required with each loan application, as their status can be revoked at any time.

6. Businesses owned by Foreign Nationals or Foreign Entities may be eligible.

Businesses listed in Appendix 1 of this 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, including foreign-owned businesses:

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. with a liquidation value equal to no less than the approved loan amount at the time of first disbursement and, to the extent that the value of collateral declines during the life of the loan, require the borrower to pledge additional collateral to ensure a sufficient collateral coverage amount. If the Small Business Applicant owned by foreign nationals, foreign entities or non-immigrant aliens residing in the U.S. does not have sufficient collateral, the applicant is not eligible for a guaranteed loan.

Comment [D64]: Modified collateral requirements for non LPRs.

c) In order for a business not to be subject to these additional requirements, it must be at least 51% 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 (EPC) 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. (13 CFR §120.111)

a) Under SBA regulations, an EPC can take any legal form or ownership structure. 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.

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

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

b) 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. An EPC may not use loan proceeds to acquire a business, acquire stock in a business or any intangible assets of a business or to refinance debt that was incurred for those purposes.

2. Conditions that apply to all legal entities:

a) The OC must be an eligible small business;

b) The proposed use of proceeds must be an eligible use as if the OC were obtaining the financing directly, subject to paragraph 1.b) above;

c) The EPC (with the exception of a trust) and the OC each must be small under the appropriate size standard of 13 CFR Part 121.

d) The EPC must lease the project property directly to the OC and:

1. The lease must be in writing;

2. The lease must be subordinated to the SBA's mortgage, trust deed lien, or security interest on the property;

3. The lease must have a term, including options to renew exercisable solely by the OC, at least equal to the term of the loan;

4. 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;

5. 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

6. 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.

7. If in acquiring the property, the EPC becomes the beneficiary or owner of the rights to an existing mineral lease on the property, the EPC must assign its interest in the lease (together with its rights to all rental, mineral, royalty, bonus, or similar lease payments that might accrue by virtue of the existing mineral (oil and gas) lease) to the OC; and any such assignment must be subordinated to all Deeds of Trust or Mortgages. In addition, the lender must take the following actions as applicable:

(a) If subordination is not possible, the lender must provide documentation to that effect.

(b) If the mineral lease has been terminated, the lender should attempt to have it removed from the Title Policy.

(c) If the lender is unable to have the lease removed from the Title Policy, the lender must provide supporting documentation evidencing the proper assignment of the lease to the OC and obtain a title endorsement to protect SBA's interest in the real property (i.e., California Land Title Association (CLTA) 100.23 or 100.24).

e) 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 and/or for the purchase of other assets, including intangible assets, for the Operating Company's use.

f) Each holder of an ownership interest constituting at least 20% of either the EPC or the OC must:

1. Guarantee the loan (if the holder is a trust, then the Trustee shall execute the guarantee on behalf of the trust); and

2. Comply with the Utilization of Personal Resource Rule. See Paragraph III.C.7 - 11 of this Chapter.

3. Conditions that apply when the EPC is owned in whole or in part by a trust.

a) The eligibility status of the Trustor will determine trust eligibility.

b) All donors to the trust will be deemed to have Trustor status for eligibility purpose.

c) 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.

d) The Trustor must guarantee the loan.

1. 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.

2. 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.

e) The Trustee shall certify in writing to SBA that:

1. The Trustee has authority to act;

2. The trust has authority to borrow funds, pledge trust assets, and lease the property to the OC;

3. The Trustee has provided accurate, pertinent language from the trust agreement confirming the above; and

4. The Trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.

f) The trust itself does not have to be small by SBA size standards.

4. Size Determinations under the EPC rule

a) If the EPC and the OC are affiliated the two companies are combined for determining size.

1. If there is only one OC, use the OC's NAICS code.

2. If there are multiple, unaffiliated OCs, use the NAICS code of the OC that derives the most revenue. Note: Each OC must be small based on its own NAICS code.

3. If the multiple OCs are affiliated, then use the rules detailed in 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 identifying NAICS Code.

b) If the EPC and the OC are not affiliated, each entity must be small under the size requirement for its particular industry.

c) 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.

d) 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

a) Both the EPC and each OC must submit Financial Statements. The OC's statements are subject to tax verification.

b) The regular requirement for an Aging of receivables and payables is waived for EPCs.

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 Patriot Express Pilot Loan Initiative

1. Eligibility for Patriot Express is 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.

2. 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: Copy of Form DD 214, which is provided for other than dishonorably discharged veterans.

b) Service-Disabled Veteran: Copy of Form 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.

In the event that the veteran's DD 214 is unavailable, a "Certification of Military Service" (NA Form 13038) is an acceptable equivalent.

For any category listed above that requires a photocopy of a military ID, as an alternative, the veteran/service member may provide a statement of service signed by, or by the direction of, the adjutant, personnel office, or commander of the unit or higher headquarters they are attached to. There is no one unique form used by the military for a statement of service. While statements of service are typically on military letterhead, some may be computer-generated. The statement of service must clearly show:

1. The veteran's full name;
2. The Social Security Number (SSN) or the last 4 digits of SSN;
3. The entry date on active duty or the entry date of applicant's Reserve/Guard duty, as applicable (depending on whether the applicant is on active duty or is a current member of the Reserves or National Guard);
4. The duration of lost time, if any (for active duty); and
5. The name of the command providing the information.

Note for Current Reserve/Guard Members: The statement must clearly indicate that the applicant is an "active" reservist and not just in a control group (inactive status).

Comment [D65]: Language added to clarify ID requirements for Military Service.

3. 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.

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. (13 CFR §120.476)

J. Additional Eligibility Requirements for Export Express

a) Eligibility for Export Express is 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. However, applicants that have been in operation for less than 12 months are eligible if both of the following conditions are met:

1. The applicant's key personnel have clearly demonstrated export expertise and substantial previous successful business experience, and

2. The lender processes the Export Express loan using conventional commercial loan underwriting procedures and does not rely solely on credit scoring or credit matrices to approve the loan. Non-bank lenders that do not have a conventional loan portfolio must submit their underwriting procedures to the Office of Credit Risk Management for written approval prior to making an Export Express loan.

Evidence of compliance with both of these requirements must be retained by the lender in its file.

b) 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.

c) Lender must maintain in its loan file information provided by the borrower as it pertains to the use of proceeds for export development activities and its projected impact on the borrower's export sales along with an estimate of the borrower's export sales for the 12 month period following the date of the loan application. Required documentation is itemized in Paragraph IV.J.5 of this Chapter.

K. Additional Eligibility Requirements for International Trade Loans

The Small Business Applicant must establish either of the following in order to be eligible:

1. That the loan proceeds will expand existing export markets or develop new export markets. To establish this, the Small Business Applicant must submit an export business plan, including both a projection and narrative rationale that contains enough information to reasonably support the likelihood of expanded export sales. The plan should identify the amount of expected export sales. Indirect exports are considered exports for purposes of determining eligibility. 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 to the lender from the Borrower's domestic customer (typically in the form of a letter, invoice, order or contract) that the goods or services are in fact being exported. For all of the Borrower's exports (including indirect exports), the lender must determine if US companies are authorized to conduct business with the country to which the goods or services will be shipped, pursuant to the Ex-Im Bank Country Limitation Schedule. A loan may not be made to a business that exports to a foreign country which is listed as a prohibited country (Note # 7) on the Country Limitation Schedule; or

2. That the Small Business Applicant is adversely affected by import competition. The Small Business Applicant must demonstrate injury attributable to increased competition with foreign firms in the relevant market. A narrative explanation and financial statements showing that imported products or services which are directly competitive with those produced by the Small Business Applicant have contributed significantly to a decline in competitive position are required. Alternatively, the Small Business Applicant can submit a finding of injury by the International Trade Commission or the Secretary of Commerce pursuant to Chapter 3 of Title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.), and

3. In addition to either 1 or 2 above, the Small Business Applicant must also be able to demonstrate that the loan will allow the Small Business Applicant to improve its competitive position. The loan report must document evidence that can support the fact that the loan will allow the Small Business Applicant to improve its competitive position.

L. Additional Eligibility Requirements 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.

M. Additional Eligibility Requirements For CAPLines

1. To be eligible for a Seasonal CAPLine, the applicant must qualify under standard 7(a) requirements and:

a) Have been in operation for at least 12 calendar months; and

b) Be able to demonstrate a definite pattern of seasonal activity.

2. To be eligible for a Contract CAPLine, the applicant must qualify under standard 7(a) requirements and:

a) Be able to demonstrate an ability to operate profitably based upon the prior completion of similar contracts;

b) Possess the overall ability to bid, accurately project costs, and perform the specific type of work required by the contract(s); and

c) 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 (13 CFR §120.391; 120.392; 120.393; 120.394), the applicant must qualify under standard 7(a) requirements and:

a) Be construction contractors or homebuilders under NAICS codes 236220, 236115, 236116, or 236118 with a demonstrated managerial and technical ability in profitable construction or renovation;

b) 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;

c) 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

d) 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 Working Capital CAPLine, the applicant must qualify under standard 7(a) requirements and generate accounts receivable (not notes receivable, and/or have inventory.

IV. ELIGIBLE USES OF LOAN PROCEEDS (13 CFR §120.120)

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;
8. Energy Conservation loans; or
9. Refinancing.

B. Loan Proceeds May be Used to Finance a Lender's Other Real Estate Owned (OREO):

Where loan proceeds will be used to finance the purchase of real estate owned by the 7(a) lender making the loan, the application must:

1. Be submitted to the LGPC (delegated authority may not be used to process these applications);

2. Include an independent real estate appraisal that meets the requirements found in Chapter 4 of this Subpart (the appraisal requirement cannot be delayed until loan closing), and that provides the liquidation value of the real estate;

3. Include an explanation of the circumstances surrounding the lender's acquisition of the real estate. If the acquisition of the property was triggered by a business failure at that particular location, the lender must submit a detailed explanation of why the new small business borrower will succeed at that same location; and

4. Identify the lender's cost in the real estate. In order to get the full SBA guaranty, the sales price may not exceed the mortgage balance plus care and preservation expenses or the liquidation value, whichever is less. If the sales price is greater than the mortgage balance plus care and preservation expenses or the liquidation value (whichever is less), then the SBA guaranty is reduced accordingly.

For example:

OREO Sales Price	$1.2 million
Lender's costs or liquidation value (whichever is less)	$1.0 million
Guaranty amount: 75% of $1.0 million	$750,000
Effective SBA guaranty: $750,000/$1,200,000	62.5%

C. Loan Proceeds for Farm Enterprises May be Used for:

1. The purchase of land, buildings, and land improvements (fencing, irrigation systems, construction of dikes, silos, barns, hog and dairy facilities, etc.);

2. Construction, renovation, or improvement (including water systems) of farm buildings other than residences;

3. The purchase of farm machinery and equipment;

4. The purchase of seed and the acquisition of animals;

5. Operating expenses directly related to the farming operation, excluding personal or family living expenses; and

6. The refinancing of debt related to the farming operation, excluding personal or family debt, provided the refinancing meets Agency policy regarding refinancing (see paragraph D below).

D. Business Loan Proceeds Restrictions

Loan proceeds may not be used for any of the following purposes (including the replacement of funds used or borrowed for any such purpose): (13 CFR §120.130)

1. Payments, distributions or loans to an Associate of the applicant 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. 13 CFR §120.160(d)

a) Loan proceeds must not be used to pay delinquent IRS withholding (payroll) taxes, sales taxes or other funds payable for the benefit of others.

b) Payment of delinquent income taxes may be permitted if the applicant has an approved payment arrangement with the IRS.

6. To finance the relocation of the applicant business out of a community, if there will be a net reduction of one-third of its jobs or a substantial increase in unemployment in any area of the country. An exception may be allowed if the lender can justify the relocation because:

a) The relocation is for key economic reasons and crucial to the continued existence, economic wellbeing, and/or competitiveness of the applicant; and

b) The economic development benefits to the applicant and the receiving community outweigh the negative impact on the community from which the applicant is moving.

E. Policies Regarding Debt Refinancing

1. SBA guaranteed loan proceeds may not be used to refinance debt originally used to finance a loan purpose that would have been ineligible for SBA financing at the time it was originally made.

2. SBA guaranteed loan proceeds may be used to refinance debt in the personal name of the owners, such as a Home Equity Line of Credit (HELOC) or credit card debt that was used for business purposes. The borrower must certify that the amount being refinanced was used exclusively for business purposes and provide appropriate documentation, such as a copy of the note and/or current loan statement, to demonstrate that the debt was, in fact, used for business purposes. For example, a sole proprietor may demonstrate that the debt was used for business purposes by providing a copy of the note and documentation that shows the debt is reflected on the business balance sheet and/or the interest deduction is reported on the Schedule "C" not the Schedule "A" of the proprietor's tax return. If the interest deduction reported on the Schedule C includes multiple debts, then the applicant must provide a copy of the appropriate IRS Form 1098 related to the debt being refinanced. (For documentation requirements concerning the refinancing of credit card debt, see paragraph 5.h) below.)

3. SBA guaranteed loans may be used to refinance the following types of business debt (see paragraph 6 below for additional requirements if refinancing same institution debt):

a) Debt (short or long term) structured with a demand note or balloon payment;

b) Debt with an interest rate that exceeds the SBA maximum interest rate for the processing method being used;

c) Credit card obligations used for business-related purposes;

d) Debt that is overcollateralized based on SBA's collateral requirements;

e) Revolving lines of credit (short term or long term) where the original lender is unwilling to renew the line or the applicant is restructuring its financing in order to obtain a lower interest rate or longer term;

f) Debt with a maturity that was not appropriate for the purpose of the financing (e.g. a 3 year term loan to finance a piece of equipment with a useful life of 15 years);

g) Debt used to finance a change of ownership;

Comment [D66]: Language modified to delete requirement for valuations on refinance of change in ownership transactions except for seller notes.

h) The lender may consider refinancing any seller take-back financing with an SBA-guaranteed loan if it has been in place for at least 24 months following the change of ownership and is, and has been, current for the past 24 months. The refinancing request must meet the requirements set forth in paragraphs 4 and 5 below;

i) Debt that is not identified above but the Lender believes no longer meets the needs of the Small Business Applicant. Applications under this subparagraph may only be processed through Standard 7(a) procedures.

4. With the exception of debt under 3.a), c) or e) above, when refinancing debt the new installment amount must be at least 10 percent less than the existing installment amount(s). If other debt is being refinanced at the same time, such debt may be included in the cashflow improvement calculation. If the note terms include an escalating payment structure, the new installment amount must be at least 10 percent less than the expected installment amount within the next 12 months.

5. When refinancing debt, the lender's loan file must include a written analysis that addresses the following issues and any supporting documentation:

a) Why was the debt incurred?

b) Has over-obligated or imprudent borrowing necessitated a major restructuring of the debt?

c) Is the debt being refinanced currently on reasonable terms?

d) Will the new loan improve the financial condition of the Small Business Applicant?

e) Does the refinancing include payments to creditors in a position to sustain a loss, for example, the applicant has an inadequate collateral position, low or deficit net worth, or the loan is in default?

f) 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?

g) What portion of the total loan does the refinancing constitute?

h) If credit card debt will be refinanced, the borrower must certify that the credit card debt being refinanced was incurred exclusively for business purposes.

1. If the credit card is issued to the small business, the lender may refinance the credit card debt after confirming that the credit card is in the name of the business and the borrower has certified that the credit card debt being refinanced was incurred exclusively for business related purposes. If the business credit card was also used for personal reasons, the small business must identify which purchases were for personal reasons and that amount must be

deducted from the credit card balance before applying for the SBA–guaranteed loan. Loan proceeds must not be used to refinance any personal expenses.

2. If the credit card is issued to an individual personally, the lender must confirm which of the credit card obligations were used for business-related purposes. Lenders must document the specific business purpose of the credit card debt and the borrower must certify that the loan proceeds are being used only for business-related debt. Documentation required for refinancing credit card debt includes a copy of the credit card statements and individual receipts for any business expenses in excess of $100. In all cases, the borrower must certify that the amount that will be refinanced was used exclusively for business expenses.

6. Refinancing Same Institution Debt

a) When a lender seeks to use SBA guaranteed loan proceeds to refinance its own debt, it must include a transcript showing the due dates and when payments were received as part of its analysis and recommendation for the prior 36 months, or the life of the loan whichever is less. In addition, the lender must explain in writing any late payments and late charges that have occurred during the last 36 months. (Late payments are defined as any payment made beyond 29 days of the due date.) An SBA guaranteed loan **may not** be used to refinance same institution debt where there is an appearance that the lender will shift to SBA all or part of a potential loss from that same debt. (13 CFR §120.201)

Comment [D67]: Language added to require transcript and define "late" .

b) Applications that include the refinancing of same institution debt may not be processed using PLP procedures unless (13 CFR §120.452(a)(2)):

1. The debt is an interim loan that has been made for other than real estate construction purposes and was approved by the lender within 90 days prior to the issuance of a PLP loan number; or

2. The debt is a construction loan that has not been disbursed.

7. Refinancing an SBA-Guaranteed Loan

Refinancing an existing SBA debt is permissible provided the conditions of paragraphs 3, 4, and 5 above are satisfied and the procedures of this paragraph are followed.

a) Procedure to refinance an SBA-guaranteed loan:

1. Borrower or Lender must provide evidence from the lender holding the existing SBA-guaranteed loan that verifies the lender has declined to approve an increase in loan amount or a second loan and the lender is either unwilling or unable to modify the current payment schedule. Lender must retain this evidence in the loan file.

Comment [D68]: Language added to permit borrower or lender to obtain evidence from current lender. Evidence to be retained in loan file.

b) Procedure to refinance a same institution SBA-guaranteed loan:

1. 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.

2. These applications may not be processed PLP, they must be processed in the LGPC.

8. Using a 7(a) loan to Refinance an Existing SBA 504 loan.

A 7(a) loan may be used to refinance an existing 504 loan if it meets the requirements of paragraphs 3, 4 and 5 above and either:

a) Both the Third Party Loan and the 504 loan are being refinanced; or

b) The Third Party Loan has been paid in full and the 504 loan needs to be refinanced as part of a larger transaction to provide funding for expansion of or renovations to the Project Property. In either case, the lender must document its loan file as to the justification to refinance the existing SBA-guaranteed 504 loan. Any applicable 504 prepayment penalties will apply.

Comment [D69]: Language added to address refinance of 504 loans.

9. Refinancing under SBA Express

a) A lender may refinance an existing non-SBA guaranteed loan or borrower debt from another lender if:

1. 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

2. The new loan meets the SBA's 10% increase in cash flow requirement, as applicable (see Paragraph 4 above).

b) Under SBA Express, a lender may refinance its own non-SBA guaranteed debt to the applicant if:

1. Items a)(1) and a)(2) above are met;

2. The debt to be refinanced is, and has been, current for at least the last 36 months. (SBA Form 1920SX, Part C (Eligibility Checklist), includes the related lender certification.) Current means that a required payment has not remained unpaid for more than 29 days. 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; and

Comment [D70]: Language added to define current.

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 that refinancing comprises only business related debt (SBA Form 1919, Borrower's Information Form, includes such a certification).

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.

10. Refinancing Under Patriot Express

a) A lender may refinance debt under Patriot Express if it follows the guidelines set forth in paragraph 9 above for SBA Express.

b) In addition, 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.

11. Refinancing Under Export Express

a) A lender may refinance debt under Export Express if it follows the guidelines set forth in paragraph 9 above for SBA Express; and

b) The applicant provides documentation that the new loan or line of credit will help to develop a market or support sales outside of the United States.

c) Existing SBA guaranteed loans may not be refinanced under Export Express.

Comment [D71]: Language added.

12. Refinancing Under CAPLines

a) No proceeds from a Seasonal, Contract or Builder's CAPLine may be used to refinance any existing debt.

b) Proceeds from a Working Capital CAPLine may refinance existing short-term revolving debt as long as the conditions of paragraphs 3, 4 and 5 above are met and:

1. The short-term revolving debt must be terminated after it is paid off with the CAPLine;

2. The refinancing does not put SBA in a position to sustain a loss which the existing lender is presently facing;

3. Depending on whether the CAPLine will be disbursed based on a borrowing base certificate or not, the borrower has either a borrowing base or collateral sufficient to support the Working Capital CAPLine plus any other short-term debt that is not being refinanced;

Comment [D72]: Language added to specific use of collateral vs. borrowing base certificate

4. The refinancing is specifically identified in the Use of Proceeds section of the Authorization; and

5. If the application includes the refinancing of same institution short-term debt:

(a) The application must be submitted to the LGPC for processing; such applications may not be processed under delegated authority; and

(b) If the applicant defaults on the SBA-guaranteed CAPLine within 90 days of initial disbursement, there will be a presumption that the loan proceeds were used to pay a creditor in a position to sustain a loss causing a shift of all or part of the loss to SBA in violation of 13 CFR §120.201 and SBA may deny liability on its guaranty of the line.

6. If the application includes the refinancing of same-institution, SBA-guaranteed short-term revolving debt, in addition to the requirements of (1) through (5) above, the lender's exposure to the applicant will not be reduced.

c) Additional documentation required:

1. A copy of the note(s) and an explanation of the terms and conditions of any debt(s) being refinanced;
2. A copy of the transcript of account; and
3. A Borrowing Base Certificate with Aging of Receivables and List of Inventory, as necessary.

d) If the short-term revolving debt to be refinanced was not revolving in accordance with the terms of the note, the debt is not eligible to be refinanced under CAPLines.

13. Refinancing under International Trade Loan Program

International Trade loan proceeds may be used for the refinancing of any debt that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under Standard 7(a).

14. Refinancing as part of a change of ownership

a) If the change of ownership is a complete change of ownership and any existing debt of the business being acquired will be refinanced as part of the transaction, the refinancing of such debts is considered part of the purchase of the business and does not have to meet the requirements set forth in this section.

b) If the change of ownership is between existing owners of a business and existing business debt will be refinanced as part of the transaction, the refinancing must meet the requirements set forth in this section.

c) If the existing debt is SBA guaranteed and with the same lender, the application cannot be processed using PLP, SBA Express, Export Express or Patriot Express processing procedures. These applications must be processed in the LGPC. In a complete change of ownership situation, the option to assume the existing SBA debt should be offered to the buyer.

15. Other conditions that apply to debt refinancing

a) A 7(a) loan may not be used to refinance a debt owed to an SBIC.

b) The third party financing for an existing 504 project cannot be refinanced with a 7(a) loan. (13 CFR §120.920(b))

c) After an SBA Authorization has been issued, a lender or an affiliate of the lender may make interim advances (also known as bridge loans) and SBA loan proceeds may be used to reimburse the interim advances, as long as the interim advances reasonably comply with the terms of the SBA Authorization. Such advances are made at the lender's own risk. The lender does not have to notify SBA of such advances or loans.

d) The payment of trade payables is not considered to be debt repayment.

e) The Authorization must include:

1. An itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid $10,000 or more; and/or
2. The loan number and dollar amount of any existing SBA debt refinancing.

F. Leasing Part of a Building Acquired with Loan Proceeds (13 CFR §120.131)

1. Amount of rentable property that can be leased:

a) For an existing building, a small business must occupy 51% of the rentable property and may lease up to 49%; and

b) 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.

c) An EPC must lease 100% of the rentable property to an OC. The OC must follow items a) and b) above.

d) 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.

e) The restrictions in a) and b) above apply regardless of whether the rentable property is leased to a commercial or residential tenant.

f) The applicant may not use loan proceeds to improve or renovate any of the Rentable Property that is leased to a third party.

2. "Rentable Property" is the total square footage of all buildings or facilities used for business operations (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 may also include exterior space (except parking areas) that is actively used in Borrower's business operations. Examples of exterior space that is actively used in Borrower's business operations include: outdoor storage yards for general contractors, trucking companies, and moving and storage companies; or boat slips and docks for marinas.

3. Lender must document in its loan file the basis for determining that the exterior space is actively used in Borrower's business operations.

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

G. Residential Space as Part of the Business

If the nature of the business requires a resident owner or manager, loan proceeds may be used for the purchase of an existing building(s) or construction of a new building(s) that includes residential space, however, such residential space may not exceed 49% of the total property. The residential space must be an essential part of the business. For example, a horse-boarding facility traditionally requires that someone be on premises 24/7 to care for the horses. In this case, the residential property would be considered to be a part of the business rather than leased property.

H. Change of Ownership (13 CFR §120.202)

Comment [D73]: Note: Change of Ownership language contained herein reflects the modification made July 1, 2013.

1. A Small Business Applicant(s) (and any individual co-applicant as permitted under this paragraph H) , may use loan proceeds for a change of ownership, whether the change of ownership is accomplished through a stock purchase (including a stock redemption) or an asset purchase, only under the circumstances described in this paragraph H. (An asset purchase will be deemed a change of ownership and must

comply with all of the requirements of this paragraph if the Small Business Applicant(s) is purchasing all or substantially all of the assets of the Seller's business or is otherwise continuing the operations of the Seller's business.):

a) The change of ownership will promote the sound development and/or preserve the existence of a small business;

b) Change of Ownership Between Existing Owners: A change of ownership between existing owners may be financed under the following circumstances:

1. An existing owner(s) of the small business is purchasing the ownership interest of another owner(s), resulting in 100% ownership of the business by the purchasing owner(s); or

2. The small business is redeeming the ownership interest of an owner(s), resulting in 100% ownership of the small business by the remaining owner(s); and

c) Change of Ownership Resulting in a New Owner: A change of ownership resulting in a new owner may be financed under the following circumstances:

1. A small business is purchasing 100% of the ownership interest in another business;

2. An individual(s) who is not an existing owner is purchasing 100% of the ownership interest in a small business; or

3. A small business is acquiring another small business through an asset purchase.

2. The seller may not remain as an officer, director, stockholder or key employee of the business. (13 CFR §120.130) (If a short transitional period is needed, the small business may contract with the seller as a consultant for a period not to exceed 12 months including any extensions.)

3. An SBA-guaranteed loan cannot be made solely to an individual. The small business must be either the Borrower or a Co-borrower as follows:

a) In a change of ownership under section H.1.b)(1) or H.1.c)(2) above, the small business and the individual owner(s) must be co-borrowers. In addition, the Note must be executed, jointly and severally, by both the individual(s) who acquires the ownership interest(s) and the small business whose ownership interest is being acquired. If the small business denies liability for the debt based on an alleged failure of consideration under applicable state law, SBA may deny liability on its guaranty.

b) In a change of ownership under section H.1.b)(2) above, the small business must be the Borrower and the remaining owner(s) may be Co-borrower(s) or Guarantor(s). In a change of ownership under section H.1.c)(1) or c)(3) above, the acquiring entity may be the Borrower or the acquiring entity and the small business being acquired may be Co-borrowers.

4. The lender must meet the requirements for IRS verification identified in Chapter 5, Paragraph III.C of this Subpart.

5. If the Borrower will be acquiring the small business's real estate in a separate transaction with a non-SBA guaranteed loan, the SBA loan must receive a shared lien position (pari passu) on the real estate with the non-SBA guaranteed loan. This provision does not apply if the business real estate is being financed as part of a 504 project.

6. The following changes of ownership are not eligible:

(a) A non-owner who is purchasing less than 100% of the ownership interests in the business; or

(b) An existing owner who is purchasing the ownership of another existing owner that will not result in 100% ownership of the business by the purchaser.

7. 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.

1. The lender's loan documentation must include:

1. A current 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. (See Chapter 4 of this Subpart for SBA's business valuation requirements.)

2. A site visit of the business being acquired. The lender must document in its loan file the date of the site visit as well as comments.

3. A real estate appraisal for commercial real estate that meets SBA's requirements. (See Chapter 4 of this Subpart for SBA's appraisal requirements.)

4. An analysis as to how the change of ownership will promote the sound development and/or preserve the existence of the business. 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.

2. Intangible Assets: An SBA-guaranteed loan may be used to finance a change of ownership that includes intangible assets.

(a) If the purchase price of the business includes intangible assets (including, but not limited to, goodwill, client/customer lists, patents, copyrights, trademarks and agreements not to compete) in excess of $500,000, the borrower and/or seller must provide an equity injection of at least 25% of the purchase price of the business for the application to be processed under delegated authority. (Seller equity is defined as seller take-back financing that is on full standby (principal and interest) for a

minimum of 2 years.) The borrower and seller will agree how much equity each will provide. For example, the borrower and seller may each provide half of the equity or the borrower may provide 15% and the seller may provide 10%.

(b) If the purchase price of the business includes intangible assets of $500,000 or less, b)(1) immediately above does not apply.

(c) If the purchase price of the business includes intangible assets in excess of $500,000 and the equity contribution from the borrower and the seller combined is less than 25% of the purchase price of the business, the application may not be processed using delegated authority and must be sent to the LGPC.

(d) The "purchase price of the business" includes all assets being acquired such as real estate, machinery and equipment, and intangible assets. Real estate may not be removed from the transaction and financed separately to avoid the 25% equity injection requirement for PLP processing.

(e) The value of the intangible assets is determined by either the book value as reflected on the business's balance sheet, a separate appraisal for the particular asset, or the value of the business as identified in the business valuation minus the sum of the working capital assets and the fixed assets being purchased.

(f) If any of the loan proceeds will be used to finance intangible assets, the amount must be specifically identified in the Use of Proceeds section of the application and the Authorization.

I. Eligible Use of Proceeds for SBA Express and Patriot Express

SBA Express and Patriot Express loan proceeds must be used exclusively for business-related purposes subject to 13 CFR §120.120 and 120.120.

J. Eligible Use of Proceeds for Export Express

1. Export Express loans must be used for an export development activity, which includes the following:

a) Obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

b) Participation in a trade shows that takes place outside the United States;

c) Translation of product brochures or catalogues for use in markets outside the United States;

d) Obtaining a general line of credit for export purposes (as a normal course of business, the borrower may use portions of the line of credit for domestic purposes, as long as no less than 70% of the line of credit will be used for export purposes);

e) Performing a service contract for buyers located outside the United States;

f) Obtaining transaction-specific financing associated with completing export orders;

g) Purchasing real estate or equipment to be used in the production of goods or services for export;

h) Acquiring, constructing, renovating, modernizing, improving or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

i) Providing term loans and other financing to enable a small business concerns, including an export trading company and an export management company, to develop a market outside the United States.

2. Indirect Exports are considered exports for purposes of determining the eligible use of proceeds. 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 to the lender from the Borrower's domestic customer (typically in the form of a letter, invoice, order or contract) that the goods or services are in fact being exported.

3. 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.

4. When an Export Express loan finances specific export transactions (including indirect exports), the lender must determine if US companies are authorized to conduct business with the country to which the goods or services will be shipped. Lenders must check Ex-Im Bank's Country Limitation Schedule, which can be found on Ex-Im Bank's website at http://www.exim.gov/tools/country/country_limits.cfm or is available from SBA's Office of International Trade. A loan may not be made to a business that exports to a foreign country which is listed as a prohibited country (Note # 7) on the Country Limitation Schedule.

5. Documentation required: SBA requires the lender to obtain information from the borrower pertaining to the use of proceeds and its projected impact on the borrower's export sales and retain that documentation in its loan file. The specific documentation includes the following:

a) The applicant must answer affirmatively on question 8 of SBA Form 1919 and provide an estimate of annual export sales; and

b) The applicant must provide documentation regarding the following items (this may be in the form of a general business plan, an attachment to the loan application or on a lender-developed questionnaire):

1. A brief description of the business' product or service which will be exported;

2. An explanation of how the loan proceeds will enable the business to enter a new export market or expand in an existing export market;

3. The countries to which the business will export; and

4. An estimate of the borrower's export sales for the 12 month period following the date of the loan application.

K. Eligible Use of Proceeds for EWCP

1. EWCP loan proceeds may be used to:

a) Acquire inventory for export or to be used to manufacture goods for export;

b) Pay the manufacturing costs of goods for export;

c) Purchase goods or services for export;

d) Support Standby Letters of Credit related to export transactions;

e) For working capital directly related to export orders;

f) For foreign accounts receivable and inventory financing; and

g) 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 to the lender from the Borrower's domestic customer (typically in the form of a letter, invoice, order or contract) that the goods or services are in fact being exported. 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. A loan may not be made to a business that exports to a foreign country which is listed as a prohibited country (Note # 7) on the Country Limitation Schedules.

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 (13 CFR §120.342):

a) Support the Borrower's domestic sales, except in the case of an indirect sale:

b) Acquire fixed assets or capital goods for use in the Borrower's business;

c) Acquire, equip, or rent commercial space overseas; or

d) 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.

L. Eligible Uses of Proceeds for International Trade Loans

Proceeds of an IT loan may be used for the following eligible purposes only. Proceeds of an IT loan may not be used for any other purpose, including a change of ownership.

Comment [D74]: Language added.

1. Acquire, construct, renovate, modernize, improve or expand facilities and equipment to be used in the United States to produce goods or services involved in international trade and to develop and penetrate foreign markets;

2. Working Capital; and

3. Refinancing any debt that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under Standard 7(a).

M. 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. Contract CAPLines

   The contractor must use loan proceeds only to finance the costs of one or more specific contracts, including overhead or general and administrative expenses, allocable to the specific contract(s). Contract CAPLine proceeds may not be used for permanent working capital, to acquire fixed assets, to pay delinquent taxes or similar funds held in trust (directly or indirectly), to refinance existing debt, to finance a contract in which significant performance has already begun, for change of ownership or floorplan financing. In addition, Contract CAPLines proceeds may not be used to cover any mark-up or profit. Further, advances of loan proceeds financing performance of one contract or sub-contract under a master agreement may not be used to finance the performance of another contract or sub-contract. Likewise, progress payments or proceeds received in the performance of a contract or sub-contract financed with this line must not be applied in repayment of a different contract or sub-contract. Funding and payment applications must be accounted for in conjunction with the specific contract or sub-contract to which they relate.

3. Builder's CAPLines

a) Borrowers must use the loan proceeds solely for direct expenses related to the construction and/or "substantial" 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. ("Substantial" means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of application.)

b) 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% of the project cost can be allocated for improvements that benefit all properties in a subdivision, such as streets, curbs, sidewalks, or open spaces.

c) 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. Working Capital 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.), or for floorplanning. In the event that Working Capital CAPLine proceeds are used to acquire fixed assets, lender must refinance the portion of the line used to acquire the fixed asset into an appropriate term facility no later than 90 days after lender discovers that the line was used to finance a fixed asset.

CHAPTER 3: LOAN TERMS AND CONDITIONS

I. MAXIMUM LOAN AMOUNTS

The maximum loan amount allowed under SBA's loan program varies by delivery method but generally cannot exceed $5 million. 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/CLP/PLP	$5,000,000
7(a) SLA Loans	$350,000
SBA Express Loans	$350,000 (gross) (including any outstanding SBA Express, Community Express, Patriot Express and Export Express)
Export Express	$500,000 (gross)
Patriot Express Loans	$500,000 (gross) (including any outstanding SBA Express, Community Express, Patriot Express and Export Express)
CAPLines or Lines of Credit	$5,000,000
Export Working Capital Loans (EWCP)	$5,000,000
International Trade Loans (IT)	$5,000,000
Community Adjustment & Investment Program (CAIP)	$5,000,000
Energy Loans (as described in §7(a)(12) of the Small Business Act)	$5,000,000
ESOP Loans	$5,000,000

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 $5,000,000. 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 $3,750,000 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. Contract CAPLine:

a) 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, provided that the borrower and lender are in compliance with all terms of the Authorization. The contracting parties, as a result of a properly executed change order, may agree to increase the contract price subsequent to the approval of the Contract CAPLine. In such event, if the overall line amount needs to be increased, the lender must comply with paragraph D below to obtain SBA's approval of the increase in the line. The contracting parties, as a result of a properly executed change order, also may agree to decrease the contract price subsequent to the approval of the Contract CAPLine and/or after a progress advance was made. In such event, the lender must assure the borrower is aware that the next future advance or future advances, if necessary, will be at the decreased amount.

b) For single contract financing with a single payment, the loan amount is equal to the sum of the costs of the contract (excluding profit), as evidenced by the project cost schedule.

c) For a single contract with multiple payments, the loan amount is the amount projected by the borrower necessary to cover 20% over the greatest cash deficit projected for the subject contract. This permits the line to revolve within the term of the contract.

Comment [D75]: Language added to provide for single contracts with multiple payments. Eliminates the need to borrower the full contract amount to reduce guaranty fee cost.

d) For multiple contract financing, the master note amount is equal to the sum of the costs of all contracts (excluding profit) to be financed under the CAPLine, as evidenced by the project cost schedules. For future projects not yet identified, at the time the contract is obtained all costs by line item should be identified. The amount of the sub-note for each specific contract should equal the total costs of that contract (excluding profit).

3. Builder's CAPLine:

a) 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.

b) 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.

c) The final sale of the property must be an arm's length transaction with legal transfer to an unaffiliated third party.

d) 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.

e) 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. Working Capital CAPLine:

To determine the maximum line amount, the lender must follow its established policies and procedures utilized on its similarly sized, non-SBA guaranteed commercial lines of credit or the lender may use the following formula:

a) Net Sales for Prior Year

b) Divide Prior Year Net Sales by 365

c) Multiply Daily Sales figure by number of days to finance (whatever number is the business sales cycle)

d) The result will be the estimated working capital needs.

D. Loan Increases

1. Increases to 7(a) loans, regardless of the disbursement status, are subject to statutory, administrative, and program maximums and must be approved by SBA. Upfront and ongoing fees for increases in subsequent years are at the rates in effect at the time the loan was originally approved.

2. Standard 7(a), CLP, PLP, SBA Express, Export Express and Patriot Express term loans: If the request for an increase is more than 20% of the original loan amount or is more than18 months after the original approval date of the loan, the lender must include with its request its analysis showing that the purpose of the increase is the same as the original purpose of the loan and that the borrower's cash flow can support the increased payment amount.

3. For revolving lines of credit, increases:

a) May be requested:

1. if made under SBA Express, Export Express and Patriot Express, at any time during the life of the loan, but must be within 7 years of the date of loan approval and be in compliance with Chapter 3, Paragraph III.D. of this Subpart (maximum maturities on SBA Express, Export Express and Patriot Express loans);

2. if made under CAPLines, at any time during the life of the loan, but must be within 10 years of the date of loan approval (except Builder's CAPLines which must be within 5 years of the date of loan approval) and be in compliance with Chapter 3, Paragraph III.E. of this Subpart (maximum maturities on CAPLines);

Comment [D76]: Language added to clarify requirements based on method of delivery.

b) May not exceed the dollar limit for the program at the time the loan was originally approved (this includes any other outstanding loans under SBA Express, Export Express and Patriot Express); and

c) Must 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 if the increase is above 33% of the original loan amount.

4. PLP, SBA Express, Export Express and Patriot Express 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 prior to submitting the request for an increase to SBA.

5. See Chapter 7, Paragraph I of this Subpart for the procedures and the appropriate form for all lenders to use when requesting an increase in the loan amount.

II. MAXIMUM GUARANTY AMOUNTS

The maximum dollar amount outstanding of SBA's guaranty to any one business (including affiliates) shall not exceed $3,750,000, 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)/CLP/PLP Loans—See Note 1	$3,750,000	85% for loans of $150,000 or less. 75% for loans over $150,000
SBA Express Loans	$3,750,000--See Note 2	50%
Export Express	$3,750,000--See Note 2 and Note 4	90% for loans of $350,000 or less. 75% for loans over $350,000 up to $500,000.
Patriot Express Loans	$3,750,000--See Note 2	85% for loans of $150,000 or less. 75% for loans over $150,000
CAPLines	$3,750,000	85% for loans of $150,000 or less. 75% for loans over $150,000
EWCP Loans	$4,500,000	90%
International Trade Loans	$4,500,000--See Note 3	90%
CAIP Loans	$3,750,000	85% for loans of $150,000 or less. 75% for loans over $150,000
Energy Loans	$3,750,000	85% for loans of $150,000 or less. 75% for loans over $150,000
ESOP Loans	$3,750,000	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 $3.75 million maximum guaranty that may be outstanding at any one time.

Note 3: Exception for IT Loans. The amount guaranteed for working capital for the IT loan combined with any other outstanding 7(a) loan for working capital cannot exceed $4,000,000. (Small Business Act, Section 7(a)(3)(B))

Note: 4: Export Express Loans: If two Export Express loans are approved within 90 days of each other, and the combined gross loan amount of all the Export Express loans approved in that time frame to any one borrower (including affiliates) exceeds $350,000, then the maximum guaranty percentage of each of these loans is 75% (subject to the $3,750,000 limit).

A. Multiple Loans from Different Programs with Different Maximums

When an applicant applies for any combination of 7(a) and 504 loans, the order in which the loans are approved determines the maximum loan and guaranty amount available. Because the 7(a) loan has a lower maximum guaranteed amount, the 7(a) loan should be approved first. Please ensure that the SBA centers processing the applications know there is a companion application so that the 7(a) loan can be approved first.

B. Maximum Guaranty Percentage for Multiple 7(a) Loans (13 CFR §120.210)

The maximum guaranty percentage for 7(a) loans of $150,000 or less is 85%, 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 I.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% (subject to the $3,750,000 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 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 loans that have been approved but not fully disbursed, a lender may submit a request to change the guaranty percentage to the LGPC.

2. Any changes must comply with SBA policy and program constraints.

3. Submit a written request to the LGPC that includes the name of the lender, name of the lending officer, phone number, fax number, name of the borrower, SBA Loan Number and the following information:

a) How it is now;

b) How it should be; and

c) Why – justification for the change and any supporting documentation.

4. Post-approval modifications should be sent by e-mail to 7aLoanMod@sba.gov or by fax to 916-735-1975.

5. On fully disbursed loans, lenders may submit a request to change the guaranty percentage to the appropriate CLSC in accordance with SOP 50 57.

III. LOAN MATURITIES (13 CFR §120.212)

The loan term must be the shortest appropriate term based on the use of proceeds and the borrower's ability to repay. Working capital loans and the financing of intangible assets (including goodwill) must not exceed 10 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 10 years	Terms for a working capital or inventory loan should be appropriate to the borrower's ability to repay up to 10 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.

Program/Use of Proceeds	Maximum Maturity See Note 1 below	Additional Considerations
7(a)--Mixed Purposes	May use blended maturity or a maturity 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, or the refinancing of any these purposes), the maturity may be the blended maturity based on the use of proceeds or up to the maximum for the asset class comprising the largest percentage of the use of proceeds.
International Trade Loans	Same as 7(a)	
Export Working Capital Program	Up to 3 years	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	Up to 10 years (except Builder's CAPLines which 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, Patriot Express and Export Express	Term loans--same as 7(a). Lines of Credit (LOCs) 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. For Export Express transactional lines of credit, the maximum term is 7 years and no disbursement can be made for an export transaction where payment by the foreign buyer will occur after the maturity date of the loan.

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 (13 CFR §120.396)

A. Establishing the Repayment Period (13 CFR §120.212)

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. (Note: Lender should include in their file support for maturities that exceed the standard for an asset class but in no event may the maturity exceed the stated maximums.) 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.

Comment [D77]: Guidance added to provide support for exceeding maturities based on asset class.

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 or a Business Acquisition

1. The maximum maturity for a loan used to refinance a real estate or fixed asset loan shall be 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.

2. The maximum maturity for a loan used to refinance a business acquisition shall be 10 years, unless the largest percentage of the small business's assets is real estate which would permit a maturity up to 25 years.

D. SBA Express, Export Express and Patriot Express Maximum Maturities and the use of Non-Financial Default Provisions

1. SBA Express, Export Express and Patriot Express loans must have a stated maturity and the maturities are the same as any other 7(a) loan, except that revolving loans are limited to a maximum maturity of 7 years, including any "term-out" period. For Export Express transactional lines of credit, the maximum term is 7 years and no disbursement can be made for an export transaction where payment by the foreign buyer will occur after the maturity date of the loan.

2. Non-financial default provisions are allowed under SBA Express, Export Express and Patriot Express under the following conditions:

a) Non-financial default provisions are loan conditions that, if violated, would cause the loan to be in default even though the borrower has made all payments as agreed.

b) Non-financial default provisions must be substantive and must be agreed to by the borrower in writing at loan closing;

c) The provisions must be consistent with those used by lender on its similarly-sized non-SBA guaranteed commercial loans;

d) A lender may not request purchase of the guaranty solely based on a violation of a non-financial default provision (see 13 CFR §120.520); and

e) A maturity date must be established in the note. For example, a line of credit could state that it is payable upon demand under certain conditions, but in no case later than a certain date.

3. Revolving loans may be established as renewable each year, provided they do not exceed the maximum 7 year term. Lender may not charge renewal fees. If a one year loan is renewed, Lender must pay the guaranty fee for loans with a maturity in excess of 12 months. See paragraph V.G. of this chapter for further discussion of guaranty fees on renewals of short-term loans.

4. The term of a loan may not exceed the period of the SBA guaranty commitment.

E. Maturity of CAPLines

With the above noted exception for Builder's CAPLines, the maximum maturity on a CAPLine is 10 years. Any CAPLine with a maturity of less than 10 years can be renewed as long as the total revolving repayment period does not exceed 120 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 V.G. of this Chapter.

F. Maturity of EWCP Loans:

1. General: The maximum maturity of an EWCP loan is 36 months. SBA's guaranty remains in effect for disbursements made through the maturity date, subject to the terms and conditions of the loan authorization and loan documents. With the exception of a disbursement made to fund a drawing against a letter(s) of credit that was issued under the EWCP before the maturity date, disbursements made after the maturity date are not covered under the guaranty. The maturity of the loan is:

a) The date specified in the loan authorization. Such date will not be longer than 36 months from the Note date. If the loan is not reissued, or extended, all outstanding amounts are due and payable on that day.

b) Standby Letters of Credit. Unless SBA provides prior written consent, Standby Letters of Credit supported by an EWCP loan must expire before the loan maturity date. If the lender receives SBA's prior written consent and makes a disbursement after the maturity date because there has been a draw on a standby letter of credit which was issued under the EWCP prior to the maturity date, such disbursement will be covered by the guaranty.

2. Specific Types of EWCP loans:

a) Single Transaction-Specific Loan: A non-revolving loan that supports a specifically identified, single export transaction. While the term of a transaction-specific loan typically should not exceed 1 year, SBA may, on a case-by-case basis, approve a longer loan term (up to 36 months) to allow for an extended production cycle.

b) Transaction Based-Revolving Line of Credit: A revolving line of credit can support either multiple export transactions or a single, specifically identified export transaction on a continuous basis during the term of the loan. While the term of a revolving line of credit typically does not exceed 1 year, SBA may allow an initial commitment up to 36 months with annual renewals.

c) Asset Based Loans (ABLs): ABLs are revolving lines of credit supported by a monthly Borrowing Base Certificate which reports levels of assets, normally accounts receivable and inventory, supporting the loan amount. ABLs are typically committed for 12 months and re-issued annually. Because a re-issuance of a loan is a new loan, another guaranty fee is due each time the loan is re-issued. (See the discussion of guaranty fees in Paragraph V of this Chapter.) ABLs, however, can have up to a 36 month maturity with annual renewals. The lender must supply to SBA updated financial statements on the borrower annually.

IV. INTEREST RATES

A. General Policy on Interest Rates (13 CFR §120.213; 120.214; 120.215)

1. A loan may have a fixed or variable interest rate. The maximum interest rate that may be established for any 7(a) loan is governed by SBA's regulations on interest rates, 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. SBA will periodically publish the maximum allowable fixed interest rate in the Federal Register. The maximum allowable fixed interest rate will be based on the cost of converting a floating rate note to a fixed rate note using the LIBOR Swap Rate. For a listing of the current maximum allowable fixed interest rates, see www.sba.gov/for-lenders. The maximum allowable fixed rate may only be used by a lender if such rate will be in effect for the entire term of the loan, without adjustment or reset. Otherwise, the maximum rates for variable rate loans will apply.

3. For variable interest rate loans, the base rate in effect on the first business day of the month will determine the basis for the initial interest rate for any complete loan application received by SBA during that month. The initial note rate must not exceed SBA's maximum interest rate. The basis for the SBA maximum interest rate is an acceptable base rate plus allowable spread. The spread above the base rate as identified in the Note may not be changed during the life of the loan without the written agreement of the borrower. For further discussion of variable interest rates, see paragraph C below.

4. Default interest rates are not permitted except as described below for SBA Express, Patriot Express and Export Express.

5. For loans with a variable interest rate, the following terms must be defined:

a) Base Rate:

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

(a) The Prime Rate;

(b) One Month London Interbank Offered Rate (LIBOR) plus 3 percentage points (LIBOR Base Rate); or

(c) The SBA Optional Peg Rate.

2. The Prime or LIBOR Base Rate will be that rate which is in effect on the first business day of the month, as identified in a national financial newspaper or website. This rate may be found in the newspaper on the second business day of the month. If a website is used, please ensure whether it is publishing the

current day's rate or the previous day's rate as some newspaper websites publish the previous day's rate. The Optional Peg Rate is a weighted average of rates the federal government pays for loans with maturities similar to the average 7(a) loan. SBA calculates and publishes the Optional Peg Rate quarterly in the Federal Register. Base Rates will be rounded to two digits with .004 being rounded down and .005 being rounded up.

3. For SBA Express, Patriot Express and Export Express, 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.

b) Frequency of change;

c) Range of fluctuation; and

d) Ceiling and floor (if any).

6. After approval and prior to final disbursement, lender must notify the LGPC of any changes to the Note terms related to the interest rate. After final disbursement, lender must notify the appropriate Commercial Loan Servicing Center of any changes to the Note terms related to the interest rate.

Comment [D78]: Guidance added for changes n note terms prior to and subsequent to disbursements.

7. Reference Chart on Interest Rates

SBA QUICK REFERENCE CHART No. 4: Maximum Interest Rates Allowed

Product	**Interest Rate – The published maximum allowable fixed rate or if variable:**	**Limitations**
Standard 7(a) Loans $25,000 or less (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate+ 4.25%	See Paragraphs B through E below
Standard 7(a) Loans $25,000 or less (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 4.75%	See Paragraphs B through E below
Standard 7(a) Loans more than $25,000 up to $50,000 (Maturity less than 7 Years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate+ 3.25%	See Paragraphs B through E below
Standard 7(a) Loans more than $25,000 up to $50,000 (Maturity 7 Years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate+ 3.75%	See Paragraphs B through E below
Standard 7(a) Loans greater than $50,000 (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate+ 2.25%	See Paragraphs B through F below
Standard 7(a) Loans greater than $50,000 (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate+ 2.75%	See Paragraphs B through F below

Product	Interest Rate – The published maximum allowable fixed rate or if variable:	Limitations
SBA Express and Export Express Loans - $50,000 or less (All maturities)	Cannot exceed Prime + 6.5%	See Paragraphs G and H.2 below
SBA Express and Export Express - More than $50,000 (All maturities)	Cannot exceed Prime + 4.5%	See Paragraphs G and H.2 below
Patriot Express	Same as Standard 7(a)	See Paragraph H.1 below
Export Working Capital Loans	No SBA Maximum.	See note below
CAPLines	Same as Standard 7(a) loans	

NOTE: SBA does not prescribe interest rates for the EWCP but does monitor the rates charged for reasonableness. (13 CFR §120.344(c))

B. Base Rate, Allowable Spread, and Allowable Variance for Small Loans (up to and including $50,000 13 CFR §120.214)

Comment [D79]: Language added for clarity.

1. A loan may have a variable interest rate. The base rate may be one of the following:

a) the Prime Rate;

b) the One Month LIBOR plus 3 percentage points (LIBOR Base Rate); or

c) the SBA Optional Peg rate.

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 as identified in the Note may not be changed during the life of the loan without the written agreement of the borrower.

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. 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. However, the maximum spread over the base cannot exceed SBA's stated maximum.

2. Post-Approval Changes to the Interest Rate

a) Pre-Disbursement Changes: After loan approval and prior to first disbursement, the lender may change the initial Note rate, including changing the base rate, the spread over the base rate, or from a fixed rate to a variable rate or from a variable rate to a fixed rate, provided the new interest rate does not exceed the maximum allowable interest rate at the time of the loan application. The lender must obtain the borrower's written agreement and must notify the LGPC of the change or make the change through E-Tran servicing.

For example, an SBA guaranteed loan was approved with a variable rate. Since the loan was approved, there have been changes to the prime rate. The borrower has asked the lender if it can switch to a fixed rate. The answer is yes as long as the loan has not been disbursed and the fixed rate selected does not exceed the maximum allowable fixed rate at the time of loan application.

b) Post-Disbursement Changes: After the loan is disbursed, on a variable rate loan, the lender may change the base rate or the spread over the base rate as long as the new base rate or spread is based on a method permitted when the loan was approved and is consistent with the interest rate regulations at the time the loan was approved. The lender must obtain the borrower's written agreement and must notify the appropriate SBA CLSC of the change or make the change through E-Tran servicing. For further guidance see the SOP 50 57.

3. Frequency of Interest Rate Adjustment

a) 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 an interest rate that is set for the first 5 years of the loan. After that time, the interest rate will begin to fluctuate as stated in the Authorization.

b) The lender must specify in the Note the frequency at which the interest rate adjustment will occur. This adjustment period as identified in the Note may not be changed without the written agreement of the borrower. 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 in effect on the first business day of the adjustment period. 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. Many lenders use the calendar quarter as the adjustment period, especially those that sell the guaranteed portion in the Secondary Market.

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.

4. 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.

5. Accrual Method

   SBA does not require a specific accrual method, unless the loan is sold in the Secondary Market. Loans sold on the Secondary Market must either use 30/360 or Actual/365 as the interest accrual methods. While the interest accrual method 365/360 is permitted on loans not sold on the Secondary Market, lenders are cautioned that they cannot use this accrual method and charge the maximum allowable rate of interest because this will result in an Annual Percentage Rate that exceeds SBA's regulatory maximum.

6. 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.

D. 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.

E. Interest Rate Swap Contracts

1. An interest rate swap is a contract between two parties where one party pays a fee in exchange for an agreement by the other party to pay any interest in excess of an established amount. The contract may last for all or part of the term of the loan. The swap contract only relates to the payment of interest.

   Example: A borrower has a prime plus 2% interest rate on a 7(a) variable rate guaranteed loan (presently 5.25%). The borrower could purchase an interest rate

swap contract that would set the interest rate at 7%. When the Note rate is lower than the rate paid by the borrower on the swap contract (7%), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 7%. When the Note rate is higher than the rate paid by the borrower on the swap contract, the borrower would continue to pay the fixed rate of 7% and the swap seller would pay the difference above 7% to the lender. The ability to stabilize the amount of the loan payment each month is the benefit to the borrower of an interest rate swap contract.

2. In order to use an interest rate swap in the 7(a) program, the interest rate swap contract must meet the following conditions:

a) The interest rate swap contract is an agreement between the small business borrower and the lender or, if the swap seller is not the lender, a third party. SBA is not a party to the interest rate swap contract.

b) The interest rate swap contract does not affect the amount of money owed by the borrower to SBA in the event SBA purchases the guaranty. In the event of a borrower default, interest will be calculated using the base rate and spread in the variable interest rate Note, not the swap contract.

c) SBA will not be responsible if the swap seller defaults during the life of the contract. The borrower will be liable for the interest as required in the Note.

d) Loans with accompanying interest rate swap contracts may be sold on the secondary market. The lender is still required under the secondary market contract (SBA Form 1086) to forward interest and principal pursuant to the original terms of the loan. It is the lender's responsibility to work with the swap seller to make sure funds are available for submission to the fiscal and transfer agent according to the time schedule in the Form 1086.

e) The full amount of the principal and interest required under the Note must be reported by the lender on the Form 1502.

f) SBA will not review swap contracts for borrowers or provide guidance on their use. While swap contracts should not have a significant impact on the cost of the loan, SBA will not publish any guidelines on the cost of these contracts.

g) The borrower must sign a statement acknowledging that interest will be calculated at the Note rate if the swap contract is terminated.

h) The following statement must be included in the swap contract that is executed by the borrower and the swap seller: "The Small Business Administration is not a party to this contract and does not guarantee it. In the event SBA is called upon to honor its guaranty to the lender, the borrower's debt will be determined by the terms of the Note, including the variable interest rate provision."

i) Swap contracts may be used on new or existing loans.

j) The swap contract does not have to last for the entire length of the loan agreement.

k) SBA does not have a standard form for an interest rate swap contract.

l) Any fees owed the swap counterparty as a result of the default by the borrower will be subordinated to the SBA 7(a) loan.

F. Interest Rate Requirements for an SBA Note

1. Fixed rate loans—the lender must specifically state the interest rate in the Note.

2. Variable rate loans—the lender must include the following information in the Note:

a) Identification of the rate being used as the base rate;

b) 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);

c) The permanent percentage spread to be added to the base rate;

d) The initial interest rate of the loan (from disbursement to first adjustment);

e) The date of the first rate adjustment; and

f) The frequency of rate adjustment.

G. SBA Express and Export 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 ($500,000 for Export Express) 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, the lender is not required to use the base rate identified in 13 CFR §120.214(c). 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 or Export Express interest rate and the loan may be sold on the Secondary Market only if the base rate is one of the base rates allowed in 13 CFR §120.214(c).

3. A lender may charge a default interest rate 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. (The default interest rate is a change (increase) in the interest rate charged to the borrower as a result of a failure to meet certain conditions specified in the loan agreement.)

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. Patriot Express Pilot Loan Initiative Interest Rate Policy

1. The standard 7(a) interest rate restrictions apply.

2. A lender may charge a default interest rate 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. (The default interest rate is a change (increase) in the interest rate charged to the borrower as a result of a failure to meet certain conditions specified in the loan agreement.)

3. For variable rate loans, a Patriot Express lender is not required to use the base rate identified in 13 CFR §120.214(c). 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 one of the base rates allowed in 13 CFR §120.214(c).

V. SBA GUARANTY FEES (13 CFR §120.220)

A. Standard Policy

1. A lender must pay a fee to SBA for each loan guaranteed under the 7(a) program. 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.

2. The Agency automatically calculates the guaranty fee for each individual loan. This calculation is modified in SBA's loan accounting system and E-tran to include changes to the fee that are necessary due to other loans approved within the past 90 days. Short term loans are not included in this calculation. For more information, see subparagraph V.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.	Maturities that exceed 12 months.
$150,001 to $700,000	3% of guaranteed portion	
$700,001 to $5,000,000 (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 $5 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 $5,000,000 loan with a 75% guaranty ($3.75 million guaranteed portion) would be 3.5% of $1,000,000 ($35,000) PLUS 3.75% of $2,750,000 ($103,125), which totals $138,125.

B. When the Guaranty Fee Must be Paid (13 CFR §120.220(b))

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

a) 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.

b) 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. For EWCP loans that are re-issued after 12 months, each time the loan is re-issued it is a new loan and another guaranty fee is due. The SBA earns the short term guaranty fee when the SBA loan number is issued. The guaranty fee is not refundable except as provided for in paragraph H.1 below.

c) 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. 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 required to use www.pay.gov (see paragraph C below). If the fee is not received within 10 business days after the processing center issues the loan number, SBA cancels the guaranty.

d) Short Term SBA Express, Export Express and Patriot Express Loans: For SBA Express, Export Express and Patriot Express 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. 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 required to use www.pay.gov (see paragraph C below). If the fee is not received within 10 business days after the processing center issues the loan number, SBA cancels the guaranty.

e) 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

Lenders must submit the guaranty fee electronically either by using their existing SBA-approved bulk ACH method or through www.pay.gov. When using www.pay.gov, select "form type 1544" and select "guaranty." The loan must have been approved and an SBA loan number issued in order to use www.pay.gov.

D. If the Fee Is Not Paid

If the guaranty fee is not paid within 90 days, the guaranty will be cancelled:

1. Notification of Fee Due

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 SBA has not received the full guaranty fee by the due date, on the 91st day after loan approval SBA may issue a "Notice of Overdue Guaranty Fee." If SBA 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 57, Chapter 4):

1. SBA Loan Number and the SBA Loan Name;

2. The required guaranty fee must be paid electronically (see paragraph C above) within 30 days from the date of reinstatement or the guaranty will be cancelled.

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 SBA Express.

F. Additional Guaranty Fee for Loan Increases

1. 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).

2. The additional guaranty fee associated with the increase must be paid electronically (see paragraph C above) within 30 days from the date the increase was approved or the total loan guaranty will be cancelled.

G. Additional Guaranty Fee for Extensions of Short Term Loans

1. When the maturity of a short term 7(a) loan is extended beyond 12 months, an additional guaranty fee is due. (Lenders may contact the appropriate SBA CLSC (or the Office of International Trade for EWCP loans) for assistance.) The additional fee must be paid electronically (see paragraph C above) within 30 days from the date the lender agrees to the extension or the total loan guaranty will be cancelled. The lender may charge the additional fee to the borrower after the lender has notified SBA that the maturity has been extended and has paid the additional guaranty fee.

2. No additional guaranty fees will be owed for loans extended beyond their original maturity date when SBA determines the extension is to effect collection and no new funds are disbursed, regardless of the original maturity.

H. Guaranty Fee Refunds (13 CFR §120.220(c))

1. Short term loans--the guaranty fee will be refunded only if:

a) The loan application is withdrawn by the lender prior to approval by SBA;

b) SBA declines to guarantee the loan; or

c) 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:

a) The guaranty fee is based on the amount that SBA has approved prior to the loan being closed and initially disbursed. Any request by the lender to decrease the approved amount must be approved by SBA with a date that is prior to the date the loan is closed and initially disbursed by the lender in order for the guaranty fee payable to be adjusted downward. SBA Form 2237 must be submitted by the lender to the appropriate SBA CLSC for an adjustment to the approved amount of the loan and guaranty fee. On loans that have been initially disbursed, the guaranty fee associated with any increase approved by SBA must be paid to SBA, whether or not the increase is subsequently cancelled.

1. 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 closed and initially disbursed and the lender submits a written request to SBA to cancel. Once a

loan with a maturity exceeding 12 months has been initially disbursed, no refund is permitted.

2. Partial refund: If SBA approves the cancellation of a portion of the loan prior to the loan being closed and initially disbursed, SBA will adjust the guaranty fee payable to reflect the new loan amount and refund the excess amount if the fee has already been paid. If the loan has been closed and initially disbursed, no refund is permitted.

I. Guaranty Fee Calculation for Multiple Loans Within 90 Days

1. Whenever one borrower, including any affiliate, receives an approval for more than one loan (with a maturity exceeding 12 months) within 90 days of each other, 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.

2. 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.)

3. 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.

4. 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.

5. 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. This rule also applies to any subsequent increases to either of the loans, even if one of the loans subsequently is paid in full.

VI. OTHER FEES (13 CFR §120.221)

SBA QUICK REFERENCE CHART No. 6

TYPE OF FEE	AMOUNT	NOTES
SBA 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)
Fees for Packaging and Other Services	Amount deemed reasonable and customary by the local SBA office for the market area	Can be paid by lender or borrower and can be included in the loan amount. (See B below)
Extraordinary Servicing Fee	Not to exceed 2%, except under the EWCP and Working Capital CAPLines.	Primarily for construction servicing needs, field inspections and asset-based lending costs. (See C below)

TYPE OF FEE	AMOUNT	NOTES
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. Lender's Annual Service Fee ("SBA On-Going Guaranty Fee") (13 CFR §120.220(f))

1. Lenders are required to pay SBA an annual service fee ("on-going guaranty fee"). This fee is set at the time of loan approval and based on the outstanding principal 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. With the exception noted for EWCP loans in paragraph 2 below, lenders pay this fee on a monthly basis when reporting the status of the loans on SBA Form 1502. (For further guidance on SBA Form 1502 reporting, see Chapter 8, Paragraph IV of this SOP.) 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.

2. EWCP Loans: For EWCP loans approved after September 27, 2010, the lender may choose one of the following options for payment of the EWCP Ongoing Fee only. Either option (monthly or annually) will result in payment of the same total amount of EWCP Ongoing Fee on each EWCP loan. Regardless of which payment option is chosen, the lender must continue to submit, on a monthly basis, the lender's 1502 Report on all 7(a) loans in the lender's portfolio, including all EWCP loans.

a) Option 1 – Monthly Payment of EWCP Ongoing Fee

Option 1 allows Lenders to pay the EWCP Ongoing Fee monthly along with other 7(a) loan ongoing servicing fees to Colson with the required 1502 Report. Because EWCP loans may be a small percentage of the Lender's 7(a) portfolio, Option 1 allows Lenders to voluntarily pay the EWCP Ongoing Fee on each EWCP loan on a monthly basis along with the rest of their 7(a) portfolio.

b) Option 2 – Annual Payment of EWCP Ongoing Fee
Lenders may pay the EWCP Ongoing Fee on each EWCP loan annually by selecting Option 2. Lenders selecting Option 2 will receive an annual invoice on each EWCP loan from SBA's DFC. The EWCP loan balance reported by the Lender on the monthly 1502 Reports for the EWCP loan will allow DFC to compute the EWCP Ongoing Fee amount to be billed annually.

The vast majority of EWCP loans have a maturity of 12 months or less; however, EWCP loans may have a maturity of up to 36 months. For EWCP loans with a maturity of 12 months or less, Lenders will receive one EWCP Ongoing Fee invoice after maturity. For EWCP loans with a maturity in excess of 12 months and not more than 24 months, Lenders will receive a EWCP Ongoing Fee invoice 12 months after closing and again after maturity. For EWCP loans with a maturity greater than 24 months, Lenders will receive a EWCP Ongoing Fee invoice 12 months after closing, 24 months after closing and again after maturity.

The DFC will mail the Lender an EWCP Ongoing Fee invoice on each EWCP loan within 60 days of each 12-month interval on the EWCP loan and payment will be due within 30 days of the date of the invoice. The invoice will be for the EWCP Ongoing Fee amount owing for the previous 12 months, or shorter period for loans maturing prior to the end of the 12-month period. Lenders will be given instructions on the invoice to make payment using the Pay.gov online payment process.

Colson will send monthly EWCP reports to DFC and SBA's Office of International Trade (OIT). This report will track information on each EWCP loan by Lender, including but not limited to the following:

1. Whether the Lender is submitting 1502 Reports on EWCP loans as required;
2. When annual invoices are to be sent; and
3. The accrued amount to be billed for the EWCP Ongoing Fee for each EWCP loan.

The DFC will send a monthly report to OIT and SBA's Office of Credit Risk Management reporting any Lenders that are delinquent on payments of invoiced EWCP Ongoing Fees. OIT will be responsible (through delegation to the USEAC Regional Managers) for monitoring Lenders in regards to submitting the required 1502 Reports and the payment of the required EWCP Ongoing Fees. A lender's failure to pay any of the fees (and any interest and penalties that are subsequently charged by SBA due to a lender's delinquent payment) may result in SBA's decision to suspend or revoke a lender's eligibility to participate in SBA's 7(a) program or to limit a lender's delegated authority.

B. <u>Fees for Packaging and Other Services</u>

1. The lender or a third party may charge a Small Business Applicant fees for packaging and other services. "Packaging services" includes assisting the Small Business Applicant with completing the application, preparing a business plan, cash

flow projections, and other documents related to the application. "Other services" includes consulting as to what financing is needed and what type, broker or referral fees. (Note: The lender and its Associates, however, are prohibited from charging the Small Business Applicant a broker, referral or similar fee. See Paragraph VII below for further discussion of prohibited fees.) The fees must be reasonable and customary for the services actually performed and must be consistent with those fees charged on the lender's similarly-sized, non-SBA guaranteed commercial loans. In addition, fees for packaging and other services may be based on a percentage of the loan amount. With regard to fees for packaging or other services charged based on a percentage of the loan amount, in no event may the fee exceed 3% on loans of $50,000 or less, and for loans over $50,000, 2% on the first $1,000,000 and an additional ¼% on amounts over $1,000,000, with a maximum fee of $30,000. A standard fee charged to all Small Business Applicants is not acceptable.

Comment [D80]: Language added.

2. Lenders may be reimbursed by the Small Business Applicant for the direct costs (including reasonable overhead) of legal services performed by lender's in-house counsel in connection with an SBA-guaranteed loan, but in no event may the lender be reimbursed for an amount that would exceed the cost of outside counsel. In accordance with 13 CFR §120.222(e), charges for legal services (regardless of who provides the service) must be on an hourly basis and must be for requested services actually performed. In addition, as with fees charged for other services provided by the lender to the Small Business Applicant, such charges must be reasonable and customary for the services performed. These fees may be reviewed at any time and lender must refund any fee considered unreasonable by SBA.

3. Prior to the services being provided, the lender must advise the Small Business Applicant in writing that the applicant is not required to obtain or pay for unwanted services. If fees are charged to the Small Business Applicant, an SBA Form 159(7a) must be completed.

4. A lender cannot charge a Small Business Applicant for the lender's costs associated with underwriting the loan including the completion by the lender of SBA's application forms and lender's analysis. In addition, if the lender pays a third party to assist the lender with the completion of the application forms and the analysis, the lender cannot pass this cost onto the Small Business Applicant.

5. SBA may review these fees at any time. Lenders and third parties must refund any fee considered unreasonable by SBA. (See paragraph X.C. below for further guidance.)

C. Extraordinary Servicing Fee

1. A lender cannot charge the borrower a servicing fee on an SBA-guaranteed loan unless the servicing fee is to cover expenses for extraordinary servicing requirements connected with the loan. Such a fee may not 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% of the loan amount EXCEPT under the EWCP or Working Capital CAPLine programs. In these programs, the fee must be reasonable and prudent based on the level of extraordinary effort required. In addition, if the lender charges an

extraordinary servicing fee on its similarly-sized, non-SBA guaranteed commercial loans, it cannot charge a higher fee on its SBA-guaranteed loans.

2. Lenders must obtain SBA's prior written approval for these fees. Lender must include the fees to be charged to administer the loan/line in its credit memorandum. Lenders submitting applications under delegated authority must enter the amount of the fee to be charged in E-Tran and certify that the fee is reasonable and prudent based on the level of extraordinary effort required. SBA's issuance of a loan number will constitute its prior written approval of the fees, subject to SBA's subsequent review of the fees for reasonableness. SBA will review such fees when conducting lender oversight activities and at time of guaranty purchase. If SBA determines the fee is excessive, the lender must reduce the fee to an amount SBA deems reasonable, refund any sum in excess of that amount to the borrower, and refrain from charging or collecting from the borrower any funds in excess of the amount SBA deems reasonable. SBA's guaranty does not extend to extraordinary servicing fees and, at time of guaranty purchase, SBA will not pay any portion of such fees.

3. The following actions do not qualify as extraordinary servicing and therefore a participating lender is prohibited from collecting fees for these services:

a) 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;

b) Changing the installment amount after a deferment;

c) Providing the release or exchange of collateral (standard out-of-pocket expenses such as recordation fees are permitted); or

d) Any modification to the repayment terms of the note.

4. Past due financial statements: 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 Expenses

1. Lenders may be reimbursed by the borrower for all direct costs including UCC filings 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. These costs must be itemized and kept in the loan file for SBA's possible review. The costs of software used to prepare SBA loan documents cannot be passed on to a Small Business Applicant.

2. Direct costs associated with document preparation in connection with the loan closing do not need to be reported in SBA Form 159(7a).

E. Late Payment Fee

Lenders may charge the borrower a late payment fee not to exceed 5% 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 voluntarily 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. If the lender believes that the prepayment of the loan is not voluntary, the lender may submit a request for a determination, with the lender's supporting analysis, to the appropriate CLSC. The CLSC will submit the request, along with its recommendation to the D/FA. Only the D/FA or designee can make the determination that a prepayment is involuntary.

G. Assumption Fee

1. 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. SBA's guaranty does not extend to assumption fees and, at time of guaranty purchase, SBA will not pay any portion of such fees.

2. This fee may be paid by the seller or the assumptor. Lenders should review SBA's SOP 50 57, 7 (a) Loan Servicing and Liquidation, for procedures to process an assumption request.

H. SBA Express, Export Express and Patriot Express Fee Policy

1. The SBA guaranty and on-going servicing fees are the same for SBA Express, Export Express and Patriot Express as for standard 7(a) loans. The policy regarding packaging fees is the same as for standard 7(a) loans as set forth in paragraph B.1 above. In addition, the lender may charge the same fees for SBA Express, Export Express and Patriot Express loans as it charges for its similarly-sized non-SBA guaranteed commercial loans as long as the fees are directly related to the service provided and are reasonable and customary for the services performed. Examples include application fees and 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. If packaging or application fees are charged, they must be disclosed on SBA Form 159(7a).

2. As with standard 7(a) loans, lenders may not charge servicing fees unless the fees are to compensate for extraordinary servicing requirements connected with the loan; for example, monitoring the levels of accounts receivable for a line of credit. Such fees must comply with Paragraph C above.

3. Renewal fees are not permitted.

4. SBA reserves the right to disallow fees that are not customary and/or which do not bear a relationship to the actual service provided. Also, if the lender requests that

SBA honor its guaranty on an SBA Express, Export Express or Patriot Express loan, with the exception of the SBA guaranty fee, the Agency will not purchase any portion of the loan balance that consists of fees charged to the borrower.

VII. PROHIBITED FEES (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.

VIII. DISCLOSURE OF FEES AND LENDER EXPENSES (13 CFR §Part 103; 120.221; 120.222)

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" means 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.

B. SBA Form 159(7a) "Fee Disclosure Form and Compensation Agreement"

1. 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.

2. 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.

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

a) 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;

b) A state-certified or state-licensed appraiser employed by the lender to appraise collateral in connection with the SBA loan

c) An individual who is a qualified source as defined in Chapter 4, Paragraph II.C. of this Subpart and employed by the lender to conduct an independent business valuation in connection with an SBA loan

Comment [D81]: Language added to include business valuation as exempt from SBA Form 159.

d) An environmental professional employed by the lender to conduct an environmental assessment of the collateral in connection with an SBA loan;

e) Any attorney in connection with the SBA loan closing; and

f) A real estate agent who is receiving a commission for the sale of real estate in connection with the SBA loan.

4. The lender must inform the applicant in writing that the applicant does not have to employ an Agent or representative (including the lender) to assist the applicant with the 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.

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

6. Lenders must submit SBA Form 159(7a) to Fiscal Transfer Agent ("FTA") on loans that involve payment of fees, including, but not limited to, those covering any packaging fees charged by the participating lender or where the lender paid the loan agent fee. This submission is required only once after there has been an initial disbursement on the loan and should be submitted in conjunction with a lender's 1502 report for the month. The information may be submitted either by facsimile or by electronic document imaging utilizing either the Portable Document Format (.pdf) or the Tagged Information Format (.tif). Lenders may either fax the document to FTA at (718) 315-5170 or email the pdf/tif file to Form159@colsonservices.com. Lenders are required to retain an original signature version of the form in their files for compliance review purposes.

IX. AGENTS

A. SBA regulations at 13 CFR §Part 103 govern the activities of Agents, the disclosure of fees, and the circumstances that would result in revocation or suspension.

1. Agent – (13 CFR §103.1(a))

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.

b) For lender service providers SBA approves the written agreement between the lender and the lender service provider, thus SBA Form 159(7a) is not required for the services provided by the lender service provider to the lender. (13 CFR §103.5(c)) Fees paid by the lender to the lender service provider cannot be passed onto the Small Business Applicant.

c) For all other Agents paid by either a Small Business Applicant or a lender, a 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.

d) The only situation where an Agent can receive compensation from both the lender and the Small Business Applicant is when the Agent is providing different services by providing packaging services to the Small Business Applicant and receiving a referral fee from the lender. (13 CFR §103.4(g))

e) 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 – (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 – (13 CFR §103.1(d))

a) "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.

b) A lender must have a continuing ability to evaluate, process, close, service, liquidate and litigate small business loans. (13 CFR §120.410) A lender may contract with a third party (Lender Service Provider (LSP)) to assist the lender with one or more of these functions. However, the lender itself, not the LSP, must be able to demonstrate that it has day-to-day responsibility for evaluating, processing, closing, disbursing, servicing, liquidating and litigating its SBA portfolio. SBA determines whether or not an agent is a LSP 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 an LSP, a formal agreement between the Agent and lender is required and must be approved by SBA. (See Paragraph X.D. below for further guidance on LSP agreements.)

c) All participating lenders must submit each LSP agreement to the LGPC for review and approval. Lenders may submit the agreements to LSPagreements@sba.gov. After SBA approves an LSP agreement, if there are any changes to the agreement, the lender must submit the revised agreement to SBA for review and approval.

d) District Offices will send all existing LSP agreements that have been approved by the district offices to the LGPC to ensure compliance with SBA Loan Program Requirements. If any changes have been made to a previously-approved LSP agreement, the lender must submit the revised agreement to the LGPC for review and approval.

e) SBA will investigate any complaint by a 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.

f) SBA reserves the right to audit compliance with any SBA-approved LSP agreement.

4. Packager – (13 CFR §103.1(e))

a) "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.

b) 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 a Small Business 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 Small Business Applicant

Lenders and Agents must clearly inform any Small Business 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 Small Business Applicant for providing packaging services as long as compensation is reasonable and customary for those services; the compensation complies with paragraph VI.B.1 above; and the compensation is not contingent on the loan being approved.

2. The Agent who works for a Small Business Applicant as a packager may also work as a loan referral agent for the Small Business Applicant and receive a referral fee from the Small Business Applicant.

3. The Agent may be a loan referral agent for a lender and a packager for a Small Business Applicant, provided both the Small Business Applicant and the lender are aware of both relationships, and the Agent does not receive a referral fee from the Small Business Applicant or a packaging fee from the lender.

4. SBA Form 159(7a) must be completed by the Agent and the Small Business Applicant for all fees paid by the Small Business Applicant.

E. Employment of Agent by Lender (not an LSP)

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 loan closing, or preparation of the loan to sell it on the Secondary Market, the lender may use an Agent.

2. The compensation for these services must be reasonable and customary for the services actually provided; comply with paragraph VI.B.1 above; and cannot be contingent upon the loan being approved.

3. 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.

X. WHO MAY CONDUCT BUSINESS WITH SBA (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 13 CFR §103.1(b).

1. Individuals and entities suspended, debarred, revoked or otherwise excluded under the SBA or Government-wide debarment regulations are not permitted to conduct business with SBA. SBA may require that an Agent supply written evidence of is 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 are responsible for consulting the System for Award Management (SAM)/Excluded Parties List System (EPLS) or successor system to determine if an Agent has been debarred, suspended or otherwise excluded by SBA or another federal agency. (www.epls.gov.)

Comment [D82]: Language added to include revocation and other exclusion.

2. 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. The meaning of "good cause" may be found at 13 CFR 103.4. Lenders are responsible for reviewing SBA's webpage list of Agents that have been subject to an enforcement action or have been otherwise excluded from the privilege of conducting business with SBA and must refrain from doing business with any Agent appearing on the list during the time that an Agent is suspended or revoked from SBA programs. See http://www.sba.gov/about-sba-services/18351.

Comment [D83]: Language added for SAM

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

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

a) There is an indication from a third party that an Agent's fees might be excessive; or

b) When an Applicant complains about the fees charged by an Agent.

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

3. 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. However, the lender itself, not the LSP, must be able to demonstrate that it has day-to-day responsibility for evaluating, processing, closing, servicing, liquidating and litigating its SBA portfolio. 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 full responsibility for all loan decisions regarding SBA applications including approvals, closings, disbursements, servicing actions and due diligence. The LSP only provides assistance to the lender. If an LSP is authorized to access E-Tran on behalf of a lender, the lender is responsible for all entries and certifications made on its behalf into the E-Tran system.

3. Compensation: The compensation must be specifically explained as to what will be charged for each type of service and must state that the fees are for services actually performed.

a) Services related to loan packaging, processing and assistance with Secondary Market sales must comply with paragraph VI.B.1 above and cannot be contingent on whether the loan is approved.

b) Services related to loan servicing may be based on a percentage of the loan balance.

c) 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.

d) The lender and the LSP cannot share in any Secondary Market premium.

e) The billing for loan packaging or for other loan processing services must identify the Small Business Applicant's name.

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:

a) The lender and the LSP will not engage in the sharing of any Secondary Market premium.

b) The LSP will not assume a portion of the risk of the un-guaranteed portion of any loan.

c) The agreement is binding on any affiliates and successors of the LSP and the lender.

d) Discloses any prior or existing relationship other than the contractual one created by the agreement or that no such relationship exists.

e) 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

Comment [D84]: Reader/Users s are advised to read in detail the contents of Chapter 4 as there have been significant modifications to streamline program underwriting requirements and application documents.

I. CREDITWORTHINESS/CREDIT UNDERWRITING

Comment [D85]: Small Rural Lender Advantage has been deleted.

A. Credit Standards (13 CFR §120.150)

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 or outside sources of cash.

1. **7(a) SLA loans up to and including $350,000**:

Comment [D86]: ALL LOANS $350,000 and UNDER WILL BE USING THESE CREDIT UNDERWRITING GUIDELINES

a) Pre-Screening for SLA Credit Score

All applications will begin with a pre-screening for a credit score. The lender will enter certain information into E-Tran and a credit score will be issued. (The specific information is described in Chapter 6, of this Subpart.) If the application receives an acceptable credit score, the application may be submitted via E-Tran. If the loan application does not receive an acceptable credit score, the lender may submit a Standard 7(a) loan application to the LGPC or, if the lender is an SBA Express lender, an SBA Express application via E-Tran for a 50% guaranty.

The credit score is calculated based on a combination of consumer credit bureau data, business bureau data, borrower financials, and application data. (The credit score is not to be confused with the Small Business Predictive Score (SBPS) used by SBA's Office of Credit Risk Management.) The minimum credit score is based on the lower end of the risk profile of the current SBA portfolio and may be adjusted up or down from time to time. SBA will post on its website the minimum credit score for applications at www.sba.gov/for-lenders.

Comment [D87]: ALL LOANS $350,000 and UNDER WILL BE PRE-SCORED JUST LIKE THE SLA LOANS HAVE BEEN IN THE PAST.

b) The Lender's Credit Analysis:

While each application will be pre-screened to determine its credit score, the lender's credit memorandum must, at a minimum, include all of the following:

1. Lenders must demonstrate the Small Business Applicant's ability to repay the loan from the cash flow of the business and at a minimum include documentation of the following:

(a) A brief description of the history of the business; and

(b) Consider the length of time in business under current management and, if applicable, the depth of management experience in this industry or a related industry. Such analysis should include a brief description of the management team of the company; and

(c) The Small Business Applicant's debt service coverage ratio exceeds 1:1 on a historical or projected cash flow basis; and

(d) With the exception of loans under $50,000, the Small Business Applicant's global cash flow coverage ratio exceeds 1:1 on a historical basis or, projected cash flow basis. Lender must document in the loan file the definition or formula used to calculate global cash flow; and

(e) Owner/Guarantor analysis, including personal financial statements, consistent with lender's similarly-sized non-SBA guaranteed commercial loans.

2. Lenders may use their own credit scoring criteria to assess the character, reputation, and credit history of the applicant (and the Operating Company, if applicable), its Associates, and guarantors, including historical performance as well as the potential for long term success. This may include a business credit scoring model (such a model cannot rely solely on consumer credit scores), as long as the lender uses the same business credit scoring model for its similarly-sized, non-SBA guaranteed commercial loans. Although SBLCs do not make non-SBA guaranteed loans, SBA has determined that they may use credit scoring. Lenders must validate (and document) with appropriate and accepted statistical methodologies that their credit scoring model is predictive of loan performance to SBA no less than annually. In addition, the business credit scoring results must be documented in each loan file and available for SBA review.

3. Lenders must analyze the strength of the business including key characteristics of the account such as internal Credit/Deposit behavior data, current consumer credit bureau data, and Small Business Financial Exchange data to determine creditworthiness such as the probability of an account reaching 90 days past due in the next 6 months. This may be conducted using a risk management or credit scoring model if the lender uses such a model to review its similarly-sized, non-SBA guaranteed commercial loans. If the lender does not have this ability to systematically analyze the borrower, the lender must collect and analyze business tax returns.

4. Lenders must verify and reconcile the applicant's financial data against income tax data prior to submitting an SLA application by submitting IRS Form 4506-T, Request for Transcript of Tax Form to the Internal Revenue Service (IRS) as required in Chapter 5, Paragraph III of this Subpart.

5. Lender must determine if the equity and the pro-forma debt-to-worth are acceptable based on its policies and procedures for its similarly-sized, non-SBA guaranteed commercial loans. If the lender requires an equity injection and, as part of its policies and procedures for its similarly-sized, non-SBA guaranteed commercial loans verifies the equity injection, it must do so for SBA loans.

Comment [D88]: ALL LOANS $50,001 up to and including $350,000 must document global cash flow of greater than 1:1 and provide formula for the same.

2. **For Standard 7(a) loans greater than $350,000 and up to and including $5,000,000**:

Comment [D89]: SPECIFIC REQUIREMENTS FOR DEBT SERVICE COVERAGE AND EBITDA CALCULATIONS HAVE BEEN ADDED FOR LOANS OVER $350,000.

Lenders analysis must demonstrate the Small Business Applicant's ability to repay the loan from the cash flow of the business by documenting the following:

a) Description of the history and nature of the business;

b) Lender's credit decision must consider the length of time in business under current management and, if applicable, the depth of management experience in this industry or a related industry. Such analysis should include a brief description of the management team of the company.

c) A financial analysis of repayment ability based on historical financial statements (including balance sheet with debt schedule and income statement) and/or tax returns (if an existing business) and detailed projections, including the supporting assumptions:

1. Analysis of historical cash flow should demonstrate total debt service coverage after the SBA loan;

2. Define operating cash flow (OCF) as earnings before interest, taxes, depreciation and amortization (EBITDA);

Comment [D90]: Defined OCF as EBITDA

3. Analysis must document additions and subtractions to cash flow such as the following:

(a) Unfunded capital expenditures;

(b) Non-recurring income;

(c) Expenses and distributions;

(d) Distributions for S-Corp taxes;

(e) Rent payments;

(f) Owner's Draw; and/or

(g) Assessment of impact on cash flow to/from any affiliate business.

4. Debt service (DS) is defined as required principal and interest payments on all business debt inclusive of new SBA loan proceeds. The small business applicant's debt service coverage ratio (OCF/DS) must be 1.15 to 1 or greater on a historical and/or projected basis:

Comment [D91]: Language adding minimum debt service coverage at 1.15.

(a) For projected cash flows, the Lender should provide the calculation of debt service coverage using the definitions above, and provide analysis of the assumptions supporting the projected cash flow, such as:

i. Reason for reduced expense structure;

ii. Reason for revenue growth, i.e.

(a) new product lines,

(b) sales channels, and

(c) production facilities, and

iii. Industry analysis.

5. Spread of pro-forma Business Balance Sheet (current business balance sheet + changes in assets and liabilities as a result of the loan, other debt, any required equity injection and use of proceeds);

6. Ratio calculations (based on the pro-forma Balance Sheet and historical and projected Income Statements) for the following financial ratio benchmarks: Current Ratio, Debt/Tangible Net Worth, Debt Service Coverage, and other ratios the lender considers significant for the business/industry (e.g., inventory turnover, receivables turnover, and payables turnover, etc.);

7. Analysis of working capital adequacy to support projected sales growth in next 12 months;

d) Collateral adequacy assessment (using net book value) to offset risk of default;

e) Explanation of and justification for the refinancing of any debts as part of the loan request, particularly Same Institution Debt (SID), along with a transcript of the account for the prior 24 months except for SID which requires a transcript of the account for the prior 36 months or the life of the loan, whichever is less.

f) Conduct analysis of credit, including lender's rationale for recommending approval;

g) Discussion and analysis of any:

1. Competition
2. Seller financing;
3. Stand-by agreements;
4. 90+day delinquencies;
5. Trade disputes and/or;
6. Federal, State or local citations which would preclude the small business applicant from normal business operations.

h) For a change of ownership, discussion/analysis of business valuation (based on generally accepted valuation methods used for the pertinent industry) used to support the purchase price. (See Paragraph II.C.5 of this chapter for business valuation requirements.);

i) Discussion of any liens, judgments or bankruptcy filings; and

j) Discussion of other relevant information (for example, if the application involves a franchise, lender must review the franchise agreement and all related documents including the franchise disclosure document and any credit information provided such

as the number of failed franchisees and cash flow projections provided by the franchisor).

B. SBA Express, Export Express and Patriot Express Credit Standards

1. SBA has authorized SBA Express, Export Express and Patriot 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 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, Export Express or Patriot Express. If lenders use credit scoring for their similarly-sized non-SBA guaranteed commercial loans, they must comply with Paragraph A.1.a.above

2. Lenders must not make an SBA Express, Export Express or Patriot 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 on SBA Express, Export Express and Patriot Express 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, Export Express and Patriot Express loans. (Lenders must adhere to the requirement that owners of 20% or more must inject any liquid assets 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. EWCP Credit Standards

a) Lender must submit a credit memorandum with the application and analyze each EWCP request in a commercially reasonable manner, consistent with prudent lending standards. EWCP loans are self-liquidating loans and the conversion of the export trading assets to cash is the primary source of repayment. The lender's financial analysis should pay particular attention to the applicant's foreign payment terms and the impact on the applicant's cash cycle. Lender must specify whether the request is for a single transaction-specific loan, revolving line of credit (single or multiple transactions), or an asset based loan.

b) The lender's analysis must include the following:

1. An explanation of the use of proceeds and benefits of the loan guaranty, including details of the underlying transaction(s) for which the loan is needed and the country(ies) where the buyer(s) is (are) located;

2. A description of the history and nature of the business;

3. A description of and comments on the business plan, including the financial condition of the business;

4. A discussion of the owners' and managers' relevant experience in the type of business, including a discussion of any life insurance that will be required;

5. A financial analysis of the applicant's current balance sheet;

6. A financial analysis of repayment ability based on the applicant's cash cycle;

7. A ratio analysis of the financial statements, including comments on any trends and a comparison with industry averages;

8. An analysis of the collateral adequacy, including a discussion of the payment terms accepted by the applicant and the proposed allowable foreign receivables to be financed with the EWCP loan;

9. If the applicant intends to seek advances on "open account, uninsured foreign receivables," an analysis on the suitability of these foreign receivables; and

10. A discussion of lender's credit experience with the applicant and a review of business and personal credit reports.

D. SBA Review of Lender's Credit Analysis

a) 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.

b) For all applications processed through the LGPC, 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.

c) SBA has authorized PLP, SBA Express, Export Express, and Patriot Express lenders to make credit decisions without SBA review prior to loan approval. The PLP, SBA Express, Export Express, and Patriot Express 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.

E.

F. Equity Requirement for loans in excess of $350,000

Comment [D92]: Specifies for over $350,000 loans.

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

a) The following may be considered as Equity Injection:

1. Cash that is NOT borrowed.
2. Cash that IS borrowed only under the limited circumstances outlined below:

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

   (b) 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.)

   (c) 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.
3. 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 required if the valuation of the fixed assets is greater than the depreciated value (net book value). A valuation of the fixed assets provided as part of a business valuation will not meet these requirements, except as part of a going concern appraisal as described in paragraph II.C.5.e) below.
4. Standby debt

   Debt that is on full standby (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 standby (interest payments only being made) may be considered equity when there is adequate historical business cash flow available to make the payments. A copy of the note must be attached to the standby agreement. (See Chapter 5, Paragraph IV of this Subpart for additional discussion of standby agreements.)

b) The following may not be considered as Equity Injection:

1. Value or cost of education; and
2. Funds that are borrowed and do not meet the exception noted in subparagraph a)(2) above.

3. Documentation of Equity Injection.

a) Lenders must verify the injection 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 the following documentation:

1. A copy of a check or wire transfer along with evidence that the check or wire was processed showing the funds were moved into the borrower's account or escrow;
2. A copy of the statements of account for the account from which the funds are being withdrawn for each of the two most recent months prior to disbursement showing that the funds were available; and
3. A subsequent statement of the borrower's account showing that the funds were deposited or a copy of an escrow settlement statement showing the use of the cash.

b) A promissory note, "gift letter" or financial statement is not sufficient evidence of cash injection without corroborating evidence consistent with paragraph a) above.

II. COLLATERAL

A. General Requirements

With respect to collateral taken, lenders must use commercially reasonable and prudent practices to identify collateral items, which conform to procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans.

Comment [D93]: Preamble added to emphasize commercially reasonable and prudent.

1. Adequacy of Collateral

a) 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.

b) **SBA does not permit its guaranty to be used as a substitute for available collateral.** For loans in excess of $350,000, SBA requires that the lender collateralize the loan to the maximum extent possible up to the loan amount. If fixed assets do not fully secure the loan, the lender must take available equity in the personal real estate of the principals as collateral.

c) 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 and lien priority as the debt that is being refinanced.

d) For loans of $25,000 or less, lenders are not required to take collateral; and

e) For loans over $25,000, up to and including $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, but at a minimum the lender must obtain a lien on the applicant's fixed assets to secure the loan. Lender may secure applicant's trading assets (using a 10% current book value for the calculation) if it does so for similarly sized non-SBA-guaranteed commercial loans.

Comment [D94]: For all loans $350,000 and under.

f) SBA considers a loan as "fully-secured" if the lender has taken security interests in all available fixed assets with a combined "net book value" as adjusted below up to the loan amount. "Net book value" is defined as an asset's original price minus depreciation and amortization. New machinery and equipment may be valued at 75% of Net Book Value, or 80% with an Orderly Liquidation Appraisal minus any prior liens for the calculation of "fully-secured." Used or existing machinery and equipment may be valued at 50% of Net Book Value or 80% with an Orderly Liquidation Appraisal minus any prior liens for the calculation of "fully-secured." Real estate can be valued supported at 85% of the value for the calculation of "fully-secured" and the value must be determined in accordance with the requirements set forth in Paragraph C below. If the loan will be secured by the fixed assets and the valuation of fixed assets is greater than their depreciated value (net book value), an independent appraisal by a qualified individual must be obtained by the lender to support the higher valuation. (See Paragraph C.3 below.);

Comment [D95]: Language added to define fully secured and discounts to use for collateral.

1. If there is a collateral shortfall (not fully-secured) on the SBA-guaranteed loan, the lender may include trading assets as necessary (using 10% of current book value for the calculation) and will be required to take available equity in the personal real estate of the principals. Liens on a personal residence or investment property may be limited to the amount of the collateral shortfall

2. Liens on a personal residence or investment property 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.

Comment [D96]: Use of trading assets for collateral and guidelines modified for use of personal real property collateral limitations.

g) For loans that are more than $250,000 and collateralized by commercial real estate, lenders must comply with the appraisal requirements set forth in Paragraph II.C 1 below.

h) 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% of the property's fair market value

2. 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 available equity in personal real estate that is owned individually, by the applicant owner as well as available equity in personal real estate owned jointly. Real estate transferred by the applicant to the non-owning spouse within 6 months of the date of the application will not be exempt from consideration as available collateral.

Comment [D97]: Language added to address non-owner spouse assets and availability to secure loans.

B. Guaranties (13 CFR §120.160(a))

1. Personal Guaranties: Individuals who own 20% or more of a Small Business Applicant must provide an unlimited full personal guaranty. (SBA Form 148 or equivalent lender's form) Lenders may require other individuals to guarantee the loan as well. 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

Comment [D98]: Lender's may use their own form or 148 and 148L.

in SBA Form 148L (or equivalent lender's form) (Unconditional Limited Guarantee) and specify the option in the Authorization.

a) Lender must obtain a personal financial statement from all individuals guaranteeing the loan.

b) Guaranty may be secured or unsecured but must meet SBA's collateral requirements. If the loan is not fully collateralized by fixed assets, available equity in personal real estate must be pledged to secure the guaranty, up to the collateral shortfall above.

Comment [D99]: Language modified to limit personal asset pledge to collateral shortfall.

c) Guaranty of Spouse:

1. Each spouse owning 5% or more of a Small Business Applicant must personally guarantee the loan in full when the combined ownership interest of both spouses is 20% or more

2. 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. If the entity that owns 20% or more of the Small Business Applicant is a trust (revocable or irrevocable), the trust must guarantee the loan with the trustee executing the guaranty on behalf of the trust and providing the certifications required in Chapter 2, Paragraph III.F.3. c) and e) of this Subpart. In addition, if the trust is revocable, the Trustor also must guarantee the loan. 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. In addition, if the guaranty will be provided by a trust, the requirements of paragraph 2 immediately above must be met.

4. Reducing Ownership Interest

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

b) 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).

5. Employee Stock Ownership Plans (ESOPs) and 401(k) Accounts: When an ESOP or 401(k) owns 20% or more of a Small Business Applicant, the Plan or Account cannot guarantee the loan. The Plan or Account must meet all applicable IRS eligibility requirements. In addition, the following loan conditions must be met:

a) The owner(s) 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.

b) The members of the ESOP are not required to personally guarantee the debt, but all owners of the Small Business Applicant who hold an ownership interest of 20% or more outside the ESOP are subject to SBA's personal guaranty requirements.

c) The application cannot be structured as an EPC/OC. (13 CFR §120.111(a)(6)) (SBA regulations require each 20% or more owner of the EPC and each 20% or more owner of the OC to guarantee the loan, and the regulation does not provide for an exception.)

C. Appraisal and Business Valuation Requirements

The regulations governing appraisal requirements are set forth at 13 CFR §120.160(b):

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) For all loans greater than $250,000, secured by commercial real property, federally regulated lenders must obtain an appraisal by a state licensed or certified appraiser and otherwise follow their primary regulator's FIRREA requirements for real estate appraisals. Appraisals must be in compliance with USPAP. Additionally, SBA requires that completed appraisals be dated within 12 months of the application for guaranty, and that federally-regulated lenders comply with the provisions set forth in paragraphs 3 and 4 below with regard to other fixed assets and the additional appraisal requirements for changes of ownership. **No Exemption is granted under the Interagency Appraisal and Evaluation Guidelines dated December 2, 2010 for Transactions Insured or Guaranteed by a US Government Agency.** The SBA or the lender may require an appraisal of real estate property by a State licensed or certified appraiser in connection with a loan for $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness

Comment [D100]: Appraisal requirements modified for federally regulated institutions and specific SBA requirements re-stated.

b) All NFRLs and SBLCs must follow the following appraisal requirements if the SBA-guaranteed loan is greater than $250,000 AND is collateralized by commercial real property:

Comment [D101]: SBLC and NFRL's must continue to use the following SBA guidance for appraisals and valuations.

c) The appraiser must be:

1. 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
2. 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.

d) In order for the appraiser to identify the scope of work appropriately, the appraisal must identify the lender as the client and/or an intended user of the appraisal, as those terms are defined in the Uniform Standards of Professional Appraisal Practice (USPAP). The lender may not use an appraisal prepared for the applicant. The cost may be passed on to the Small Business Applicant.

e) The appraisal must be prepared in compliance with USPAP and use one of the following options:

1. a self–contained appraisal report; or
2. a summary appraisal report.

f) If the loan will be used to finance new construction or the substantial renovation of an existing building, the appraisal must estimate what the market value will be at completion of construction. ("Substantial" means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of the application.) After construction is completed, lender must obtain a statement from the appraiser that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based. If the appraiser cannot provide such a statement, then the lender may not close the loan without SBA's prior written permission.

g) If the SBA guaranteed loan was used to cover the construction period, the lender must notify the appropriate SBA CLSC of any deviation(s) and work with the SBA CLSC to determine an appropriate course of action, including the securing of additional collateral. The lender's notification 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. If the appraiser is unable to issue a statement that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based, but is able to provide a new appraisal demonstrating that the market value meets or exceeds the original estimate of value, then no additional action on the part of the lender is necessary.

h) If the loan will be used to acquire an existing building that does not require construction, the appraiser should estimate market value on an as-is basis. If the appraiser estimates the value other than on an as-is basis, the narrative must include an explanation of why the as-is basis was not used.

i) If the appraisal engagement letter asks the appraiser for a business enterprise or going concern value, the appraiser must allocate separate values to the individual components of the transaction including land, building, equipment and business (including intangible assets). When the collateral is a special purpose property, the appraiser must be experienced in the particular industry.

j) When valuing the collateral, the lender must not include the contributory value of any rental income or the value of any intangible assets contained in the appraisal.

k) An appraisal may be submitted as part of the loan application to assist with the underwriting or as part of the loan closing. In no case may the lender rely on an appraisal that was prepared more than 12 months prior to the date of the application.

1. 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 and the estimate must be identified in the loan authorization with the requirement for an appraisal that supports the estimated value at time of closing.

2. If at time of closing the appraisal:

   (a) Comes in at 90% 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

   (b) Comes in at less than 90% 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.

3. Exception for PLP Lenders:

   PLP lenders are permitted to close a loan when the appraisal is less than 90% 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 appraisal 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 (net book value), an independent appraisal by a qualified individual must be obtained by the lender to support the higher valuation. A valuation of the fixed assets provided as part of a business valuation will not meet these requirements, except as part of a going concern appraisal as described in paragraph 5.e) below.

4. Additional Appraisal Requirements for Changes of Ownership

   For businesses that have been transferred within 36 months prior to the date of the loan application and the loan amount is more than $250,000, SBA requires:

a) An appraisal of the business real estate that meets the appraisal requirements above; and

b) Either a "review" of the appraisal by another appraiser selected directly by the lender or 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.

5. Business Valuation Requirements – Change of Ownership

Determining the value of a business (not including real estate which is separately valued through an appraisal) is the key component to the analysis of any loan application for a change of ownership. An accurate business valuation is required because the change in ownership will result in new debt unrelated to business operations and create an intangible asset. A business valuation assists the buyer in making a determination that the seller's asking price is supported by historic operations and permits the buyer to make a reasonable return on his or her investment.

a) If the amount being financed (including any 7(a), 504, seller, or other financing) minus the appraised value of real estate and/or equipment being financed is $250,000 or less, the lender may perform its own valuation of the business being sold, unless the lender's internal policies and procedures require an independent business valuation from a qualified source.

b) If the amount being financed (including any 7(a), 504, seller, or other financing) minus the appraised value of real estate and/or equipment is greater than $250,000 or if there is a close relationship between the buyer and seller (for example, transactions between family members or business partners), the lender must obtain an independent business valuation from a qualified source.

c) A "qualified source" is an individual who regularly receives compensation for business valuations and is accredited by one of the following recognized organizations:

1. Accredited Senior Appraiser (ASA) accredited through the American Society of Appraisers;
2. Certified Business Appraiser (CBA) accredited through the Institute of Business Appraisers;
3. Accredited in Business Valuation (ABV) accredited through the American Institute of Certified Public Accountants;
4. Certified Valuation Analyst (CVA) accredited through the National Association of Certified Valuation Analysts; and
5. Accredited Valuation Analyst (AVA) accredited through the National Association of Certified Valuation Analysts.

Comment [D102]: Qualified source list has been amended. CPA designation is not considered satisfactory without one of the listed designations.

d) In order for the individual performing the business valuation to identify the scope of work appropriately, the business valuation must be requested by and prepared for the lender. The scope of work should identify whether the transaction is an asset purchase or stock purchase and be specific enough for the individual performing the business valuation to know what is included in the sale (including any assumed debt). The business valuation must include the individual's opinion of value, the qualifications of the individual performing the valuation and their signature certifying to the information contained in the valuation. The lender may not use a business valuation prepared for the applicant or the seller. The cost of the valuation may be passed on to the Small Business Applicant.

e) The lender may use a going concern appraisal to meet these requirements if:

1. The loan proceeds will be used to purchase a special use property;

2. The appraisal is performed by an appraiser experienced in the particular industry and who is a "qualified source" as identified in paragraph 5.c) above and

3. The appraisal allocates separate values to the individual components of the transaction including land, building, equipment and intangible assets.

Comment [D103]: Language updated to refer only to the qualified source list above.

f) If the application will be submitted to the LGPC, the business valuation must be submitted as part of the loan application. (See Chapter 6, of this Subpart.)

g) If the application will be submitted under delegated authority, the business valuation may be obtained and reviewed after the issuance of an SBA loan number and prior to closing. If the lender is processing the application under delegated authority and requests the business valuation after issuance of an SBA loan number, the credit memorandum must include an estimate of the value of the business. The credit memorandum must be updated after receipt of the business valuation to include a comparison of the loan amount and the business valuation.

h) Any amount in excess of the business valuation may not be financed with the SBA guaranteed loan.

i) Lender Verification of Business Valuation Financial Data

Lender must obtain a copy of the financial information relied upon by the individual who performed the business valuation and verify that information against the seller's IRS transcripts to ensure the accuracy of the information.

D. CAPLine Collateral Requirements

1. The CAPLines programs listed below have specific collateral requirements as follows:

a) For Working Capital CAPLines:

1. If the lender will disburse the line based on a borrowing base certificate, the lender must obtain a first lien on the applicant's working/trading assets (i.e., accounts receivable, inventory).

2. If the lender will not use a borrowing base certificate to disburse the line, the lender must assume full utilization of the revolving line of credit and secure the line with sufficient collateral to ensure there is a 1:1 collateral ratio. Lender must obtain a first lien position on the working/trading assets (accounts receivable and inventory) financed with the line. If the working/trading assets are insufficient to provide a 1:1 collateral ratio, the lender also must take additional collateral to ensure there is a 1:1 collateral ratio. If business assets do not fully secure the loan, the lender must take available equity in personal real estate owned by the principals as collateral to ensure there is a 1:1 collateral ratio. (See Chapter 7, Paragraph IV.H.4 of this subpart for further guidance.)

b) For Builder's CAPLines:

1. 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.

2. 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% of the fair market value (selling price) of the completed project.

c) For Contract CAPLines

1. Applicants must be able to provide the lender with a first lien position on the contract(s) and the proceeds of the contract(s) financed with the line, by assignment to the participating lender and proper UCC filing. As discussed in Chapter 7, Paragraph IV.H.2 of this Subpart, however, there may be exceptions to when an assignment is required.

2. The lender may take additional collateral in accordance with its policies and procedures governing its similarly sized, non-SBA guaranteed commercial lines of credit.

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. <u>SBA Express and Export Express Collateral Requirements</u>

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, except for Export Express lines of credit over $25,000 used to support the issuance of a standby letter of credit. The line of credit must have collateral (cash, cash equivalent or project) that will provide coverage for at least 25% of the issued standby letter of credit amount.

3. Lender's collateral policies must be commercially reasonable and prudent.

4. With respect to collateral taken, 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. <u>Patriot Express Collateral Requirements</u>

1. For loans of $25,000 or less, lenders are not required to take collateral;

2. 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.)

3. For loans of $350,000 or more, lender must follow standard 7(a) collateral policy.

4. Lender's collateral policies must be commercially reasonable and prudent.

5. With respect to collateral taken, 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.

G. 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. Standby Letters of Credit: SBA also requires additional collateral if EWCP loan proceeds are used to support the issuance of a standby letter of credit. In such situations, the Borrower must deposit cash into an account held by the Lender in an amount equal to 25% of the standby letter of credit being issued. This deposit must remain in the account held by the lender for the life of the standby letter of credit. SBA may, at its discretion, allow export inventory or export accounts receivable or other acceptable collateral to replace the cash deposit; however, the lender must obtain SBA's prior written approval of any such substitution. In addition, the EWCP Authorization Boilerplate contains specific provisions related to standby letters of credit.

4. Receivables generated from sales to foreign purchasers are not considered a foreign asset and may be taken as collateral.

5. Personal guarantee of all 20% or more owners is generally required, but may be waived by the D/ITF.

H. International Trade Loan Collateral Requirements

1. The lender is required to take a first lien on the assets financed with IT loan proceeds or other assets of the small business concern. An IT loan can be secured by a second lien position on the property or equipment financed by the IT loan or on other assets of the small business concern, if the SBA determines that the second lien provides adequate assurance of repayment of the loan. For example, when the IT loan is to improve business real estate (such as financing an addition to an existing building) or to purchase equipment, and the collateral securing the IT loan is subject to a first lien securing an existing loan used to acquire the business real estate or equipment, the IT loan may be in a second lien position if (1) the loan in the first lien

position was not made at or about the same time as the IT loan ("piggyback financing"), and (2) the lender's analysis identifies how the risk of a second lien position on the IT loan is offset by other factors, such as other collateral has been taken to secure the IT loan that in liquidation would pay the IT loan in full or the business has been operating profitably and repaying its existing obligations in a timely manner and the borrower's cash flow is sufficient to repay all of the borrower's debt, including the IT loan. Clear justification must exist when the interest rate for the first lien loan is significantly higher than the IT loan and/or the maturity of the first lien loan is significantly shorter than the IT loan. (See discussion in Subpart A, Chapter 1, Paragraph II.E.5 of this SOP regarding "piggyback financing" which is not eligible.)

2. IT loans may not be processed under a lender's PLP authority when the IT loan will not have a first lien on the assets being financed.

III. 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.

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 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

Lender (except on PLP, SLA, SBA Express, Export Express and Patriot Express loans) must submit the Environmental Investigation Report to the SBA Center processing the application. The requirements of this section apply to all Environmental Investigations whether or not the report is required to be submitted to the SBA. 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. (Note that a Reliance Letter is required even if the Environmental Investigation Report is addressed to the lender.)

E. The Steps of an Environmental Investigation

1. NAICS Codes. For all Property *except* a unit in a Multi-Unit Building, Lender must begin by making a Good Faith effort to determine the NAICS code(s) for the Property's ***current and known prior uses*** and compare the NAICS code(s) to the list of environmentally sensitive industries in Appendix 4. For a unit in a Multi-Unit Building, Lender may proceed directly to subparagraphs b)(1) and (2) below.

a) 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), the Environmental Investigation must begin with a Phase I and the lender must also refer to and, if applicable, comply with "Environmental Investigation Requirements for Gas Station Loans" in Appendix 5.

b) If there is not a NAICS code match to an environmentally sensitive industry, or if the Property is a unit in a Multi-Unit Building, the lender must proceed as follows:

1. If the loan amount is **up to and including** $150,000, the Environmental Investigation may begin with an Environmental Questionnaire.

2. If the loan amount is **more than** $150,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and Records Search with Risk Assessment.

2. Environmental Questionnaire Results. If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination at the Property 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 Records Search with Risk Assessment.

3. Environmental Questionnaire & Records Search with Risk Assessment Results

a) If the Environmental Questionnaire reveals that it is unlikely that there is environmental contamination at the Property 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.

b) If the Records Search with Risk Assessment concludes that the Property is an "elevated risk" or "high risk" for Contamination, lender must obtain a Phase I ESA.

4. Transaction Screen Results

a) 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.

b) If the Environmental Professional conducting the Transaction Screen concludes that further investigation is warranted, the lender must obtain a Phase I ESA.

5. Phase I ESA Results

a) 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.

b) 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.

6. Phase II ESA Results

a) 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.

b) 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:

1. Whether the Contamination quantities exceed the reportable or actionable levels;
2. Whether Remediation is necessary;
3. 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
4. The projected completion date of any Remediation.

c) 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 below, "Approval and Disbursement of loans when there is Contamination or Remediation at the Property".

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 and Center Counsel

With respect to environmental investigations that are required to be submitted to an SBA Loan Processing Center, SBA loan processing personnel must obtain field counsel or center 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 known 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 or center 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:

1. Nature and Extent of the Contamination including copies of the following documents pertaining to the Property:

a) All relevant Environmental Investigation Reports;

b) All publicly available Governmental Entity correspondence;

2. Remediation

a) Recommended method of Remediation;

b) Status of on-going Remediation, if any;

c) Environmental Professional's estimated cost of Remediation;

d) Environmental Professional's estimated completion date;

e) Governmental Entity's designation of responsible Person(s);

f) Person(s) paying for on-going Remediation;

3. Collateral Value

a) Proposed loan amount and proposed use of proceeds;

b) Appraised or the estimated value of the Property;

c) Institutional Controls and Engineering Controls, if any, and their impact on repayment ability, collateral value and marketability of the Property; and

4. Mitigating Factors

SBA will rely upon one or more of the following factors when deciding to disburse before completion of Remediation or monitoring.

a) Indemnification. If any Person who possesses sufficient financial resources to cover the costs of completing Remediation 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. The Third Party Indemnitor cannot be the borrower or the operating company.

The SBA Environmental Indemnification Agreement:

1. cannot be modified;
2. must be executed by the Borrower and (if applicable) Operating Company;
3. must have a copy of the Environmental Investigation Report attached to it; and
4. must be properly recorded in the memorandum format in Exhibit C to Appendix 6.

All lenders (except when submitting requests through PLP, SLA, SBA Express, Export Express and Patriot Express) must submit the finalized SBA Environmental Indemnification Agreement to SBA for review and approval prior to a request that SBA fund the loan.

b) 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.

c) "No Further Action". If a lender obtains a "no further action letter" or "closure letter" from a Governmental Entity stating that no further Remediation or monitoring of Contamination previously found is required, approval or disbursement may be considered.

d) "Minimal Contamination". If the extent of Contamination and cost of Remediation are de-minimis 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.

e) 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.

f) 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 and escrow agreement for the escrow account must ensure that escrow funds will only be used for Remediation costs. The source of the escrow funds may not be SBA loan proceeds. Depending upon the circumstances, an escrow account with more than 150 percent of the estimated costs of Remediation may be appropriate. The escrowed funds may be used for Remediation. 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.

g) Groundwater Contamination Originating from Another Site. If groundwater Contamination on the Property is shown to have come from another property, approval or disbursement may be considered if:

1. Another Person with sufficient resources is performing Remediation pursuant to a Remediation action plan that has been approved by the appropriate Governmental Entity; or
2. 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
3. The Governmental Entity provides satisfactory written assurance that it will not hold the Property owner liable for the Contamination. Lender should attempt to have lender and SBA included by name in the letter along with the Property owner and future purchasers.

h) 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.

i) "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 loans processed under PLP, SLA, SBA Express, Export Express and Patriot Express.

For loans processed under PLP, SLA, SBA Express, Export Express and Patriot Express, 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 4.i) above.

H. Special Use Facilities

Prudent lending practices dictate that specific additional environmental assessments be performed for certain special use facilities. For example, Property constructed prior to 1980 that will be used for daycare or child care centers or nursery schools or residential care facilities occupied by children must undergo a lead risk assessment (for lead based paint) and testing for lead in drinking water, and the results of these assessments 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. On-site dry cleaning facilities, which may have utilized tetrachloroethene (PCE) and trichloroethene (TCE) in the course of their business operations, may present significant clean-up costs if these contaminants have entered the soil or groundwater. Prudent lending practices dictate and SBA requires that on-site dry cleaners in operation for more than five years undergo a Phase II Environmental Site Assessment in addition to a Phase I which would be required due to the NAICS code match. Any Phase II performed in connection with an on-site dry cleaning facility must be conducted by an independent Environmental Professional *who holds a current Professional Engineer's or Professional Geologist's license and has the equivalent of three (3) years of full time relevant experience.* Gasoline stations also present significant clean-up costs if contaminated (for specific requirements pertaining to gasoline stations, please refer to Appendix 5).

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 G.4 above.

J. Questions on SBA's Environmental Policy 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 an environmental decision that has been rendered by SBA 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. (NOTE: This e-mail address cannot receive submissions larger than 10MB. If the e-mail and attachments exceed this size, the appeal must be sent in more than one e-mail.) Environmental appeals, including exceptions to Agency environmental policy, will be reviewed by the SBA Environmental Committee comprised of OGC attorneys appointed by the Associate General Counsel for Litigation, who may consult with an environmental

engineer. The Associate General Counsel for Litigation retains the authority to overrule decisions rendered by the SBA Environmental Committee.

CHAPTER 5: LOAN 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.

I. BASIC LOAN CONDITIONS (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 SOP supersedes the Boilerplate.

Comment [D104]: Language modified to SOP supersedes Boilerplate

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. SBA Express, Export Express and Patriot Express lenders may use the Boilerplate or the abbreviated version created for each program. Small Loan Advantage (SLA) loans approved by PLP Lenders under their PLP authority may use the alternative Authorization created for SLA or the Boilerplate.

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/for-lenders, then click on "Steps in SBA Lending," then "7(a) Loans," then "Approval-Authorization," then "7(a) Loan Package Templates" to find the list of authorizations.. The Authorization for standard 7(a), CLP and PLP loans must use the pre-approved conditions that are found in the Boilerplate. If the lender chooses to use the abbreviated Authorizations for loans made under Small Loan Advantage (loans approved under a lender's PLP authority only), SBA Express, Export Express and Patriot Express, the Authorization 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.

Loan Program	Responsible Party
Standard 7a, non-PLP SLA, and CAPLines	SBA drafts and signs the Authorization
Standard EWCP and Preliminary Commitment Conversions	SBA drafts and signs the Authorization
CLP	Lender drafts, SBA finalizes and signs
PLP (including PLP-SLA and PLP-CAPLines), PLP-EWCP, SBA Express	
Patriot Express and Export Express	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, including PLP-EWCP 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, including a PLP-EWCP lender, develops and uses a non-standard condition, an explanation for its development must be in the loan file.

II. INSURANCE REQUIREMENTS (13 CFR §120.160(C))

A. Hazard Insurance

1. SBA requires hazard insurance on all assets pledged as collateral. If the business is located in a state that requires additional coverage such as wind, hail, earthquake or other, on the hazard insurance, the borrower must provide a separate policy.

Comment [D105]: Language added for special hazard.

2. Real Estate:

a) Coverage must be in the amount of the full replacement cost.

b) If full replacement cost insurance is not available, coverage must be for the maximum insurable value.

c) 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:

a) Coverage must be in the amount of full replacement cost.

b) If full replacement cost insurance is not available, coverage must be for maximum insurable value.

c) 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, Export Express and Patriot Express: 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:

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.

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 086-0-32 or FEMA Form 81-93). Lenders have the option of using either form until May 30, 2015, at which time only FEMA Form 086-0-32 may be used. The mandatory purchase of flood insurance requirements set forth by the National Flood Insurance Program (NFIP) apply with equal force to condominium and cooperative units. Policies for such units will consist of separate policies obtained by the individual unit owner for the particular unit and the condominium or cooperative association for the exterior of the entire building.

Comment [D106]: Note Form change…either form may be used until 5/30/15.

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 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:

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.

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. For loans processed under standard 7(a) over $350,000, lenders may follow their internal policy for similarly sized non-SBA guaranteed commercial loans, except:

If the loan is not fully secured, life insurance is required for the principals of sole proprietorships, single member LLCs, or for businesses otherwise dependent on one owner's active participation, consistent with the size and term

of the loan. The amount and type of collateral available to repay the loan may be factored into the determination of the appropriate amount of life insurance. If lender determines that the principal is uninsurable, lender must obtain written documentation from a licensed insurer of the same.

2. For loans processed under SLA, SBA Express, Export Express and Patriot Express, lenders may follow their internal policy for similarly sized non-SBA guaranteed commercial loans.

Comment [D107]: Modification to allow lenders to use conventional policies for loans over $350,000 except when the business is dependent on one owner's active participation.

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.

III. 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 submission of the application to the LGPC for non-delegated loans, for non-delegated lenders and prior to first disbursement for lenders with delegated authority, lender must obtain:

Comment [D108]: Language added to clarify timing of 4506 requests.

1. Verification of Financial Information—

a) Lender must submit IRS Form 4506-T 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).

b) If the business has been operating for less than 3 years, lender 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. If the applicant has filed an extension for the most recent fiscal year, lender must obtain a copy of the extension along with evidence of payment of estimated taxes.

d) Lender 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 lender and the LPGC or appropriate SBA CLSC. Failure to resolve differences may result in cancellation of the loan.

f) For a change of ownership, lender must verify financial information provided by the seller of the business in the same manner as above.

g) If lender does not receive a response from the IRS or copy of the tax transcript within 10 business days, the lender:

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.

2. The Internal Revenue Service (IRS) has implemented a new expedited service through which the financial community can expeditiously confirm the income of a borrower during the processing of a loan application: Income Verification Express Service (IVES) program. Under IVES, the IRS can electronically provide tax return transcript, W-2 transcript and 1099 transcript information generally **within 2 business days** to a third party with the consent of the taxpayer. The transcript information is delivered to a secure mailbox based on information received from a Form 4506-T. A $4.50 fee is imposed on each transcript requested. It is expected that this process will replace the current process, which requires the manual pick-up and delivery of transcripts from the seven IRS Return and Income Verification Services (RAIVS) units located across the country. Under the new system, transcripts will be delivered electronically using the e-Services platform via a secure mailbox. To participate in the IVES program, lenders will need to register and identify employees to act as agents to receive electronic transcripts on the lender's behalf. To establish access to a secure mailbox, lenders will need to register, which can be done through the following IRS website: http://www.irs.gov/individuals/article/0,,id=161649,00.html. Additional information on IVES is also available from this website.

3. If the IRS transcript reflects "Record Not Found" for the middle year of the three years requested, the lender has verified the other two years, AND the Small Business Applicant has some record of either receiving a refund or paying the taxes for the missing year, then the lender may reasonably assume that the Small Business Applicant filed a return for the missing year. If the lender documents all of these steps in its loan file, the lender has demonstrated to SBA that it has made a good faith effort to satisfy the verification requirement.

4. If the IRS advises that it has no record on the applicant, no record of year 1 and/or year 3, 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.

5. If a Small Business Applicant has not filed required federal tax returns, the applicant is not eligible for SBA financial assistance.

6. SBA Express, Export Express and Patriot Express Programs:

a) 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.

b) For SBA Express, Export Express and Patriot Express, 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.

IV. STANDBY AGREEMENTS

A. SBA Form 155 - Standby Agreement Lender may use SBA Form 155 or its own Standby Agreement Form that is used for similar non SBA guaranteed loans. A copy of the note must be attached to the standby agreement.

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 I.B.2. of this Subpart.

V. 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

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 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 existing or new 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:

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 lender 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

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.

VI. CONSTRUCTION LOAN PROVISIONS (13 CFR §120.174)

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.

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.

c) The Authorization boilerplate automatically inserts the NEHRP provision when any of the use of proceeds options selected includes construction financing, including leasehold improvements. If the leasehold improvements made with loan proceeds will become permanently affixed to any structure on the leased premises, then they must comply with the NEHRP. If the improvements are only temporary, they do not need to comply with the NEHRP. Accordingly, if the borrower can demonstrate that the leasehold improvements will be temporary, lender may request modification of the Authorization to remove the NEHRP provision in accordance with Paragraph X of this Chapter.

Comment [D109]: NEHRP insertion.

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 component of an SBA-guaranteed loan is more than $350,000:

1. Prior to the commencement of any construction, lender must obtain from Borrower:

a) Evidence that the contractor has furnished a l00% performance bond and labor and materials payment bond;

1. Only a corporate surety approved by the Treasury Department using an American Institute of Architect's form or comparable coverage may issue these bonds.

2. Only Borrower may be named as obligee on the bonds.

b) Evidence that contractor carries appropriate Builder's Risk and Worker's Compensation Insurance;

c) 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;

d) A copy of the final plans and specifications; and

e) A copy of a Construction Contract with:

1. An acceptable contractor at a specified price; and

2. 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:

a) 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;

b) Make interim and final inspections to determine that construction conforms to the plans and specifications;

c) Obtain evidence that the building, when completed, will comply with all state and local building and zoning codes, and applicable licensing and permit requirements;

d) Obtain a completed SBA Form 601, Applicant's Agreement of Compliance; and

e) Obtain lien waivers or releases from all material men, contractors, and subcontractors involved in the construction.

3. SBA has granted a blanket waiver on the requirement of a performance bond when a third party in the business of providing construction management services controls the disbursement of the proceeds. Lender must document in its file that the construction was completed in conformance with the plans and specifications and that all lien waivers and releases from all material men, contractors, and subcontractors involved in the construction have been obtained. (13 CFR §120.200)

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.

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:

1. The borrower/contractor is experienced in the type of construction and has all appropriate licenses;
2. The cost is the same as, or less than, what an unaffiliated contractor would charge as evidenced by 2 bids on the work; and
3. The borrower/contractor will not earn a profit on the construction.

VII. 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.

VIII. CERTIFICATION REGARDING CHILD SUPPORT (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.

IX. 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 CAPLiness. A "clean up" period may be included in the Authorization at the lender's option

X. MODIFYING THE AUTHORIZATION

A. For 7(a), CLP, SLA (non-PLP) and CAPLines (non-PLP), the lender may request modifications to the terms and conditions of the Authorization at any time after approval. All modification requests through final disbursement must be approved by the LGPC. (For EWCP loans, submit the request to the appropriate USEAC.) To request a modification:

1. Submit a written request to the LGPC that includes the name of the lender, name of the lending officer, phone number, fax number, name of the borrower, SBA Loan Number and the following information:

a) How it is now;

b) How it should be; and

c) Why – justification for the change and any supporting documentation.

2. Post-approval modifications (except EWCP loans) should be sent by e-mail to 7aLoanMod@sba.gov or by fax to 916-735-1975.

3. After final disbursement, modification requests must be sent to the appropriate CLSC. (For EWCP loans, submit requests to the appropriate USEAC.)

B. For PLP (including PLP-SLA and PLP-CAPLines), PLP-EWCP, SBA Express, Export Express and Patriot Express loans, the lender is responsible for modifying the authorization under its delegated authority and must document its file with a written explanation that includes justification for the change and any supporting documentation.

CHAPTER 6: SUBMISSION OF APPLICATION FOR GUARANTY

Comment [D110]: Readers/Users are advised to read in detail the submission requirements as changes were made to streamline requirements for up to and including $350,000 .

There are several different ways to process 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 each process. The different methods are:

- Standard 7(a) Guaranty
  - Loans up to and including $350,000 (SLA)
  - Loans over $350,000 to $5,000,000
- Certified Lender Program
  - Loans up to and including $350,000 (SLA)
  - Loans over $350,000 to $5,000,000
- Preferred Lender Program (*delegated)*
  - Loans up to and including $350,000 (SLA)
  - Loans over $350,000 to $5,000,000
- SBA Express *(delegated)*
- Patriot Express *(delegated)*
- Export Express (*delegated)*
- Community Advantage
  - Loans up to and including $250,000

Comment [D111]: Language added on method of delivery.

The application forms for all programs include information on the number of employees at the time of application and the number of jobs to be created and/or retained as a result of the loan. Jobs "created" means the number of full-time (or equivalent) employees that the small business expects to hire as a result of the loan. Jobs "retained" means the number of full-time (or equivalent) employees on the payroll of the business at the time of application that will be lost if the loan is not approved.

I. CONTENTS OF LENDER'S APPLICATION FOR GUARANTY:

Comment [D112]: Small Rural Lender Advantage has been removed.

The contents of the Lender's application for guaranty varies depending on the size of the loan and the method of processing chosen by the Lender.

A. Standard 7(a), SLA, CLP, PLP

Program forms can be found at www.sba.gov/for-lenders.

Centralized 7(a) Loan Submission Instructions and a checklist can be found at the Standard 7(a) Loan Guaranty Processing Center website along with other forms, telephone numbers and fax numbers: http://www.sba.gov/category/lender-navigation/find-center/standard-7a-loan-guaranty-processing-center-lgpc-ca

1. In compliance with the requirements stated in Chapter 4, 7(a) SLA, SBA Express, Export Express, and Patriot Express Application packages must include the forms and information the lender requires in order to make an informed eligibility and credit decision. Any application obtained by the lender from the applicant must

be certified by the applicant as true and complete. The following SBA documentation is required:

a) Applicants must complete and sign SBA Form 1919, "Borrower Information Form." SBA Form 1919 must be signed by the following:

1. For a sole proprietorship, the sole proprietor;
2. For a partnership, all general partners and all limited partners owning 20% or more of the equity of the firm;
3. For a corporation, all owners of 20% or more of the corporation and each officer and director;
4. For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;
5. Any person hired by the business to manage day-to-day operations; and
6. Any person guaranteeing the loan, if that guaranty is required by SBA, as set forth in Chapter 4, Paragraph II.B. of this Subpart.

b) 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 concerning floodplains and wetlands management, lead based paint, earthquake hazards, the Right to Financial Privacy Act, among others are included in SBA Form 1919.

c) Lender must complete and sign SBA Form 1920SX

d) Additional Forms may be necessary. See 2.e) below.

2. All standard 7(a) loan applications over $350,000 must include the following:

a) Lender must complete and submit SBA Form 1920SX

b) As part of the Lender's request for Guaranty, the Applicant is required to complete and sign SBA Form 1919, Application for Loan. Application packages must include all forms and information the lender is required to obtain based on loan size and delivery method in accordance with Chapter 4 Credit Standards.

c) SBA Form 1919 must be signed by the following:

1. For a sole proprietorship, the sole proprietor;
2. For a partnership, all general partners and all limited partners owning 20% or more of the equity of the firm;
3. For a corporation, all owners of 20% or more of the corporation and each officer and director;
4. For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;
5. Any person hired by the business to manage day-to-day operations; and
6. Any person guaranteeing the loan, if that guaranty is required by SBA, as set forth in Chapter 4, Paragraph II.B. of this Subpart.
7. The Form 1919 includes the certifications and requirements previously set forth in SBA Forms 601, 912 and 1261. In addition, the requirements imposed

by laws and executive orders discussed in paragraph I.A.1. of this Chapter are included in SBA Form 1919

Comment [D113]: All loan applications will be completed using the SBA Form 1919 to be completed by the borrower with additional forms as appropriate.

d) Additional Forms that may be necessary:

1. 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)). See Chapter 3, Paragraphs VIII-IX of this Subpart for further guidance on the disclosure of fees.

2. 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.

3. 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 III.D.3.n) of this Subpart.

e) Personal Financial Statement, dated within 90 days of submission to SBA, on all owners of 20% or more (including the assets of the owner's spouse and any minor children), and proposed guarantors. SBA Form 413 is available; however, lenders may use their own form.

f) Business financial statements and/or tax returns dated within 180 days prior to submission to SBA, consisting of:

Comment [D114]: Language modified for age of business financials.

1. Year End Balance Sheet for the last three years, including detailed debt schedule,
2. Year End Profit & Loss Statements for the last three years,
3. Reconciliation of Net Worth,
4. Interim Balance Sheet,
5. Interim Profit & Loss Statements,

g) Affiliate/Subsidiary financial statement requirements same as above, and

h) Copy of Lease, if applicable

i) Detailed listing of machinery and equipment to be purchased with loan proceeds and cost quotes

j) Detailed listing of collateral

k) Provide the following if real estate is to be purchased with loan proceeds:

l) Appraisal;

m) Lender's environmental questionnaire;

n) Cost breakdown; and

o) Copy of purchase agreement.

p) Provide the following if purchasing an existing business with loan proceeds:

1. Copy of buy-sell agreement

2. Copy of business valuation that meets the requirements of Chapter 4 of this Subpart;

3. Pro forma balance sheet for the business being purchased as of the date of transfer;

4. 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

5. Interim statements no older than 180 days from date of submission to SBA.

6. 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:

(a) Why financial statements are not available;

(b) How the lender determined the business purchase price was reasonable; and

(c) How the lender verified business revenue.

q) Equity Injection – explanation of type and source of applicant's equity injection. For further information on equity injections, see Chapter 4, Paragraph I.B. of this Subpart.

r) Franchise – If listed on www.franchiseregistry.com a certification of franchise documents is required. If not listed on the Registry, a copy of the Franchise Agreement and Federal Trade Commission Disclosure Report (FDD) of Franchisor must be submitted.

s) IRS Form 4506-T, Request for Copy of Tax Return – See Chapter 5, Paragraph III. of this Subpart. Identify the date IRS Form 4506-T was sent to IRS. For non-delegated lenders verification of IRS Form 4506-T is required prior to submission of application.

t) Documentation of USCIS status verification -- Per Chapter 2, Paragraph III.E. of this Subpart, lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application to SBA. Lenders may submit a copy of the verification received from USCIS or SBA-SLPC or lender may document in its credit memorandum that verification has been obtained.

u) SBA Form 1846, Statement Regarding Lobbying, must be signed and dated by lender.

v) Authorization – latest version of the wizard program available at http://www.sba.gov/aboutsba/sbaprograms/elending/authorizations/bank_Auth_National_7a.html

3. PLP-EWCP:

a) All forms and exhibits listed below for the Standard EWCP application are required to be completed and retained in lender's file.

b) Forms to be submitted:

1. Copy of page 1 of EIB-SBA 84-1, U.S. Small Business Administration and Export-Import Bank of the United States, Joint Application for Export Working Capital Guarantee;

2. Copy of SBA Form 1920SX ; and

4. EWCP

a) 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.

b) 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.

B. CAPLines

All CAPLines, including those processed non-delegated use SBA Application Forms 1919 and 1920. Forms can be found at www.sba.gov/for-lenders .

1. There are 4 subprograms under the CAPLines program. All require:

a) The Standard 7(a) application referenced above in I.A.2.

b) Submission of guaranty fee at time of application for loans with maturities of 12 months or less. (See Chapter 3, Paragraph V of this Subpart for more information on payment of guaranty fees.)

c) In addition to the documents identified above as required for a Standard 7(a) application, for the following subprograms lender must:

2. 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.

3. Contract CAPLine:

Obtain from applicant

1. A project cost schedule depicting all direct material, labor, and overhead attributable to the contract to be financed. (Profit may not be included.) The schedule must illustrate each cost by line item;

2. A current annual income statement depicting the changes (increases/decreases) in operating, investing and financing cash flows to establish affordability and to confirm adequate cash flow for repayment; and
3. A copy of the contract(s) being financed by the Contract CAPLine.

4. Builders CAPLine:
   1. Obtain month-to-month cash flow for all work to be performed by applicant;
   2. Obtain a letter from:
      (a) A mortgage lender indicating that permanent mortgage money is available to qualified purchasers to buy such properties;
      (b) A real estate broker indicating that a market exists for the proposed building and that it will be compatible with its neighborhood; and
      (c) An architect, appraiser or engineer agreeing to make inspections and certifications to support interim disbursements.
   3. 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.

II. WHERE TO SUBMIT APPLICATION FOR GUARANTY

All Lenders with an executed 750 Agreement are eligible to submit Applications for Guaranty to SBA using standard processing procedures.
Lenders with supplemental agreements can submit applications based on what the agreement covers, such as PLP, CLP CA, and SBA Express.

A. Standard 7(a), CLP, and CapLines (non-delegated) applications must be sent via E-Tran, or to the 7(a) Loan Guaranty Processing Center ("LGPC") electronically.
   1. Email: 7aloanprogram@sba.gov if attachments are less than 9 megabytes in size.
   2. Website: http://www.sba.gov/aboutsba/sbaprograms/elending/lgpc/index.html click on "Submit 7(a) Document Here" or "sendthisfile.com".

Comment [D115]: Language modified to require electornic submission for all standard 7(a), CLP, and Caplines non-delegated.

B. Small Loan Advantage (SLA)

All applications must be submitted using E-Tran (SBA's electronic origination program) or e-mail. For those loans that are submitted by non-PLP lenders or that are ineligible to be processed under a PLP lender's delegated authority, the lender will submit general application information using E-Tran and then submit the application documentation electronically to the Standard 7(a) Loan Guaranty Processing Center (LGPC). The lender must retain copies of the documentation in its loan file for all SLA loans whether submitted under delegated or non-delegated authority.

All applications for a loan guaranty under SLA will begin with a pre-screening for a credit score. The lender will enter certain information into E-Tran (the specific information is described below) and a credit score will be issued. If the application receives an acceptable credit score, the application may be submitted under SLA 7(a) via E-Tran using the steps below. (If the loan

application does not receive an acceptable credit score, the lender may submit a Standard 7(a) loan application to the LGPC or, if the lender is an SBA Express lender, an SBA Express application via E-Tran for a 50% guaranty. See Chapter 4, Paragraph I.A.3 of this Subpart for more information.)

To pre-screen the application for a credit score:

The Lender will enter a minimal set of fields into E-Tran Loan Origination. At this point, the lender will not be required to complete the entire set of E-Tran screens, but the lender may choose to submit the entire set of E-Tran loan origination data if it is easier to keep the data set intact while processing via a third-party software product. The fields required to generate a credit score are as follows (it should be noted that these data fields are part of the screens used for the E-Tran loan origination process and part of the specification for loan origination software packages, which will make it easier to move forward with the loan application if the credit score is acceptable):

business_legal_name
business_address>
business_city
business_state
business_zip
business_phone
fed_tax_id
DUNNs number

Comment [D116]: Dunns number required.

For all owners of 20% or more equity in the applicant small business, the following must be provided and will be included in the credit score.

first_name
last_name
SSN
city
state
zip

If the credit score is acceptable, follow these specific steps for submitting all SLA applications:

1. E-tran has been modified to include a choice for 7(a) SLA. After selecting SLA, the lender will complete the E-tran screens up to the point of "Eligibility."
2. E-tran will then ask the following questions: For non-PLP lenders, "Is lender a PLP lender?" For PLP lenders, "Is this loan eligible to be processed under the PLP lender's delegated authority? If you answer "yes," you are also certifying that the SBA Form 1920SX, has been completed, signed, dated, and filed in the loan file."

a) If the lender is a PLP lender and checks "Yes" to indicate the loan is eligible for submission under its delegated authority, the lender will receive an SBA Loan Number indicating the loan is approved.

b) If the lender is not a PLP lender or the loan is not eligible to be submitted under the PLP lender's delegated authority, the lender checks "No" and E-tran will generate a message instructing the lender to e-mail the application forms along with the SBA Loan Application Number provided by E-tran to the LGPC at slaloans@sba.gov. The attachments must include:

1. Form 1919 and any other SBA forms required by Form 1919 in response to "yes" answers on the form [for example, Form 912 (Statement of Personal History)];
2. Form 1920SX,
3. Lender's Credit Memorandum; and
4. Documents required based on the conditions of the loan (e.g., appraisal if real estate, purchase and sale agreement if change of ownership)

Please be sure that the contact information (name, e-mail and phone number) of the lender's loan officer who can discuss the underwriting of the loan is on the top of the e-mail to the LGPC.

Once the LGPC receives the e-mail and attachments, the LGPC will begin reviewing the loan for creditworthiness and eligibility.

C. PLP (including PLP-7(a) SLA and PLP-CAPLines), PLP-EWCP, SBA Express, Export Express and Patriot Express

Requests for a loan number must be sent through E-Tran. 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/content/e-tran.

D. Standard EWCP and Preliminary Commitment Conversions

1. Standard EWCP Processing:

a) 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/content/us-export-assistance-centers.

b) The USEAC Regional Manager will conduct a full eligibility and credit review in their Loan Officer's Report (LOR), prepare the loan authorization and submit a recommendation to the LGPC. The LGPC will review the LOR and EWCP submission for final approval.

c) If the LGPC concurs with the USEAC approval recommendation, a final authorization will be sent directly to the lender. If the LGPC does not concur with the

USEAC's recommendation, the request is sent to the SBA/OIT for a final decision by the Director, International Trade Finance (D/ITF) or designee.

2. Preliminary Commitment Conversions:

a) Eligible exporters that are unable to find a lender willing to process an EWCP request on their behalf have the option of applying directly to their local USEAC for a "Preliminary Commitment." SBA will only issue a Preliminary Commitment to an applicant upon submission of a complete application and the conclusion that the applicant meets SBA eligibility requirements as set forth in Chapter 2 of this Subpart.

b) If SBA issues an SBA EWCP Preliminary Commitment, it will outline the specific terms and conditions under which SBA is prepared to guarantee an EWCP loan extended by an eligible lender. The Preliminary Commitment is valid for 90 days. It is the applicant's responsibility to find a lender to convert the Preliminary Commitment to a final EWCP loan approval.

c) Lenders that wish to convert a Preliminary Commitment to an EWCP loan must follow the procedures for Standard EWCP processing identified in paragraph 1 above in order to receive final approval and a loan authorization.

E. Reconsideration of Declined Standard 7(a), CLP, SLA (non-delegated) and CAPLines (non-delegated) Applications (13 CFR §120.193)

1. If a lender believes the reasons for decline have been overcome, 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. Lender must submit a request to the Center within 6 months of the date of decline. Any request submitted more than 90 days after the date of decline must include current financial statements.

2. If a request for reconsideration is declined by the Center, a second and final reconsideration may be submitted to the D/FA whose decision is final. The request for reconsideration must be submitted to the LGPC and must include a copy of the Center's decline letter and include additional information that specifically addresses the reasons identified for decline and how the Small Business Applicant has overcome those reasons. The LGPC will forward the request to the D/FA for a final decision.

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.

I. POST APPROVAL/PRE-DISBURSEMENT REQUESTS FOR CHANGES

A. For SBA loans that have not been closed or fully disbursed, lenders must submit requests for SBA approval of the following actions:

1. An increase or decrease in the loan amount; or
2. An increase or decrease in the guaranty percentage.

B. Lenders must inform SBA of the following actions (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.

Lenders may inform SBA of these actions either by following the procedures set forth in paragraph C or D below, or the lender may make the appropriate change using E-Tran servicing. If lender makes the change using E-Tran servicing, a separate notification to the appropriate SBA center is not necessary. PLP lenders are required to notify SBA of these actions by making the changes in E-Tran servicing.

C. For SBA loans that have not been closed or fully disbursed:

1. To request a post-approval modification, Lenders must submit a written request to the LGPC that includes the name of the lender, name of the lending officer, phone number, fax number, name of the borrower, SBA Loan Number and the following information:

a) How it is now;

b) How it should be; and

c) Why – justification for the change and any supporting documentation.

2. Post-approval modifications should be sent by e-mail to 7aLoanMod@sba.gov or by fax to 916-735-1975.

D. For SBA loans that have been fully disbursed:

1. Lenders must submit SBA Form 2237 along with any supporting documentation to the appropriate CLSC. 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.

E. Standard EWCP and PLP-EWCP

1. Standard EWCP: Lender must submit the completed SBA Form 2237 along with supporting financial statements and/or other documentation to the local USEAC for processing.

2. PLP-EWCP:

a) Lenders must submit the completed SBA Form 2237 along with any supporting documentation to the appropriate CLSC.

b) By signing the SBA Form 2237, the lender certifies that the request complies with the requirements of this SOP.

II. TRANSFER OF GUARANTY BETWEEN PARTICIPATING LENDERS

A. To transfer the guaranty between participating lenders prior to final disbursement, lender must submit a written explanation to the Standard 7(a) Loan Guaranty Processing Center along with any supporting documentation. (Transfers after final disbursement must be sent to the appropriate CLSC in accordance with SOP 50 57.)

B. To transfer the guaranty on more than one loan prior to final disbursement, lender must submit a written explanation to the Standard 7(a) Loan Guaranty Processing Center along with any supporting documentation. The LGPC will forward the request to the D/FA for a decision. (Transfers after final disbursement must be sent to the appropriate CLSC in accordance with SOP 50 57.)

III. 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 V. of this Subpart.

IV. 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. SBA considers a revolving line of credit as fully disbursed at the time of first disbursement.

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. The lender may only charge the borrower interest on funds that have been disbursed out of escrow to the borrower.

3. A loan is considered to be fully disbursed and then may be sold on the secondary market when the borrower has access to the loan proceeds and is able to use them in accordance with the loan authorization.

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.

a) 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.

b) 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 VI. of this Subpart.

c) Escrow Policy for Commercial Real Estate Taxes and Insurance

1. When a lender is in a senior lien position on commercial real property financed with an SBA guaranteed loan (or if SBA is in a junior lien position and an escrow account does not exist with the senior lienholder), the borrower and lender may agree to establish an escrow account for the purpose of collecting and paying the real estate taxes, hazard insurance, and flood and earthquake insurance when applicable;

2. The amount of money collected for an escrow account may not exceed 105% of the amount charged in the current year by the taxing authority or insurance company for the total requirement to pay the annual real estate taxes and insurance;

3. The account must be FDIC insured and pay the borrower a money market rate of interest, or the rate typically paid on escrow accounts for commercial real property on non-SBA guaranteed loans, whichever is greater;

4. Except for those items covered in subparagraphs c)(2) and (3) above, the account must be consistent with accounts required of the lender's conventional borrowers and the lender must use similar procedures to administer the escrow accounts on its SBA loans as it does for its non-SBA guaranteed loans (Small Business Lending Companies (SBLCs) must be consistent with the practices followed by federally regulated financial institutions);

5. Lender must remit to the borrower all accrued interest on the account and provide statements regarding the account at least annually, unless otherwise required by state or Federal law; and

6. Upon termination of the account, the remaining funds must be returned to the borrower within 15 business days.

d) CAPLines

1. Interest only payments for any period exceeding the borrower's cash cycle, seasonal cycle, contract final payment date, or project completion date are not permitted.

2. Master Notes and Sub-Notes: Each loan will have a Master Note 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. See the paragraph immediately below for the required forms.

C. Required SBA Forms

1. With the exception of 7(a) SLA, SBA Express, Export Express and Patriot Express, and paragraph 2 below, 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 the text is identical.

2. For all 7(a) loans, whether processed under non-delegated or delegated authority, lenders have the option of using their own note and guaranty agreements rather than the SBA versions (SBA Forms 147, 148 and 148L).

a) If the lender uses its own note form, the lender must ensure that the note is legally enforceable and assignable, has a stated maturity and is not payable on demand. In addition, if the lender uses its own note form, the note must include the following language: "*When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.*"

b) If the lender uses its own guaranty form, the guaranty must include the following language: "*When SBA is the holder, the Note and this Guarantee will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Guarantee, Guarantor may not claim or assert any local or state law against SBA to deny any obligation, defeat any claims of SBA, or preempt federal law.*"

3. SBA forms and instructions can be found at www.sba.gov/for-lenders, then click on "Forms Loan Package Tool" listed under "Forms, Notices, and SOPs" towards the bottom of the page to see a listing of all forms. The required forms are:

Comment [D117]: SBA Note Form 147 and SBA Guaranty Form 148 and 148L are no longer listed as required. Lender may use their own forms.

a) Settlement Sheet, SBA Form 1050;

b) Fee Disclosure and Compensation Agreement, SBA Form 159(7a);

c) Agreement of Compliance, SBA Form 601;

d) Equal Employment Opportunity Poster, SBA Form 722;

e) Tax Return Verification, IRS Form 4506-T.

4. Settlement Sheet, SBA Form 1050

a) 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.

b) All lenders must document each disbursement on an SBA-guaranteed loan. Except under SBA Express, Export Express, SLA and Patriot Express, 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 documentation must contain sufficient detail for SBA to determine:

1. The recipient of each disbursement;
2. The date and amount of each disbursement; and
3. The purpose of each disbursement.

c) 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. If the Authorization identifies working capital as a use of proceeds and those proceeds will be used to pay normal operating expenses (e.g., payroll, utilities, etc.), then the working capital disbursement does not need to be documented.

d) The following documentation is acceptable to verify disbursement in accordance with the Authorization:

1. Joint payee checks;
2. Copies of receipts, invoices or other supporting documentation marked paid by the seller or vendor; or
3. Evidence of an electronic funds transfer to a vendor along with a copy of the invoice.

e) 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)

a) 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.

b) 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.

c) See Chapter 3, Paragraphs VIII-IX of this Subpart for further discussion of compensation of Agents.

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:

a) They received a copy of the Authorization;

b) 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.

c) No 50% or more owner of the borrower or OC is more than 60 days delinquent on any obligation to pay child support;

d) 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;

e) 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.

f) They will reimburse lender for expenses incurred in the making and administration of the loan;

g) 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.

h) They will post SBA Form 722, Equal Opportunity Poster, where it is clearly visible to employees, applicants for employment and the general public;

i) To the extent practicable, they will purchase only American-made equipment and products with the proceeds of the loan;

j) They will pay all federal, state and local taxes, including income, payroll, real estate and sales taxes of the business when they come due; and

k) That any credit card debt being refinanced was incurred exclusively for business purposes.

2. Borrower and OC must certify that they will not, without the lender's prior written consent:

a) Make any distribution of company assets that will adversely affect the financial condition of Borrower and/or OC;

b) Change the ownership structure or interests in the business during the term of the loan; or

c) 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.

3. Additional certifications from Borrower and Operating Company

The Authorization provides for additional certifications from Borrower and Operating Company regarding:

a) Limitations on acquiring additional fixed assets;

b) Limitations on acquiring additional business location(s);

c) Salary limitations; and

d) Occupancy requirements.

4. 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.

5. 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, Export Express, Patriot Express, and Small Loan Advantage

1. For SBA Express, Export Express, Patriot Express and Small Loan Advantage 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. In addition, for SLA loans over $250,000 that

are collateralized by commercial real estate, the lender must comply with the appraisal policy set forth in Chapter 4, Paragraph II.C. of this Subpart.

3. Before disbursing an SBA Express, Export Express, Patriot Express or Small Loan Advantage loan, the lender must:

a) Use IRS tax transcripts to verify financial information used to support the loan credit analysis. SLA loans require verification of financial information **prior** to submission of the application.

Comment [D118]: Language added to clarify review timing of financial information verification.

b) Obtain evidence of no un-remedied 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.

c) Obtain required hazard insurance on all assets taken as collateral, as set forth in Chapter 5, Paragraph II of this Subpart.

d) Make the required flood hazard determination and require flood insurance (when collateral is taken) pursuant to the flood insurance requirements in Chapter 5, Paragraph II of this Subpart.

e) 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 VI of this Subpart.

f) Obtain the borrower's agreement that it will, to the extent feasible, purchase only American-made equipment and products with the proceeds of the loan. This certification is included on the SBA Form 1919.

g) 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.

h) 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.

i) Require appropriate environmental reviews and compliance. For loans under SBA Express, Export Express, Patriot Express and Small Loan Advantage, lenders must follow the environmental requirements in Chapter 4 of this Subpart. For loans under SBA Express, Export Express, Patriot Express and Small Loan Advantage, lenders may not request a loan number for a loan that will be secured by 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, Export Express, Patriot Express or Small Loan Advantage loan but should retain all documents in the loan file.

5. Access to Funds: SBA Express, Export Express, Patriot Express and Small Loan Advantage 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. Use of a credit or debit card to access the loan funds is acceptable under SBA Express, Export Express, Patriot Express, and Small Loan Advantage. 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 or debit 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 the transaction is payable in a foreign currency SBA may require the borrower to mitigate the currency risk through hedging (purchasing of a forward contract, forward option, or similar mechanism). When advancing against a transaction payable in a foreign currency, Lender must use an established foreign exchange rate and must retain documentation showing the exchange rate used and the Lender's calculation of the amount of the advance.

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%. The SBA Approving Official may approve a maximum advance rate up to 90% when the lender submits written justification that meets one of the following conditions:

a) The receivables are from financially sound corporations or multinational companies located in countries with minimal political risk;

b) The receivables are from highly-rated government entities in countries with minimal political risk; or

c) The exporter can provide favorable ledger experience with specific accounts over a significant period of time (e.g., three years).

If the lender is a PLP-EWCP lender, the lender may advance up to 90 % and must document its loan file with the analysis and justification to allow the higher advance rate.

5. Accounts Receivable:

a) Terms of Sale: Payment terms must be in compliance with the loan authorization. The Ex-Im Bank Country Limitation Schedule should be reviewed for prohibited countries (such countries are identified by Note # 7 on the Schedule), and accounts receivable supported by Ex-Im Bank Export Credit Insurance shall not exceed 180 days from the invoice date. Accounts receivable supported by acceptable letters of credit shall not exceed 364 days, and the loan must mature after the expiration date of any standby letter of credit, unless approved in writing by SBA. In addition, payment terms must be in line with prudent lending practices. Typical terms of sale include but are not limited to:

1. Confirmed irrevocable letter(s) of credit (SBA or the PLP-EWCP lender may require for some or all of the borrower's export-related accounts);
2. Irrevocable letter(s) of credit (SBA or the PLP-EWCP lender may require for some or all of the borrower's export-related accounts);
3. Open account insured through Ex-Im Bank export credit insurance for comprehensive commercial and political risk (SBA or the PLP-EWCP lender may determine that export credit insurance is required to enhance the quality of export-related accounts receivable. If export credit insurance is obtained, the Lender must be named as Loss Payee on the export credit insurance policy.);
4. Open account insured through non-Ex-Im Bank export credit insurance for comprehensive commercial and political risk (SBA or the PLP-EWCP lender may determine that export credit insurance is required to enhance the quality of export-related accounts receivable. If export credit insurance is obtained, the Lender must be named as Loss Payee on the export credit insurance policy.);
5. Cash payment received prior to shipment;
6. Open account uninsured, with SBA's prior written consent; and
7. Sight draft documents against payment, with SBA's prior written consent.

b) Jurisdiction and Currency of Accounts Receivable: Receivables held as collateral should be payable to the borrower in the United States and in United States dollars. Accounts Receivable due and payable in Non-U.S. currency may be allowed on a case-by-case basis with SBA's prior written consent. Depending on the stability of the currency in question, SBA may require that the borrower mitigate the risk through hedging (purchasing of a forward currency contract, forward option, or similar mechanism) as a condition of such approval. When advancing against a transaction payable in a foreign currency, Lender must use an established foreign exchange rate and must retain documentation showing the exchange rate used and the Lender's calculation of the amount of the advance.

c) Control Accounts:

1. For the "single transaction-specific" and "transaction based-revolving line of credit" EWCP loans, lenders will be required to set up a control account to capture the proceeds of foreign receivables as they are paid by the foreign buyers. The proceeds are required to be applied against the loan balance, either in their entirety or as a percentage of the proceeds in a sufficient amount to pay off the initial advance for that specific transaction.

2. For asset based loans, lenders normally must have 100% of the export accounts receivable proceeds applied against the loan balance and have the borrower request additional advances as needed. Another available option is to allow for the borrower to maintain a balance within the Borrowing Base limits and to retain export accounts receivable proceeds (not apply to the loan balance upon collection). The borrower must submit an aging of receivables and listing of inventory and Borrowing Base Certificate no less than monthly. The lender will review the Borrowing Base to assure the borrower is not over-advanced according to the available collateral detailed on the Borrowing Base Certificate. If the borrower is over-advanced per the Borrowing Base, the lender will require the borrower to immediately make a payment to reduce the loan balance to be in compliance. For a company with an asset based loan to be allowed to retain the accounts receivable proceeds, the company must meet the following requirements:

(a) Be in business for at least 2 years (no start-ups); and

(b) Have financial records satisfactory to SBA and the ability to provide a current aging of accounts receivable and a listing of inventory to determine the allowable loan balance per the borrowing base.

3. Restrictions: Unless the lender receives SBA's prior written consent, any of the following types of accounts receivable are not eligible for inclusion in an asset based loan borrowing base:

(a) An account receivable that does not arise from the sale of items in the ordinary course of the borrower's business;

(b) An account receivable from a domestic (U.S.) company, unless the transaction has been approved by SBA as an indirect export;

(c) An account receivable for which an invoice has not been sent;

(d) An account receivable that is due and payable from a foreign buyer located in a country with which SBA is legally prohibited from doing business as set forth in the current Ex-Im Bank Country Limitation Schedule (such countries are identified by Note # 7 on the Schedule). (If the borrower has knowledge that an export to a country in which SBA may do business, as set forth in the Ex-Im Bank Country Limitation Schedule, will be re-exported to a country with which SBA is legally prohibited from doing business, the corresponding

receivables are not eligible for inclusion in the export-related borrowing base.);

(e) An account receivable that, by its original terms, is due and payable more than 180 calendar days from the date of the invoice, except those accounts receivable supported by acceptable letters of credit;

(f) An account receivable that is still outstanding more than 60 calendar days from its original due date;

Comment [D119]: Language deleted "unless insured through Ex-Im Bank (or other acceptable) export credit insurance for comprehensive commercial and political risk, in which case 120 calendar days will apply;"

(g) An account receivable that the Lender deems uncollectible or unacceptable; this category includes, but it not limited to, finance charges or late charges imposed on the foreign buyer by the borrower as a result of the foreign buyer's past due status;

(h) An account receivable that does not comply with the terms of sale as set forth in the loan authorization;

(i) An account receivable that arises from a bill-and-hold, guarantee sale, sale-and-return, sale on approval, consignment, or any other repurchase or return basis or is evidenced by chattel paper;

(j) An account receivable that is subject to any offset, deduction, defense, dispute, or counterclaim, or the buyer is also a creditor or supplier of the borrower or the account receivable is contingent in any respect or for any reason;

(k) An account receivable for which any of the items giving rise to such account receivable have been returned, rejected or repossessed;

(l) An account receivable due from an affiliated company; and

Comment [D120]: Language added for a/r from affiliate.

(m) When 50% or more of the total accounts receivable for a specific buyer are over 60 calendar days past the original due date, then the total accounts receivable for that buyer are excluded.

4. In addition, the lender shall apply the same policies in reference to receivables eligible to be included in the borrowing base as the lender applies to its own similar asset based loans which are not guaranteed by SBA or any other government entity.

5. The lender may verify that no ineligible accounts receivable (as described above) are included in the borrowing base by obtaining a borrower certification to this extent at the bottom of the Borrowing Base Certificate or on a separate certification form.

6. Inventory

a) General Guidelines

1. Export-related inventory taken as collateral must be located within the United States, until shipped to the foreign buyer.

2. Export-related inventory must be valued at the lower of actual cost or market value (including cost of work-in-process inventory) as determined in accordance with Generally Accepted Accounting Principles (GAAP).

3. Export-related inventory may include raw materials, work-in-process, and finished goods.

4. Advance rates against eligible export-related inventory may vary depending on inventory quality.

b) Restrictions: Unless the lender receives SBA's prior written consent, any of the following types of export-related inventory are not eligible for inclusion in the export-related borrowing base:

1. Inventory that is not subject to a valid, perfected, and enforceable first priority lien in favor of the lender;

2. Inventory located at an address that has not been disclosed to the lender in writing;

3. Inventory that is not located in the United States, unless being shipped to the foreign buyer;

4. Inventory that is placed by the borrower on consignment or held by the borrower on consignment;

5. Inventory that is demonstration inventory;

6. Inventory that consists of proprietary software (i.e., software designed solely for the borrower's internal use and not intended for resale);

7. Inventory that is damaged, obsolete, returned, defective, recalled or unfit for further processing;

8. Inventory that is to be incorporated into items destined for shipment to a country with which SBA is legally prohibited from doing business as designated in the current Ex-Im Bank Country Limitation Schedule (such countries are identified by Note # 7 on the Schedule), or that the borrower has knowledge will be re-exported by a foreign buyer to a country in which SBA is legally prohibited from doing business; and

9. Inventory that is to be incorporated into items whose sale would result in an account receivable that would not be an eligible export-related account receivable.

c) In addition, lender shall apply the same policies in reference to inventory eligible to be included in the borrowing base as the lender applies to its own similar asset based loans which are not guaranteed by SBA or any other government entity.

d) The lender may verify that no ineligible inventory (as described above) is included in the borrowing base by obtaining a borrower certification to this extent at the bottom of the Borrowing Base Certificate or on a separate certification form.

H. <u>CAPLines</u>

1. Seasonal CAPLines

a) Disbursement and Repayment:

1. 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 30 day clean up period or maturity.

2. 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.

b) Borrowing Base Certificate:

Lender may use Borrowing Base Certificates to monitor the borrower's seasonal activity. If the lender does so, the Borrowing Base Certificates must be submitted by the borrower to the lender no less frequently than monthly.

2. Contract CAPLines

a) Assignment of Contract Proceeds:

1. Subject to the exception noted in (2) below, 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.

2. Exception to the Assignment of Contract Proceeds: An assignment of the contract proceeds may be foregone, if at least two of the following conditions are met:

(a) The term of the contract being financed is 12 months or less;

(b) A successful track record between the borrower and the contracting authority exists relative to the same or reasonably similar contracts. (The definition of a "successful track record" includes but is not limited to, any prior contractual arrangement between the subject parties, where the responsibilities of each party under the contract were met to the satisfaction of all parties to the contract.);

(c) Financial analysis of historical income statements and/or tax returns and pro-forma financial statements show that the applicant has a Debt Service Coverage ratio that exceeds 1:1;

(d) All contract proceeds are paid directly to the lender by the contracting authority or, in the instance where a performance bond is in place, a Funds Control (or escrow or third party servicer) procedure is implemented; or

(e) There is other available and worthwhile collateral pledged to secure the line by either the borrower or any owner/guarantor.

b) Prime and Subcontractor Contracts:

Subject to 2.a) above, a contract between a Prime and Subcontractor is eligible to be financed with a Contract CAPLine, if at least two of the following conditions are met:

1. Both the Prime and the Subcontractor have favorable credit ratings based on an acceptable rating agency (e.g., Builders Industry Credit Association "BICA");
2. There is a successful track record between the Prime contractor and the Subcontractor (borrower);
3. There is a successful track record between the Prime contractor and the contracting authority;
4. The Contract CAPLine amount is less than $300,000;
5. The term of the contract is 12 months or less;
6. The financial analysis of historical income statements and/or tax returns and pro-forma financial statements show that the applicant has a Debt Service Coverage ratio that exceeds 1:1; or
7. There is other available and worthwhile collateral pledged by either the borrower or any owner/guarantor.

c) Contracts with Performance Bonds:
Subject to 2.a) above, a contract requiring a Surety's performance bond may be eligible for a Contract CAPLine provided the lender perfects a UCC security interest in the contract proceeds.

SBA recognizes the following conditions may be necessary to effectuate the transaction where a contract requires a Surety's performance bond:

1. The lender's perfected UCC security interest in the contract proceeds will be subordinate to the cost reimbursement claim of the Surety; and
2. The Surety may require that a funds control facility be executed. The funds control facility would disburse directly to suppliers and laborers. The contracting authority will remit contract proceeds directly to the funds control facility, which will remit payment to the lender.

d) Purchase Orders under a Master Agreement:
Purchase Orders (PO) may be substituted for a formal contract, provided the following conditions exist:

1. The PO is issued to the borrower under a Master Agreement; and
2. The combination of the PO and the Master Agreement constitute a binding agreement.

e) Disbursements are made, when needed, to pay for the costs on a specific contract. Disbursements will generally be made as the contract progresses, not with one lump sum disbursement to cover all 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.

f) With the assignment of contract proceeds and direct payment in place, the lender receives all the payments the borrower would normally receive if it was internally

financing the contract as performance progresses. Because all performance costs (including direct overhead and allocated general/administrative expenses) were funded under the CAPLine, all such payments received by the lender must be applied first to interest due on the CAPLine, with the remainder applied to the CAPLine balance until the balance is paid in full.

g) If deemed necessary from a credit standpoint by the lender, the lender may invoke additional controls over the payments, provided the lender obtains the borrower's prior written consent. If such additional controls include the funding of direct material and labor only, as opposed to all contract costs, then the lender must inform the borrower in writing of the percentage split arrangement regarding the allocation of progress payments received from the contracting authority.

3. Builder's CAPLines

a) 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% 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.

b) Prior to final disbursement of construction funds, final lien waivers must be obtained from borrower/contractor and all subcontractors, material men, and any independent workers involved in the construction. No disbursement can be made after maturity of the master note.

c) 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. Working Capital CAPLines

a) For Working Capital CAPLines, lenders have the option of disbursing the line proceeds based on a borrowing base certificate, or 1:1 collateral ratio.

Comment [D121]: Language added to include option for fully collateralized CapLine.

1. If a lender will not use a borrowing base certificate to determine the availability of funds for disbursement, the lender must:

(a) Use a combination of factors for the underwriting and credit decision consistent with its similarly sized, non-SBA guaranteed commercial lines of credit, including at a minimum;

i. Cash flow analysis to determine the adequacy, duration and dependability of cash flow;

ii. Collateral analysis to establish an estimated value of collateral; and

iii. Owner/Guarantor analysis;

(b) Assume full utilization of the revolving line of credit and secure the line with sufficient collateral to ensure there is a 1:1 collateral ratio. Lender must obtain a first lien position on the working/trading

assets (accounts receivable and inventory) financed with the line. If the working/trading assets are insufficient to provide a 1:1 collateral ratio, the lender also must take additional collateral to ensure there is a 1:1 collateral ratio. If business assets do not fully secure the line, the lender must take available personal equity in personal real estate of the principals as collateral to ensure there is a 1:1 collateral ratio;

i. To determine if there is a 1:1 collateral ratio, discount the available collateral based upon the Net Book Value presented on the borrower's financial statements. The total line amount should be supported with accounts receivable at a maximum of 80% (after discounting a percentage for any ineligible receivables identified by reviewing the accounts receivable aging) and inventory no greater than 50%. Machinery and equipment may be valued at 50% of Net Book Value or 80% with an Orderly Liquidation Value minus any prior liens. Real estate can be supported at 85% of the value and the value must be determined in accordance with the requirements set forth in Chapter 4, Paragraph II.C of this Subpart;

ii. If the line will be secured by fixed assets and the valuation of fixed assets is greater than their depreciated value (net book value), an independent appraisal by a qualified individual must be obtained by the lender to support the higher valuation. (See Chapter 4, Paragraph II.C.3 of this Subpart.);

(c) Obtain borrower prepared financial statements and tax returns if the CAPLine amount is $1,000,000 or less and compiled, reviewed or audited financial statements and tax returns if the CAPLine amount is over $1,000,000, consistent with lender's policies governing its similarly sized, non-SBA guaranteed commercial lines of credit;

(d) Use financial covenants consistent with those used on lender's similarly sized, non-SBA guaranteed commercial lines of credit. These balance sheet covenants such as a Current Ratio or Debt to Tangible Net Worth ratio should be tested quarterly, semi-annually or annually, consistent with lender's policies governing its similarly sized, non-SBA guaranteed commercial lines of credit; and

(e) Monitor the lines consistent with the lender's policies and procedures for its similarly sized, non-SBA guaranteed commercial lines of credit and, at a minimum, conduct a credit review including cash flow analysis, collateral analysis to ensure there is a 1:1 collateral ratio, owner/guarantor credit review and site visit on an annual basis.

(f) Proceeds from cash sales and receivable collections must pay down the line as collected consistent with borrowers operating cash cycle.

Comment [D122]: Language added to reference repayment based on operating cash cycle

(g) Lenders must report the initial disbursement on SBA Form 1050 in accordance with paragraph C.4. above.

2. If the lender will use a Borrowing Base Certificate to determine the availability of funds for disbursement the lender must adhere to the following:

(a) Loan proceeds may be disbursed to the borrower's operating account. To calculate the maximum amount available for disbursement, use the following formula:

i. Eligible A/R $_____

ii. Times advance rate %_____

iii. Equals A/R Borrowing Base $_____

iv. Eligible inventory $_____

v. Times advance rate %_____

vi. Equals inventory Borrowing Base $_____

vii. Total (iii plus vi) $_____

viii. Face amount of Note $_____

ix. Borrowing base (Lesser of vii or viii) $_____

x. Loan balance on books $_____

xi. Amount available for disbursement (ix minus x) $_____

(b) On a monthly basis, lender should determine the amount of eligible assets for the borrowing base.

i. 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% 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. If the re-billing occurs on the same day in order to correct a clerical error, the accounts do not have to be excluded.)

(iv)Foreign receivables not backed by documentary 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.

ii. When advancing against inventory, a lender should:

(a) Obtain a description of inventory and its value; and

(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.

iii. The dollar amount of ineligible receivables and inventory will remain unchanged for the entire month. The actual borrowing availability may increase or decrease as the balance on the line changes and the receivables and inventory are generated or converted back to cash.

iv. A Borrowing Base Certificate (BBC) is required at least monthly to determine the amount that can be disbursed. Lender may require a BBC more frequently consistent with its policy and procedures on similarly-sized non-SBA guaranteed commercial lines of credit. Lenders may use their own forms for the BBC or SBA Forms BBC-1 and BBC-2, which are included in Appendix 7.

(c) Repayments will come from cash sales and receivable collections. Proceeds must pay down the line as collected with availability to re-advance as long as the borrower is conforming to the maximum amount of the borrowing base certificate.

(d) If a cash collateral account is being used and 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. There is no provision for interest only payments. Interest must be paid at least monthly either from borrower's own resources OR from loan proceeds at the time of an advance. Principal payments should be tied to the borrower's cash cycle.

(e) Lenders must report the initial disbursement on SBA Form 1050 in accordance with paragraph C.4. above.

(f) Advance Rate for Accounts Receivable

i. The maximum advance rate cannot exceed 80% of the eligible receivables. The maximum advance rate may go up to 90% of the eligible receivables if the receivable is a prime Federal contract and the lender has obtained an assignment of the contract proceeds under the Assignment of Claims Act of 1940 (the Act), 31 USC 3727, or the borrower is a subcontractor and the prime contractor has obtained an assignment under the Act and the contract proceeds will be disbursed by a third party funds

control facility or the foreign accounts receivable are insured by the Export-Import Bank or a major private insurer. Additional exceptions may be permitted if the lender obtains SBA's prior written concurrence. The advance rate should not include any net profit. Factors that should be taken into consideration when determining the maximum advance rate are:

Comment [D123]: Language added to reference insured by Ex IM Bank.

(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; and

(g) Net profit margin.

ii. After initial disbursement, lenders have unilateral authority to increase or decrease the advance rate for receivables by as much as 5% above or below the rate stated in the Authorization. Increases or decreases in the advance rate above 5% require SBA's prior written concurrence.

(g) Inventory Advance Rate

i. The maximum advance rate cannot exceed 50% 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).

ii. After initial disbursement, lenders have unilateral authority to increase or decrease the advance rate for inventory by as much as 5% 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) Examinations

If the Working Capital CAPLine is over $1,000,000, lender must conduct an annual field examination. The field examination may be conducted by the lender's staff or a third party. An examination is a physical verification of the assets which compose the borrowing base. Examinations must include a sampling of the assets (receivables and inventory) included in the borrowing base. The frequency of the examinations may be determined by the lender based upon the quality of the records, risk profile of the borrower and

seasonality of the line. At a minimum, an examination must be conducted prior to the initial disbursement and annually thereafter. The lender must describe the level and frequency of examinations in the credit memorandum for the line.

(i) Monitoring

i. The minimum monitoring requirements for Working Capital CAPLines are as follows:

(a) Monthly - Borrowing base certificate; Aging of accounts receivable/payable; and Inventory listing (if advanced against);

(b) Quarterly – Borrower prepared financial statements; and

(c) Annually –

(i) If the Working Capital CAPLine is $1,000,000 or less, credit review including cash flow analysis, concentration analysis, collateral analysis, owner/guarantor credit review and annual site visit. Accounts from any one customer that constitute more than 20% of the total outstanding receivables should not be included in the eligible borrowing base unless the account is a high rated public company, a Federal government account, the customer has a long-standing positive credit history with the borrower. The customer is a prime contractor performing on a Federal government contract, or the accounts are insured through credit insurance (common for foreign accounts receivable). If the account meets one of those five conditions, the lender does not need to obtain SBA's prior written concurrence to include the account above the 20% in the eligible borrowing base, but must include a written justification in the loan file. If, however, the account does not meet one of the five conditions, then the lender must obtain SBA's prior written consent in order to include the account in the eligible borrowing base. Such requests must be sent to the LGPC.

Comment [D124]: Language added to reference insured a/r.

(ii) If the Working Capital CAPLine is over $1,000,000, credit review including cash flow analysis, concentration analysis, collateral analysis, owner/guarantor credit review and annual field examination. Accounts from any one customer that constitute more than 20% of the total outstanding receivables should not be included in the eligible borrowing base unless the account is a high rated public company, a Federal government account, the customer has a long-standing positive credit history with the borrower, the customer is a prime contractor performing on a Federal government contract, or the accounts are insured through credit insurance (common for foreign accounts receivable). If the account meets one of those five conditions, the lender does not need to obtain SBA's prior written concurrence to include the account above the 20% in the eligible borrowing base, but must include a written justification in the loan file. If, however, the account does

not meet one of the five conditions, then the lender must obtain SBA's prior written consent in order to include the account in the eligible borrowing base. Such requests must be sent to the LGPC.

b) Level of Funds Control

The level of funds control for a Working Capital CAPLine, whether a borrowing base certificate is used or not, is determined by the banking relationship the lender has with the borrower.

1. If the lender has the borrower's deposit accounts, the lender is not required to utilize cash collateral accounts or other types of controlled accounts, but must follow its established procedures for its similarly-sized, non-SBA guaranteed commercial lines of credit to monitor payments received.

2. If the lender does not have the borrower's deposit accounts, then the lender must utilize some form of controlled account as follows:

   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; or

   ii. Lock box (bank account under lender control where borrower's customers remit payments for accounts receivable).

c) For Working Capital CAPLines, final disbursement must occur far enough in advance of maturity so that a sufficient amount of time is available for the assets financed 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. However, if maturity coincides with the scheduled annual review of the line, including an annual review conducted by lender coincidental with the maturity of the line, lender may advance on the line up to maturity in conjunction with the lender's annual review in accordance with lender's policies and procedures on its similarly-sized non-SBA guaranteed commercial lines of credit. No advances can be made after maturity. When a balance exists on a CAPLine at maturity, the lender should consider the following:

Comment [D125]: Language added to address treatment of advances when annual review and maturities conincide.

1. Enforce final collection;

2. Renew the line without SBA's guaranty;

3. Renew the line, requesting SBA's guaranty (new application required if maturity has reached 10 years);

4. 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

5. Commence liquidation of supporting collateral.

CHAPTER 8: POST-DISBURSEMENT, SECONDARY MARKET, SECURITIZATION AND LENDER REPORTING (SBA FORM 1502)

I. POST-DISBURSEMENT CHANGES

Lenders may request changes on disbursed loans by contacting the appropriate CLSC. The CLSC contact information can be found at www.sba.gov/for-lenders, then click on the appropriate CLSC found under "Find a SBA Resource."The CLSCs have a loan servicing guide on SBA's web page at:

http://www.sba.gov/aboutsba/sbaprograms/elending/clc/servicing/index.html

A. SBA Form 2237 for routine servicing request submissions is found at: http://www.sba.gov/sites/default/files/sba_form_2237_0.pdf.

B. Guidance on loan servicing is also outlined in SOP 50-57.

C. 13 CFR §120 Subpart E outlines requirements under SBA loan administration.

II. 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: www.sba.gov/for-lenders, then go to the section on the Secondary Market towards the bottom of the page.

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 50-57 provides additional information and can be accessed at http://www.sba.gov/sites/default/files/SOP_50_57-7(a)_Loan_Servicing_and_Liquidation_FINAL.pdf.

D. SBA Express and Pilot Loan Program loans may be sold on the secondary market. For variable rate loans, the base rate must be one of the base rates allowed by 13 CFR §120.214(c). A revolving line of credit loan cannot be sold on the Secondary Market, unless it has been termed out.

E. Loans sold on the secondary market must either use 30/360 or Actual/365 as an interest accrual method.

III. 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.

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.

IV. 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. International trade lenders that participate in the EWCP must ensure that this reporting function is addressed within their own operation. EWCP lenders should determine how this reporting is carried out by any domestic affiliate group(s), to the extent these affiliates participate in other SBA programs, and to combine loan portfolio reporting into one source point where possible.

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 transmitting loan account updates 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: diskette, e-mail, and FTA's web site interface. Each method is described below followed by a mailing address and wire instructions:

Comment [D126]: Deleted fax/mail delivery options.

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. 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.

4. Diskette

FTA may receive the Form 1502 on a diskette sent via U.S. Mail or Express Deliver Service to:

Express Mail Address:	Regular Mail Address:
Colson Services Corp.	Colson Services Corp.
2 Hanson Place, 7th Floor,	P. O. Box 54, Bowling Green Station
Brooklyn, NY 11217	New York, NY 10274
Attn.: Cash Processing	Attn.: Cash Processing

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.

a) 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 cannot be processed. This field is MANDATORY.

b) 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.

c) Next Installment Due Date: The date the borrower is scheduled to make its next payment. If the loan is:

1. Fully Undisbursed (status 9) - leave blank.
2. Current – report the due date of the next scheduled payment;
3. Past Due – report the due date of the first missed scheduled payment;
4. Deferred (status 4) – report the date the borrower is scheduled to resume making payments;
5. In Liquidation (status 5) - leave blank;
6. Paid-in-Full (status 6) - leave blank;
7. Reserved (status 7) - leave blank;
8. Purchased by SBA (status 8) - leave blank;
9. Purchased by Lender from Secondary Market; or

Comment [D127]: Language added for purchase by Lender.

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.

d) Status: If the loan is:

1. 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;

2. 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;

3. 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;

4. 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;

5. 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;

6. Paid in Full - if a loan is paid in full, report the loan as Status Code 6, with a final Guaranteed Portion Principal amount, 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 as stated above;

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. 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;

7. 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

8. 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. Do not restore any balance to the Undisbursed Amount once loan disbursements have begun.

Comment [D128]: Language added to prevent modification after disbursements begin.

9. 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

e) 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

f) Interest Rate:

1. 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%

2. 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%

3. No Payment Received - if no interest payment was received, leave blank.

g) Guaranteed Portion Interest:

1. 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

2. Unsold Loans - the borrower's interest payment received multiplied by the guaranty percentage. Common reporting errors:

(a) the SBA fee amount or guaranteed portion balance is reported in this column;

(b) interest on 100% of the loan is reported

Example: Interest payment on total loan

= $1,000.00 x 80% guaranty = $800.00

3. No Payment Received - if no interest payment was received, leave blank.

h) Guaranteed Portion Principal:

1. 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

2. Unsold Loans - same as for sold loans.

Example: Principal payment on total loan

= $200.00 x 80% guaranty = $160.00

3. 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.

i) 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.

1. 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

2. Unsold Loans (subject to SBA ongoing guaranty fee) - SBA’s ongoing guaranty fee is remitted every month the borrower makes an interest payment.

3. For term loans, SBA's ongoing guaranty fee calculation is:

[Guaranteed Portion Opening Balance] x [ongoing fee] ÷ [Calendar Basis] x [# of Days]

Example: Total Loan Amount is $100,000

Guaranty Percentage is 80%

Ongoing Guaranty Fee is 50 basis points

Accrual Method = 360/360

$100,000.00 x 80% guaranty = $80,000.00

$80,000.00 x .005 ÷ 360 x 30 days = $33.33

Total to FTA = $33.33

4. For revolving loans or term loans with multiple disbursements, SBA's ongoing guaranty fee calculation is:

[Guaranteed Interest Amount] x [ongoing fee] ÷ [the Note Rate]

Example: Guaranteed Interest Amount = $800.00

$800.00 x .005 ÷ 10.00% = $40.00

Total to FTA = $40.00

5. 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.

j) Interest Period From: The date from which the reported interest started or accrued from. Leave blank if no interest payment is reported.

k) 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 x .12 ÷ 360 x 30 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.

l) # 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)

m) 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.

n) Guaranteed Portion Closing Balance: The balance remaining after applying the borrower's most recent principal payment multiplied by the guaranty percentage.

1. Sold Loans - the guaranteed principal balance outstanding after the application of the reported guaranteed portion principal payment.
2. 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)

3. No Payment Received - if no payment was received from the borrower, indicate the guaranteed principal balance as of the last payment received.

o) Remittance Penalty: Penalty amount if the lender does not forward secondary market payments according to the terms in SBA Form 1086.

p) Total (Total to FTA column): The sum of each of the dollar values in the Total to FTA column.

q) Total (Penalty column): The sum of each of the dollar values in the Remittance Penalty column.

r) 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.

s) 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

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.

When the policy set forth in this Subpart does not adequately address the unique circumstances regarding a particular matter, an exception to policy may be approved by the D/FA. The D/FA may not approve an exception to policy if such exception would be inconsistent with a statute or regulation. A request for an exception to policy must be submitted to the SLPC. The SLPC will analyze the request and make a recommendation to the D/FA, or individual acting in that capacity, who will make the final decision. The decision must be documented in the appropriate Agency loan file. This procedure may only be used in situations where a minor deviation from standard policy is necessary for the specific situation. Exceptions to policy will be considered on a case-by-case basis and the decision will only apply to the specific request.

CHAPTER 1: GENERAL PROVISIONS

I. 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. 13 CFR §120.800

II. CREDIT STANDARDS

A. Certified Development Companies (CDCs) must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. On 504 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.

B. The CDC's analysis must include:

1. 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.

2. 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.

3. A ratio analysis of the financial statements including comments on any trends and a comparison with industry averages.

4. A discussion of the owners' and managers' relevant experience in the type of business, as well as their personal credit histories.

5. 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.)

6. 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. Credit reports are only required for the small business concern applying for the loan and its owners and affiliates who are guarantors. Credit reports are not required on non-guarantor affiliates.

Comment [D129]: Language added to reference from whom credit reports are required.

7. Other relevant information (for example, if the application involves a franchise, the success of the franchise).

III. DEFINITIONS

The following terms have the same meaning wherever they are used in this subpart. Defined terms are capitalized wherever they appear. 13 CFR §120.802 Also refer to 13 CFR §120.10 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% 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, or contracted, 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 it 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 program, debentures, and loan authorizations, as such requirements are issued and revised by SBA from time to time. 13 CFR §120.10

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** is the portion of Debenture proceeds that finance eligible Project costs (excluding administrative costs).

P. **New Business** is a business that is 2 years old or less at the time the loan is approved. A business that is more than 2 years old at the time the loan is approved may be considered a New Business if it is a change of ownership that will result in new, unproven ownership/management and increased debt unrelated to business operations. If there is a change of ownership, the CDC must review the management and level of debt and make a determination whether an additional borrower's contribution of 5% is necessary.

Q. **Priority CDC** is a CDC certified to participate on a permanent basis in the program (see 13 CFR §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.

IV. HOW A 504 PROJECT IS FINANCED

Typical 504 Structures			
	Standard Financing Structure	New Business OR Limited or Special	Both New AND Limited or Special

		Purpose Property	Purpose Property
Third Party Lender	50	50	50
CDC/SBA	40	35	30
Borrower	10	15	20

A 504 project has three main partners and generally: a Third Party Lender provides 50% or more of the financing; a Certified Development Company (CDC) provides up to 40% of the financing through a 504 debenture (guaranteed 100% by SBA); and an applicant (borrower) injects at least 10% of the financing. 13 CFR §120.801 and 13 CFR §120.900 No more than 50% of eligible Project costs can be from Federal sources. 13 CFR §120.930(a)

Please see Chapter 7 of this Subpart for a discussion of the maximum debenture amount.

A. Third Party Loan 13 CFR §120.920

1. The Third Party Lender must be in place at the time of application and must be evidenced by a letter of intent/term sheet or commitment letter included in the application package outlining the terms and conditions of the Interim and/or Third Party Loan to enable SBA to evaluate the 504 application.

Comment [D130]: Language added to include type of documentation required.

2. The terms of the Third Party Loan are defined in 13 CFR §120.921.

3. The Third Party Loan may be closed and begin amortizing prior to the debenture funding as long as the Third Party Lender obtains the borrower's written consent.

4. The Third Party Lender's note and loan documents must not have any cross-default, "deem-at-risk," or any other provisions which allow the Third Party Lender to make demand prior to maturity unless the loan is in default.

5. The Third Party Lender must not establish a preference beyond its rights as a senior lender on the Third Party Loan without the prior written consent of the CDC/SBA. If SBA has knowledge (through a letter of intent/notice or commitment letter from the Interim and or Third Party Lender presented with the application package) of a requirement by the Third Party Lender for collateral in addition to the Project Property, SBA's issuance of an Authorization will be considered to be prior written consent for the preference. SBA may or may not choose to take a subordinate position on the additional collateral based upon the factors listed in Chapter 3. If the Third Party Lender does take additional collateral or otherwise have a preference, in the case of liquidation, any proceeds received as a result of a preference must be applied to the Third Party Lender's debt prior to the proceeds from liquidation of common collateral held by the CDC/SBA and the Third Party Lender. If the additional collateral or other preference no longer exists at the time of liquidation or has insufficient value to justify the cost of collection, then the Third Party Lender is not required to liquidate such collateral or other preference provided the Third Party Lender notified CDC/SBA and obtained CDC/SBA's written consent. (13 CFR §120.925)

6. Interest Rate Swap Contracts

a) An interest rate swap is a contract between two parties where one party pays a fee in exchange for an agreement by the other party to pay any interest in excess of an established amount. The contract may last for all or part of the term of the loan. The swap contract only relates to the payment of interest.

Example: A borrower has a prime plus 2% interest rate on a Third Party Loan variable rate loan (presently 5.25%). The borrower could purchase an interest rate swap contract that would set the interest rate at 7%. When the Note rate is lower than the rate paid by the borrower on the swap contract (7%), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 7%. When the Note rate is higher than the rate paid by the borrower on the swap contract, the borrower would continue to pay the fixed rate of 7% and the swap seller would pay the difference above 7% to the lender. The ability to stabilize the amount of the loan payment each month is the benefit to the borrower of an interest rate swap contract.

b) Third Party Loans may use swap contracts. In order to use an interest rate swap on a Third Party Loan, the interest rate swap contract must meet the following conditions:

1. The interest rate swap contract is an agreement between the small business borrower and the lender or, if the swap seller is not the lender, a third party. SBA is not a party to the interest rate swap contract.
2. SBA will not review swap contracts for borrowers or provide guidance on their use. While swap contracts should not have a significant impact on the cost of the loan, SBA will not publish any guidelines on the cost of these contracts.
3. Swap contracts may be used on new or existing Third Party Loans.
4. The swap contract does not have to last for the entire length of the Third Party Loan.
5. SBA does not have a standard form for an interest rate swap contract.
6. Any fees owed the swap counterparty as a result of the default by the borrower will be subordinated to the SBA 504 loan.

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. 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 for details.

3. If the Third Party Lender provides the interim loan, it may do so using:

a) An interim note 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.

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
Total Project Costs		**900,000**
Permanent Financing Structure:		
First Mortgage Lender	50%	450,000
504 Net Proceeds	40%	360,000
Borrower Equity	10%	90,000
Total Financing	**100%**	**$900,000**

In this example the interim loan would be $810,000. It must 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 an interim loan at any time prior to the loan closing.

4. The interim lender must make a number of certifications at the time of the debenture closing. The certifications are stated in 13 CFR §120.891 and 120.892. If the interim lender cannot certify as required, then the debenture cannot be funded.

C. Borrower's Contribution 13 CFR §120.910, 120.911, 120.912 and 120.913

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) Amusement parks;

b) Bowling alleys;

c) Car wash properties;

d) Cemeteries;

e) Clubhouses;

f) Cold storage facilities where more than 50% of total square footage is equipped for refrigeration;

g) Dormitories;

h) Farms, including dairy facilities;

i) Funeral homes with crematoriums;

j) Gas stations;

k) Golf courses;

l) Hospitals, surgery centers, urgent care centers and other health or medical facilities;

m) Hotels and motels;

n) Marinas;

o) Mines;

p) Museums;

q) Nursing homes, including assisted living facilities;

r) Oil wells;

s) Quarries, including gravel pits;

t) Railroads;

u) Sanitary landfills;

v) Service centers (e.g., oil and lube, brake or transmission centers) with pits and in ground lifts;

w) Sports arenas;

x) Swimming pools;

y) Tennis clubs;

z) Theaters; and

aa) Wineries.

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 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 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 contribution is borrowed:

a) Any lien position on the Project Property must be subordinate to the 504 loan;

b) The borrower may not pay the loan for its contribution at a faster rate than the 504 loan (13 CFR §120.912) unless it is approved by the D/FA or designee; and

c) If the borrowed contribution is collateralized by assets other than the Project Property, the borrower must demonstrate repayment of the loan for its contribution from the cash flow of the business or other sources.

D. Financing Involving Industrial Development Bonds or Industrial Revenue Bonds

SBA may participate in Projects financed in part, directly or indirectly, by obligations exempt from state or local taxes (for example, real estate tax exemptions). However, in accordance with OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables" (January 2013), SBA may not participate in projects financed in part, directly or indirectly, by Federal tax-exempt obligations. For Projects that do not involve Federal tax-exempt obligations, industrial development bonds or industrial revenue bonds (IDBs/IRBs) may be a source of funding for Projects under the following conditions:

1. When the bond proceeds are used to fund the Third Party Loan:

a) If the bond issuer requires that it hold title to the Project Property, the TPL's and SBA's respective liens must be properly recorded before any transfer of the title to the Project Property to the bond issuer;

b) If the bond issuer takes title to the Project Property and leases the Project Property to the borrower, the bond issuer must assign the lease to the Third Party Lender and all payments under the lease must be paid to the Third Party Lender and serve as the payments under the loan;

c) If 1.a) and b) are met, then the Third Party Loan may remain in a senior lien position.

d) If the bond issuer does not require that it hold title to the Project Property but takes a lien on the Project Property, the Third Party Lender may still be in a senior lien position, but SBA's lien position must not be subordinate to the bond issuer's lien.

2. When the bond proceeds are used to fund the Borrower's Contribution:

a) If the bond issuer requires that it hold title to the Project Property, the TPL's and SBA's respective liens must be properly recorded before any transfer of the title to the Project Property to the bond issuer;

b) SBA's lien position must not be subordinate to the bond issuer's lien; and

c) The borrower may not pay the loan made from the proceeds of the tax-exempt obligation at a faster rate than the 504 loan unless it is approved by the D/FA or designee;

3. In no case may a default in payment of the tax-exempt obligation result in a tax lien on the property; and

4. In transactions where the bond issuer takes collateral other than the Project Property, SBA may, in its discretion, agree to take a subordinate lien position on that collateral.

The structure of these transactions may vary from state to state and other conditions may apply. CDCs and the SLPC should consult with District Counsel and OGC for additional guidance.

Comment [D131]: Language added to specify procedure for IDBs and IRBs for 504 projects.

CHAPTER 2: ELIGIBILITY

I. 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. (13 CFR §120.100, 120.101, 120.102, 120.110, 120.860, 120.861, 120.880 and 120.881) 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. (See 504 Eligibility Checklist.)

II. SUMMARY OF ELIGIBLITY REQUIREMENTS

A. The Small Business Applicant must:

1. Be an operating business;
2. Be organized for profit;
3. Be located in the United States (includes territories and possessions);
4. Be small (as defined by SBA); and
5. Demonstrate a need for the desired credit; (13 CFR §120.100)

B. CDC must certify that credit is not available elsewhere on reasonable terms; (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; (13 CFR §120.102)

D. The following businesses are ineligible (13 CFR §120.110):

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 5% of their 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).

III. 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 loan proceeds 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:

a) Articles of Incorporation-- filed with Secretary of State or similar department in the state where the applicant is organized or conducts operations;

b) 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;

c) Corporate By-Laws and any amendments;

d) Partnership Agreements;

e) Association By-laws; and

f) Tax Returns.

B. The Applicant Must Be Small Under SBA Size Requirements Applicable to 504 Financial Assistance (13 CFR §121.301(b))

1. The applicant business (considering its affiliates, if any) must meet either the same size standards applicable to 7(a) business loans set forth in 13 CFR §121.301(a) (see also Subpart B, Chapter 2 of this SOP) or the size standards for development company loans set forth in 13 CFR §121.301(b) , which are as follows:

The Small Business Applicant and its Affiliates (affiliation defined at 13 CFR §121.103) must have:

a) A Tangible net worth of $15 million or less; and

b) Average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years of $5 million or less.

2. When size status of an applicant is determined (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. The applicable size standards are increased by 25% 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. (13 CFR §121.301(e))

4. Formal size determinations

a) 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.

b) 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. 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. 13 CFR §121.303

5. Review of Franchise/License/Dealer/Jobber or Similar Agreements

The discussion in this section applies to franchise agreements, license agreements, dealer agreements (with the exception of dealer agreements from new car manufacturers which are not reviewed for affiliation), jobber or similar agreements. *All such franchise, license, dealer, jobber or similar agreements are referred to in this section as "franchise agreements" and the two parties to any such agreement are referred to as "franchisor" and "franchisee."*

Comment [D132]: Readers/Users are advised to read thoroughly this update on size determination based on franchise/license/dealer/jobber, etc. as there are modifications throughout.

Comment [D133]: Language added to define use of "franchise" herein.

A finding that the agreement is acceptable 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 acceptable does not mean that the Small Business Applicant is eligible; therefore, CDC must consider all other size, eligibility

and underwriting requirements specific to a respective loan applicant/application in accordance with this SOP.

Comment [D134]: Language added to clarify that this process is for size eligibility based on affiliates only.

Applicants who operate or propose to operate under franchise development agreements (often referred to as Master Franchise Agreements) are ineligible as such agreements have been determined to be inherently speculative and are considered to be passive investments. Development agreements may include, but are not limited to: (a) agreements which provide the developer a geographic area with which to grow additional franchise units; and (b) agreements where the developer's income is derived from the royalty payments of each franchise unit in the developer's geographic territory.

Applicants who operate or propose to operate under an agreement containing area development rights, which allow a specific franchisee to operate a number of franchises within a specified geographic area, may be eligible if it complies with the guidance in this section.

a) *Affiliation can exist through:*

1. Common ownership;
2. Common management;
3. Excessive restrictions upon the sale/transfer of the franchise interest; or
4. Control by a franchisor either directly or through an affiliated entity or agent such that the franchisee does not have right to profit from its efforts and bear the risk of loss commensurate with ownership. (13 CFR §121.103 (i))

b) *Review of Franchise Agreements and Related Documents*

SBA requires in all cases a determination as to whether affiliation exists when the applicant has or will have a franchise, license, dealer, jobber or similar relationship and such relationship (or product, service or trademark covered by such relationship) is critical to the Small Business Applicant's business operation. In such case, the agreement governing the relationship (or product, service or trademark), and any related documents, must be reviewed.

c) *Review and determination must be conducted by:*

1. SBA-- for all loans processed through the SLPC; and
2. CDC --for all PCLP loans.
3. In all cases, the franchise agreement, including any amendments and/or addendums, must be executed by all parties prior to submitting the closing package to SBA for debenture funding

d) *Registry of approved franchise agreements*

1. To facilitate the review of these agreements, SBA makes available a list of franchise agreements (the "Registry") that have been approved by the SBA Franchise Committee for size/affiliation and control issues. This information is currently available to the public at no cost at www.franchiseregistry.com. (SBA

also posts a list of approved agreements by year on SBA's website at www.sba.gov/for-lenders.) CDCs must ensure that they have the correct date of the agreement that the applicant/franchisee is operating under in order to access the correct Registry documents. If CDC is unable to determine the date from the documents, it should contact the franchisor directly. SBA will accept the executed Certification of Franchise Documents (available on the Registry website) matching the correct year of the agreement as conclusive evidence that the franchisee is not affiliated with the franchisor based upon the agreement. (Affiliation may nevertheless exist based on other factors.)

2. In order to rely on the Registry for its determination, the CDC's loan file must include the following:

a) Executed franchise agreement and any approved attachments and exhibits;

b) Executed Addendum (if required);

c) Executed Certification of Franchise Documents; and

d) Compliance with any required eligibility notes.

e) *Process if Not Listed on Registry or CDC is Not Using the Registry*

If the Agreement is not listed on the Registry or the CDC chooses not to use the Registry, a review must be made of the Agreement and all related documents.

1. Franchise Findings

a) CDCs should consult the SBA Franchise Findings List at http://www.sba.gov/content/franchise-findings to see if there have been any findings for a particular Franchise agreement, which if still in the Agreement, would result in a determination of affiliation. The information provided by the SBA Franchise Findings List should be used by CDCs to ensure they are making informed affiliation determinations. CDCs should consult the "fix available" category on the List to see if there is a fix to remedy the specific issues noted there.

b) If an agreement has no negotiated fix available and the noted findings remain in the agreement, then the agreement should be determined to result in affiliation.

c) CDCs may contact SBA counsel in the District Office or the SBA Chief Franchise Counsel for specific questions regarding franchise affiliation determinations.

d) Franchisors may contact the SBA Chief Franchise Counsel at franchiseappeals@sba.gov for questions regarding the franchise registry approval process.

2. Affiliation Issues To Consider If Reviewing A Franchise Agreement That Is Not Listed On The Registry Or If The Lender Is Not Using The Registry. `

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

(a) Control

Any of the following provisions are considered conclusive evidence of control:

i. Including a transfer provision that requires a franchisor's consent unless it expressly states "Consent must not be unreasonably withheld or delayed" or its equivalent. SBA will not infer this into a franchise agreement. Reasonable Business Judgment is not an acceptable substitute;

ii. Setting the Applicant's net profit;

iii. Requiring the payment of excessive franchise continuing fees;

iv. Directly controlling the applicant's employees including hiring or terminating, except

v. Short term step-in agreements for 90-120 days are acceptable, provided the period of control by the franchisor does not exceed 365 days in the aggregate over the term of the agreement;

vi. In the temporary personnel industry, temporary employees paid by the franchisor are acceptable as long as the franchisee makes all employment determinations.

vii. Requiring that the billing activities, deposit receipts or revenues for the applicant be handled by the franchisor or a Third Party chosen by the franchisor (Exception: automatic debits from a franchisee account are acceptable);

viii. Including an option to purchase the applicant's personal property upon expiration or breach of the agreement, where the franchisor has the ability to control the price at the time of purchase (Exception: right of first refusal is allowed provided it is on commercially reasonable terms);

ix. Requiring the franchisee (or EPC owner, if applicable) to sell the real property to the franchisor upon expiration, breach or termination of the agreement. (This type of provision may be found in the agreement itself or recorded against the real estate as a purchase option.) Exception: The franchisor may require a lease of the property upon

termination for a period up to the remaining term of the original franchise agreement; or

x. Including a Right of First Refusal on a partial transfer of ownership between existing owners of a franchise entity or their close relatives.

(b) Insurance Industry

SBA's Office of Hearings and Appeals has determined that, in the Insurance industry, it does not create affiliation for the franchisor to own the Insurance Policies as well as receive the payments on the policy.

(c) Fitness Industry

Fitness centers that target one gender are not ineligible if they permit both men and women to join and/or use the facility. Lenders must document the file with the following:

i. Affidavit signed by the Small Business Applicant that both men and women are allowed to join and/or use the facility; and

ii. Evidence that the facility is open to both men and women, such as two single-sex bathrooms or locker rooms, brochures/flyers stating that both men and women are welcome, or actual membership demographics.

(d) Gasoline Industry

Based on the Industry standard established by the Gasoline Industry, it is common practice for the oil company to install a credit card system to provide for payment of gasoline products. This type of arrangement, by itself, does not create excessive control or affiliation.

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.

i. Eligibility Determination. The eligibility determination for all Gas Station Loans must include a review of the relevant documents. The documentation associated with Gas Station Loans is voluminous, complex and frequently contains provisions that (1) enable an oil company or another non-small Person to exert significant control over the small business loan applicant resulting in affiliation (13 CFR §121.103); (2) have a significant negative impact on the marketability and collateral value of the Property; and (3) impair the applicant's repayment ability.

Therefore, all "Relevant Documents" must be reviewed to determine whether a single provision or based on the "totality of the circumstances" (13 CFR §121.103(a)(5)) execution of the Relevant Documents by the small business would render it ineligible for SBA financial assistance.

(a) Relevant Documents. For purposes of this paragraph, the term "Relevant Documents" includes but is not limited to (1) 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"), (2) the small business concern's oil company supply agreement and convenience store franchise agreement, if any, and (3) 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"). 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.

(b) 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 small business concern from selling the gas station as a going concern and significantly diminish SBA's recovery in the event of default.

(c) Examples of Unacceptable Document Review Findings:

(i) Affiliation. Provisions in the Relevant Documents that give an oil company or another non-small Person significant control over the small business applicant are not acceptable. (See 13 CFR §120.100 (d).) Examples include: (1) Purchase or Repurchase Options. Purchase or repurchase options that allow an oil company or other Person to acquire the small business concern's primary business asset (e.g. real estate) if the small business concern violates a condition, covenant, restriction or other provision. (Distinction: A "purchase option" is different from a "right of first refusal". A right of first refusal that allows an oil company or other Person to match a third party's offer is generally acceptable to SBA.) Please note that a right of first refusal on a partial transfer of an interest in the small business concern is NOT acceptable; (2) Deed/Use Restrictions. Provisions that give an oil company or other Person the right to record deed or use restrictions

that enable the oil company or other Person to control the use of the Property thereby preventing the small business owner from fully benefiting commensurate with ownership. Note that certain deed restrictions pertaining to the use of the property, which are intended to protect the health and safety of occupants, may be acceptable. Examples of uses in deed restrictions based upon environmental concerns which may be acceptable may include: residential use, use as a day care center for children or seniors, use as a school, or use as a hospital.

(ii) Significant Impairment of Collateral Value or Repayment Ability. Provisions in the Relevant Documents that impose requirements, restrictions or consequences that could significantly impair (1) the collateral value and marketability of the Property or (2) the small business concern's repayment ability are not acceptable. The fact that the collateral will consist solely of personal property, such as buildings and trade fixtures located on leased land, is irrelevant since they would ordinarily be sold in-place in the event of foreclosure, e.g., a carwash, mini-mart, or fuel pumping equipment. Examples 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 require subsequent owners of the Property to indemnify an oil company or other Person; and (2) Engineering Controls that require the small business concern or subsequent owners to install costly devices or structures such as extraction wells or subsurface barrier walls prior to constructing a building, remodeling, or otherwise improving the Property.

(iii)Alteration of SBA/Lender's Legal Rights, Remedies or Responsibilities. Provisions in the Relevant Documents that alter SBA or Lender's legal rights, remedies or responsibilities or impose additional duties are not acceptable. Examples include provisions that require SBA/Lender to: (1) Release or Waive their legal rights, remedies or claims against the seller, an oil company or other Person; (2) Subordinate the SBA/Lender lien; (3) Indemnify the seller, an oil company or any other Person; (4) Notice. Provide the seller, an oil company or any other Person with special notice of default or foreclosure; or (5) Forbearance. Provide the oil company or another Person with an exclusive period of time in which to decide what action to take before SBA/Lender can initiate liquidation activities in the event of default on the SBA loan.

f) Questions on SBA's Franchise Policy, Requests for Reconsideration and Appeals

1. Questions on SBA's Franchise Policy should be directed to local field counsel, center counsel, or SBA Chief Franchise Counsel.

2. CDCs that believe that a franchise decision that has been rendered by SBA 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 FranchiseAppeals@sba.gov. Franchise appeals will be reviewed by the SBA Franchise Committee comprised of OGC attorneys appointed by the Associate General Counsel for Financial Law & Lender Oversight. For purposes of franchise appeals, the D/FA or designee will be an ex officio member of the SBA Franchise Committee. The Associate General Counsel for Financial Law & Lender Oversight will retain the authority to overrule decision rendered by the SBA Franchise Committee.

3. Franchisors that would like to appeal SBA's decision not to place them on the Registry may do so following the procedures set forth in subparagraph (2) immediately above.

4. Certain issues involving businesses that may be engaged in promoting religion or that may have activities of a prurient nature may be referred to the Associate General Counsel for Litigation for a decision.

Comment [D135]: .

C. <u>The Small Business Applicant Must Demonstrate a Need for the 504 Loan.</u>

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. 13 CFR §120.101

2. The CDC must determine that:

a) The Small Business Applicant is unable to obtain the loan on reasonable terms without a Federal government guaranty, and

b) Some or the entire loan is not available from any of the following sources:

1. The resources of the applicant business; or
2. The personal resources of the principals of the applicant concern.

If some or the entire 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 their loan file. The file must contain documentation that specifically identifies the factors in the present financing that meet the Credit Elsewhere Test.

4. Acceptable factors that demonstrate an identifiable weakness in the credit or that show the credit will exceed the policy limits of the Third Party Lender include:

a) The business needs a longer maturity than the Third Party Lender's policy permits (for example, the business needs a loan that is not on a demand basis);

b) The requested loan exceeds either the Third Party Lender's legal lending limit or policy limit regarding the amount that it can lend to one customer;

c) The collateral does not meet the Third Party Lender's policy requirements;

d) The Third Party Lender's policy normally does not allow loans to new businesses or businesses in the applicant's industry; and/or

e) Any other factors relating to the credit that, in the CDC's opinion, cannot be overcome without the 504 loan. These other factors must be specifically documented in the loan file.

5. Unacceptable factors include:

a) Addressing the Third Party Lender's Community Reinvestment Act (CRA) compliance; or

b) Refinancing debt already on reasonable terms. (For eligible debt refinancing, see Chapter 2, Paragraph III.H.4.b of this Subpart.)

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% or more of the Small Business Applicant be reviewed. 13 CFR §120.102

a) The rule also applies to each person when the combined ownership of the spouses and dependent children is 20% or more.

b) If the Small Business Applicant is owned by a Trust, the rule applies to the Trustor. All donors to the trust will be deemed to have Trustor status for eligibility purposes.

c) The utilization of personal resources rule does not apply to the business resources of an associate or affiliated business.

d) 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

a) 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 or credit instrument if it is required by Federal or State law.

b) 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.

c) SBA or the CDC can require injection of the available personal resources of the individual's minor children.

d) 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

a) Only liquid assets are subject to being injected into the project (this includes liquid assets held in a revocable trust). Liquid assets include:

1. Cash;
2. Certificates of deposit;
3. Marketable securities and bonds;
4. Cash surrender value of life insurance; and
5. 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.

b) Liquid assets do not include:

1. Closely held non-marketable stocks or bonds;
2. 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; tax-advantaged Educational Savings Accounts; and other similar assets;
3. Equity in real estate or other fixed assets; or
4. 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 (13 CFR §120.102)

a) 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.

b) If the total financing package:

1. Is $250,000 or less, the exemption is two times the total financing package or $100,000, whichever is greater;
2. Is from $250,001 up to and including $500,000, the exemption is one and one-half times the total financing package or $500,000, whichever is greater; or
3. Exceeds $500,000, the exemption is one times the total financing package or $750,000, whichever is greater;

c) 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.

d) Liquid assets required to be injected into the business under the utilization of personal resources rule cannot be pledged as an alternative to injection.

e) 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:

a) 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);

b) Determine the value of the liquid assets subject to the rule for each individual; and

c) 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

a) 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%.

b) 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:

a) Determine the primary business industry of the Small Business Applicant. 13 CFR §121.107

b) Determine whether the Small Business Applicant is one of the types of business listed as ineligible in SBA regulations. 13 CFR §120.110

2. SBA may not provide financial assistance to a Small Business Applicant for the benefit of an ineligible affiliated business.

3. SBA cannot provide financial assistance to any of the following types of businesses:

a) Businesses organized as a non-profit (for-profit subsidiaries are eligible). (13 CFR §120.110(a))

b) Businesses Engaged in Lending (13 CFR §120.110(b))

1. SBA cannot provide financial assistance 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:

(a) Banks;

(b) Life Insurance Companies (not independent agents);

(c) Finance Companies;

(d) Factors;

(e) Investment companies;

(f) Bail Bond companies; and

(g) Other businesses whose stock in trade is money and which are engaged in financing.

2. The following are exceptions to this regulation:

(a) A pawn shop that provides financing is eligible if more than 50% of its revenue for the previous year was from the sale of merchandise rather than from interest on loans.

(b) 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 revenue is from financing its sales.

(c) A mortgage servicing company that disburses loans and sells them within 14 calendar 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.

(d) A check cashing business is eligible if it receives more than 50% of its revenue from the service of cashing checks.

(e) A business engaged in providing the services of a financial advisor on a fee basis is eligible provided they do not use funds to invest in their own portfolio of investments.

Comment [D136]: Language added to advise on eligibility of fee for service financial firms.

c) Passive Businesses (13 CFR §120.110(c))

1. 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 under 120.111) are not eligible.

2. Businesses primarily engaged in subdividing real property into lots and developing it for resale on its own account are not eligible.

3. Businesses that are primarily engaged in owning or purchasing real estate and leasing it for any purpose are not eligible. For example, shopping centers are not eligible and businesses that lease land for the installation of a cell phone tower or wind turbine also are not eligible; however, the business operating the cell phone tower or wind turbine is eligible.

4. Apartment buildings and mobile home parks are not eligible. But, hotels, motels, recreational vehicle parks, marinas, campgrounds, or similar types of businesses are eligible if more than 50% of the business's revenue for the prior year is derived from transients who stay for 30 days or less at a time. If the applicant is a start-up, the applicant's projections must show that more than 50% of the business's revenue will be derived from transients who stay for 30 days or less at a time.

5. Residential facilities that are licensed as nursing homes or assisted living facilities are eligible.

6. Businesses that are engaged in leasing equipment, household goods or other items are eligible. (See subparagraph b) above regarding the eligibility of businesses engaged in lending.)

7. Businesses such as barber shops, hair salons, nail salons, and similar types of businesses are eligible, regardless of whether they have employees or contract with individuals to provide the services.

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

d) Life Insurance Companies (13 CFR §120.110(d))

1. Life insurance companies are not eligible.

2. 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:

(a) 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;

(b) If the insurance agent hires, supervises and pays employees he or she needs to help perform his or her services;

(c) 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;

(d) If the insurance agent is paid by the job or on a commission basis, rather than by the hour, week or month;

(e) If the insurance agent is responsible for paying his or her own business expenses;

(f) If the insurance agent provides a significant amount of his or her tools, materials, and other equipment, even if the insurance company provides some forms, manuals, or other materials;

(g) 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

(h) If the insurance agent can realize a profit or incur a loss as a result of his or her services.

e) Business Located in a Foreign Country or Owned by Undocumented (Illegal) Aliens (13 CFR §120.110(e))

1. Businesses are not eligible if the business is:

(a) Located in a foreign country with no activities in the United States; or

(b) Owned in whole or in part by undocumented (illegal) aliens.

2. Businesses are eligible if the business:

(a) Is located in the U.S.;

(b) Operates primarily in the U.S.; and

(c) Is authorized to operate in the state or territory where they seek SBA financial assistance; OR

(d) Makes a significant contribution to the U.S. economy through the:

i. Payment of taxes to the U.S.; or

ii. Use of American products, materials, and labor.

3. The proceeds for an eligible loan 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.

4. Businesses involved in international trade are subject to U.S. trade restrictions.

5. Businesses owned by legal permanent residents are eligible. See Paragraph III.E. of this Chapter.

f) Businesses Selling Through a Pyramid Plan (13 CFR §120.110(f))

Pyramid or multilevel sales distribution plans are not eligible for SBA assistance.

g) Businesses Engaged in Gambling (13 CFR §120.110(g))

1. Small businesses that obtain more than one-third of their annual gross revenue for the prior year, including rental income, from legal gambling activities are not eligible.

2. Small businesses are eligible if they obtain one-third or less of their annual gross revenue, including rental income, from:

(a) Commissions from official State lottery ticket sales under a State license; or

(b) Gambling activities licensed and supervised by state authority in those states where the activities are legal.

3. 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 revenue derived from gambling.

h) Businesses Engaged in any Illegal Activity (13 CFR §120.110(h))

A Small Business Applicant engaged in illegal activity or who makes, sells, services, or distributes products or services used in connection with illegal activity, is not eligible unless such use can be shown to be completely outside of the Small Business Applicant's intended market.

i) Businesses Which Restrict Patronage (13 CFR §120.110(i))

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.

j) Government-Owned Entities, Excluding Native American Tribes (13 CFR §120.110(j))

1. Municipalities and other political subdivisions are not eligible.
2. 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:

(a) It establishes that it is a separate legal entity from the tribe and submits the documents authorizing its existence; and

(b) 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.

k) Businesses Engaged in Promoting Religion (13 CFR §120.110(k))

1. In evaluating the eligibility of a Small Business Applicant, if it appears that the Small Business Applicant may be connected, associated or affiliated with a religious organization or may have a religious component, the CDC must complete the Religious Eligibility Worksheet (SBA Form 1971), attached to this SOP as Appendix 8. Any questions regarding this worksheet should be addressed to local SBA Counsel.

2. A PCLP CDC must retain the worksheet and any information obtained in connection with the CDC's religious eligibility decision in the loan file. SBA may review the worksheet and such information when conducting lender oversight activities.

3. A non-PCLP CDC must submit the completed worksheet and any information obtained in connection with that worksheet to the SLPC with the application. The SLPC will forward the matter to appropriate local SBA Counsel who will then review the matter. If local SBA Counsel recommends that the Small Business Applicant be found ineligible for financial assistance based on a religious aspect, the matter must be referred to the Associate General

Counsel for Litigation for a decision. If local SBA Counsel finds the Small Business Applicant eligible for financial assistance, the SLPC will notify the CDC of that decision.

4. A Small Business Applicant is not ineligible merely because it offers religious books, music, ceremonial items and other religious articles for sale.

Comment [D137]: Language added to specify current requirements for determining eligibility for businesses involving region. New worksheet in Appendix 8.

l) Cooperatives (13 CFR §120.110(l))

1. Consumer and marketing cooperatives are not eligible. For agricultural marketing cooperatives, see (3) below.

2. Producer Cooperatives.

A producer cooperative is eligible if:

(a) It is engaged in a business activity;

(b) The purpose of the cooperative is to obtain financial benefit for itself as an entity AND its members in their capacity as businesses; and

(c) It is small and each member of the cooperative is small.

3. Agricultural Marketing Cooperatives. An agricultural cooperative acting pursuant to the provisions of the Agricultural Marketing Act (12 USC 1141j) is considered to be a producer cooperative and is eligible if it meets the requirements for eligible producer cooperatives in (2) above.

4. Worker Cooperatives. A worker cooperative, in which the employees of the small business cooperatively own the company, is eligible if it meets all other SBA eligibility requirements.

m) Businesses engaged in loan packaging (13 CFR §120.110(m))

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

n) Businesses with an Associate of Poor Character (13 CFR §120.110(n))

Comment [D138]: Readers/Users are advised to thoroughly review this section. Modifications include changes to the Form 912, Form 1919 reporting requirements as to character, electronic fingerprints, delegations of authority to clear 912 issues and others. .

1. SBA cannot provide financial assistance to businesses with Associates who are incarcerated, on probation, on parole, who have been indicted for a felony or a crime of moral turpitude, or who are presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction.

2. 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.

3. An individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an applicant is not eligible.

4. To determine eligibility under this section, the Agency requires that every proprietor, general partner, officer, director, managing member of a limited liability company (LLC), owner of 20% or more of the equity of the Applicant, Trustor (if the Small Business Applicant is owned by a trust), and any person hired by the Applicant to manage day-to-day operations ("Subject Individual") must be of good character. The completion of an SBA Form 912, Statement of

Personal History ("912"), by each Subject Individual is required as part of the character evaluation process and the form must be completed within 90 days of submission of the application to SBA. 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.

(a) If every Subject Individual answers questions 7, 8 and 9 as "no," normal loan processing may proceed.

(b) If a Subject Individual answers "yes" to question 7, then the Small Business Applicant is not eligible.

(c) If a Subject Individual's response to question 9 reveals that he or she is currently on parole or probation, then the Small Business Applicant is not eligible.

(d) If a Subject Individual answers "yes" to question 8 or 9, 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 attached to the SBA Form 912 and maintained in the CDC's loan file.) If the individual pled 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 or an Electronic Fingerprint Submission.

"Electronic Fingerprint Submission" means fingerprints taken and reproduced in a machine-readable format by a fingerprint capture system that complies with the Federal Bureau of Investigation's Electronic Biometric Transmission Specifications. An Electronic Fingerprint Submission must be compatible with the Federal Bureau of Investigation's Automated Fingerprint Identification System, or any successor system in place for biometric identification. The Electronic Fingerprint Submission will generally be a piece of paper produced by the fingerprint capture system, which an individual may attach to SBA Form 912 to expedite character check procedures. Where an Electronic Fingerprint Submission is not

locally available, paper and ink fingerprint cards may still be used.

(e) If there is a "yes" response, the CDC must take the following actions:

i. 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:

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

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

(c) The specific charge(s) (DUI, assault, forgery, etc.) AND the level of the charge (either a misdemeanor or felony).

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

(i) Any fines imposed;

(ii) Any class or workshop to be attended;

(iii) Any jail time served;

(iv) If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation); or

(v) Any other court conditions (such as registration as a sex offender).

(e) 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.

(f) The borrower's dated signature on the explanation.

ii. When an applicant discloses a felony arrest a Fingerprint Check is required and a Fingerprint Card (FD 258) or an Electronic Fingerprint Submission must be completed. Where an Electronic Fingerprint Submission is not locally available, paper and ink fingerprint cards may still be used. Local law enforcement agencies will usually assist the individual with the fingerprinting. CDCs may obtain the FD 258 from their local field office.

iii. 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.

iv. Regardless of whether the past offense was a felony or misdemeanor, the CDC must submit the complete 912 package to the SLPC before loan processing can proceed. Copies of the documents are to be submitted to the SLPC. The CDC must retain the originals in its loan file. SBA recommends that the CDC submit the 912 package as soon as possible.

v. The SLPC 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.)

(f) Decisions Available to the SBA When Processing a 912 with a "yes" response:

i. Clear the 912 to permit processing, approval and disbursement;

(a) 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:

(i) A single minor (misdemeanor) offense or arrest; OR

(ii) 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

(iii)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.

(b) The SLPC cannot clear felony arrests or convictions for loan processing.

(c) When the SLPC receives the completed 912 package and decides to clear it for processing, it will notify the CDC that the application has been cleared for processing and will submit the 912 package to the OIG/OSO for a Name Check.

(d) When the SLPC clears the 912 and the Name Check corroborates the information on the 912, OIG/OSO will advise the SLPC, which will then notify the CDC.

(e) 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.

(f) The D/FA or designee can overrule the clearance by the SLPC in either situation.

ii. Place the processing of the application on hold for further investigation;

(a) The CDC must obtain from the Subject Individual a Form FD 258, SBA Fingerprint Card or an Electronic Fingerprint Submission, and submit it to the SLPC to forward to OIG/OSO for a Fingerprint Check. 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.

(b) 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.

iii. Decline the application because the information supplied on the Subject Individual shows the offense is open and has not been adjudicated or the Subject Individual is on probation or parole.

(g) 912 Decision Appeals

i. SBA will consider a request submitted by a Subject Individual for reconsideration of a determination of lack of good character. Factors that contribute to a favorable reconsideration include: (1) additional information provided by the Subject Individual that satisfactorily explains the circumstances of the prior offense(s); (2) a statement from the Subject Individual 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 Subject Individual has not committed additional offenses and has generally led a responsible life and made a contribution to the community.

ii. The Subject Individual 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.

(h) PCLP 912 Procedures.

i. If, in connection with a PCLP loan, a Subject Individual answers question 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 attached to the SBA Form 912 and maintained in the CDC’s loan file.) If the individual pled 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 SLPC.

ii. To request clearance from the SLPC, 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.

(i) 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.

(j) 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).

Comment [D139]: End of 912 Requirements

o) Equity Interest by CDC or Associates in Applicant Concern (13 CFR §120.110(o))

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 apply. See 13 CFR §120.140 for a list of ethical requirements that apply to CDCs.

p) Businesses Providing Prurient Sexual Material (13 CFR §120.110(p))

1. 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.

2. 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, to be prurient.

Comment [D140]: Language removed - "in view of community standards".

3. If a PCLP CDC finds that the Small Business Applicant may have a business aspect of a prurient sexual nature, the PCLP CDC must document its analysis and eligibility decision in the loan file. SBA may review such documentation when conducting lender oversight activities.

4. If a non-PCLP CDC finds that the Small Business Applicant may have a business aspect of a prurient sexual nature, the CDC must include an analysis of the issue with its application to the SLPC. The SLPC will forward the matter to the appropriate local SBA Counsel who will then review the matter. If local SBA Counsel recommends that the Small Business Applicant be found ineligible for financial assistance, the matter must be referred to the Associate General Counsel for Litigation for a decision. If local SBA Counsel finds the Small Business Applicant eligible for financial assistance, the SLPC will notify the lender of that decision.

Comment [D141]: Language added with specific guidance for PCLP on prurient sexual material issues.

q) Prior Loss to the Government (13 CFR §120.110(q)) and Delinquent Federal Debt (31 CFR 285.13)

1. Unless waived by SBA for good cause, SBA cannot provide assistance to a Small Business Applicant if there has been a Prior Loss to the Government. "Prior Loss" means the dollar amount of any deficiency on a Federal loan or Federally assisted financing 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 including the following:

(a) Loss on the sale or other disposition of collateral acquired after default;

(b) Compromise, i.e., resolution or settlement of a loan balance for less than the full amount due;

(c) Bankruptcy by a borrower and/or any guarantors; and

(d) Any unreimbursed advance payments by a Federal agency.

2. Unless waived by SBA for good cause, SBA cannot provide assistance to a Small Business Applicant if there is a Delinquent Federal Debt:

(a) A debt is considered "delinquent" when any Federal loan or Federally assisted financing has not been paid within 90 days of the payment due date. A debt is considered "delinquent" even if the creditor agency has suspended or terminated collection activity with respect to such debt.

(b) A debt is not considered "delinquent" if:

i. The creditor agency has released the obligor from paying the debt;

ii. The obligor is subject to, or has been discharged in, a bankruptcy proceeding;

iii. The obligor has entered into a satisfactory written repayment agreement and is current; or

iv. The debt is in an administrative or judicial appeal process.

(Note: If there was a loss associated with any of these debts, however, the loan remains subject to the rules governing a Prior Loss to the Government under paragraph q)(1) immediately above.)

3. "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). It does not include unpaid/delinquent taxes, any loss incurred by the Federal Deposit Insurance Corporation (FDIC) when it sells a loan at a discount, or any loan purchased, held or securitized by Fannie Mae or Freddie Mac.

Comment [D142]: Language added to specify exception for Fannie Mae/Freddie Mac loans. These institutions guarantee securities, not individual loans.

4. These rules apply to:

(a) The Small Business Applicant;

(b) Any business owned, operated or controlled by an Associate of the Small Business Applicant that incurred the Delinquent Federal Debt or caused the Prior Loss;

(c) Any Associate of the Small Business Applicant who has (or guaranteed) a Delinquent Federal Debt or cause a Prior loss (either directly or as a guarantor); and

(d) Any guarantor who has (or guaranteed) a Delinquent Federal Debt or caused a Prior Loss (either directly or as a guarantor).

Comment [D143]: Language updated to agree with SubPart B, Chapter 2

5. CDCs are responsible for checking the Credit Alert Verification Reporting System (CAIVRS) to determine if any of the individuals or businesses identified in paragraph (4) immediately above has either a Delinquent Federal Debt or a Prior Loss which would result in the Small Business Applicant being ineligible for SBA financial assistance. In addition, SBA and CDCs may take additional due diligence efforts to determine whether there has been prior loss to the government.

Comment [D144]: Language added for additional option.

(a) CAIVRS allows the CDC to enter multiple tax id numbers (either SSN or EIN) to search for an outstanding Delinquent Federal Debt or Prior Loss in connection with a loan application.

(b) CDCs may obtain instructions for accessing CAIVRS at http://www.hud.gov/offices/hsg/sfh/sys/caivrs/caivrs_faq.cfm.

6. Waiver Requests:

(a) When there are compelling circumstances, the CDC may send a written request for a waiver to the SLPC. The CDC must identify the Delinquent Federal Debt or Prior Loss to the Government, explain the relationship of the Small Business Applicant to the individual or business causing the delinquency or prior loss and the circumstances.

(b) For Delinquent Federal Debt, the Chief Financial Officer (CFO) (who may only delegate this authority to the Deputy Chief Financial Officer) will make the final decision on the request.

(c) For Prior Loss to the Government, the D/FA or designee will make the final decision on the request.

7. If the Delinquent Federal Debt or Prior Loss to the Government is fully satisfied, the application can be processed without a waiver from the CFO or D/FA, including under a CDC's delegated authority. The CDC must document its file as to how the debt or loss has been fully satisfied.

r) Businesses primarily engaged in political or lobbying activities (13 CFR §120.110(r))

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

s) Speculation (13 CFR §120.110(s))

1. Speculative businesses are not eligible. This prohibits loans to a Small Business Applicant for:

(a) The sole purpose of purchasing and holding an item until the market price increases; or

(b) Engaging in a risky business for the chance of an unusually large profit.

2. Speculative businesses include:

(a) Wildcatting in oil;

(b) Dealing in stocks, bonds, commodity futures, and other financial instruments;

(c) Mining gold or silver in other than established fields; and

(d) 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. 13 CFR §120.391

3. Non-speculative businesses which are eligible include:

(a) A business, such as a grain elevator, that uses a commodity contract to lock in a price;

(b) A farmer who uses a commodity contract to lock in the sale price of his or her harvest;

(c) A business engaged in drilling for oil in established fields; and

(d) 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).

SBA requires all CDCs, to comply with the U.S. Department of the Treasury regulations for Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks found at 31 CFR 1020.220. SBA does not expect CDCs to duplicate the procedures of the Third Party Lender if the Third Party Lender is regulated by a Federal functional regulator (as defined in 31 CFR 1010.100) and submits annual certifications to the CDC that it (the Third Party Lender or its agent) will comply with the CIP requirements of 31 CFR 1020.220 with respect to all third-party financings of 504 loans. Under these circumstances, it is acceptable to SBA if a CDC's CIP states that the CDC will rely on the Third Party Lender to verify the identity of the SBA customer. The CDC has the option of performing its own verification of the identity of the SBA customer even if a Third Party Lender has already complied with 31 CFR 1020.220.

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 Lawful Permanent Residents (LPRs) are eligible. LPRs are persons who may live and work in the U.S. for life unless their status is revoked through an administrative hearing.

a) The USCIS Form I-551 (551) is evidence of LPR status. USCIS has two versions of the 551:

1. Resident Alien Card; and
2. Permanent Resident Card. (This is the most recent version.)

b) 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:

1. A temporary stamp by USCIS on the individual's passport that says "Processed for I-551 – Temporary Evidence of Lawful Permanent Residence;"

2. USCIS Form I-327, "Re-entry Permit," issued to LPRs in lieu of a visa, which is valid for only 2 years;

3. 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).

4. 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:

a) 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 Citizenship and Immigration Services (USCIS) document, such as a visa.

1. They must have current/valid USCIS documentation permitting them to reside in the U.S. legally; and
2. The documentation/status of each alien must be verified with USCIS.

b) 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.

a) IRCA vests USCIS with the authority to grant illegal aliens lawful temporary resident status. IRCA prohibits financial assistance to businesses owned 20% or more by such individuals for a period of 5 years after USCIS grants lawful temporary resident status.

b) This disqualification does not apply to Cuban or Haitian entrants or alien entrants subject to IRCA who are 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.

c) All applicants self-certify that they are eligible under IRCA by signing SBA Form 1244, which includes the "Statements Required by Law and Executive Orders." This includes a certification that IRCA does not apply to them or if it does apply, more than five years have elapsed since they were granted lawful temporary resident status pursuant to the 1986 legislation.

Comment [D145]: Language added to include alternate acceptable certification.

5. Documentation to evidence and verify an alien principal's status.

At time of application, for any alien required to complete SBA Form 912, the following applies:

a) Aliens must provide their alien registration number on SBA Form 912, "Statement of Personal History."

b) CDCs must obtain a copy of the individual's USCIS documentation and maintain in the loan file.

c) All CDCs must register designated personnel with the SLPC at Sacramento504Register@sba.gov. The SLPC will respond to such requests by providing instructions on how to complete the registration and to use the electronic verification process. The CDC submits a USCIS Form G-845 (845), "Document Verification Request," with supporting information to the SLPC. The CDC must state on the 845 that the request is for an SBA loan.

d) As required by USCIS, SBA will release 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.

1. As required by USCIS, SBA accepts either of the following authorization statements:

(a) I authorize the U.S. Citizenship and Immigration Services to release information regarding my immigration status to [name

of CDC] because I am applying for a U.S. Small Business Administration loan.

(b) I authorize the U.S. Citizenship and Immigration Services to release alien verification information about me to [name of CDC] because I am applying for a U.S. Small Business Administration loan.

2. As required by USCIS, all verification requests must include an authorization with the original signature of the alien for SBA to release information to the CDC on the status of a verification. The original Document Verification Request (Form G-845) and authorization for release must be maintained by the CDC in the borrower's file for review by SBA and USCIS, if requested.

3. The information provided to SBA by the USCIS system is intended solely for the purpose of determining eligibility for SBA financial assistance. This information is governed by the Privacy Act, 5 U.S.C. 552(a)(i)(1), and any person who obtains this information under false pretenses or uses it for any purpose other than for determining eligibility may be subject to criminal penalties.

4. The authorization statement must not be on SBA or CDC stationery.

e) CDCs must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application to SBA. The notification received from the SLPC must be submitted to SBA with the application. PCLP CDCs must retain the notification from the SLPC in the borrower's loan file.

f) Verification of the status of an LPR is required if 6 months has elapsed since the last verification with one exception: if the individual reported an offense on SBA Form 912, then verification would be required even if 6 months had not elapsed, as the offense may put their status at risk. For non-LPRs, verification is required with each loan application, as their status can be revoked at any time.

6. Businesses owned by Foreign Nationals or Foreign Entities may be eligible.

Businesses listed in Appendix 1 of this 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, including foreign-owned businesses:

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. with a liquidation value equal to no less than the approved loan amount at the time of first disbursement and, to the extent that the value of collateral declines during the life of the loan, require the borrower to pledge additional collateral to ensure a sufficient collateral coverage amount CDCs will determine liquidation value in compliance with SOP 50 55 and in coordination with the appropriate commercial loan servicing center. 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.

Comment [D146]: Language added to clarify collateral requirements for loans to non LPRs.

c) In order for a business not to be subject to these additional requirements, it must be at least 51% 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. 13 CFR §120.111

a) Under SBA regulations, an EPC can take any legal form or ownership structure. 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.

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

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

b) 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:

a) The OC must be an eligible small business;

b) The proposed use of proceeds must be an eligible use as if the OC were obtaining the financing directly subject to 1.b) above;

c) The EPC (with the exception of a trust) and the OC each must be small under the appropriate size standard of 13 CFR Part 121.

d) The EPC must lease the project property directly to the OC and:

1. The lease must be in writing;

2. The lease must be subordinated to the SBA's mortgage, trust deed lien, or security interest on the property;

3. The lease must have a term, including options to renew exercisable solely by the OC, at least equal to the term of the loan;

4. 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;

5. The rent or lease payments cannot exceed the amount necessary to make the loan payment to the CDC and Third Party Lender, and an additional amount to cover the EPC's expenses of holding the property, such as maintenance, insurance and property taxes; and

6. 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.

7. If in acquiring the Project Property, the EPC becomes the beneficiary or owner of the rights to an existing mineral lease on the property, the EPC must assign its interest in the lease (together with its rights to all rental, mineral, royalty, bonus, or similar lease payments that might accrue by virtue of the existing mineral (oil and gas) lease) to the OC; and any such assignment must be subordinated to all Deeds of Trust or Mortgages. In addition, the CDC must take the following actions if applicable:

(a) If subordination is not possible, the CDC Closing Counsel must opine to that effect.

(b) If the mineral lease has been terminated, the CDC should attempt to have it removed from the Title Policy.

(c) If the CDC is unable to have the lease removed from the Title Policy, the CDC Closing Counsel must include language in the Opinion of Counsel indicating that they have examined and relied upon the accuracy of the assignment document and obtain a title endorsement to protect SBA's interest in the real property (i.e., California Land Title Association (CLTA) 100.23 or 100.24).

e) The OC must be a guarantor or a co-borrower on the loan. The OC must be a co-borrower if any of the Project funds are used to purchase fixed assets to be owned by the OC.

f) Each holder of an ownership interest constituting at least 20% of either the EPC or the OC must:

1. Guarantee the loan (if the holder is a trust, then the Trustee shall execute the guarantee on behalf of any trust); and

2. Must comply with the Utilization of Personal Resources Rule. See Paragraph III.C.7.- 11. of this Chapter.

3. Conditions that apply when the EPC is owned in whole or in part by a trust.

a) The eligibility status of the Trustor will determine trust eligibility.

b) All donors to the trust will be deemed to have Trustor status for eligibility purposes.

c) 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.

d) The Trustor must guarantee the loan.

1. 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.

2. 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.

e) The Trustee shall certify in writing to SBA that:

1. The Trustee has authority to act;

2. The trust has authority to borrow funds, pledge trust assets, and lease the property to the OC;

3. The Trustee has provided accurate, pertinent language from the trust agreement confirming the above; and

4. The Trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.

f) The trust itself does not have to be small by SBA size standards.

4. Size Determinations under the EPC rule

a) If the EPC and the OC are affiliated the two companies are combined for determining size.

1. If there is only one OC, use the OC's NAICS code.

2. If there are multiple, unaffiliated OCs, use the NAICS code of the OC that derives the most revenue. Note: Each OC must be small based on its own NAICS Code.

3. If the multiple OCs are affiliated, then use the rules detailed in 13 CFR §121.107 (13 CFR §121.107) for determining the primary industry of affiliated businesses. The NAICS code of the primary industry of the OCs shall be the identifying NAICS code.

b) If the EPC and the OC are not affiliated, each entity must be small. 13 CFR §121.301(b)

c) 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.

d) 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. (See discussion above on tenancy in common.)

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

a) Both the EPC and each OC must submit Financial Statements. The OC's statements are subject to tax verification.

b) The regular requirement for an Aging of receivables and payables is waived for EPCs.

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. Economic Development Objectives of a 504 Project 13 CFR §120.860 and 120.861

a) Job Creation or Retention

1. At least 1 job for every $65,000 of project debenture ($100,000 for Small Manufacturers).

2. Job Opportunity is defined in Chapter 1 of this Subpart.

3. 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.

4. 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.

5. CDCs must list estimated jobs created or retained in its Annual Report, and at the 2 year anniversary of each loan's disbursement, the CDC must list the **actual** jobs created and/or retained for that loan (whether the initial approval was based on job creation/retention or some other 504 goal).

b) Or meet one of 14 community development or public policy goals found in 13 CFR §120.862. If any of the community development or public policy goals set out in 1 CFR §120.862 or set forth below is 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. Energy Public Policy Goals:

If any of the following public policy goals are met, then the applicant can qualify for a larger debenture amount (up to $5,000,000 with the exception of items (a) and (c) below, which may go up to $5,500,000 Section 502(2)(A)(ii) of the SBI Act):

(a) Reduction of existing energy consumption by at least 10% (this cannot apply to a startup business, however, an existing business buying a building may be eligible if the new location uses at least 10% less energy than the prior location);

(b) Increased use of sustainable designs, including designs that reduce the use of greenhouse gas emitting fossil fuels or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact; or

(c) Plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities' consumption, commonly known as micropower, or renewable fuel producers including biodiesel and ethanol producers. Note: the terms in subparagraphs (b) and (c) have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standards for green building certifications. For additional information on LEED Certification, see http://usgbc.org/leed/certification.

2. Additional guidance to determine if the Project meets one of the energy public policy goals:

(a) In order for an applicant's Project to be eligible under the Energy Public Policy Goal described in b)(1)(c) above, the Project must generate more than a de minimus amount (SBA interprets "more than a de minimus amount" to mean at least 10%) of the energy used by the applicant at the Project facility. In additional, all improvements or equipment required to generate the renewable energy or renewable fuels must be included in the 504 Project costs.

(b) In order for an applicant's 504 loan project to be eligible under the 10% energy reduction goal, the following applies:

i. If the Project involves the construction or acquisition of a facility (the "new facility"), the new facility must replace an existing facility. The energy consumption at the existing facility must be compared with the new facility to determine if the Project satisfies the 10% energy reduction goal. The new facility must be located in the same local area (e.g. the same city, town, county, zip code, metropolitan statistical area or as otherwise deemed appropriate by SBA), and the applicant must be able to demonstrate that the new facility will use 10% less energy than the existing facility. In addition, the energy consumption between the two facilities must be compared for energy consumption on a square footage basis.

ii. If the Project involves the retrofit of an applicant's existing facility, the retrofit must reduce energy consumption of that facility by at least 10%, regardless of the energy usage of any other facilities that the applicant may operate.

(c) The applicant must document the Project's compliance with either paragraph (2)(a) or (b) above through either an energy audit, engineering report, or other professional evaluation, as deemed appropriate by SBA that is based on the annual energy usage at the facility or facilities (measured in actual energy usage, e.g. kilowatt hours, therms, or gallons, as applicable, not in dollar costs), and that, at a minimum, includes the following:

i. a description of the facility or facilities;

ii. the current energy usage;

iii. the projected energy usage, which must be based on all modifications and retrofits to building(s), and all installations of, and replacements and retrofits to, equipment; and

iv. the qualifications of the party performing the energy audit, engineering report, or other professional evaluation, each of which must be performed by an independent third party (by an entity other than the applicant, the interim lender, the Third Party Lender, or any of their respective affiliates).

Comment [D147]: Language added/revised for guidance on energy public policy requirements.

3. Additional guidance for assisting small manufacturers:

For a small manufacturer (NAICS Codes 31-33), to qualify for a $5,500,000 debenture the project must either:

(a) Create or retain 1 Job Opportunity per $100,000 in 2 years; or

(b) Meet one of the community development or public policy goals.

4. Additional guidance for the public policy goal to assist small businesses adversely affected by base closings. 13 CFR §120.862(b)(9)

(a) This only applies when:

i. A community has been adversely affected by a base closing; and

ii. The community continues to be adversely affected.

(b) Continuing adverse effect is presumed if the base closing was within 10 years of the date the application was submitted.

(c) For applications submitted more than 10 years after a base closing, the CDC must provide supporting documentation with the application and retain a copy of its finding of adverse effect in the loan file.

5. The CDC must have a job opportunity average of 1 Job Opportunity created or retained for every:

(a) $65,000; or

(b) $75,000 for Projects located in Special Geographic Areas (Alaska, Hawaii, State-designated enterprise zones, empowerment zones, enterprise communities, and labor surplus areas) A CDC may choose to separate these loans from the remainder of its portfolio for the purpose of calculating the averages.

(c) Loans to Small Manufacturers (See Chapter 7 - Debenture Pricing & Funding for definition) are excluded from this average.

6. 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. (See Chapter 7 of this Subpart – Debenture Pricing & Funding.)

2. Basic Eligibility Requirements for 504

To be an eligible Borrower for a 504 loan 13 CFR §120.880:

a) The Small Business Applicant must use the Project Property (except that an EPC may lease to an OC); and

b) Meet the size requirements set out in paragraph III.B. of this Chapter.

3. Ineligible 504 Projects 13 CFR §120.881

a) 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).

b) Projects in foreign countries

4. Eligible and Ineligible Project Costs

a) Eligible project costs 13 CFR §120.882

1. 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 be:

i. Only counted at cost if it was bought less than 2 years prior to the date of the application; and

ii. Fair market value based upon an appraisal if held for 2 years or more;

2. Short Term debt ("Bridge Financing") on the Project land as long as:

(a) There is no building currently on the land or any building on the land will be razed prior to construction of the new building; and

(b) The financing is for a term of 3 years or less;

3. Building and Building Improvements -- Integral costs for improvements to the building such as facade expenditures, heating, electrical, plumbing and roofing costs;

4. Machinery and Equipment –

(a) All costs associated with the purchase, transportation, dismantling or installation of machinery and equipment;

(b) The machinery and equipment has to have a useful life of at least 10 years;

(c) 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;

5. 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 contribution. Costs incurred prior to that date may be included solely at the SBA's discretion.

6. Furniture and Fixtures - If essential to and a minor part of the Project which will not affect the weighted average maturity (13 CFR §120.884(d)(1));

7. Professional Fees – Directly attributable and essential to the Project with the exception of attorney's fees incurred in closing the Interim and Third Party Loans. Examples of project-related costs that may be included in this section are: title insurance, title searches and abstract costs, surveys and zoning matters.

8. Interim financing – Repayment of interim financing including points, fees and interest; and

9. Contingency Fund - May not exceed 10% 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.

10. "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:

(a) The borrower/contractor is experienced in the type of construction and has all appropriate licenses;

(b) The cost is the same as, or less than, what an unaffiliated contractor would charge as evidenced by 2 bids on the work; and

(c) The borrower/contractor will not earn a profit on the construction.

b) Permissible Debt Refinancing (13 CFR §120.882(e))

504 Projects may include a limited amount of debt refinancing, as follows: If the Project involves expansion of a small business applicant, any amount of existing indebtedness that does not exceed 50% of the cost of the expansion may be refinanced. The debt being refinanced will be added to the expansion

cost to establish the total project costs, if all the conditions discussed below are met. "Expansion" includes any Project that involves the acquisition, construction or improvement of land, building or equipment for use by the small business applicant.

In its loan analysis submitted to SBA for non-PCLP loans, the CDC must include a conclusion that the proposed debt refinancing meets all the conditions listed below with supporting analysis and documentation. For PCLP loans, the PCLP CDC will transmit the Eligibility Information Required for PCLP Submission (SBA Form 2234, Part C), in which the PCLP CDC is required to address these conditions, and must maintain the analysis and documentation in its file.

(1) Substantially all (85% or more) of the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment. The assets acquired must be eligible for financing under the 504 loan program. If the acquisition, construction or purchase of the assets was originally financed through a commercial loan that would have satisfied the "substantially all" requirement and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this paragraph (1);

(a) Whether the new project is within the CDC's area of operation is based on the assets newly acquired for the business not the assets securing the debt being refinanced. If the assets refinanced or any collateral securing the loan are outside the CDC's Area of Operations, it is the CDC's responsibility to establish that the CDC is capable of closing and servicing the loan and monitoring the collateral. Evidence must be approved by SBA with the exception of PCLP CDCs which must document the file with evidence regarding the CDC's capability to close and service the loan and monitor the collateral.

(b) Instruments resulting in transfer of ownership of the property to the Small Business Applicant may be eligible for refinancing, including, but not limited to, land sales contracts, contracts for deed or capital leases.

(c) The purchase of property under an operating lease is eligible for 504 financing, but the operating lease itself is not eligible for debt refinancing.

(d) In order to be eligible for debt refinancing, a copy of the corresponding debt and lien instruments must be submitted with the application.

(2) The existing indebtedness is collateralized by fixed assets.

The 504 eligible fixed assets collateralizing any debt to be refinanced, or relating to the portion of debt being refinanced in the case of a partial refinance, must also collateralize the 504 Loan unless SBA [Sacramento Loan Processing Center (SLPC)] approves a waiver due to extraordinary circumstances. PCLP CDCs may not use their delegated authority to approve a loan requiring this waiver. The lender of the existing indebtedness must release, subordinate (if the total existing indebtedness is not being refinanced) or assign its lien on the 504 eligible fixed assets to the lien of SBA and/or the Third Party Lender so that the Third Party Lender and/or SBA will maintain the same lien position on the collateral that was held by the lender whose debt is being refinanced.

(3) The existing indebtedness was incurred for the benefit of the small business concern.

(a) The small business for which debt is refinanced must be the same small business for which any new Project costs are incurred. The debts being refinanced may be owed by an Operating Company, an Eligible Passive Company or both.

(b) An existing 504 loan may be refinanced if it meets the conditions of Paragraph b, "Permissible Debt Refinancing" and either: (i) both the Third Party Loan and the 504 loan are being refinanced; or (ii) the Third Party Loan has been paid in full and the 504 loan needs to be refinanced as part of a larger transaction to provide funding for expansion or renovations to the Project Property. In either case, the CDC and Third Party Lender must document its loan file as to the justification to refinance the existing SBA-guaranteed 504 loan. Any applicable 504 prepayment penalties will apply. A Third Party Loan may not be refinanced with an SBA guaranteed loan. (13 CFR §120.920(b))

Comment [D148]: Language added to provide specific guidance for refinancing 50 loans.

(c) An existing 7(a) loan may be refinanced in whole or in part only if the CDC has provided verification that the present lender is either unwilling or unable to modify the current payment schedule. In the case of Same Institution Debt, if the Third Party Lender or the CDC affiliate [as authorized under 13 CFR §120.852(a)] is the 7(a) lender, the loan will be eligible for 504 refinancing only if the lender is unable to modify the terms of the existing loan because a

secondary market investor will not agree to modified terms.

(4) The financing will be used only for refinancing existing indebtedness or costs relating to the Project financed.

(a) Debt being refinanced does not need to be for assets at the same location or for the same type of property as the Project being financed as long as the operation at the other location has the same NAICS code as the operation at the Project location.

(b) Costs essential to the refinancing, such as prepayment penalties, financing fees or other refinancing costs, required by the original terms of the debt instrument, may be included in the debt refinance portion of a Project.

(c) The total debt being refinanced may consist of one or more loans.

(5) The financing will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for.

"Substantial Benefit" means that the portion of the new installment amounts attributable to the debt being refinanced must be at least 10% less than the existing installment amount(s). The total installment amount is determined by adding the two installment amounts attributable to the refinancing using the interest rate of the most recent debenture funding on the 504 loan and the committed interest rate of the Third Party Lender loan. The total amount must be 10% less than the existing installment amount(s).

(a) Prepayment penalties, financing fees, and other financing costs must also be added to the amount being refinanced in calculating the percentage reduction in the new installment payment.

(b) Loans with seasonal payments would meet the Substantial Benefit test if there was a 10% improvement in the installment when calculated by averaging all payments over the most recent twelve month period from date of application and comparing that to the new installment amount attributable to the debt being refinanced.

(c) Loans with balloon payments meet the Substantial Benefit test.

(d) Exceptions to the 10% reduction requirement may be approved by the D/FA or designee for good cause. PCLP CDCs may not use their delegated authority to approve a loan requiring this exception.

(6) The borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing.

"Date of refinancing" refers to the date the 504 loan is approved by SBA. The CDC must submit a transcript of account, or similar documentation containing detailed payment history from the lender whose debt is being refinanced reflecting that the loan has been current (not to exceed 30 days in arrears) for one year (or for the time the debt has been open if less than one year). Any unremedied delinquency after approval must be reported to SBA as an adverse change.

(7) The financing under section 504 will provide better terms or rate of interest than the existing indebtedness on the date of refinancing.

"Better terms or rate of interest" may include longer maturity (but always commensurate with the assets' useful life), a lower interest rate committed on the Third Party Lender Loan or projected on the 504 Loan, improved collateral conditions, or less restrictive loan covenants.

(8) A 504 Project cannot be approved to refinance debt owed:

(a) To an Associate, which is prohibited by 13 CFR §120.130(a);

(b) To an SBIC, which is prohibited by 13 CFR §120.130(b); or

(c) To any creditor in a position to sustain a loss causing a shift to SBA of all or a part of a potential loss from an existing debt. 13 CFR §120.884(b)

(9) PCLP authority must not be used to refinance Same Institution Debt.

"Same Institution Debt" is defined as any debt of the CDC or the Third Party Lender financing the new project, or of affiliates of either. 13 CFR §120.882(e)(8)

(Note: Equity in land and/or building that is being refinanced may be included as Borrower's equity as set forth under present policy.)

c) Eligible Administrative Costs 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:

1. Settlement agent's fees;

2. Overnight delivery, postage and messenger services;

3. Certifications required by SBA (such as earthquake, flood, IRS, Certificate of Occupancy, and certificate of completion); and

4. Copying costs attributable to the above.

d) 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.

5. Pre-Existing Debt on the Project Property 13 CFR §120.922

The Third Party Loan may include consolidation of existing debt on the Project Property so long as it does not improve the Third Party Lender's lien position on the existing debt, unless the debt is a previous Third Party Loan.

6. Leasing

a) Leasing policies specific to 504 loans

1. 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.

2. The CDC must not subsidize the project by charging an amount less than enough to pay the CDC's costs for the project.

3. The borrower may not use 504 loan proceeds for interior tenant improvements and such improvements may not secure the Third Party Loan. 13 CFR §120.871(a)

b) Leasing part of a building acquired with loan proceeds 13 CFR §120.131

1. Amount of rentable property that can be leased:

(a) For an existing building, a small business must occupy 51% of the rentable property and may lease up to 49%; and

(b) 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. 13 CFR §120.870(b)

(c) An EPC must lease 100% of the rentable property to an OC. The OC must follow (a) and (b) above.

(d) Circumstances may justify allowing 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.

(e) The restrictions in (a) and (b) above apply regardless of whether the rentable property is leased to a commercial or residential tenant.

2. "Rentable Property" is the total square footage of all buildings or facilities used for business operations (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 may also include exterior space (except parking areas) that is actively used in Borrower's business operations. Examples of exterior space that is actively used in Borrower's business operations include: outdoor storage yards for general contractors, trucking companies, and moving and storage companies; or boat slips and docks for marinas..

3. CDC must document in its loan file the basis for determining that the exterior space is actively used in Borrower's business operations. Residential Space as Part of the Business

c) If the nature of the business requires a resident owner or manager, loan proceeds may be used for the purchase of an existing building(s) or construction of a new building(s) that includes residential space, however, such residential space may not exceed 49% of the total property. The residential space must be an essential part of the business. For example, a horse-boarding facility traditionally requires that someone be on premises 24/7 to care for the horses. In this case, the residential property would be considered to be a part of the business rather than leased property.

d) If the small business applicant leases residential space to a third party, the leased space must meet the requirements set out in paragraph 6.b) immediately above.

7. Eligibility of Projects that Result in a Change of Ownership

a. Projects that result in a change of ownership are eligible under the following circumstances:

i. The 504 Project finances only the costs associated with eligible long-term fixed assets; the change in ownership and the acquisition of any other assets such as receivables or goodwill is not an eligible use of 504 loan proceeds and must be financed by other means which may include a 7(a) loan;

ii. The application documents that jobs will be retained because of the change of ownership. There must be reasonable assurance that the jobs would be lost without the change of ownership. This can be in the form of a statement from the seller to that effect or other certification acceptable to the SLCP.

Comment [D149]: Language added to clarify requirements for projects that result in change of ownership.

a) The 504 loan proceeds must not be used to purchase stock or any other ownership interest in a business; and

b) All other 504 Loan Program Requirements must be met.

8. Loan Proceeds to Finance a Third Party Lender's Other Real Estate Owned (OREO) (13 CFR §120.923):

Where loan proceeds will be used to finance a Third Party Lender's own OREO property, the application must:

a) Be submitted to the SLPC (delegated authority may not be used to process these applications);

b) Include an independent real estate appraisal that meets the requirements found in Chapter 3 of this Subpart (the appraisal requirement cannot be delayed until loan closing); and

c) Include an explanation of the circumstances surrounding the Third Party Lender's acquisition of the real estate. If the acquisition of the property was triggered by a business failure at that particular location, the Third Party Lender must submit a detailed explanation of why the new small business borrower will succeed at that same location.

CHAPTER 3: COLLATERAL, APPRAISALS AND ENVIRONMENTAL POLICIES

I. COLLATERAL

A. SBA's 504 Collateral Policy 13 CFR §120.934

SBA usually takes a 2nd lien position on Project Property, but may have a shared lien (pari passu) with the Third Party Lender.

B. Adequacy of Collateral

1. SBA's 2nd lien position will be considered adequate when the applicant meets all of the following criteria:

a) Strong, consistent cash flow that is sufficient to cover the debt;

b) Demonstrated, proven management;

c) The applicant business has been in operation for more than 2 years; and

d) The proposed Project is a logical extension of the applicant's current operations.

2. If all four factors are present, no additional collateral or Borrower's contribution is required.

3. If one or more of the above factors is not met, additional collateral and/or increased Borrower's contributions may be required.

4. Because leasehold improvements provide minimal collateral value, the CDC must consider requiring additional collateral.

5. Caution: Do not encumber assets or require additional contributions that the Borrower needs to sustain ongoing operations. Taking additional collateral with minimal liquidation value only serves to limit the Borrower's ability to obtain additional short-term financing while offering little or no additional protection to SBA.

C. Third Party Loan

1. The Third Party Lender usually has a 1st lien on the Project Property, and SBA cannot guarantee these loans. (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 (13 CFR §120.923):

a) The borrower assumes an existing note as part of the total financing;

b) The FDIC has carry-back financing; or

c) 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. SBA's lien position must not be subordinate to loans made from the proceeds of a tax-exempt obligation. Mixed-Use Collateral

Comment [D150]: Language removed - "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 shorter term assets, such as machinery and equipment and furniture and fixtures, the CDC should 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 shorter term assets. SBA requires at least a 2nd lien position unless there is a lien from an existing 504 loan on the assets;
3. Requiring additional equity or collateral; or
4. Removing the shorter 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. Each 504 loan must be guaranteed by at least one individual or entity. SBA/CDC may require other individuals to guarantee the loan as well. (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.

Comment [D151]: Language added to agree with Subpart B, Chapter 4.

a) CDC must obtain a personal financial statement from all individuals guaranteeing the loan.

b) 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.

c) Guaranty of Spouse:

1. Each spouse owning 5% or more of a Small Business Applicant must personally guarantee the loan in full when the combined ownership interest of both spouses is 20% or more.
2. 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. SBA/CDC may require other entities to guarantee the loan as well. If the entity that owns 20% or more of the Small Business Applicant is a trust (revocable or irrevocable), the trust must guarantee the loan with the trustee executing the guaranty on behalf of the trust and providing the certifications required in Chapter 2, Paragraph III.F.3.c) and e) of this Subpart. In addition, if the trust is revocable, the Trustor also must guarantee the loan. Financial statements are necessary to determine the assets available to support the guaranty.

3. Reducing Ownership Interest

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

b) 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).

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, the Plan or Account cannot guarantee the loan. CDC must ensure that the Plan or Account meets all applicable IRS eligibility requirements. In addition, the following loan conditions must be met:

a) The owner(s) of the 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.

b) The members of the ESOP are not required to personally guarantee the debt, but all owners of the Small Business Applicant who hold an ownership interest of 20% or more outside the ESOP are subject to SBA's personal guaranty requirements.

c) The application cannot be structured as an EPC/OC. 13 CFR §120.111(a)(6) (SBA regulations require that each 20% or more owner of the EPC and each 20% or more owner of the OC guarantee the loan, and the regulation does not provide for an exception.)

II. APPRAISAL REQUIREMENTS

The regulations governing appraisal requirements are set forth at 13 CFR §120.160(b).

A. Commercial Real Estate

1. SBA requires a real estate appraisal if the estimated value of the Project Property is:

a) Greater than $250,000; or

b) $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

2. 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 Project Property's estimated value is over $1,000,000, the appraiser must be 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:

a) A self–contained appraisal report; or

b) A summary appraisal report.

4. In order for the appraiser to identify the scope of work appropriately, the appraisal must identify SBA as the client or an intended user of the appraisal, as those terms are defined in the Uniform Standards of Professional Appraisal Practice

(USPAP). The CDC may also be identified as the client or an intended user. It is acceptable to SBA if the appraisal identifies the Third Party Lender as the client and SBA as an intended user. The CDC may not use an appraisal prepared for the applicant. The cost may be passed on to the borrower.

5. If the loan will be used to finance new construction or the substantial renovation of an existing building, the appraisal must estimate what the market value will be at completion of construction. ("Substantial" means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of the application.) After construction is completed, CDC must obtain a statement from the appraiser that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based. If the appraiser cannot provide such a statement, then the CDC cannot close the loan without the SLPC's prior written permission.

6. If the loan will be used to acquire an existing building that does not require construction, the appraiser should estimate market value on an as-is basis. If the appraiser estimates the value other than on an as-is basis, the narrative must include an explanation of why the as-is basis was not used.

7. If the appraisal engagement letter asks the appraiser for a business enterprise or going concern value, the appraiser must allocate separate values to the individual components of the transaction including land, building, equipment and business (including intangible assets). When the collateral is a special purpose property, the appraiser must be experienced in the particular industry.

8. An appraisal must be submitted and approved by the SLPC (except on PCLP loans) prior to closing. If the appraisal comes in:

a) at 90% or more of the estimated value, the CDC may close the loan but must include a written explanation in the loan file if the appraisal is less than the estimated value; or

b) at less than 90% of estimated value, the debenture must be reduced or, if available, the CDC must secure additional collateral or additional investment from the borrower and/or guarantors that will be added to the required Borrower's Contribution and will be sufficient to address the gap in value. If additional collateral or additional investment is not available, but the applicant demonstrates strong, consistent cash flow sufficient to support the debt, then the SLPC can approve the appraisal and the CDC may close the loan.

9. An appraisal must be submitted to the SLPC with the application under the following circumstances:

a) Equity in land owned for 2 years or more is being contributed as part of Borrower's contribution;

b) The real estate is Third Party Lender's OREO; or

c) The Project is not an arms-length transaction (e.g., family members).

B. <u>Non-commercial real estate or real estate securing a personal guaranty</u>

SBA has no specific appraisal 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.

III. 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.

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. The requirements of this section apply to all Environmental Investigations whether or not the report is required to be submitted to the SBA. 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. (Note that a Reliance Letter is required even if the Environmental Investigation Report is addressed to the CDC.)

E. The Steps of an Environmental Investigation

1. NAICS Codes. For all Property *except* a unit in a Multi-Unit Building, CDC must begin by making a Good Faith effort to determine the NAICS code(s) for the Property's ***current and known prior uses*** and compare the NAICS code(s) to the list of environmentally sensitive industries in Appendix 4. For a unit in a Multi-Unit Building, Lender may proceed directly to subparagraphs b)(1) and (2) below.

a) 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), the Environmental Investigation must begin with a Phase I and the CDC must also refer to and, if applicable, comply with "Environmental Investigation Requirements for Gas Station Loans" in Appendix 5.

b) If there is not a NAICS code match to an environmentally sensitive industry, or if the Property is a unit in a Multi-Unit Building, the CDC must proceed as follows:

1. If the loan amount is **up to <u>and including</u>** $150,000, the Environmental Investigation may begin with an Environmental Questionnaire.

2. If the loan amount is **more than** $150,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and Records Search with Risk Assessment.

2. Environmental Questionnaire Results. If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination at the Property 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 Records Search with Risk Assessment.

3. Environmental Questionnaire & Records Search with Risk Assessment Results

a) If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination at the Property 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.

b) If the Records Search with Risk Assessment concludes that the Property is an "elevated risk" or "high risk" for Contamination, CDC must obtain a Phase I ESA.

4. Transaction Screen Results

a) 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.

b) If the Environmental Professional conducting the Transaction Screen concludes that further investigation is warranted, the CDC must obtain a Phase I ESA.

5. Phase I ESA Results

a) 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.

b) 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.

6. Phase II ESA Results

a) 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.

b) 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:

1. Whether the Contamination quantities exceed the reportable or actionable levels;
2. Whether Remediation is necessary;
3. 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
4. The projected completion date of any Remediation.

c) 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 below, "Approval and Disbursement of loans when there is Contamination or Remediation at the Property".

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 and Center Counsel

With respect to environmental investigations that are required to be submitted to an SBA Loan Processing Center, SBA loan processing personnel must obtain field or center 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 known 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 or center 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:

1. Nature and Extent of the Contamination including copies of the following documents pertaining to the Property:

a) All relevant Environmental Investigation Reports;

b) All publicly available Governmental Entity correspondence;

2. Remediation

a) Recommended method of Remediation;

b) Status of on-going Remediation, if any;

c) Environmental Professional's estimated cost of Remediation;

d) Environmental Professional's estimated completion date;

e) Governmental Entity's designation of responsible Person(s);

f) Person(s) paying for on-going Remediation;

3. Collateral Value

a) Proposed loan amount and proposed use of proceeds;

b) Appraised or the estimated value of the Property;

c) Institutional Controls and Engineering Controls, if any, and their impact on repayment ability, collateral value and marketability of the Property; and

4. Mitigating Factors

SBA will rely upon one or more of the following factors when deciding to disburse before completion of Remediation or monitoring:

a) Indemnification. If any Person who possesses sufficient financial resources to cover the costs of completing Remediation 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. The Third Party Indemnitor cannot be the borrower or operating company.

The SBA Environmental Indemnification Agreement:

1. Cannot be modified;

2. Must be executed by the Borrower and (if applicable) Operating Company;

3. Must have a copy of the Environmental Investigation Report attached to it; and

4. 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 no less than two weeks in advance of submission of the loan closing package to the SBA District Office.

b) 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.

c) "No Further Action". If a CDC obtains a "no further action letter" or "closure letter" from a Governmental Entity stating that no further Remediation or monitoring of Contamination previously found is required, approval or disbursement may be considered.

d) "Minimal Contamination". If the extent of Contamination and cost of Remediation are de minimis 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.

e) 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.

f) 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 and escrow agreement for the escrow account must ensure that escrow funds will only be used for Remediation costs. The source of the escrow funds may not be SBA loan proceeds. Depending upon the circumstances, an escrow account with more than 150 percent of the estimated costs of Remediation may be appropriate. The escrowed funds may be used for Remediation. 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.

g) Groundwater Contamination Originating from Another Site. If groundwater Contamination on the Property is shown to have come from another property, approval or disbursement may be considered if:

1. Another Person with sufficient resources is performing Remediation pursuant to a Remediation action plan that has been approved by the appropriate Governmental Entity; or

2. 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

3. The Governmental Entity provides satisfactory written assurance that it will not hold the Property owner liable for the Contamination. CDC should attempt to have CDC and SBA included by name in the letter along with the Property owner and future purchasers.

h) 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.

i) "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 4.i) 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 additional environmental assessments be performed for certain special use facilities. For example, Property constructed prior to 1980 that will be used for daycare or child care centers or nursery schools or residential care facilities occupied by children must undergo a lead risk assessment (for lead based paint) and testing for lead in drinking water, and the results of these assessments 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. On-site dry cleaning facilities, which may have utilized tetrachloroethene (PCE) and trichloroethene (TCE) in the course of their business operations, may present significant clean-up costs if these contaminants have entered the soil or groundwater. Prudent lending practices dictate and SBA requires that on-site dry cleaners in operation for more than five years undergo a Phase II Environmental Site Assessment in addition to a Phase I which would be required due to the NAICS code match. Any Phase II performed in connection with an on-site dry cleaning facility must be conducted by an independent Environmental Professional *who holds a*

current Professional Engineer's or Professional Geologist's license and has the equivalent of three (3) years of full time relevant experience. Gasoline stations also present significant clean-up costs if contaminated (for specific requirements pertaining to gasoline stations, please refer to Appendix 5).

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.4 above.

J. Questions on SBA's Environmental Policy 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 an environmental decision that has been rendered by SBA 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. (NOTE: this e-mail address cannot receive submissions larger than 10MB. If the e-mail and attachments exceed this size, the appeal must be sent in more than one e-mail.) Environmental appeals, including exceptions to Agency environmental policy, will be reviewed by the SBA Environmental Committee comprised of OGC attorneys appointed by the Associate General Counsel for Litigation, who may consult with an environmental engineer. The Associate General Counsel for Litigation retains the authority to overrule decisions rendered by the SBA Environmental Committee.

CHAPTER 4: LOAN APPLICATION PROCEDURES AND CONTROLS

I. CDC'S 504 APPLICATION

The CDC must complete in full Application for Section 504 Loan, SBA Form 1244.

II. MINIMUM DEBENTURE AMOUNT

The minimum dollar amount for a debenture must be at least $25,000. 13 CFR §120.930(b)

III. SUBMITTING THE APPLICATION

A. Regular 504 Loans

1. All 504 loans are processed in the SLPC. Pre-application inquiries may be emailed to Sacramento504@sba.gov.

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"):

a) CDC Checklist for Submitting a 504 Loan Application;

b) Eligibility Information Required for 504 Submission; and

c) Supplemental Information for 504 Processing.

3. Send the completed items along with SBA Form 1244, the CDC's credit analysis, and a disk of the Authorization) to:

Sacramento Loan Processing Center
Small Business Administration
6501 Sylvan Road, Suite 111
Citrus Heights, CA 95610-5017

4. In lieu of submitting a disk, the CDC may email the Authorization to Sacramento504Authorizations@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 www.sba.gov/for-lenders, then go to "Forms Loan Package Tool" which is found under "Forms, Notices, and SOPs" towards the bottom of the page to find a listing of all forms.

a) PCLP Guarantee Request (SBA Form 2234 (Part A));

b) Copy of pages 2 and 7 of SBA Form 1244;

c) Copy of "Supplemental Information for PCLP Processing" (Part B); and

d) Copy of "Eligibility Information Required for PCLP Submission" (Part C).

2. Send the completed items to the SLPC by mail to the above address or by fax to 916-735-0640.

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 is only required to submit the documents not marked with an asterisk on the instructions. See SBA Form 1244. The application includes:

a) Credit memorandum,

b) Draft loan authorization,

c) SBA Form 1244.

d) Only the following exhibits to the 1244:

1. Eligibility checklist (Exhibit 2);
2. SBA Forms 912 (Exhibit 3);
3. Franchise documentation (Exhibit 13);
4. Key costs documents (Exhibit 14);
5. Collateral appraisals (Exhibit 16);
6. Environmental documentation (Exhibit 17);
7. Participating Lender Letter (Exhibit 19);
8. INS Verification (Exhibit 21); and
9. Copies of debt and lien instruments and a transcript of account or equivalent (Exhibit 24).
10. There is a certification on Form 1244 "The undersigned certifies that all information in this application and the exhibits is true and complete to the best of his/her knowledge and is submitted to SBA so that SBA can decide whether to approve this application." Therefore wet signatures from the borrower are not required on the following exhibits: Exhibit 4, "Personal Financial Statement," Exhibit 6 "A balance and income statement as well as federal income tax returns for the previous two years for SBC (or three years, if the alternative 7(a) size standard is used, Exhibit 7 "A balance sheet and income statement dated 120 days of the application together with an aging of the accounts receivable and accounts payable listed," and Exhibit 12: "The names of affiliated (through ownership or management control) or subsidiary businesses as well as the last two fiscal year-end financial statements and/or federal income tax returns for the last two years (or three years, if the alternative 7(a) size standard is being used.) The signature on the Certification will serve as the signature for Exhibits 4, 6, 7 and 12.

Comment [D152]: Language added to address certification on Form 1244 and requirements for wet signatures.

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. All CDCs are required to provide a copy of the full or partially executed purchase/sale agreements with 504 applications.

Comment [D153]: Language added requiring purchase/sale agreements.

5. Criteria for ASM

a) SLPC selects CDCs to participate in ASM. To be selected, CDCs must submit complete, quality loan applications.

b) To submit loans using ASM, a CDC must:

1. Be an ALP;

2. Be Premier Certified Lenders Program (PCLP): or

3. Have submitted at least 10 loans in the last 12 months, and have passed benchmark measures using the most recent loans processed; and

4. Earn an average "loan package score" (LPS) numeric equivalent rating of no more than "2.0" among the most recent 25 loans submitted as determined by the SLPC upon the review of the comprehensiveness and quality of the loan application package.

6. Monitoring

SBA will monitor CDC's continued eligibility to use ASM by reviewing 1 loan out of 10 loan applications based upon the following:

1. Each CDC will have at least 1 loan reviewed during a 12 month period.

2. No CDC will have more than 12 loans reviewed during a 12 month period.

3. SLPC will send CDC a written notice for review, and CDC will have 3 business days to submit the entire file to the SLPC.

4. The CDC will lose its ASM status if:

(a) The average "loan package score" (LPS) for the most recent 25 applications (or all applications since inception as ASM, if fewer than 25) submitted to the SLPC exceeds 2.0, the CDC will lose its ASM status until the average LPS returns to 2.0 or less.

(b) The average LPS of the ASM loans reviewed in the CDC's annual review of ASM applications by SLPC exceeds 2.0, the CDC will lose its ASM status for a period of not less than 90 days.

(c) A CDC fails to meet the required portfolio performance standards or any other criteria for ASM.

(d) SBA will rely more heavily on the analysis of the CDCs therefore, continued quality performance of the CDCs portfolio is essential.

5. The SLPC Center Director or designee may approve or remove ASM status at any time for good cause including, but not limited to, misrepresentation, quality of post-approval actions and findings of internal or external audits of the CDC.

CHAPTER 5: LOAN CONDITIONS/AUTHORIZATION REQUIREMENTS

I. 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. 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 SOP supercedes the Boilerplate.

Comment [D154]: Language modified…conflicts defer to SOP not Boilerplate.

a) The Boilerplate contains the mandatory national standard language for all SBA authorizations.

b) The Wizard is a technical tool intended to make it easier for CDCs to create Authorizations based on the Boilerplate.

2. 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.

Loan Program	Responsible Party
Regular/ALP	CDC drafts and SBA finalizes and executes
PCLP	CDC drafts and executes on SBA's behalf

4. SBA 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 48 months from the date of approval. There will be no extensions. SBA will automatically cancel undisbursed dollars. The Denver Finance Center (DFC) will make a reasonable effort to mail an initial message to the CDC approximately 3 months prior to taking action on undisbursed funds. The message will inform the CDC of the undisbursed dollar amount and will provide a date on which the dollars will be automatically cancelled. After the 3-month message has expired, DFC will make a reasonable effort to mail a second message on the day the automatic cancellation is processed.

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

3. Maturity is 10 or 20 years based upon the useful life of the property being financed and is generally:

a) 20 years for real estate;

b) 10 years for machinery and equipment; and

c) 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 13 CFR §120.160(c)

a) SBA requires hazard insurance on all assets pledged as collateral. If the business is located in a state that requires additional coverages such as wind, hail, earthquake or other, on the hazard insurance or in a separate policy, borrower must provide.

Comment [D155]: Language added to cover special coverage requirements.

b) Real Estate:

1. Coverage must be in the amount of the full replacement cost.

2. If full replacement cost insurance is not available, coverage must be for the maximum insurable value.

3. Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of the CDC/SBA. 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/SBA. The policy or endorsements must provide for at least 10 days prior written notice to CDC/SBA of policy cancellation.

c) Personal Property:

1. Coverage must be in the amount of full replacement cost.

2. If full replacement cost insurance is not available, coverage must be for maximum insurable value.

3. Insurance coverage must contain a LENDER'S LOSS PAYABLE CLAUSE in favor of CDC/SBA. 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/SBA. The policy or endorsements must provide for at least 10 days prior written notice to CDC/SBA of policy cancellation.

2. Marine Insurance

a) Coverage in the amount of the full insurable value on the vessel(s) with CDC/SBA designated as "Mortgagee" must be obtained when the vessel is the collateral on the loan.

b) The policy must contain a Mortgagee clause providing that the interest of CDC/SBA will not be invalidated by any:

1. Act, omission, or negligence of the mortgagor, owner, master, agent or crew of the insured vessel;

2. Failure to comply with any warranty or condition out of mortgagee's control; or

3. Change in title, ownership or management of the vessel.

c) The policy must include Protection and Indemnity, Breach of Warranty, and Pollution coverage.

d) The policy or endorsements must provide for at least 10 days prior written notice to CDC/SBA of policy cancellation.

3. Flood Insurance

a) SBA flood insurance requirements are based on the Standard Flood Hazard Determination (FEMA Form 086-0-32 or FEMA Form 81-93). CDCs have the option of using either form until May 30, 2015, at which time only FEMA Form 086-0-32 may be used.). The mandatory purchase of flood insurance requirements set forth by the National Flood Insurance Program (NFIP) apply with equal force to condominium and cooperative units. Policies for such units will consist of separate policies obtained by the individual unit owner for the particular unit and the condominium or cooperative association for the exterior of the entire building.

Comment [D156]: Language added for new form and to advise of expiration of existing form.

b) 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).

c) 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.

d) 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 request a waiver of this requirement from the SLPC. The CDC must submit with its request a written justification 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. PCLP CDCs may waive this requirement when the building is not collateral for the loan if it:

1. Uses prudent lending standards to determine that flood insurance is not economically feasible or not available; and

2. Includes 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.

e) Insurance coverage must be in amounts equal to the lesser of the insurable value of the property or the maximum limit of coverage available.

f) Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of CDC/SBA. 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/SBA.

4. Life Insurance

a) CDC must determine if the viability of the business is tied to an individual or individuals. In these situations, the CDC must require life insurance.

b) Life insurance required must be consistent with the size and term of the loan. The amount and type of collateral available to repay the loan in the event of the death of the borrower may be factored into the determination of the appropriate amount of life insurance.

c) For each policy required under this paragraph, CDC must obtain a collateral assignment, identifying the CDC/SBA 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.

d) 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:

a) Liability Insurance;

b) Product Liability Insurance;

c) Dram Shop/Host Liquor Liability Insurance;

d) Malpractice Insurance;

e) Disability Insurance;

f) Workers' Compensation Insurance; and

g) Any State specific insurance requirements.

E. IRS Tax Transcript/Verification of Financial Information

1. SBA's Tax Verification process is to determine if:

a) The Small Business Applicant filed business tax returns; and

b) 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 first disbursement of Loan proceeds, CDC must obtain:

a) Verification of Financial Information—

1. Within 10 days of receipt of the Authorization, the CDC must submit IRS Form 4506 - T with SBA logo 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.

2. If the business has been operating between zero and 2 years, CDC must obtain the information for all years in operation.

3. 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. If the applicant has filed an extension for the most recent fiscal year, CDC must obtain a copy of the extension along with evidence of payment of estimated taxes.

4. CDC must compare the tax data received from the IRS with the financial data or tax returns submitted with the loan application.

5. Borrower must resolve any significant differences to the satisfaction of CDC and the SLPC. Failure to resolve differences may result in cancellation of the loan.

6. For a change of ownership, CDC must verify financial information provided by the seller of the business in the same manner as above.

7. If CDC does not receive a response from the IRS or copy of the tax transcript within 10 business days, the CDC:

(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.

b) The Internal Revenue Service (IRS) has implemented a new expedited service through which the financial community can expeditiously confirm the income of a borrower during the processing of a loan application: Income Verification Express Service (IVES) program. Under IVES, the IRS can electronically provide tax return transcript, W-2 transcript and 1099 transcript information generally **within 2 business days** to a third party with the consent of the taxpayer. The transcript information is delivered to a secure mailbox based on information received from a Form 4506-T. A $4.50 fee is imposed on each transcript requested. It is expected that this process will replace the current process, which requires the manual pick-up and delivery of transcripts from the seven IRS Return and Income Verification Services (RAIVS) units located across the country. Under the new system, transcripts will be delivered electronically using the e-Services platform via a secure mailbox. To participate in the IVES program, CDCs will need to register and identify employees to act as agents to receive electronic transcripts on the CDC's behalf. To establish access to a secure mailbox, CDCs will need to register, which can be done through the following IRS website: http://www.irs.gov/individuals/article/0,,id=161649,00.html. Additional information on IVES is also available from this website.

c) If the IRS transcript reflects "Record Not Found" for the middle year of the three years requested, the lender has verified the other two years, AND the Small Business

Applicant has some record of either receiving a refund or paying the taxes for the missing year, then the lender may reasonably assume that the Small Business Applicant filed a return for the missing year. If the lender documents all of these steps in its loan file, the lender has demonstrated to SBA that it has made a good faith effort to satisfy the verification requirement.

d) If the IRS advises that it has no record on the applicant, no record of year 1 and/or year 3, 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.

e) 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. CDC may use SBA Form 155 or its own Standby Agreement Form. A copy of the note must be attached to the standby agreement.

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 must obtain:

a) An Assignment of Lease with

1. A term including renewal options that equals or exceeds the term of the loan; and

2. A requirement that the lessor provide a 60-day written notice of default to the CDC with option to cure the default; and

b) 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:

a) Tenant's right to encumber leasehold estate;

b) No modification or cancellation of lease without CDC's or assignee's approval;

c) CDC's or assignee's right to:

1. 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;

2. Sublease;

3. Hazard insurance proceeds resulting from damage to improvements;

4. Share in condemnation proceeds; and

4. CDC's or assignee's rights upon default of the tenant or termination.

5. For lease requirements concerning EPCs and OCs, see Chapter 2 of this Subpart.

6. 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:

a) 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. 13 CFR §120.174

1. The NEHRP provisions may be found in the American Society of Civil Engineers (ASCE) Standard 7 and the International Building Code.

2. 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.

b) The authorization boilerplate automatically inserts the NEHRP provision when any of the use of proceeds options selected includes construction financing, including leasehold improvements. If the leasehold improvements made with loan proceeds will become permanently affixed to any structure on the leased premises, then they must comply with the NEHRP. If the improvements are only temporary, they do not need to comply with the NEHRP. Accordingly, if the borrower can demonstrate that the leasehold improvements will be temporary, CDC may request modification of the authorization to remove the NEHRP provision in accordance with Paragraph II of this Chapter. 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

Comment [D157]: Language added to provide detail for compliance with NEHRP.

2. If the interim financing comes from a CDC, the following additional conditions must be required in the Authorization:

a) Mortgages must be recorded prior to beginning construction.

b) Inspections must be made by a qualified engineer, appraiser, or other party satisfactory to SBA prior to all progress disbursements.

c) 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;

d) The contractor must furnish builder's risk and workers' compensation insurance;

e) One complete set of plans and specifications of the proposed construction must be submitted to the CDC;

f) 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;

g) The CDC must make and document periodic inspections of construction; and

h) When loan funds will be used to improve buildings on leased land, assignment of the lease must be obtained.

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 the same opportunity to cure any defaults 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. (Scroll down and click on link entitled "504 streamlining notice and related documents.)

K. Certifications of the Borrower

The certifications required of the Borrower are listed on SBA Form 2289. (Scroll down and click on link entitled "504 streamlining notice and related documents.)

L. Certifications of the Interim Lender

The certifications required of the Interim Lender are listed on SBA Form 2288. (Scroll down and click on link entitled "504 streamlining notice and related documents.)

II. MODIFYING THE AUTHORIZATION

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.

A. 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.

B. Neither the amount nor the maturity of a loan can be modified after the debenture closing has been completed.

C. PCLP CDCs may modify and extend the loan authorization unilaterally and must notify SLPC of any change in loan amount.

D. Post-approval modifications (327 actions) may be sent by email to Sacramento504Servicing@sba.gov or by fax to 916-735-0641.

CHAPTER 6: CLOSINGS

I. 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. 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. 13 CFR §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 CFR §120.960.

II. 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 who are not using a Designated Attorney; and

2. An expedited closing package submitted by a Priority CDC using a Designated Attorney under the expedited closing process.

B. The Closing Package

1. SBA has adopted a 504 Debenture Closing Checklist (Checklist) (SBA Form 2286). CDCs and SBA must use this Checklist for all 504 debenture closings. The Checklist 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:

a) For regular closings, the 12 items and the Checklist; or

b) For expedited closing packages, the first 7 items and the Checklist to SBA for SBA Counsel's review after closing.

c) 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:

a) Documents on the Checklist that have an SBA form number

b) Opinion of CDC Counsel (Appendix D to the 504 Authorization Boilerplate); and

c) The SBA-approved environmental indemnification agreement.

d) 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.

III. 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. CDCs must issue an opinion that to the best of its knowledge there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA ("finding"). For all 504 loans except ALP and PCLP, CDCs must provide its finding to the SLPC along with copies of the financial statements current within 120 days supporting that finding. The CDC's finding of no adverse change must be made no more than 14 calendar days prior to submission to the SLPC at the time the CDC is requesting that SLPC transmit the file to District Counsel for debenture closing. The SLPC either will notify the CDC of its approval or, if SBA disagrees with the CDC's determination of no adverse change, the debenture will not close until SBA has been satisfied that any adverse change has been remedied. ALP and PCLP CDCs must make a finding of no unremedied substantial adverse change 14 calendar days prior to submission of the closing package to District Counsel and retain the finding and copies of the financial statements on which they relied in their files. If the debenture closing is not consummated in the month following the finding, all CDCs must make and submit (except PCLP and ALP CDCs which must retain the finding in the file) a new finding of No Adverse Change and request for transmission of the file including SLPC's approval of the new finding to District Counsel.

4. 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 hold over the package for the next month's debenture sale.

5. 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 hold late packages over for the next month's debenture sale.

6. 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.

7. 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.

8. 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:

a) Servicing Agent Agreement (SBA Form 1506) (original)

b) Development Company 504 Debenture (SBA Form 1504) (original)

c) Note (CDC/504 Loans) (SBA Form 1505) (copy)

d) Authorization Agreement for Preauthorized Payment (Debit) and voided check (original)

e) Request for Taxpayer ID Number and Certification (IRS Form W-9) (original)

f) Third Party Lender participation fee check (if not being deducted from the CDC processing fee) (original)

9. Forward the original of all documents listed on the 504 Debenture Closing Checklist (which serves as the original collateral listing) to the appropriate **CLSC** within 30 days after the debenture sale.

a) The CDC must forward the collateral file containing all the original documents listed on the Checklist to the CLSC. The CDC must use the Checklist as the collateral listing. The CDC must maintain the collateral file in a manner acceptable to SBA.

b) 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 additional documents along with a collateral listing upon receipt.

10. Ensure that all recorded documents are canceled of record (officially canceled at the place of recordation, as required by law), if a 504 loan is canceled after closing but before funding.

B. What are SBA Counsel's Responsibilities?

SBA Counsel Must:

1. Issue an annual 504 debenture closing schedule with District Office deadlines for receiving closing packages. SBA Counsel responsible for debenture closing in

each District Office must make available an annual schedule of the deadlines for receipt of both regular and expedited closing packages for each monthly debenture sale to the public and to CDCs who regularly submit closing packages to the district.

2. Review closing packages. SBA Counsel must use the standard Checklist to review the seven documents submitted for an expedited closing and 12 documents submitted for a regular closing. If SBA Counsel has concerns that SBA may be at material risk if the debenture is sold, then SBA Counsel must contact the CDC and identify what information is reasonably necessary to address that concern. If the CDC is unable to provide the information or otherwise alleviate the concern, then the debenture will not be submitted for sale. In addition, SBA Counsel must verify that the information the CDC entered onto the Debenture, Note, and Servicing Agent Agreement forms is accurate and complete.

a) Notify CDCs of deficiencies. SBA Counsel may reject late packages or packages that do not meet the standards for debenture sale. If the SBA Counsel determines that changes are needed in the closing documents of packages approved for sale, SBA Counsel must notify the CDC of such changes before the deadline upon which the CDC must mail the documents to CSA for the debenture sale. If SBA Counsel rejects a package, SBA Counsel must notify the CDC that SBA will not include the package in the scheduled sale and advise the CDC in writing of what the CDC needs to correct for the package to meet the standards for sale. The CDC may resubmit the package for a future sale with the required changes.

b) Issue an SBA Counsel closing opinion. Once SBA Counsel is satisfied with the loan closing package (including that the CDC has made all necessary changes to the closing documents as identified by SBA Counsel), SBA Counsel must issue an opinion pursuant to 13 C.F.R. §120.960(c) stating that the debenture may be closed, SBA may execute its guarantee, and the debenture may be sold. The standard format for the SBA Counsel opinion is Appendix D of the Authorization boilerplate. The SBA Counsel's Opinions should be sent to the SLPC.

c) Notify the CDC and the CSA which loans SBA has approved for debenture funding. SBA Counsel must notify the CDC and the CSA in writing as to which debentures the District Office approves for funding in that month's sale.

3. Quality Assurance Reviews (QARs). SBA Counsel must conduct QARs of a random selection of closing packages submitted by Priority CDCs 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.

4. 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 or non-Priority CDCs, to ensure program integrity. A Complete File Review consists of a review of the items listed on the Checklist for Complete File Review, SBA Form 2303.

Comment [D158]: Language added to provide specific SBA counsel requirements.

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 and Servicing Agent Agreement, generating conformed pages, and executes the Servicing Agent Agreement.

3. Distribute post-closing documents. The CSA will provide the following documents on-line:

a) The first page of the Note;

b) The Note amortization and prepayment schedules; and

c) Pages 3 and 4 of the Servicing Agent Agreement.

D. The Trustee's responsibilities

The Trustee will provide copies of the Debenture and the Debenture amortization and prepayment schedules to the CDC, CSA, or SBA, as directed.

IV. USE OF CONSTRUCTION ESCROW ACCOUNT (13 CFR120.961)

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 (see Chapter 5 of this Subpart, Construction Loan Provisions):

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 Third Party Lender's loan.

E. No other escrow closings are permitted.

CHAPTER 7: DEBENTURE PRICING & FUNDING

I. PRICING A 504 DEBENTURE 13 CFR §120.931

A. Terms

1. Net Debenture Proceeds 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:

a) $5,000,000 for each small business concern (which includes any prior SBA loan guaranties, committed or outstanding, 7(a) or 504, to the applicant and its affiliates) for:

1. Regular 504 loans; and
2. Public Policy Projects (See Section 502(2)(A)(ii) of the SBI Act and Chapter 2 of this Subpart, Eligibility)

b) $5,500,000 for:

1. Each Project 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);
2. Each Project that reduces the Borrower's energy consumption by at least 10%; or
3. Each Project for plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities' consumption, commonly known as micropower, or renewable fuel producers including biodiesel and ethanol producers.

There can be more than one Project (for small manufacturers and eligible energy projects) for the same applicant or for its affiliates provided that SBA determines that each Project meets prudent lending standards. The $5,500,000 per Project is not reduced by other prior SBA loan amounts outstanding because the $5,500,000 is a limit per Project not a limit for each small business concern.

Comment [D159]: Language added to specify SBA application of prudent lending standards.

Note: 504 loans made for Projects for small manufacturers or eligible energy loans as described above do not reduce the $5,000,000 limit for each small business concern for regular 504 loans and loans for Public Policy Projects.

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%

of the project costs for 20 years, participation in project financing would be as follows:

%	Participation	Amount
50%	Third-Party Lender	$500,000
35%	504 Net Debenture	$350,000
15%	Small Business Injection	$150,000
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
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	$2,500.00
		Total	$358,625.00
		Divide by 0.99600 (0.99625 for 10-Year Debenture)	$360,065.20
		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.		

*For Eligible Project Costs and fees, see Chapter 2 of this Subpart.

D. Separate Payment of the Debenture Fees

1. The CDC's 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's Processing Fee from the debenture proceeds.

a) If the Borrower is reimbursed, the CDC's 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.

b) If the borrower does not want to be reimbursed for the CDC's Processing Fee from the debenture proceeds, the Gross Debenture calculation must include the CDC's 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's 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:

a) If the amount of the unused contingency fund is 2% 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.

b) If the amount of the unused contingency fund is greater than 2% 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. 13 CFR §120.930(c)

II. 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:

1. 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.

2. 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's Processing Fee; and

c) Balance to Borrower based on the CSA's computations under the pricing model.

B. Community Adjustment and Investment Program (CAIP)

CAIP was established in 1993 to assist U.S. companies doing business in areas of the country that have been negatively affected by the North American Free Trade Agreement (NAFTA). CAIP loans allow for the reimbursement of the guaranty fee on eligible 504 loans.

1. Eligibility

To be eligible for CAIP, the small business must reside in a county, or a defined area within a county, noted as being negatively affected by NAFTA based on job losses and the unemployment rate of the county. There is also a job creation component of one job created for every $65,000 of the debenture.

2. Eligible CAIP Communities

To find out if the business is in an eligible area, go to the listing of the counties at www.sba.gov at All CAIP. This listing is updated several times a year.

3. Debt Refinancing under CAIP

a) No more than 49% of loan principal made available under CAIP may be used to refinance existing long-term debt (i.e., debt with a remaining term of more than 24 months) or to finance a change of ownership.

b) For purposes of this limitation, the following are not considered to be long-term debt refinancing and, accordingly, are not subject to the limitation:

1. Converting short-term debt (i.e., debt with a remaining term of 24 months or less) to long-term debt;
2. Converting interim debt (i.e., a bridge loan) to long-term debt;
3. Converting line of credit or revolving credit debt to long-term debt;

4. If the debt was incurred to open a new facility, expand operations at an existing facility, enter new markets, or improve a small business's competitive position;
5. Bringing trade payables to a current status or buying out a factor; and
6. A change of ownership (e.g., acquisition, merger or consolidation) that is essential to sustain the existence of the business is not subject to the limitation.

Comment [D160]: Language added to specify that COO essential to sustain is not subject to the limitation.

4. Application Process

Once the 504 loan is approved by SBA (as evidenced by an SBA loan number), the CDC must submit a completed Form 2021 to the SLPC. The SLPC will review the form and, if the CAIP application meets all eligibility requirements, will forward it to the Office of Financial Assistance (OFA). In addition to the completed form, SBA's loan accounting information must reflect that the guaranty fee has already been paid.

OFA then prepares a package to be submitted to and considered by the CAIP Finance Committee, which is comprised of officials from the Departments of Agriculture and Treasury and the North American Development Bank.

If the CAIP Finance Committee approves the application, SBA will refund the guaranty fee to the CDC who, in turn, refunds any fee paid by the borrower to the borrower. (Note: The CAIP Finance Committee meets infrequently, and funds for this initiative are limited and may not always be available.)

CHAPTER 8: ALLOWABLE FEES

I. 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 120.972 and are described in the table below.

504 Fees		
CDC Fees -- 13 CFR §120.971(a)		
(1) Processing fee (Packaging fee)	Up to1.5% of the Net Debenture	Paid by borrower to CDC
(2) Closing Fee	Maximum of $2500 may be financed from the debenture proceeds. 13 CFR §120.883(e)	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 15th 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
CSA Fees – 13 CFR §120.971(b)	On-going fee of 0.1% per year is charged. 1) July 26, 2007 thru July 25, 2009, CSA receives 2/64th. 2) For July 26, 2009 thru July 25, 2012 (option years) CSA receives 3/64th. Remainder goes to SBA.	
Other Agents Fees – 13 CFR §120.971(c)		

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)		
SBA Fees -- 13 CFR §120.971(d)		
(1) SBA Guaranty Fee -- (up-front fee)	0% (FY 2011) 0.5% (FY 2012)	One-time fee
(2) Annual Fee -- (Ongoing fee)	0.749% (FY 2011) 0.9375% (FY 2012)	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.
Funding Fee -- 13 CFR §120.971(e)	0.25% of the net Debenture Proceeds	Charged to cover the costs incurred by the trustee, fiscal agent and transfer agent.
3rd Party Lender & CDC -- 13 CFR §120.972		
(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 cannot be paid from any additional fees imposed on the Borrowers (loans approved by SBA after 9/30/1996)

II. 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
The CDC may earn a fee for this service provided it is:

1. Based upon a contractual agreement between the Third Party Lender paying the referral fee and the CDC; and
2. Not paid by the borrower or funded from the debenture proceeds.

III. DISCLOSURE OF FEES AND EXPENSES (13 CFR §Part 103)

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 CDC in any matter involving SBA assistance. "Agent" means 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.

B. SBA Form 159(504) "Fee Disclosure Form and Compensation Agreement"

1. The Small Business Applicant or the CDC, depending on who paid or will pay the Agent, must use SBA Form 159(504), "Fee Disclosure Form and Compensation Agreement," to document the fees. The Small Business Applicant, the Agent and the CDC must sign the SBA Form 159(504). A separate SBA Form 159(504) must be executed for each Agent.

2. Information on this form will be used to monitor the Agents, fees charged by Agents, and the relationship between Agents and CDCs. CDCs must make sure that all of the appropriate data fields on SBA Form 159(504) are completed.

3. The following are not considered Agents for purposes of this Agreement and, therefore, are not required to complete SBA Form 159(504):

a) 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;

b) A state-certified or state-licensed appraiser employed by the CDC to appraise collateral in connection with the SBA loan;

c) An environmental professional employed by the CDC to conduct an environmental assessment of the collateral in connection with an SBA loan;

d) An individual who is a qualified source as defined in Subpart B, Chapter 4, Paragraph II.C.5 of this SOP and employed by the lender to conduct an independent business valuation in connection with an SBA loan;

Comment [D161]: Language added to specify exemption for business valuation providers.

e) Any attorney in connection with the SBA loan closing; and

f) A real estate agent who is receiving a commission for the sale of real estate in connection with the SBA loan.

4. The CDC must inform the applicant in writing that the applicant does not have to employ an Agent or representative (including the CDC) to assist the applicant with the 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.

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

IV. AGENTS

A. SBA regulations at 13 CFR §Part 103 govern the activities of Agents, the disclosure of fees, and the circumstances that would result in revocation or suspension.

1. Agent – (13 CFR §103.1(a))

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.

b) For individuals or entities operating under a professional services contract, SBA approves the written agreement or contract with the CDC and the SBA Form 159(504) is not required. (13 CFR §103.5(c) and 120.824) (Professional Services Contracts are used under the 504 Program rather than Lender Service Provider Agreements. See Subpart A, Chapter 3 for guidance on Professional Service Contracts.) Fees paid by the CDC in accordance with the professional services contract cannot be passed onto the Small Business Applicant.

c) For all other Agents, paid by either a Small Business Applicant or a CDC, an SBA Form 159(504) must be completed and signed by the Small Business Applicant and the CDC. 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 CDC, the CDC must identify the Agent on SBA Form 159(504) and the CDC and Small Business Applicant must sign the form.

d) The only situation where an Agent can receive compensation from both the CDC and the Small Business Applicant is when the Agent is providing different services by providing packaging services to the Small Business Applicant and receiving a referral fee from the CDC. (13 CFR §103.4(g))

e) 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 – (13 CFR §103.1(f))

"Referral Agent" means a person or entity that identifies and refers an applicant to a CDC or a CDC to an applicant. The referral agent may be employed and compensated by either an applicant or a CDC. 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(504).

B. Agents and Privacy Act Considerations

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

C. Employment of Agent Initiated by Applicant

CDCs and Agents must clearly inform any Small Business 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 Small Business Applicant for providing packaging services as long as compensation is reasonable and customary for those services; the compensation complies with Subpart B, Chapter 3, Paragraph VI.B.1 of this SOP; and the compensation is not contingent on the loan being approved.

2. The Agent who works for a Small Business Applicant as a packager may also work as a loan referral agent for the Small Business Applicant and receive a referral fee from the Small Business Applicant.

3. The Agent may be a loan referral agent for a CDC and a packager for a Small Business Applicant, provided both the Small Business Applicant and the CDC are aware of both relationships, and the Agent does not receive a referral fee from the Small Business Applicant or a packaging fee from the CDC.

4. SBA Form 159(504) must be completed by the Agent and the Small Business Applicant for all fees paid by the Small Business Applicant.

V. WHO MAY CONDUCT BUSINESS WITH SBA (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 13 CFR §103.1(b).

1. Individuals and entities suspended, debarred, revoked or otherwise excluded under the SBA or Government-wide debarment regulations are not permitted to 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 CDC as a condition of revealing any information about the applicant's or CDC's current or prior dealings with the SBA. CDCs are responsible for consulting the System for Awards Management (SAM)/Excluded Parties List System (EPLS) to determine if an Agent has been debarred, suspended or otherwise excluded by SBA or another federal agency. (www.epls.gov.)

Comment [D162]: Language expanded to detail entities and revocations.

Comment [D163]: Requirement for SAM review.

2. 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. The meaning of "good cause" may be found at 13 CFR 103.4. CDCs are responsible for reviewing SBA's webpage list of Agents that have been subject to an enforcement action or have been otherwise excluded from the privilege of conducting business with SBA and must refrain from doing business with any Agent

appearing on the list during the time that an Agent is suspended or revoked from SBA programs. See http://www.sba.gov/about-sba-services/18351.

Comment [D164]: Language added to define "good cause", and re-enforce SBA requirements for CDC to review.

B. Illegal Activity of an Agent Must Be Reported

CDCs 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

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

a) There is an indication from a third party that an Agent's fees might be excessive; or

b) When an Applicant complains about the fees charged by an Agent.

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

3. 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.

CHAPTER 9: BORROWER'S DEPOSIT, DEBENTURE POOLS AND POST-DISBURSEMENT ISSUES

I. 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% of the Net Debenture Proceeds, whichever is less. For additional information relating to this fee, see 13 CFR §120.935.

B. Agreements Regarding the Deposit

1. A written agreement between the CDC and the Small Business Applicant should include the following:

a) 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;

b) If SBA approves the loan, the deposit may be applied toward the CDC processing fee described in 13 CFR §120.883; and

c) 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.

II. 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

III. MISCELLANEOUS

See 13 CFR §120.990 and 120.991 on the impact of current rules on older loans and the effect of other laws.

IV. POST-DISBURSEMENT ISSUES

A. A CDC may request changes on disbursed 504 loans by contacting the appropriate CLSC.

1. The CLSCs have a loan servicing guide on SBA's web page.

2. Guidance on loan servicing is also outlined in SOP 50-50 4, Loan Servicing.

3. 13 CFR §120 Subpart E- outlines lender requirements under SBA loan servicing, liquidation and debt collection litigation.

B. Prepayment. The borrower may prepay its 504 loan. More information may be found at:

1. SBA's SOP 50-55, Chapter 15 contains information on prepayment or purchase of a development company loan or debenture.

2. Wells Fargo Bank Corporate Trust Services is the current central servicing agent (CSA) for closed SBA 504 loans.

3. 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.

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:2

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. 50501, 55102). 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. 40102, 41101, 41309).

F. Be issued permits for intra-United States air commerce or navigation. There are exceptions to this when certain requirements are met (49 U.S.C. 41302, 41703).

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. Receive a preferred ship mortgage (46 U.S.C. 31322, 12103).

I. 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).

J. Establish an Edge Act corporation to engage in international or foreign banking (12 U.S.C. 619).3

K. Purchase Overseas Private Investment Corporation (OPIC) insurance or guarantees (22 U.S.C. 2198(c)).

L. Obtain construction-differential or operating-differential subsidies for vessel construction or operation (46 U.S.C. 50501, 53101).

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[2]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.

[3] 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.

M. During war or a national emergency, acquire or charter U.S. flag vessels, vessels owned by a U.S. citizen or shipyard facilities 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. 56102).

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. 55109, 55111).
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. (16 U.S.C. 1801, 1821)4
D. Transport certain commodities procured by or financed for export by the United States Government or an instrumentality thereof. There are certain statutory exceptions to this rule (46 U.S.C. 55305, 55314).
E. Obtain certain types of vessel insurance. (46 U.S.C. 53903)
F. Obtain licenses to operate as customs-house brokers (19 U.S.C. 1641). (At least one of the officers must be U.S. citizens.)

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:
   i. Obtain licenses to construct dams, reservoirs, houses, and transmission lines (16 U.S.C. 797(e));
   ii. Obtain licenses to develop and utilize geothermal steam and associated resources on Federal lands (30 U.S.C. 1015); or
   iii. Obtain certain rights of way, mining rights, leases or other rights on Federal lands. (*See, generally*, 43 CFR 2000-4000, *ex*. 43 CFR 3472, *also* 30 U.S.C. 22.)

These restrictions would not apply if the foreign controlled enterprises operated through a domestic subsidiary.

[4] To the extent that these activities involve the coast wise trade, certain limitations on stock ownership would have to be met (Cf. Sec. 1).

B. In addition to restrictions previously noted, foreign citizens may not:

iv. Act as officers and serve in certain other positions on certain vessels (Cf. 46 U.S.C. 8103); or

v. Function as operators in radio or television stations (47 U.S.C. 303(1) and 310).

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/tools/country/country_limits.cfm.

APPENDIX 2: DEFINITIONS

For purposes of the environmental portions 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, Transaction Screen Analysis, 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). The All Appropriate Inquiries standards defines an Environmental Professional as "a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases…on, at, in, or to a property, sufficient to meet the objectives and performance factors [of the rule]." 40 CFR 312.10(b). An Environmental Professional must:

1. Hold a current Professional Engineer's or Professional Geologist's license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three (3) years of full-time relevant experience; or
2. Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in § 312.21 and have the equivalent of three (3) years of full-time relevant experience; or
3. Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; or
4. Have the equivalent of ten (10) years of full-time relevant experience.

Further, SBA requires that an Environmental Professional be impartial and maintain a minimum coverage of one million dollars per claim (or 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 reviewed 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 Property. An Environmental Professional may, but is not required to, assist with the responses to the questionnaire. An Environmental Questionnaire may be considered if it was completed up to one year prior to submission. The current owner or operator of the Property must sign the Environmental Questionnaire. If the current owner or operator of the Property will not sign the Environmental Questionnaire it cannot be used and lender must then, at a minimum, obtain a Transaction Screen.

Prudent lending practices dictate that an Environmental Questionnaire must, at a minimum, inquire into the following areas:

- Past and present uses of the Property and Adjoining Properties, with particular attention paid to those uses by environmentally sensitive industries;
- Past and 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, 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 Contamination[5] 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;
- 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.

As an alternative, SBA will accept the ASTM questionnaire utilized for Transaction Screens (currently ASTM E1528-06) for all purposes that an EQ is required by this SOP. (ASTM licenses the use of these forms, which can be obtained through www.astm.org.)

"Good Faith" means the absence of any intention to seek unfair advantage or to defraud another party; and honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.

"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.

[5] 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

"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.

"Multi-Unit Building" means any non-industrial, multi-unit building that is comprised of four or more individual units.

"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 person who does not qualify as an Environmental Professional may assist in the conduct of All Appropriate Inquiries if such person is under the supervision or responsible charge of a person meeting the definition of an Environmental Professional when conducting such activities, provided an Environmental Professional reviews and signs the Phase I ESA.

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. (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). SBA will recognize a Phase II ESA conducted in accordance with generally-accepted industry standards of practice and consisting of

a scope of work that would be considered reasonable and sufficient to identify the presence, nature and extent of a Release.

"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 and includes (1) a search of the government databases identified in 40 CFR § 312.26[6] for an AAI compliant Phase I as well as a search of historical use records (for example, aerial photography, city directories, reverse directories and/or fire insurance maps) pertaining to the Property and Adjoining Properties; and (2) a risk assessment by an Environmental Professional based on the results of the records search as to whether the Property is either "low risk" or "elevated risk" or "high risk" for Contamination. The choice of historical records to be reviewed on any particular site is at the discretion of the Environmental Professional. The report must identify by name the Environmental Professional that performed the risk assessment. (Note that this report need not be addressed to the SBA and need not be accompanied by a Reliance Letter.) A Records Search with Risk Assessment may be considered if it was completed up to one year prior to submission.

"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 3.

"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 6.

"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 supervise 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

[6] For a detailed list of databases to be searched, lenders may go to http://edocket.access.gpo.gov/cfr_2007/julqtr/pdf/40cfr312.26.pdf.

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: RELIANCE LETTER

[Letterhead of Environmental Professional or Environmental Professional's Firm]

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 (or an Updated 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 addressed the performance of 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 generally-accepted industry standards of practice and consisting of a scope of work that would be considered reasonable and sufficient to identify the presence, nature and extent of a Release as it impacts the Property.

Reliance by SBA and Lender. Environmental Professional (and Environmental Professional's firm, where applicable) understand(s) 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 (and Environmental Professional's

firm, where applicable) authorize(s) Lender and SBA to use and rely upon the Environmental Investigation. Further, Environmental Professional (and Environmental Professional's firm, where applicable) authorize(s) Lender and SBA to release a copy of the Environmental Investigation to the borrower for information purposes only. This letter is not an update or modification to the Environmental Investigation. Environmental Professional (and Environmental Professional's firm, where applicable) makes no representation or warranty, express or implied, that the condition of the Property on the date of this letter is the same or similar to the condition of the Property described in the Environmental Investigation.

Insurance Coverage. Environmental Professional (and/or Environmental Professional's firm, where applicable) certifies that he or she or the firm is covered by errors and omissions liability insurance with a minimum coverage of $1,000,000 per claim (or occurrence) and that evidence of this insurance is attached. As to the Lender and SBA, Environmental Professional (and Environmental Professional's firm, where applicable) specifically waive(s) any dollar amount limitations on liability up to $1,000,000.

Waiver of Right to Indemnification. Environmental Professional and Environmental Professional's firm waive any right to indemnification from the Lender and SBA.

Impartiality. Environmental Professional certifies that (1) to the best of his or her knowledge, Environmental Professional is independent of and not a representative, nor an employee or affiliate of seller, borrower, operating company, or any person in which seller 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.

Acknowledgment. The undersigned acknowledge(s) and agree(s) 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.

_____

Environmental Professional
Printed Name:

(Note: The Environmental Professional must always sign this letter above. If the Environmental Professional is employed or retained by an Environmental Firm, then an authorized representative of the firm must also sign below).

_____

Signature of representative of firm who is authorized to sign this letter
Printed Name & Title:
Name of Environmental Firm:

Enclosure: Evidence of Insurance

APPENDIX 4: NAICS CODES OF ENVIRONMENTALLY SENSITIVE INDUSTRIES

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.

211 OIL & GAS EXTRACTION
212 MINING (EXCEPT OIL & GAS)
213 SUPPORT ACTIVITIES FOR MINING
237 HEAVY & CIVIL ENGINEERING CONSTRUCTION
311 FOOD MANUFACTURING *(if underground fuel tanks present)*
312 BEVERAGE & TOBACCO PRODUCT MANUFACTURING
313 TEXTILE MILLS *(not required if sewing, weaving, or hemming only)*
314 TEXTILE PRODUCT MILLS *(not required if sewing, weaving, or hemming only)*
316 LEATHER & ALLIED PRODUCT MANUFACTURING
321 WOOD PRODUCT MANUFACTURING *(if finishing occurs on site)*
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 *(not required if assembly only)*
334 COMPUTER & ELECTRONIC PRODUCT MANUFACTURING *(not required if assembly only)*
335 ELECTRICAL EQUIPMENT, APPLIANCE & COMPONENT MANUFACTURING *(not required if assembly only)*
336 TRANSPORTATION EQUIPMENT MANUFACTURING
337 FURNITURE & RELATED MANUFACTURING (*if finishing occurs on site*)
339 MISCELLANEOUS MANUFACTURING *(only required if hazardous materials are involved)*
42311 AUTOMOBILE & OTHER MOTOR VEHICLE MERCHANT WHOLESALERS *(if service bays present)*
42314 MOTOR VEHICLE PARTS (USED) MERCHANT WHOLESALERS
4235 METAL & MINERAL MERCHANT WHOLESALER
42393 RECYCLABLE MATERIAL MERCHANT WHOLESALER
4246 CHEMICAL & ALLIED PRODUCTS MERCHANT WHOLESALERS
4247 PETROLEUM & PETROLEUM PRODUCTS MERCHANT WHOLESALERS
441 MOTOR VEHICLE AND PARTS DEALERS *(if service bays present)*
447 GASOLINE STATIONS

45431 FUEL DEALERS *(not required for propane or firewood dealers)*
481 AIR TRANSPORTATION
482 RAIL TRANSPORTATION
486 PIPELINE TRANSPORTATION
53212 TRUCK, UTILITY TRAILER, AND RV (RECREATIONAL VEHICLE) RENTAL & LEASING *(if repairs, maintenance or vehicle washing are performed onsite)*
53241 CONSTRUCTION, TRANSPORTATION, MINING & FORESTRY MACHINERY & EQUIPMENT RENTAL & LEASING *(if repairs, maintenance or vehicle washing are performed onsite)*
53249 OTHER COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT RENTAL & LEASING *(if repairs, maintenance or vehicle washing are performed onsite)*
54138 TESTING LABORATORIES
56171 EXTERMINATING & PEST CONTROL
562 WASTE MANAGEMENT & REMEDIATION SERVICES
6221 GENERAL MEDICAL & SURGICAL HOSPITALS *(if fuel tanks are present)*
71391 GOLF COURSES & COUNTRY CLUBS
71392 SKIING FACILITIES
71393 MARINAS
7212 RV (RECREATIONAL VEHICLES) PARKS & RECREATIONAL CAMPS *(if fuel tanks are present or if vehicle repairs or maintenance is performed onsite)*
8111 AUTOMOTIVE REPAIR & MAINTENANCE (*except for "car wash only" facilities, for which a Transaction Screen is an acceptable starting point*)
8112 ELECTRONIC & PRECISION EQUIPMENT REPAIR & MAINTENANCE *(not required if assembly only)*
8113 COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT REPAIR & MAINTENANCE
8122 DEATH CARE SERVICES
8123 LAUNDRY & DRY CLEANING SERVICES *(if dry cleaning operations have ever existed on site)*
812921PHOTOFINISHING LABORATORIES *(except one hour)*

***A Phase I should always be obtained if the business sells, supplies or dispenses fuel, gasoline, heating oil, 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/eos/www/naics/.

APPENDIX 5: REQUIREMENTS PERTAINING TO GAS STATION LOANS

ENVIRONMENTAL INVESTIGATION REQUIREMENTS
FOR GAS STATION LOANS

NOTE: Lenders are reminded that documentation associated with gas station loans can be voluminous and complex. Apart from environmental concerns there are affiliation and credit issues that Lenders must analyze in order to make the initial loan eligibility determination.

The Environmental Investigation requirements set forth below apply to all loans secured by a lien or security interest on real property (a fee simple or leasehold mortgage, deed of trust, etc.*)* *or* personal property (gas station fixtures or equipment such as tanks, pumps, lines, etc.) currently used to operate a gas station or commercial fueling facility ("Gas Station Loans"). These requirements would not apply when the applicant operates a business, such as a convenience store associated with a gas station, in which the applicant only leases the real or personal property and neither the real nor personal property is used as collateral for the loan. Nor do these requirements apply to situations where the only collateral for the loan is something other than gas station equipment (for example, food inventory, shelving, etc.).

a. Environmental Site Assessment. The Environmental Investigation for all Gas Station Loans (including those secured by gas station equipment only) must: (1) begin with a Phase I ESA with the additional requirement that it be conducted by an independent Environmental Professional*;* (2) include 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; (3) include the equipment testing described in b. below (even if the loan is secured by real property only); (4) include the results of any further investigation, which may include a Phase II, recommended by the Environmental Professional (Any Phase II performed in connection with a Gas Station Loan must be conducted by an independent Environmental Professional *who holds a current Professional Engineer's or Professional Geologist's license and has the equivalent of three (3) years of full time relevant experience*.); and (5) if the Property is Contaminated, include a detailed description of and cost estimate for the recommended Remediation.

b. The Environmental Investigation performed by the Environmental Professional must include a determination whether or not the gas station is in compliance with all state requirements, if any, pertaining to tank and equipment testing. A loan may not be disbursed until full compliance is achieved. Further, any leaking or otherwise defective equipment, systems, containment devices, etc., must be replaced or repaired prior to disbursement.

c. Results of Environmental Investigation.

(1) Property is not Contaminated. If the Environmental Professional concludes that the Property is not Contaminated, the Lender (except on PLP, SBA Express, Export Express, Patriot Express and PCLP loans) must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

(2) Property is Contaminated. If the Environmental Professional concludes that the Property is Contaminated, Lender can either: (1) decline the loan; or (2) follow the requirements set forth in paragraph III.G. of the Environmental Policies and Procedures sections of this SOP entitled, "Approval and Disbursement of loans when there is Contamination or Remediation at the Property," *provided that at a minimum, the SBA Indemnification Agreement as described at paragraph G.4.a) must always be obtained and signed by the seller*. (There may be situations where it is not practical to require the seller to sign the indemnification agreement; for example, the property is being sold from a probate estate or through a trustee in bankruptcy. Waivers may be sought from the SBA Environmental Committee at environmentalappeals@sba.gov on a case-by-case basis. A mere unwillingness on the part of a seller to execute the indemnification agreement is not a sufficient basis for a waiver. PLP, SBA Express, Export Express and Patriot Express Lenders and PCLP CDCs do not have the authority to grant a waiver and are also required to follow this procedure.) In addition, prudent lending practices may require a Lender to utilize some of the other listed mitigating factors such as requiring additional collateral.

d. When Waiver and Release of Right to Indemnification from SBA/Lender Required. If any oil company or other Person has a right to indemnification from subsequent owners of the Property (e.g., SBA/Lender after acquiring Property through foreclosure or other means), then they must execute either the SBA Indemnification Agreement or another 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. The document containing the waiver and release must be recorded. Lenders and CDCs, except when submitting requests through PLP, SBA Express, Export Express and Patriot Express, must submit all waiver and releases to the SBA center processing the loan for review and approval by SBA counsel, along with a copy of the title report, the document providing for indemnification, and the purchase and sale documents, if any. PCLP CDCs must also submit the waiver and release to the SBA for review and approval prior to a request that SBA fund the loan.

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., 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 twelve 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 to the best of Indemnitor's knowledge: (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. Borrower Covenants

1. 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.

2. 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.

3. 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.

4. Environmental Insurance. Borrower shall include Lender as a loss payee on all environmental insurance policies held by Borrower relating to the Property.

5. 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.

B. <u>Borrower and Third Party Indemnitor Covenants</u>

1. 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.

2. 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 purchase option; repurchase option; 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. As set forth in Paragraph VII herein, provided that neither SBA nor Lender has acquired title to the Property, Third Party Indemnitor may also limit its duty to Remediate under this Agreement by paying the entire balance due under the Loan Documents including any applicable pre-payment penalty.

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. As set forth in Paragraph VII herein, provided that neither SBA nor Lender has acquired title to the Property, Third Party Indemnitor may also limit its duty to indemnify under this Agreement by paying the entire balance due under the Loan Documents including any applicable pre-payment penalty.

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. THIRD PARTY INDEMNITOR'S ELECTION TO PAY LOAN BALANCE.

In the event that either SBA or Lender makes a written demand on Third Party Indemnitor pursuant to this Agreement, and provided that neither SBA nor Lender has acquired title to the Property, Third Party Indemnitor may elect to pay the entire balance due under the Loan Documents, including any applicable pre-payment penalty, in exchange for (1) a release from all liability under this Agreement; and (2) an assignment of SBA and Lender's interest in the Loan Documents to Third Party Indemnitor.

VIII. 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.

IX. 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.

X. 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.

XI. 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 including a signature block for the Operating Company, if any, identified in the Loan Documents.]

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. Indemnitor's Election to Pay Loan Balance. Third Party Indemnitor may, under certain conditions, limit its duty to remediate and indemnify under the Agreement by paying the entire balance due under the Loan Documents including any applicable pre-payment penalty.

C. 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.

D. 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.

E. 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 including a signature block for the Operating Company, if any, identified in the Loan Documents.]

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

BORROWING BASE CERTIFICATE & REPORT TO LENDER

FOR THE PERIOD ENDING _____, 20__ 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 form 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.

BORROWING BASE CERTIFICATE & REPORT TO LENDER

FOR THE PERIOD ENDING: _____, 20

DATE OF LAST REPORT: _____, 20

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**	**$**

SBA Form BBC-2

APPLICATION QUESTIONS FOR WORKING CAPITAL CAPLINES MAY BE INCLUDED WITH LENDER'S CREDIT MEMORANDUM (OPTIONAL)

THIS FORM MAY BE COMPLETED AND INCLUDED WITH LENDER'S CREDIT MEMORANDUM TO APPLY FOR SBA WORKING CAPITAL CAPLINES

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

PAGE 2 **ADDITIONAL WORKING CAPITAL CAPLINES APPLICATION QUESTIONS**

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: _____ SBA FORM AB-4

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V. RELIGIOUS ELIGIBILTY WORKSHEET

(SBA Form 1971)

Comment [D165]: Appendix 8 added for Religious Eligibility review.

I. NAME OF LOAN APPLICANT:

II. TYPE OF LOAN REQUESTED:

III. AMOUNT OF LOAN REQUESTED:

IV. USE OF PROCEEDS:

V. RELIGIOUS COMPONENT OF BUSINESS

A. Is the business or its activities connected, associated or affiliated with a religious organization in any way?

Yes __ No

If yes, explain nature and extent of relationship:

B. Nature of the religious component (please check all that are applicable).

__ Sale of religious books, music, artifacts, gifts, and other religious items.

__ Religious instruction, counseling or indoctrination with regard to any items sold (including those listed above).

__ Religious instruction, indoctrination or counseling whether to adults or children (includes use of religious material at day care facilities).

__ Religious broadcasting (includes religious music, religious programming including instruction, indoctrination, counseling, and religious services).

__ Publication of newspaper, journal or other religious publication.

__ Creation or development of religious materials (including writings, music, artifacts, computer software, religious art and so forth).

__ Sale or distribution of religious publications.

__ Prayer, meditation, religious worship, religious service or proceeding.

__ Provision of Reading room or other space to conduct lectures, readings, prayer, worship, meditation or other activities related to religion.

__ Other:

Comments or explanation:

C. Describe the quantity or extent of the religious component or activities with regard to the entire business. In this regard, examine both the actual religious activities (particularly those that involve teaching, instructing, counseling or indoctrinating) and whether the religious component pervades or permeates the entire business.

VI. LENDER/CDC SIGNATURE

_____ _____

Name and Title of Lending/CDC Official Date

VII. DETERMINATION

__ Eligible

__ Recommended Not Eligible

Comment or Explanation:

_____ _____

Center/District Counsel Date

SBA FORM 1971 (10/2013)