



SBA Information Notice

TO: All SBA Employees and SBA Lenders

CONTROL NO.: 5000-20007

SUBJECT: Review of Agreements for Exception to Affiliation Based on Economic Dependence in the Business Loan Programs

EFFECTIVE: March 17, 2020

On February 10, 2020, SBA published an interim final rule on Express Loan Programs and Affiliation Standards. (85 FR 7622) The interim final rule becomes effective on March 11, 2020. As part of the interim final rule, for purposes of the business loan programs, businesses may be affiliated through “economic dependence.” This type of affiliation may arise when a business derived more than 85 percent of its receipts over the previous three fiscal years from a contractual relationship with another business unless (A) the contract does not restrict the concern in question from selling the same type of products or services to another purchaser; or (B) SBA agrees that the terms of the contract do not provide the purchaser with control or the power to control the seller (the Applicant small business). (85 FR 7652)

At the same time that SBA published the interim final rule, SBA posted guidance on its website on how SBA would apply the exception in (B) above and began accepting comments on the guidance. The guidance, which is open for comment until April 10, 2020, is available at <https://www.sba.gov/offices/headquarters/oca/spotlight>. The guidance states that SBA will consider the following factors in reviewing a request for an exception: the volume of sales that the contract covers; the contract’s termination provisions; the business’s right to profit from its efforts; the risk that the business bears under the contract; the rationale for restrictions that the contract places on the business; and other factors raised by the specific provisions of the contract.

This Information Notice notifies SBA Lenders, potential applicants for SBA loans, poultry and hog integrators, and other parties that SBA is accepting contracts for review under the exception to affiliation based on economic dependence. To initiate a review request, the requestor should send an email to EconomicDependence@sba.gov with the requestor’s phone number and email address. The requestor should attach the contract for review to the email or request instructions from SBA for secure electronic transmission of the contract.

Please direct any questions about this notice to EconomicDependence@sba.gov.

Dianna L. Seaborn
Director
Office of Financial Assistance

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EXPIRES: 3-1-2021

SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58