

SOP 50 10 Annual Update

October 1, 2011

SOP 50 10 5 (D)

- Effective date is October 1, 2011
- Applies to applications received by SBA on or after October 1, 2011

- Caplines has been overhauled.
- The changes are in response to the comments heard at the Listening Tour—that SBA needs an additional revolving working capital product.
- More information is being provided in a separate session.

Incorporates the changes from the Small Business Jobs Act including:

- Increase in the maximum 7(a) loan amount to \$5MM, guaranty amount to \$3.75MM.
- Export Express is now a permanent program. Max loan is \$500K, guaranty is 90% up to \$350K, 75% \$350-\$500K.
- Export Working Capital Program maximum amount is increased to \$5,000,000 with a maximum guaranty of 90%.

- International Trade loans increased to a maximum amount of \$5,000,000 with a maximum guaranty of 90%.
- Increase in the maximum 504 loan amount to \$5,000,000, except for energy consumption reduction projects, renewable energy or renewable fuels projects, and loans to small manufacturers which are eligible for a maximum debenture amount of \$5,500,000.
- Included guidance on the alternative size standard. Standard is now \$15MM in tangible net worth and \$5MM in net profits.

- Provides lenders with the option to change the interest rate prior to closing from a fixed rate to a variable rate or from a variable rate to a fixed rate.
- Provides lenders with the option to change the base rate or the spread over the base rate prior to disbursement.

Caveat: The revised interest rate cannot exceed the maximum allowable interest rate in effect at the time of the loan application. Only available for loans approved on or after October 1, 2011.

- Also added language discussing allowable accrual methods

The regulatory requirement from §120.150 that the SBA will consider

the effect any affiliates (as defined in 13 CFR Part 121) may have on the ultimate repayment ability of the applicant

was added to the list of items in Chapter 4 that the lender's credit analysis must include.

Made changes to Subpart B for 7(a) loans to allow lender to get a price greater than the cost in the property or the liquidation value, whichever is less.

For 7(a) loans, 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%

Added Small Loan Advantage to the SOP.

As of January 6, 2012, only 3 PLP Lenders in Montana made a total of 3 SLA loans.

(looking at SBA Express approvals during the same period, it appears there were 9 additional loans made by PLP lenders that could have qualified under SLA with the higher guaranty percentages)

- Effective October 1, 2011, requires delegated lenders to submit all their SBA Express, Patriot Express, Export Express, Dealer Floorplan Financing Pilot and PLP loans (including Small Loan Advantage and PLP-EWCP) through E-tran.
- Faxing requests to the Sacramento Loan Processing Center (which requires SBA personnel to enter the information into E-tran instead) will be phased out.

- Previously, all post approval loan modifications went to the appropriate Servicing Center.
- Beginning October 1, 2011, all post approval loan modifications to the authorizations for Standard 7(a), CLP, S/RLA, SLA (non-delegated) and Caplines (non-delegated) loans **prior to final disbursement** must be sent to the Standard 7(a) Loan Guaranty Processing Center
- Send 504 Post Approval Modifications to the 504 Processing Center

Provided further clarification on various fees that may or may not be charged to the small business applicant.

Examples are:

- 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 lender application forms [such as Form 4-I or SBA Forms 1920 (B &C)] as well as the lender's additional credit analysis. (This applies as well to costs the lender has incurred for the assistance from a lender service provider).
- In addition, if the lender pays a lender service provider to assist the lender with the completion of the application forms and the analysis, fees paid by the lender to the lender service provider cannot be passed onto the Small Business Applicant other than for reasonable costs associated with assisting the Small Business Applicant with its portion of the application.

Examples cont.

- Lenders may not be reimbursed by the Small Business Applicant for work performed by lender's in-house counsel.
- 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... Examples include application fees ... (This was added only for Express loans.)

- Centralized the internal SBA review and approval of LSP agreements in the Standard 7(a) Loan Processing Center. (This does not apply to Professional Services Contracts in the 504 program.)
- Provided further guidance as to what is and is not permitted regarding the fees a lender service provider may charge a lender.

Loan Agents: The procedure requiring lenders to send completed Form 159s on application packaging fees, etc. to Colson (Notices 5000-1177 and 5000-1200) after first disbursement was included in this version of the SOP.

(Reminder: Please be sure you are using the most updated Form 159 that includes the loan number on the form.)

Clarified that the definition of piggyback structures does not include transactions where the SBA loan is in the senior lien position to the commercial loan.

Personal credit card debt used for business expenses is the only personal debt that can be refinanced. Credit cards are designed for short term needs and have high interest rates if the balance goes beyond 25+ days.

Personal loans (such as HELOCs) may not be refinanced even if the loan proceeds were used to finance the business. These loans are often reflected as “equity” on the business balance sheet.

- Added language that permits lenders to escrow payments for life insurance.
- Added clarification as to when life insurance required: Lender must determine if repayment of the loan is dependent upon an owner's active participation in the business. In other words, if the owner dies, will the business operations be adversely affected and the loan default? **In these situations, the lender must require life insurance unless the lender determines due to the adequacy of collateral and/or the presence of secondary sources of repayment that life insurance is not necessary. Lender must document this determination in the credit memo.** If the lender determines that life insurance is not necessary and there is a loss on the loan due to the death of the owner, the lender will be responsible for the loss.

Trusts may be owners of a small business applicant.

Therefore, the SOP explains how the process for completing Form 912, meeting the Personal Resource Test, and guaranty requirements when the “individual” is a trust.

- Clarified: An EPC/OC borrowing structure is only available when the use of proceeds is to acquire or lease, and/or improve or renovate real or personal property that the EPC leases to one or more operating companies. (This is a regulation.)
- An EPC/OC borrowing structure is not eligible if the use of proceeds is to purchase anything else including stock or intangibles as part of a change of ownership.

The provisions of the Debt Collection Improvement Act have been added.

A loan applicant (or any of its 20 percent or more owners, guarantors, or affiliates) that is delinquent on federal debt (including student loans and disaster loans) is not eligible for an SBA-guaranteed loan.

Delegated lenders are responsible for checking the Credit Alert Verification Reporting System (CAIVRS) to determine if any of the associates of the Small Business Applicant have a Delinquent Federal Debt or a Prior Loss which would result in the Small Business Applicant being ineligible for SBA financial assistance.

Lenders may obtain instructions for accessing CAIVRS at

http://www.hud.gov/offices/hsg/sfh/sys/caivrs/caivrs_faq.cfm.

Coops and Condominiums:

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.**

Leasing Space

- 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.

Clarification added: The restrictions in a) and b) above apply regardless of whether the rentable property is leased to a commercial or residential tenant.

- Updates were made to the Environmental Issues section (Questions should go to environmentalappeals@sba.gov.)
- Clarification was added to the information about franchises: New “findings” section:
www.sba.gov/content/franchise-findings
to see if there have been any findings for a particular Franchise/License/Dealer/Jobber or similar agreement, which if still in the Agreement, would make the Agreement ineligible.
(Questions should go to franchise@sba.gov.)

- 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 borrower.
- In no case may the lender rely on an appraisal that was prepared more than **12 months** prior to the date of the application.

Business Valuations

- Added language to clarify that the scope of work of a business valuation 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 lender may not use a business valuation prepared for the applicant or the seller.

Business Valuations, cont'd

- Added language to clarify who is a qualified source to perform a “going concern appraisal”:

The appraisal is performed by an appraiser experienced in the particular industry and who is either a “qualified source” as identified in paragraph 5.c) above or has successfully completed the Appraisal Institute course “Fundamentals of Separating Real and Personal Property from Intangible Business Assets”

504 Program Changes

The appraisal must identify the CDC and SBA 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).

- It is acceptable to SBA if the appraisal identifies the Third Party Lender as the client and the CDC and SBA as intended users.
- The CDC may not use an appraisal prepared for the applicant.
- The cost may be passed on to the borrower.

An appraisal must be submitted to the SLPC with the application under the following circumstances:

- Equity in land owned for 2 years or more is being contributed as part of Borrower's contribution;
- The real estate is Third Party Lender's OREO; or
- The Project is not an arms-length transaction (e.g., family members).

Provided guidance on the use of interest rate swaps for 504 Third Party Loans, even though SBA is not a party to the swap contract.

Previously, SBA only provided guidance on swaps for 7(a) Loans.

Revised SOP language for the permanent 504 refinancing guidance to correspond to changes in the regulations.

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.

CDCs must ensure that all recorded documents are cancelled of record if a 504 loan is cancelled after closing but before funding.

Clarified: Construction escrow closings are the only type of escrow closings allowed for 504 loans.

What is not included or has
been removed

- Removed Community Express (which expired on 4-30-2011)
- Community Advantage and Dealer Floor Plan are not included as they are new pilots and have a program guide.

Thank you