



## **Chapter 2 - SBLCs**

Specific guidance for SBLCs has been added, including:

- ▶ SBLCs must submit to the Director of the Office of Credit Risk Management (D/OCRM) for review and approval, a credit policy demonstrating compliance with SBA regulations and SOPs.
- ▶ SBLCs must submit to the D/OCRM for review and approval, annual validation documentation demonstrating that all scoring models used are predictive of loan performance.
- ▶ Each SBLC's Board of Directors must adopt and fully implement an internal control policy satisfactory to SBA. Additional guidance on internal control policies is provided.
- ▶ Wherever the SOP indicates that lenders are to follow their loan policies and procedures for their similarly-sized, non-SBA guaranteed commercial loans, SBLCs must follow the policies and procedures reviewed and approved by SBA.

## **Subpart A - 504 - Program Participation Changes/Clarifications**

### **Chapter 3, Para. II - CDC Corporate Governance**

The update provides corporate governance clarifications for CDCs, including:

- ▶ Professional service contracts are reviewed by the District Office and submitted to SBA Headquarters for review and final approval.
- ▶ Each CDC must adopt and fully implement an internal control policy, satisfactory to SBA. Additional guidance on internal control policies is provided.
- ▶ Each CDC must also provide financial statements in a timely manner and retain signed minutes of CDC meetings.
- ▶ Guidance is provided to assist CDCs with compliance in documenting the financial ability to operate.

### **Chapter 3, Para. III – Becoming a CDC**

Updated guidance is provided for electronic fingerprint submission. Electronic fingerprint submission is accepted wherever the technology is available, but is not mandatory.

(Similar language has been added to Subparts B and C as this guidance is applicable to both Form 912 and Form 1081 processing.)

### **Chapter 3, Para. IV - 504 Program Voluntary Portfolio Transfers and CDC Decertifications**

Guidance is provided on CDC portfolio transfers as the result of a voluntary decertification. New guidance is provided to explain that in a voluntary decertification when a CDC Board of Director is no longer functioning, a responsible management official may execute a Voluntary Withdrawal Agreement that includes a certification as to Board status. Furthermore, clarification is provided that a CDC will not be reactivated after it voluntarily decertifies.

### **Chapter 3, Para. V - Premier Certified Lender Program (PCLP)**

Guidance is provided on the process for renewal of PCLP authority. In addition, the SOP notes that the statutory authority for the Alternative Loan Loss Reserve Pilot Program (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.

### **Chapter 3, Para. VI - CDC Multi-state and Local Economic Area (LEA)**

#### **Applications**

Updated guidance is provided for multi-state applications to explain how states or territories not directly connected to the 48 contiguous states will be deemed contiguous to other states for multi-state applications. For LEA applications, a new option is included for CDCs to submit LEA Applications with Annual Reports or ALP Applications or Renewals.

## **SUBPART B – Section 7(a) Business Loan Program**

The 7(a) policy update includes many minor clarifications, some of the more significant clarifications and changes include:

### **Chapter 2 – Eligibility**

#### **Franchise Agreement Review**

Updated guidance is provided on the eligibility of franchise, license, dealer, jobber or similar agreements, including among other things:

- ▶ Delegated lenders will have the option of submitting such agreements to SBA for an affiliation determination;
- ▶ Clarification is provided on fitness centers that target one gender;
- ▶ Franchisors may appeal the decision by SBA not to approve their agreement for inclusion on the Registry by following the procedures set out in the SOP; and
- ▶ Franchise appeals 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.

#### **Businesses Engaged in Promoting Religion**

Updated guidance is provided regarding the eligibility determination for a business that may be connected, associated or affiliated with a religious organization or may have a religious component. In such instances, lenders must complete the Religious Eligibility Worksheet (SBA Form 1971), which is now included in SOP 50 10 as Appendix 8 (rather than in SOP 70 50 3, Legal Responsibilities). Additional guidance is provided depending

on whether the application will be processed under delegated or non-delegated processing.

### **Businesses with an Associate of Poor Character – SBA Form 912**

During FY 2013 the OIG updated and modified the questions on SBA Form 912. Accordingly, this update aligns the SOP with the updated questions. In addition, all delegated lenders will now be permitted to clear certain SBA Forms 912 for processing when affirmative activity is disclosed.

### **Businesses Providing Prurient Sexual Material**

Updated guidance is provided concerning the eligibility determination when a business may have an aspect of a prurient sexual nature. Additional guidance is provided depending on whether the application will be processed under delegated or non-delegated processing.

## **Chapter 4 - Credit Standards, Collateral and Environmental Policies**

**Creditworthiness/Credit Underwriting** – The SOP clarifies the requirements for underwriting analysis based on the loan amount. Separate guidance is provided for loans up to and including \$350,000 and loans over \$350,000 up to and including \$5,000,000.

- ▶ For all loans up to and including \$350,000, lenders will follow SLA credit analysis requirements with refined guidance concerning debt service coverage and clarification concerning financial statement verification;
- ▶ For loans over \$350,000 up to and including \$5,000,000, the SOP provides a definition of how SBA calculates business cash flow to determine repayment ability:
  - Operating cash flow is defined as earnings before interest, taxes, depreciation, amortization (EBITDA);
  - Additions and subtractions to cash flow analysis defined; and
  - Minimum debt service coverage ratio of 1.15 to 1.

### **Collateral**

- ▶ 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.
- ▶ For collateral purposes, adjusted Net Book Value is determined as follows:
  - new machinery and equipment may be valued at 75% of Net Book Value, or 80% with an Orderly Liquidation Appraisal, minus any prior liens;
  - 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; and
  - real estate may be valued at 85% of the appraised value.

- ▶ If there is a collateral shortfall (not fully secured), 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.
- ▶ A non-owner spouse is not required to pledge collateral that is held solely in their name providing there was no transfer of assets within 6 months of the application date.

### **Appraisals and Business Valuations**

- ▶ When SBA policy requires an appraisal of real estate, federally regulated lenders may follow FIRREA standards for appraisals with the following qualifications:
  - Appraisals must not be dated more than 12 months prior to the date of application;
  - Federally regulated lenders still must comply with SBA requirements for appraisals of fixed assets and the additional appraisal requirements when there is a change of ownership as set forth in the SOP; and
  - SBA does not permit the exemption as authorized under Interagency Appraisal and Valuation Guidelines of 12/2/2010 for Transactions Insured by a US Government Agency.
- ▶ When SBA policy requires an appraisal of real estate, SBLCs and NFRLs must follow the SBA standards as provided in the SOP.
- ▶ Certified Public Accountants have been removed as a “qualified source” unless they receive accreditation by a recognized organization.
- ▶ Appraisal Institute course “Fundamentals of Separating Real and Personal Property” will no longer serve as a basis to determine if an appraiser is a “qualified source” to perform a going concern appraisal when the lender plans to use such an appraisal to meet the requirement for a business valuation.

### **Chapter 5 – Loan Authorization**

#### **Insurance Requirements**

- ▶ Life insurance requirements are modified for loans over \$350,000 to permit lenders other than SBLCs and NFRLs to use internal policies for non-SBA guaranteed commercial loans, except that if the loan is not fully secured, life insurance is required on principals of sole proprietorships, single member LLCs or other businesses dependent on one owner’s active participation. As noted above in the discussion of Subpart A, SBLCs and NFRLs must comply with the policies and procedures approved by SBA.

### **Chapter 6 – Submission of Application for Guaranty**

SOP 50 10 5(E) directed lenders and borrowers to use different application forms depending on the method of delivery and/or the type of loan. To more closely reflect

industry standards and improve cost of delivery, SBA will no longer use delivery method-specific application forms. The update:

- ▶ Adapts a universal set of forms for all 7(a) lending, including standard 7(a), SBA Express and all pilot programs (Forms 1919/1920);
- ▶ Requires that business financials be dated within 180 days of submission to SBA;
- ▶ Requires personal financial statements be dated within 90 days of submission to SBA; and
- ▶ Requires all applications to be submitted to SBA electronically.

#### **Chapter 7 – Post-Approval Modifications, Loan Closing & Disbursement**

All lenders will have the option to use their own Note and Guaranty agreements rather than SBA Forms 147, 148/148L, provided the federal law applicability language is included.

#### **Chapter 8 – Post-Disbursement, Secondary Market, Securitization and Lender Reporting (SBA Form 1502)**

All SBA Form 1502 reporting to the fiscal and transfer agent must be submitted electronically. Reporting by fax or mail will no longer be accepted.

### **SUBPART C - 504 Certified Development Company Loan Program**

The more significant 504 program changes include:

#### **Chapter I – General Provisions**

The following guidance is provided:

- ▶ Credit reports will no longer be required on non-guarantor affiliates;
- ▶ A letter of intent, a term sheet or letter of commitment is acceptable for a 504 application; and
- ▶ While SBA may not participate in projects financed, directly or indirectly, by Federal tax-exempt obligations, SBA may participate in Projects financed by obligations exempt from state or local taxes (for example, real estate tax exemptions). Guidance is provided as to when a 504 project may be approved and the additional conditions that will apply when the Project involves industrial development bonds (IDBs) or industrial revenue bonds (IRBs).

#### **Chapter 2 - Eligibility**

In addition to the clarifications regarding franchise reviews, businesses with a religious aspect or an aspect of a prurient nature identified above in Subpart B for 7(a), clarification is also provided on energy public policy projects, permissible debt refinancing, and 504 projects that result in a change of ownership.

#### **Chapter 4 – Loan Application Procedures and Controls**

- ▶ SBA Form 1244 has been revised to eliminate the requirement of wet signatures on Exhibits 4, 6, 7, and 12: the Personal Financial Statement, balance sheets and

- income statement, federal tax returns and aging of accounts receivable. The form also has been revised to reflect that credit reports are no longer required for non-guarantor affiliates. Several additional updates to the form are also noted; and
- ▶ CDCs are required to provide a copy of the full or partially executed purchase/sale agreements with 504 applications.

### **Chapters 6 - Closings**

Updated guidance on the 504 closing process is provided including the number and types of documents submitted at closing, and SBA Counsel's responsibilities for the closing process.

### **Chapter 8 – Allowable Fees**

Clarification is provided that CDCs are responsible for consulting the System for Awards Management/EPLS or successor system and SBA's website to determine if an employee or Agent has been debarred, suspended or otherwise excluded by SBA or another federal agency to ensure that they are not doing business with an Agent during the time the Agent is suspended or otherwise excluded from SBA programs.

### **Chapter 9 – Borrower's Deposit, Debenture Pools and Post-Disbursement Issues**

The Central Servicing Agent (CSA) is updated to Wells Fargo Bank Corporate Trust.

Questions concerning this Notice should be directed to the lender relations specialist in the local SBA Field Office. Local Field Offices may be found at [www.sba.gov/localresources](http://www.sba.gov/localresources) or to [7aquestions@sba.gov](mailto:7aquestions@sba.gov).

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Ann Marie Mehlum  
Associate Administrator  
Office of Capital Access