SBA

SOP 50 10 6

Lender and Development Company Loan Programs

Office of Financial Assistance

U.S. Small Business Administration

U.S. Small Business Administration
Standard Operating Procedure
Summary

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USER TIPS: HOW TO USE THIS DOCUMENT

SOP 50 10 6 contains the SBA's participation requirements for 7(a) Lenders and Certified Development Companies (CDCs), together known as "SBA Lenders," and the policies and procedures governing the 7(a) and 504 loan programs. The SOP is divided into two parts.

Part 1 contains SBA Lender participation and portfolio requirements. Here you will find criteria for becoming an SBA Lender; types of delegated authority; a brief overview of how SBA conducts oversight of SBA Lenders; processes for loan reporting, secondary market transactions, loan transfers, and securitization.

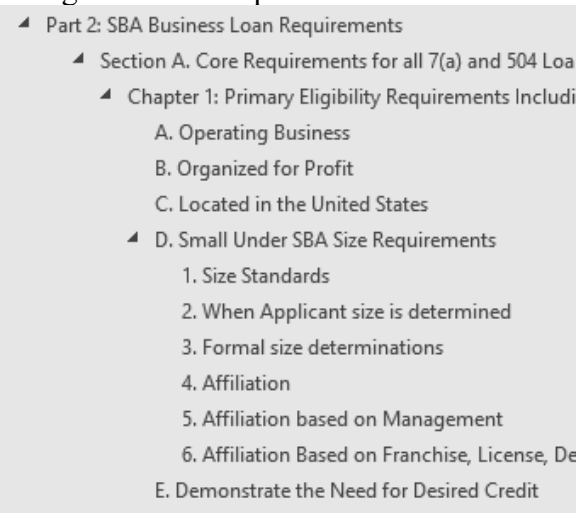
Part 2 is divided into three sections.

Section A: Core Requirements for all 7(a) and 504 loans
Section B: 7(a) Loan Program requirements
Section C: 504 Loan Program requirements

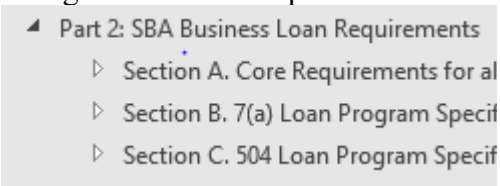
Navigating the SOP in Microsoft Word

The SOP contains bookmarks and built-in style headings to enable easy navigation using the Navigation Pane, which is a vertical panel on the left of the viewing screen. The Navigation Pane looks like a table of contents. Clicking on a line will jump you to the corresponding section in the SOP.
Hint 1: The sections expand and collapse by clicking on the arrows on the far left.
Hint 2: Clicking the "alt" and "left arrow" keys will return you to your original page when you click on a hyperlink that redirects you to a different place within the SOP. You may need to click your mouse once before you click the alt and left arrow keys.

Navigation Pane Expanded



Navigation Pane Collapsed



- Method 1: "CTRL+F" will launch a search screen. From here you can access the Navigation Pane by selecting Headings. You can also type in a keyword search here.
- Method 2: From the menu bar at the top of the screen, select "View," and then select the "Navigation Pane" box in the "Show" group.

PART 1: PARTICIPATING IN THE SBA 7(A) AND 504 LOAN PROGRAMS

This Part contains:

- Criteria for 7(a) Lenders and Certified Development Companies (CDCs) (defined in 13 CFR 120.10 as "SBA Lenders") to participate in SBA lending programs;
- The different types of delegated authority SBA grants to SBA Lenders;
- How SBA Lenders maintain their participating status with SBA;
- A brief overview of how SBA oversees its participating SBA Lenders; and
- Lender financings and operations, including but not limited to 7(a) loan program secondary market transactions, loan transfers, securitization, and Lender reporting.

SBA Lenders must act ethically and exhibit good character (13 CFR § 120.140). The SBA Lender is responsible for the conduct of its Associates (including, but not limited to, Agents and Lender Service Providers) and staff (including individuals or entities operating under an SBA-approved professional services contract). SBA 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.

Exceptions to Policy: When the policy set forth in this Part does not adequately address the unique circumstances regarding a particular matter, the SBA Lender may submit a request for an exception to policy through E-Tran to the SBA loan processing center.

The loan processing center will analyze the request and make a recommendation to the D/FA for 504 loans and for 7(a) loans except Export Working Capital Program (EWCP), Export Express, and International Trade (IT) loans or to the Director, International Trade Finance (D/ITF) for EWCP, Export Express, and IT loans. The D/FA or D/ITF, or an individual acting in that capacity, will make the final decision (with the concurrence of the D/OCRM for Export Express loans).

The D/FA or D/ITF may not approve an exception to policy if such exception would be inconsistent with a statute or regulation. 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. The decision must be documented in the appropriate Agency loan file.

SECTION A. 7(A) LENDER PARTICIPATION

CHAPTER 1: LENDER PARTICIPATION IN THE 7(A) LOAN PROGRAM

The 7(a) Loan Program is authorized by section 7(a) of the Small Business Act and is governed by the regulations outlined in Parts 103, 105, 120, 121, and 134 of Title 13 of the Code of Federal Regulations (CFR).

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 guarantee 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.

Definitions applicable to this section can be found in 13 CFR §§103.1, 105.201, 120.10, 120.420, and Appendix 3 of this SOP.

Types of lenders that may participate:

- The following lenders may apply to participate with SBA as a 7(a) Lender:
  - 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 National Credit Union Administration, and the Farm Credit Administration); and
  - SBA Supervised Lenders:
    - Non-Federally Regulated Lenders (NFRLs, including State-regulated lenders without Federal deposit or share insurance protection; and
    - Small Business Lending Companies (SBLCs).
- The following lenders may not apply to participate with SBA as a 7(a) Lender:
  - SBA-licensed Small Business Investment Companies (SBICs);
  - Certified Development Companies (see 13 CFR § 120.820(c), except with respect to the Community Advantage Pilot Program); and
  - Bank holding companies.

A. 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 must submit a request in writing to the Lead District Office (see definition in Appendix 3) serving the geographic area where the lender's principal office is located. With the exception of State-chartered

credit unions, these institutions automatically comply with the Agency's examination and supervision requirements under 13 CFR § 120.410.

b. When a State-chartered credit union applies to become a participating Lender:

   i. If the credit union has Federal deposit or share insurance protection, it must submit an application to the Lead District Office servicing the geographic area where its principal office is located. The application must include:

      a) The name and contact information for the credit union's state regulator;

      b) How often the credit union is examined by its state regulator;

      c) Date of the last examination by the state regulator;

      d) Evidence of good standing with the state regulator;

      e) Evidence of the state regulator's authorization for the proposed area of operations;

      f) A description of the credit union's experience in commercial lending including the dollar value and number of small business loans originated over the past 12 months;

      g) A list of personnel and a brief summary of staff with SBA lending experience. If the credit union does not have staff with SBA lending experience, provide a staff training plan for loan origination, servicing, and liquidation;

      h) An operation plan detailing the nature of proposed SBA lending, including detailed projections for the first 3 years as an SBA Lender;

      i) SBA may request additional information.

   ii. If the credit union does not have Federal deposit or share insurance protection, it must send to the Lead District Office the items required in paragraph 2.b. below for Non-Federally Regulated Lenders.

   iii. The SBA counsel must review the application for legal sufficiency. As part of that review, SBA 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 not acceptable.

   iv. The Lead District Office must submit the application, any supporting information, and SBA counsel's review to OCRM at OCRM@sba.gov for a written determination by OCRM regarding the State's level of regulatory supervision and examination.

c. A lender must be considered in good/satisfactory standing with its state regulator and considered to be satisfactory by its 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/satisfactory 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 or whether a lender is considered satisfactory, 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/satisfactory status 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.

d. The Lead District Office must determine whether the lender meets the requirements of 13 CFR § 120.410 to be a 7(a) participant. If the Lead District Office determines that the lender meets these requirements, it may enter into a Loan Guaranty Agreement with the lender. The lender will sign an SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)," and return it to the Lead District Office for execution by the District Director or designee. Once the SBA Form 750 is executed, the Lead District Office will add the Lender to the SBA Partner Information Management System (PIMS), which identifies the Lender as an SBA participating Lender. Note: The District Director or designee must not sign the SBA Form 750 until after the Lender has signed the form and returned it to the SBA. The Lead District Office will retain the executed SBA Form 750 in the Lead District Office's files.

2. Non-Federally Regulated Lenders:

a. Non-Federally Regulated Lenders (NFRLs) are entities engaged in small business lending that are subject to the oversight and supervision by a state regulator authorized to evaluate the safety and soundness of its regulated members. These entities operate without Federal deposit or share insurance protection (such as Business and Industrial Development Companies (BIDCOs)). 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 CFR §§ 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, Small Business Lending Companies, of this Part.

To become a 7(a) participant, the lender must submit an application containing the information and documents specified below to the Office of Financial Assistance (OFA) at 409 Third Street SW, Washington DC 20416, ATTN: Director, Office of Financial Assistance. The applicant must submit two complete binders of fully executed paper copies and one executed electronic scanned copy (in pdf format) to OFA addressing each of the elements set forth below ("NFRL Application"). The NFRL Application must be complete and organized in tabular

format. Incomplete NFRL Applications will not be processed by SBA and will be returned to the applicant. An applicant that submits an incomplete NFRL Application (as determined by SBA) must wait 30 calendar days before reapplying.

SBA reserves the right to deny any applicant requesting to become an NFRL in its sole discretion. In addition to SBA's evaluation of the elements required below, SBA may consider risk factors in its evaluation of an NFRL Application. These factors include, but are not limited to, historical performance measures (such as default, purchase and loss rate), and other performance data or program integrity concerns associated with the lender or its senior management team, along with other relevant information (such as SBA-observed gaps in small business lending not served by the existing 7(a) Lender population).

b. The Lender's application must include:

   i. Lender's name, address, telephone number and email address;

   ii. A copy of the lender's organizational formation documents and bylaws filed with the appropriate authority and certified by an appropriate officer of the applicant;

   iii. The identification of all classes of stock, partnership interest or members interests, the rights and preferences accorded to these forms of ownership, including voting rights, redemption rights, distribution rights and rights of convertibility and any conditions for the transfer, sale, or assignment of such interests;

   iv. The lender's proposed geographical area of operations, as authorized by the lender's state regulator;

   v. A list of officers, directors, managing partners, managing members, Associates (see Appendix 3, Definitions), and holders of 10% or more of any class of the lender's capital stock or ownership interest;

   vi. An organizational chart showing all officers, directors, managers, and Key Employees of the lender, which includes senior managers, members of loan committees, and individuals who have a meaningful participation in the direction of the operations, policies, or financial decisions of the lender, including any relationships between the lender and any Associates;

   vii. An executed SBA Form 1081, "Statement of Personal History," and either FBI Form FD-258 Applicant Fingerprint Form (fingerprint card) or Electronic Fingerprint Submission (see definition in Appendix 3), each signed and dated within 90 days of submission to SBA for:

      a) Each officer, managing partner, and managing member of lender, and all holders of 10% or more of any class of stock or ownership, limited partnership, or member's interest; and

      b) Each director and Key Employee of the lender organization. Directors and Key Employees must only submit either Form FD-258 (fingerprint card) or Electronic Fingerprint Submission along with SBA Form 1081

if the individual answered affirmatively to questions 10a, 10b, 10c, 11a, and/or 11b on the SBA Form 1081.

viii. A copy of the most recent audited financial statements of the lender;

ix. A copy of the most recent audited financial statements on any entity, other than natural persons, holding 10% or more of any class of the lender's stock or ownership interest;

x. An operations plan detailing the nature of the lender's proposed loan activity, the volume of activity projected over the first 3 years as a 7(a) Lender, projected balance sheets, income statements and statement of cash flows of the lender, with alternative profit and loss scenarios based on run rates equivalent to 70% and 50% of projected loan activity, the type and projected amount of financing needed to support its lending plan, along with a discussion of lender's proposed wind-down plan in the event the lender decides to leave the program;

xi. A detailed analysis of the lender's projected secondary market activities during the first 3 years of operation, including a sensitivity analysis of the effect any changes in premium from the sale of the guaranteed portion of 7(a) loans in SBA's secondary market may have on the lender's prospective earnings. The analysis must also include a description of the lender's plans (if any) to securitize or sell participations in the unguaranteed portion of 7(a) loans;

xii. If the lender intends to acquire any 7(a) loans, a written plan detailing the extent of this acquisition activity in its operating plan, and how the lender intends to manage the transition of the 7(a) loan portfolio;

xiii. A copy of the lender's policies and procedures governing business loan origination, servicing, and liquidation;

xiv. A copy of the lender's internal control policies;

xv. A certification that the lender will not be engaged primarily in financing the operations of an Affiliate, as defined in 13 CFR §§ 121.103 and 121.301.

xvi. 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;

xvii. A copy of the latest report covering the examination of the lender, and/or any regulatory orders if such reports 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;

xviii. A copy of the license, certificate, and/or charter, if any, issued to the lender by a regulatory authority;

xix. 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;

xx. Disclosure of any and all actions, proceedings, investigations, or litigation, pending or threatened, against the lender and/or its Associates, including complete details of any actions disclosed; and

xxi. A written legal opinion of independent counsel ("Independent Counsel" is counsel that is not an "Associate" of the lender under 13 CFR § 120.10.), satisfactory to SBA that addresses whether the lender:

a) Is duly formed, organized, and validly existing in good standing under the laws of the State of its organization, and is in full compliance with all Federal, State, and local laws in connection with the formation and organization of the lender;

b) Has the power, legal right, and authority to conduct business in the lender's proposed operating area; and

c) Is in full compliance with all appropriate Federal and State securities laws.

c. Once received, 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 Lead District Office. If the application is approved, the Lead District Office will send an SBA Form 750 to the Lender for signature and return to the Lead District Office.

Note: SBA must not sign the SBA Form 750 until after the lender has signed the form and returned it to the Lead District Office.

d. When the Lead District Office receives the SBA Form 750 signed by the Lender:

i. The District Director or designee will execute the agreement, and the Lead District Office will send a copy of the executed agreement to the D/FA;

ii. The Lead District Office will add the Lender to the SBA Partner Information Management System (PIMS), which identifies the Lender as an SBA participating Lender;

iii. The Lead District Office will retain the executed SBA Form 750 in the Lead District Office's files.

e. Change of Ownership or Control. 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.

i. SBA's prior written consent is required for:

a) Any single (or aggregate over time) change of ownership or control of 10 percent or more of any class of an NFRL's stock or ownership interests.

b) Any proposed transaction or event that results in control by any entity or person(s) not previously approved by SBA.

ii. A new application in accordance with the above requirements must be submitted for SBA's prior written consent with respect to a change of ownership or control transaction. For change of control transactions, the Lender must reapply for any delegated authorities.

iii. If the proposed change of ownership is for less than a majority interest, SBA, in its sole discretion, may limit the items required by the Lender in paragraph 2.b., "The Lender's application must include," above to support a request for prior SBA consent.

3. Small Business Lending Companies (SBLCs) (13 CFR §§ 120.460 - 120.490):

A Small Business Lending Company (SBLC) is a non-depository lending institution that 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, "Small Business Lending Companies," of this section for more information on becoming an SBLC.

4. Export Working Capital Program (EWCP):

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

a. Existing SBA Lenders:

Note: SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)," was updated as of July 1, 2019. Lenders with an executed:

i. July 1, 2019, version of SBA Form 750 are eligible to submit applications for guaranty under non-delegated processing procedures.

ii. SBA Form 750 that is prior to the July 1, 2019, version, and that also have an executed SBA Form 750EX, are permitted to submit applications for guaranty under non-delegated processing procedures.

iii. SBA Form 750 that is prior to the July 1, 2019, version, and that do not have an executed SBA Form 750EX, must execute a new July 1, 2019, version of SBA Form 750 to be eligible to submit applications for guaranty under non-delegated processing procedures. Such Lenders may contact the local Lead District Office to request authority to participate.

If the lender meets the criteria set forth above for 7(a) Lenders (or, for SBLCs, in Chapter 2, Small Business Lending Companies, of this Section below), and if the lender is approved to participate, the Lead District Office staff will provide the lender with SBA Form 750, which the lender must sign and return. Once the executed SBA Form 750 is returned, the District Director or designee will sign SBA Form 750 and the Lead District Office staff will enter the SBA Form 750 into the Partner Information System and notify the Export Finance Manager in the appropriate United States Export Assistance Center (USEAC). Note: A complete listing of Export Finance

Managers and USEAC locations may be found at https://www.sba.gov/article/2017/nov/01/list-useacs-sba-staff.

Note: The District Director or designee must not sign the SBA Form 750 until after the lender has signed the form and returned it to the SBA.

b. Non-SBA lender:

i. A lender that is not an existing SBA Lender must be approved by SBA to participate in the 7(a) loan guaranty program before they can participate in EWCP. Such lenders may contact the local Lead District Office to request authority to participate in SBA lending.

ii. If the lender meets the criteria set forth above for 7(a) Lenders (or, for SBLCs, in Chapter 2, Small Business Lending Companies, of this Section below), and if the lender is approved to participate, the Lead District Office staff will provide the lender with SBA Form 750, which the lender must sign and return. Once the executed SBA Form 750 is returned, the District Director or designee will sign the SBA Form 750 and the Lead District Office staff will enter the SBA Form 750 into the Partner Information System and notify the appropriate Export Finance Manager.

Note: The District Director or designee must not sign the SBA Form 750 until after the lender has signed the form and returned it to the SBA.

c. The Export Finance Manager 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 Lenders Program (PLP) for EWCP, see paragraph E.2.j. PLP Lender Authority and Responsibilities, below in this chapter.

B. LOAN GUARANTY AGREEMENT

The SBA Form 750, "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.[1] (13 CFR § 120.400) This agreement is subject to SBA's rules and regulations, as amended from time to time. A Lender must execute this agreement prior to submitting any applications for guaranty to SBA.

[1] In July 2019, SBA issued a revised SBA Form 750 that consolidated the separate agreement for short-term loans (SBA Form 750B) and the Supplemental Guaranty Agreement Export Working Capital Program (SBA Form 750EX) into one agreement that covers a Lender's authority for processing all 7(a) loans except loans made under the Community Advantage Pilot Program. The SBA Form 750CA for Community Advantage Lenders remains as a separate agreement. While the SBA Form 750B, the SBA Form 750EX, and the prior version of the SBA Form 750 will no longer be used, any such previously-executed agreements will remain in effect.

C. **RESPONSIBILITIES OF 7(A) LENDERS**

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

   a. For all loans submitted using the non-delegated process through the LGPC (including loans from delegated Lenders using this processing method):

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

      ii. Execute the Authorization;

   b. For all loans processed using the Lender's delegated authority:

      i. Obtain all required forms and documentation, perform all required credit and eligibility analyses, and maintain the documentation in the loan file;

      ii. Prepare and execute the Authorization on SBA's behalf and ensure that it includes all applicable provisions consistent with the loan approval.

   c. Close the loan in accordance with the Authorization, all SBA policies, regulations, and Loan Program Requirements;

   d. Maintain complete loan files and allow SBA's authorized representatives access to those files during normal business hours (SBA expects Lender's loan files and related records to be under the direct control of the Lender, not an Agent or Lender Service Provider);

   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 (as defined in 13 CFR § 120.10) for the 7(a) program, 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). SBA Loan Program Requirements, Center contacts, and other information can be found at https://www.sba.gov/partners/lenders/7a-loan-program; and

   h. SBA expects Lenders to exercise due diligence and prudent oversight of their third party vendors, including Lender Service Providers (LSPs) and other loan agents, which should include having written policies governing such relationships and monitoring performance of loans referred by an Agent or where an Agent provided assistance. SBA will review evidence of such due diligence and oversight of such relationships when conducting lender oversight activities. Federally-regulated Lenders are reminded that they must comply with the requirements of their primary Federal Financial Institution Regulator regarding third party vendors.

2. 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:
        i. Take any side collateral or guaranty that would secure only its own interest in a loan;
        ii. Obtain a separate guaranty on the unguaranteed portion of the 7(a) loan without SBA's approval;
        iii. Require a Borrower to purchase certificates of deposit;
        iv. Maintain a compensating balance not under the control of the Borrower;
        v. Take a side loan which would have the effect of ensuring a risk-free or limited-risk investment on the participant's share; or
        vi. 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). SBA considers "at or about the same time" to mean loans approved within 90 days of each other.
            b) SBA does not consider a scenario where both the SBA-guaranteed loan and the non-SBA guaranteed loan are for working capital and the non-SBA guaranteed loan is secured only by working/trading assets to be a piggyback structure.
            c) SBA does not consider a shared lien position with the lender (pari passu) to be a piggyback structure when the maturity of the non-SBA guaranteed loan is not shorter than the maturity of the SBA-guaranteed loan.
    c. Under the following circumstances, a Lender may make a side loan to the Borrower to purchase stock of the participating Lender (as may be required by certain Lenders, such as Farm Credit Administration entities):
        i. The enabling authority of the Lender requires the purchase as a condition for making the loan.
        ii. 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.

iii. 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.

iv. 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.

3. 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.

4. Notifying SBA of Suspected Fraud or Illegal Activity:

   SBA Lenders, Borrowers, and others must notify both D/OCRM and the SBA Office of Inspector General (OIG) of any information that indicates fraud or illegal activity may have occurred in connection with a 7(a) or 504 loan. Notify D/OCRM at OCRM@sba.gov. Notify the OIG either at https://sbax.sba.gov/oigcss/ or by mail (preferably by overnight courier) to the Assistant Inspector General for Investigations, Office of Inspector General, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. Any substantiating evidence should be included when contacting the Office of the Inspector General and D/OCRM. 13 CFR § 120.197

5. Advertising of Relationship with SBA (13 CFR §120.413):

   a. General Advertising. To further clarify the above referenced section of the Code of Federal Regulations, a Lender may not use the SBA seal or 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. However, a Lender may publicize its relationship with the SBA by identifying itself as an SBA participating Lender. In addition, to protect the Lender from any perceived misrepresentation or false impression by the public of SBA endorsement, the SBA has created an SBA-approved window decal and identical digital icon that may be used in the following manner:

      i. 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 Lead District Offices for display in the lending institution's window, e.g., alongside the required decals of other regulating institutions such as the FDIC.

      ii. Digital Icon on Website. The SBA-approved Lender digital 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.

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

b) The Lender digital icon may be downloaded from and must be used in accordance with SBA's Lender digital icon guidelines found at www.sba.gov/document/support-object-object-advertising-your-sba-relationship.

iii. Digital Icon in Advertising. The SBA Lender digital icon may only be used in print, television, digital advertising, and exhibit signage, dedicated exclusively to SBA lending products, e.g., brochure, advertisement, publication, or promotional piece. The digital icon may only be used to inform the public of the Lender's relationship with the SBA and may not be used to promote, or appear to promote, the Lender's non-SBA products or services. The SBA Lender digital icon may not be used on an SBA Lender's stationery or business cards.

iv. Digital Icon on Construction Signage. In connection with construction made possible by an SBA-guaranteed loan, if the SBA Lender initiates the signage and invites the SBA to add its logo, the SBA Lender digital icon may be used with the following disclaimer: "This project is made possible by an SBA-guaranteed loan." It is also acceptable for the SBA Lender to choose only to display the disclaimer.

b. Oversight. A Lender's usage of the window/building decal and any identical digital icons on its website and how it represents its relationship with SBA may be reviewed as part of the Agency's Lender oversight activities.

6. If a Lender makes a major change in its structure or organization after execution of the SBA Form 750, it must notify OCRM at OCRM@sba.gov (with a copy to the Lead District Office) in writing. Major changes that may impact continued SBA participation include:

   a. Acquisition by another entity;

   b. Merger into another legal entity;

   c. A change of name;

   d. Substantial changes in management;

   e. Establishment of a subsidiary or affiliate, or acquisition of another entity, to administer Lender's SBA loan portfolio;

   f. Substantial changes in how the Lender handles SBA loans, including a proposed sale of its SBA loan portfolio;

   g. Takeover or closure of the Lender by a regulatory agency; or

7. If Lender enters into an Order or Consent Agreement with its primary Federal Regulator that may affect the Lender's 7(a) lending activities, the Lender must notify OCRM at OCRM@sba.gov within 30 calendar days of the Order issuance.

8. Record Retention: See Appendix 11, Record Retention Requirements

D. SBA OVERSIGHT OF 7(A) LENDERS

SBA oversees 7(a) Lenders through:

1. Loan and Lender Monitoring System (L/LMS):
    a. 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. Data on 7(a) loans are aggregated, analyzed, and evaluated to assess the credit quality of each individual 7(a) 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 and the 7(a) program portfolio.
    b. Using SBA's L/LMS system, SBA assigns all 7(a) Lenders a composite rating. The composite rating reflects SBA's assessment of the potential risk to the government of that 7(a) Lender's SBA portfolio. The specific performance factors which comprise the composite rating are published from time to time by SBA's Office of Credit Risk Management (OCRM). In general, these factors reflect both historical 7(a) Lender performance and projected future performance. SBA performs quarterly recalculations on the common factors for each 7(a) Lender, so 7(a) Lenders' composite risk ratings are updated on a quarterly basis.
    c. SBA has established peer groups to minimize the differences in loan performance relative to portfolios of different sizes. The peer groups are based upon gross outstanding SBA loan dollars. For 7(a) Lenders, they are:
        i. $350,000,000 or more
        ii. $100,000,000 - $349,999,999
        iii. $10,000,000 - $99,999,999
        iv. $4,000,000 - $9,999,999
        v. $1,000,000 - $3,999,999
        vi. $0 - $999,999B (active with at least one loan disbursed in past 12 months)
        vii. $0 - $999,999A (inactive with no loans disbursed within the past 12 months)
    d. SBA assigns a composite rating of "1" to "5" to each 7(a) Lender generally 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 § 120.1015 (Risk Rating System); 75 FR 9257, March 1, 2010; 75 FR 13145, March 18, 2010; and 79 FR 24053, April 29, 2014 (Risk Rating Notices)) As set forth in the Risk Rating Notices, SBA may take into account rapid growth that may skew metrics and other factors in considering a Lender's risk.

2. Lender Portal:

   a. 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, peer and portfolio metric averages, and its PARRiS score (as discussed below). 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.

   b. SBA 7(a) Lenders with at least 1 outstanding SBA Loan may apply for the Portal access. Currently, SBA issues only one Portal user account per 7(a) Lender. Submission of initial requests for a Portal user account must be submitted to SBA's OCRM, and must include the following information:

      i. Request must be made by a senior officer with proper authority of the 7(a) Lender (Senior Vice President or higher);

      ii. Request must be sent via overnight mail or courier to the SBA's OCRM at 409 Third Street SW, Washington DC 20416, ATTN: Director, Office of Credit Risk Management;

      iii. Request must be made using the 7(a) Lender's stationery;

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

      v. The stationery and business card should include the 7(a) Lender's name and address;

      vi. The request must include the following data:

         a) SBA FIRS ID Number(s);

         b) Account user's name and title;

         c) Account user's mailing address, telephone number and email address at the 7(a) Lender;

         d) Requesting officer's name and title; and

         e) Requesting officer's mailing address, telephone number and email address at the 7(a) Lender.

      vii. 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 username and password within approximately 2 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.

viii. 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, PARRiS score, and confidential information and for ensuring the security of the data. See 13 CFR § 120.1060. A Lender is not permitted to share access to the SBA Lender Portal or its portal information with an individual or entity operating as a Lender Service Provider or other third party.

3. Monitoring and Reviews: (13 CFR §§ 120.1025 and 120.1050 - 1060)

   L/LMS provides performance information that allows SBA to monitor and conduct reviews of all Lenders. L/LMS-related monitoring/reviews serve as the primary means of reviewing Lenders with less than $10 million in gross outstanding SBA loan dollars although SBA may determine, in its discretion, to conduct other more in-depth reviews (e.g., Analytical, Targeted, Full, or Delegated Authority Renewal) of these Lenders. SBA may also perform Desk Reviews, Secondary Market Evaluations, Loan-by-Loan Reviews, Other Reviews, and pilot test reviews. In addition to these types of reviews, SBA may perform for SBA Supervised Lenders Safety and Soundness Examinations and Quarterly Condition and Certification of Capital Compliance Reviews. ("L/LMS-related" refers to the L/LMS reviews and the SBA Lender Profile Assessment (LPA) including the PARRiS Score (defined below).) SBA will contact the Lender if the review detects performance issues or trends requiring further discussion.

   a. For Lenders with more than $10 million in gross outstanding SBA loan dollars, L/LMS details historical and projected performance data:

      i. For use in planning and conducting more in-depth reviews or examinations;

      ii. To assist in prioritizing more in-depth reviews or examinations; and

      iii. To monitor Lenders between the more in-depth reviews or examinations.

   b. SBA's 7(a) risk-based reviews generally feature a composite risk measurement methodology and scoring guide, known as "PARRiS." PARRiS is an acronym for the specific risk areas or components that SBA reviews: **P**ortfolio Performance; **A**sset Management; **R**egulatory Compliance; **Ri**sk Management; and **S**pecial Items.

   c. Additionally, in accordance with 13 CFR § 120.1010, a Lender must allow SBA's authorized representatives, including representatives authorized by SBA's Inspector General, during normal business hours, access to its files to review, inspect and/or copy all records and documents relating to SBA-guaranteed loans or as requested for SBA oversight. In keeping with Lender's responsibility to maintain complete loan files and to allow SBA's authorized representatives access to those files during normal business hours, SBA expects that all loan files and related records will be under the direct control of Lender (not an Agent or Lender Service Provider).

d. SBA may request reports on a case-by-case basis.

e. Additional information regarding reviews and examinations can be found in:

   i. 13 CFR §§ 120.1050-1060;

   ii. SBA Policy Notice 5000-1332: Revised Risk-Based Review Protocol for SBA Operations of Federally Regulated 7(a) Lenders (December 29, 2014), available for download at https://www.sba.gov/document;

   iii. SBA Information Notice 5000-1397: Updated PARRiS Methodology for Oversight of SBA Operations of Federally Regulated 7(a) Lenders (November 15, 2016), available for download at https://www.sba.gov/document;

   iv. SBA Policy Notice 5000-1940: Revised Risk-Based Review/Examination Protocol for SBA Supervised Lenders (January 18, 2017), available for download at https://www.sba.gov/document; and

   v. SBA's SOP 51 00.

f. 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 § 120.1070)

   i. The fees may cover:

      a) The cost of conducting L/LMS-related reviews/monitoring of a 7(a) Lender;

      b) The cost of conducting more in-depth reviews of a 7(a) Lender (e.g., Analytical, Targeted, and Full Reviews, Delegated Authority Reviews, Quarterly Condition and Certification of Capital Compliance Reviews (for SBA Supervised Lenders), Secondary Market Evaluations, and related review activities, such as corrective action assessments);

      c) The cost of conducting loan reviews (e.g., Secondary Market loan-by-loan reviews);

      d) The cost of conducting safety and soundness examinations of an SBA Supervised Lender (SBLCs and NFRLs); and

      e) Any additional expenses that SBA incurs in carrying out Lender oversight activities (e.g., technical assistance and analytics to support the monitoring and review program, supervision and enforcement activity costs, salaries and travel expenses of SBA employees, and equipment expenses directly related to Lender oversight.

   ii. In general, where the costs that SBA incurs for a review, examination, monitoring, or other Lender oversight activity are specific to a particular 7(a) Lender, SBA will charge that Lender a fee for the actual costs of the oversight activity. For example, for most examinations or reviews conducted under i.b) through d) above, SBA will invoice each Lender for the amount owed following completion of the examination or review.

iii. In general, where the costs that SBA incurs for the Lender oversight activity are not sufficiently specific to a particular Lender, SBA will assess a fee based on each 7(a) Lender's portion of the total dollar amount of SBA guaranties in SBA's total portfolio or in the relevant portfolio segment being reviewed or examined, to cover the costs of such activity. For these fees, such as the L/LMS related reviews/monitoring and other Lender oversight activity expenses incurred under i.a) and i.e) above, SBA will invoice each Lender on an annual basis.

a) The invoice will state the charges, the date by which payment is due and the approved payment method(s).

b) The payment due date will be no less than 30 calendar days from the invoice date.

c) SBA may waive the fees assessed under this paragraph f(iii) for those Lenders owing less than a threshold amount if SBA determines that it is not cost effective to collect the fee.

iv. 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 or revoke a Lender's eligibility to participate in SBA's loan programs or participant's delegated authority or other remedy available under law. (13 CFR § 120.1070)

v. For the schedule of fees that SBA charges for certain activities, refer to SBA Notices that SBA may issue and update from time to time. For example, see SBA Information Notice 5000-19008, FY 2019 Updated Fee Schedule for SBA Oversight of 7(a) Lenders (January 1, 2019).

4. 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.

5. Suspension or Revocation:

a. SBA may suspend or revoke the authority of a Lender to conduct 7(a) program activities, in accordance with 13 CFR §§ 120.1400-1600.

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

i. Failure to comply materially with any requirement imposed by Loan Program Requirements, (e.g., credit elsewhere; maintaining ability within Lender to originate, service, and liquidate SBA Loans; charging impermissible or unreasonable fees; 1502 reporting; failing to pay oversight fees);

ii. Failure to underwrite, service, and liquidate SBA Loans in a commercially reasonable and prudent manner;

iii. Failure to maintain Lender eligibility requirements for SBA loan programs or delegated authority;

iv. Engaging in a pattern of uncooperative behavior (after notice);

v. Any other reason that SBA determines may increase SBA's financial risk, for example, a Less Than Acceptable examination/review assessment, regulatory order or agreement, indictment on felony or fraud charges of an officer, key employee or loan agent involved with SBA Loans for Lender, or repeated Less Than Acceptable Risk Rating, the latter generally in conjunction with other grounds.

c. SBA will consider the severity and frequency of violations among other facts.

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

6. Receiverships of NFRLs:

a. Upon SBA's determination that grounds for an enforcement action against a NFRL exist under 13 CFR § 120.1400, SBA may, pursuant to 13 CFR § 120.1500(c)(3), apply to a Federal court for the appointment of a receiver. Typically, SBA will use its receivership authority as a remedy of last resort. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR § 120.1500.

b. SBA will review the facts and circumstances of the enforcement action when deciding whether or not to seek the appointment of a receiver. SBA will also make a determination regarding the scope of the receiver's duties and powers, including whether the receivership will be limited to the NFRL's assets related to the SBA loan programs. In deciding whether to seek a receiver and in determining the scope of a receivership, SBA will consider the following:

i. The existence of fraud or false statements;

ii. A NFRL's refusal to cooperate with SBA enforcement action instructions or orders;

iii. A NFRL's insolvency (legal or equitable);

iv. The size of the NFRL's SBA loan portfolio(s) in relation to other activities of the NFRL;

v. The dollar amount of any claims SBA may have against the NFRL; and/or

vi. The existence of other non-SBA enforcement actions against the NFRL.

c. Under 13 CFR § 120.1400(a)(2), a NFRL that makes 7(a) guaranteed loans after October 20, 2017, has consented to SBA's right to seek a receivership in appropriate circumstances. Such consent is deemed to apply only if the NFRL makes 7(a) loans on or after January 1, 2018. The NFRL's consent does not in

any way preclude the NFRL from contesting whether or not SBA has established the grounds for seeking the remedy of receivership. A NFRL's consent to receivership as a remedy does not require SBA to seek the appointment of a receiver in any particular SBA enforcement action.

E. DELEGATED AUTHORITY IN THE 7(A) LOAN PROGRAM

SBA may grant delegated authority to lenders to process, close, service, and liquidate certain SBA-guaranteed loans without prior SBA review. The delegated authorities are:

- Preferred Lenders Program (PLP) (Standard 7(a) loans, 7(a) Small loans, CAPLines, EWCP, and International Trade loans);
- SBA Express; and
- Export Express.

1. Delegated Authority Criteria

a. In making its decision to grant or renew a delegated authority, SBA considers, in accordance with 13 CFR § 120.440 whether the Lender, as determined by SBA in its discretion:

i. Has the continuing ability to evaluate, process, close, disburse, service, liquidate and litigate SBA loans. This includes the ability to develop and analyze complete loan packages. SBA may consider the experience and capability of Lender's management and staff. Review and exam results may also inform on Lender capability. A minimum level of loan volume may be needed to make this assessment;

ii. Has satisfactory SBA performance (as defined in 13 CFR § 120.410(a)(2)). Factors may include, but are not limited to, review/examination assessments, PARRiS metrics, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures or is of sufficient level for SBA to assess performance, Lender Purchase Rating, and other performance related measurements and information (such as contribution toward SBA's mission);

iii. Is in compliance with SBA Loan Program Requirements (i.e., SBA Form 1502 reporting, SBA Form 159 reporting, and timely payment of all fees to SBA). For further guidance on SBA Form 1502 reporting, see Chapter 3, Lender Financing and Operations below;

iv. Has completed, to SBA's satisfaction, all required corrective actions;

v. Is in good standing with SBA as defined in 13 CFR § 120.420(f) (as determined by SBA in its discretion), and, as applicable, with its state regulator and is considered satisfactory by its FFIR (as determined by SBA and based on, for example, information in orders/agreements, and call reports) (13 CFR § 120.410(e)):

a) The Lender's written request to participate must include a written statement that to the best of its knowledge, the Lender has satisfactory:

(a) financial condition (i.e., is deemed well-capitalized based on size of entity, has sufficient liquid assets, etc.); (b) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and (c) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing/satisfactory status, 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/satisfactory status 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.

b) In conjunction with this eligibility criteria, SBA reviews whether Lender is subject to any enforcement action, order or agreement with a regulator or the presence of other regulatory concerns as determined by SBA;

vi. Is not subject to any SBA enforcement actions;

vii. Has not received a major substantive objection from its Lead District Office relating to the delegated authority criteria set forth in 13 CFR § 120.440; and

viii. Exhibits other risk/program integrity factors (i.e., has rapid growth; low SBA activity; SBA loan volume; Lender, an officer or director is under investigation or indictment, inadequate capital, inadequate governance or management).

b. Delegated authority decisions are made by the appropriate SBA official in accordance with Delegations of Authority and are final.

c. If delegated authority is approved or renewed, Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed 2 years. SBA may grant shorter terms based on risk or any of the other delegated authority criteria. See also SOP 50 53, discussion on Shortened and Non-Renewals of Delegated Authority. Lenders with less than 3 years of SBA lending experience generally will be limited to a term of 1 year.

d. Changes in a delegated Lender's structure:

i. If a delegated Lender changes its structure or organization in any of the following ways, it must inform OCRM in writing at OCRM@sba.gov (with a copy to the Lead District Office) in writing. Changes include:

a) Acquisition by another entity;

b) Merger into another legal entity;

c) A change in name;

d) Substantial changes in management

e) Establishment of a subsidiary or affiliate, or acquisition of another entity, to administer Lender's SBA loan portfolio;

f) Substantial changes in how the Lender handles SBA loans, including a proposed sale of its SBA portfolio;

g) Takeover or closure of the Lender by a regulatory agency; or

h) Orders or Consent Agreements issued by a regulator (for additional guidance see 13 CFR § 120.660(a)(3)) .

ii. When a delegated Lender's structure changes and the Lender continues as the same legal entity that signed the SBA Form 1347, a new SBA Form 1347 is not required including when:

a) The delegated Lender changes its name;

b) The delegated Lender is acquired by another entity and the delegated Lender continues as a separate legal entity; or

c) The delegated Lender acquires another Lender and the acquired Lender does not continue as a separate legal entity.

iii. When a delegated Lender acquires another Lender and the acquired Lender continues to operate as a separate legal entity, the delegated Lender's delegated authority does not transfer to the acquired Lender; however, the acquired Lender may apply for its own delegated authority.

iv. SBA will not renew a Lender's delegated authority or will revoke, suspend, or terminate a Lender's delegated authority when:

a) The Lender changes its operations so much that it cannot show that it handles SBA Loans appropriately; or

b) The delegated Lender is merged into a non-delegated lender (the surviving Lender may apply for delegated authority).

v. SBA will terminate the Lender's delegated authority and prohibit the Lender from making any new SBA loans when the Lender is dissolved, closed, or taken over by a regulatory authority.

vi. If any SBA office discovers any of the above circumstances, OCRM must be immediately notified in writing.

e. Monitoring and reviews:

SBA uses the L/LMS system to assess Lenders quarterly through the composite risk rating and other performance metrics. In addition, those Lenders with outstanding SBA balances of $10 million or more may also receive more in-depth reviews. See Section A, Ch. 1, Para. D., SBA Oversight of 7(a) Lenders of this Part above for further information.

f. Supervision and enforcement:

See paragraph D.4, Supervision and Enforcement above for further information.

g. Suspension or revocation:

See paragraph D.5, Suspension or Revocation above for further information.

2. Preferred Lenders Program (PLP)

13 CFR § 120.450

Experienced Lenders may be designated as PLP Lenders and delegated the authority to process, close, service, and liquidate most SBA-guaranteed loans without prior SBA review.

a. PLP Lenders are authorized to make SBA-guaranteed loans without prior SBA review of eligibility or creditworthiness. An SBA Loan Number is assigned by SBA upon notification by the PLP Lender of approval of the loan. PLP Lenders are expected to handle servicing and liquidation of all of their SBA loans with limited involvement of SBA.

b. Qualifications for Initial PLP Consideration:

The Lender must demonstrate to SBA's satisfaction that it:

i. Meets the delegated authority criteria set forth in paragraph 1 above; and

ii. Has the continuing ability to evaluate, process, close, and disburse SBA loans by having processed and fully disbursed at least 10 SBA loans within the past 24 months. Acquired loans do not count towards this minimum amount needed for SBA to assess Lender against the delegated authority criteria in 13 CFR § 120.440.

c. Process to obtain PLP authority:

i. To apply for initial PLP authority or to reapply for PLP authority, a Lender must submit a request along with all applicable supporting documents to D/OCRM or designee at DelegatedAuthority@sba.gov.

ii. The Lender's request should include:

a) Legal name and address of Lender;

b) Legal name of any holding company of Lender;

c) Name, title, address, phone number, email address and fax number for contact person at Lender;

d) Lender's Lead District Office;

e) A copy of the Lender's SBA Form 750 and SBA Form 750B, if applicable;

f) If Lender was previously a PLP Lender, an explanation of why the Lender left the Preferred Lenders Program;

g) A description of the Lender's history, organization, and management, including:

i) When the Lender was chartered;

ii) Any recent mergers or acquisitions;

iii) Personnel who will be in charge of PLP loan activities for the Lender, have PLP loan approval authority, and their experience with the Lender, in the industry, and with SBA loans, including any training they have received; and

iv) Where and how PLP loans will be processed, closed, serviced, and liquidated;

h) A good standing/satisfactory statement (as described above in paragraph E.1.a.v.a) in this chapter) on Lender's letterhead.

iii. In conjunction with the criteria set forth in 13 CFR § 120.440, SBA may consider:

a) Any Lead District Office concerns regarding the Lender;

b) The processing, servicing, and liquidation centers' written opinion of Lender's ability to process, close, service and liquidate SBA loans, as applicable; and

c) The Lender's commitment to SBA lending.

iv. D/FA will make the final Agency decision in consultation with and upon receipt of recommendations from D/OCRM.

v. Upon approval of the PLP application, OCRM notifies the Lender and the Lead District Office:

a) That the request for delegated authority is approved; and

b) Of the term of the delegated authority (not to exceed 2 years). For Lenders with less than 3 years of SBA lending experience/data, the Agency may consider performance over the period of time that the Lender has been a participating Lender but will limit the Lender's initial term of delegated authority 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 SBA Form 1502 reporting) should contact OCRM.

vi. OCRM sends the Lender an SBA Form 1347, "Supplemental Guaranty Agreement, Preferred Lenders Program." The Lender must sign, attest/witness, and return the executed form to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender's PLP authority can be effective. OCRM sends the Lead District Office a copy of the approval letter. OCRM will enter the effective term of the Lender's PLP authority on the SBA Partner Information Management System (PIMS). This is an essential step for Lenders processing PLP loans.

vii. Decline of PLP application:

If the PLP application is declined, OCRM notifies the Lender and Lead District Office with the reason(s) for decline.

To reapply, the Lender must submit a request to OCRM at DelegatedAuthority@sba.gov explaining how it has overcome the reason(s) for decline.

OCRM will review the request, make a recommendation, and send it to the D/FA for a final Agency decision. OCRM will notify the Lender in writing of SBA's final decision.

d. Process for Renewal of PLP Authority:

For renewal of its PLP authority, the Lender must demonstrate to SBA's satisfaction that it meets the criteria for delegated authority set forth in Paragraph E.1., Delegated Authority Criteria above.

i. OCRM will generally initiate the renewal process approximately 90 days prior to the expiration of the Lender's PLP authority. It is the Lender's responsibility to ensure its point of contact information is accurate in PIMS. However, if the Lender has not received any correspondence from OCRM 60 days prior to expiration of its PLP authority, it must initiate the process by submitting to OCRM at DelegatedAuthority@sba.gov a good standing/satisfactory status statement (as described in paragraph E.1.a.v.a) above) on the Lender's letterhead.

ii. OCRM may ask the Lead District Office and SBA's processing, servicing and liquidation centers for comments regarding the Lender's activity for its most recent PLP term, which may include:

a) Recommendation for or against, and why;

b) Whether the Lender can process, close, service and liquidate SBA loans;

c) Changes in Lender's organization or management;

d) Any recurring denial of liability or repair situations with the Lender;

e) Reasons for any unfavorable loan volume or repurchase rate data;

f) Identification of any areas of concern; and

g) An explanation of any discussions with the Lender that may impact the PLP renewal decision.

e. Notification of Renewal:

OCRM will approve or decline renewals of PLP authority. OCRM notifies the Lender and the Lead District Office of the approval and the term.

OCRM sends the Lender a new SBA Form 1347. The Lender must sign, attest/witness, and return the form to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender's PLP renewal can be effective.

f. Non-Renewal and Short Renewal:

If SBA determines in its discretion that a Lender does not meet the delegated authority criteria or that increased supervision is necessary, SBA may:

i. Grant a shorter renewal period; or

ii. Not grant renewal of delegated authority.

a) If renewal is declined, OCRM notifies the Lender and Lead District Office with the reason(s) for decline. The Lender may not make PLP loans after its PLP authority expires.

b) To reapply, the Lender must submit a request to OCRM at DelegatedAuthority@sba.gov explaining how it has overcome the reason(s) for decline. OCRM will review the request and make the final Agency decision. OCRM will notify the Lender in writing of the final decision. See paragraph E.2.h., Reapplying for PLP Authority, below.

See SOP 50 53 on Increased Supervision.

g. Temporary Extension of PLP Authority:

If SBA has not completed the renewal process before the Lender's PLP authority expires, OCRM may extend the Lender's PLP authority for a short, interim period as determined by the D/OCRM.

h. Reapplying for PLP Authority:

If a Lender's PLP authority was revoked, not renewed, or voluntarily terminated, after 6 months the Lender may reapply for PLP authority by following paragraph E.2.c., Process to obtain PLP authority, above.

i. PLP - Export Working Capital Program (EWCP) Authority:

i. 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 PLP authority to underwrite EWCP loans. Lenders with PLP-EWCP authority 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.

ii. Application requests include the following elements:

a) Legal name and address of Lender;

b) Address, city, and state where Lender's EWCP underwriting will be performed;

c) Name, title, telephone and fax numbers and email address of the lending unit's primary contact for the EWCP program;

d) A copy of the Lender's SBA Form 750 and/or SBA Form 750EX (if the Lender has an SBA Form 750 that was executed before July 2019, it must provide both SBA Forms 750 and 750EX; if the Lender executed the July 2019 version of SBA Form 750, then only that agreement is needed);

e) Identification of the SBA Export Finance Managers the lending unit works with on EWCP loans (A complete listing of Export Finance Managers and USEAC locations may be found at https://www.sba.gov/article/2017/nov/01/list-useacs-sba-staff);

f) A description of the lending unit's experience in international trade lending, including its level of EWCP lending over the last 2 years, Export-Import Bank ("Ex-Im") lending activity over the same 2-year period, and identification of any form of delegated lender authority with Ex-Im Bank or other trade finance agencies;

g) Identification of personnel in charge of EWCP lending and explanation of their experience in export trade finance for small concerns; and

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

iii. Completed applications should be directed to the local Export Finance Manager, who then sends the application to the Director, 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 authority of the Lender and the Lender's capabilities as an EWCP participant. OIT will forward its recommendation and the comments of the other offices to OCRM at DelegatedAuthority@sba.gov to either concur or non-concur on the recommendation to the D/FA. The D/FA makes the final decision. The Lender must demonstrate to SBA's satisfaction that it:

a) Meets the delegated authority criteria in paragraph E.1. above; and

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

c) Has been an active participant in the EWCP with SBA and/or with Ex-Im Bank for at least 6 consecutive months immediately prior to application and, if not an Ex-Im Bank delegated lender, has booked at least three SBA EWCP loans during the 24 months prior to application.

iv. Lenders are notified of the final decision by written letter from OCRM with a copy to OIT and the Lead District Office. If approved, OCRM will provide the Lender with SBA Form 2310, "Supplemental Guaranty Agreement – Preferred Lenders Program (PLP) for Export Working Capital Program (EWCP) Loans," which the Lender must execute, attest/witness, and return to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender can submit any loan applications under its PLP-EWCP authority. Upon receipt, OCRM will execute SBA Form 2310 and enter the information into PIMS. OCRM will maintain the documentation in its file.

v. If the PLP-EWCP application is declined, OCRM notifies the Lender, OIT, and Lead District Office with the reason(s) for decline.

To reapply, the Lender must submit a request to the local Export Finance Manager explaining how it has overcome the reason(s) 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.

vi. All PLP-EWCP 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 OIT.

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.

j. PLP Lender Authority and Responsibilities (including PLP-EWCP):

i. Eligibility Requirements:

In addition to the SBA's business loan eligibility standards set forth in Part 2, Sections A and B of this SOP, the following restrictions apply to PLP Loans.

a) Lenders may use PLP only for 7(a) loans. Lenders may not use PLP for any pilot program unless SBA authorizes use of PLP for the pilot.

b) The following types of loans are not eligible under PLP processing:

i) Disabled Assistance Loans (DAL);

ii) Loans to an ESOP (under 13 CFR §§ 120.350 through 120.354) or to an eligible small business owned or controlled by an ESOP (see Section A, Ch. 2, Para. B., Employee Stock Ownership Plans, of this Part for more information);

iii) Loans to a cooperative or to an eligible small business owned or controlled by a cooperative (see Section A, Ch. 2, Para. C, Cooperatives, of this Part for more information);

iv) Loans involving a Single Employer 401(k) plan, including a ROBS plan, unless the only investment held by the 401(k) plan (including a ROBS plan) is the equity in the Applicant business;

v) Loans involving a Multiple-Employer 401(k) plan (i.e., a plan that holds in trust the assets of other businesses), including a ROBS plan (see Part 2, Section A, Ch. 2, Para. D, 401(k) Plans Including Rollovers as Business Start-Ups (ROBS) Plan, of this SOP for more information);

vi) Pollution Control Program Loans;

vii) International Trade Loans not secured by a first lien position on the assets being financed;

viii) Applications Previously Submitted to LGPC for Processing. Once submitted to LGPC, an application withdrawn by a Lender, screened-out, or declined by LGPC may not be approved by any Lender under its PLP Authority. E-Tran will not permit the submission of such an application under any Lender's PLP authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application; and

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

x) See Part 2, Section A of this SOP for the types of businesses that are not eligible for SBA financial assistance.

c) Additional restrictions specific to PLP refinancing are found in 13 CFR § 120.452, and explained further in Part 2, Section B.

ii. 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's Eligibility Review:

i) A PLP Lender must analyze a PLP loan Applicant's eligibility in the same way that SBA analyzes eligibility for a regular 7(a) Applicant. The PLP Lender must keep in its loan file documentation supporting its eligibility analysis. 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.

ii) For a PLP loan, size of the Applicant is determined as of the date of the Lender's approval of the loan. A PLP Lender may accept as true the size information provided by the Applicant, unless credible evidence to the contrary is apparent.

b) Credit Analysis:

SBA has authorized PLP Lenders to make the credit decision without prior SBA review. The Lender must perform a thorough and complete credit analysis of the applicant, establish that the loan is of such sound value as to reasonably assure repayment and document its analysis in the loan file.

c) The Authorization:

PLP Lenders draft the Authorization without SBA review and execute it on behalf of SBA. The Lender must make sure that all collateral and other requirements documented in the Lender's credit analysis are in

each Authorization. The Lender also must include all SBA-required authorization provisions.

d) Closing Requirements:

SBA closing requirements are the same for PLP loans as for non-delegated 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.

Within 15 business days after final disbursement, the PLP Lender must submit to SBA through E-Tran a copy of the final executed Authorization, along with any amendments or modifications, and retain all other documents in the PLP Lender's loan file. The Lender should not send SBA any other closing documentation, including disbursement information, except through the required periodic loan status reports using SBA Form 1502.

e) Servicing and Liquidation Responsibilities:

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

iii. Change of PLP Lender's Structure:

a) When a PLP Lender's structure changes and the Lender continues as the same legal entity that signed the SBA Form 1347, a new SBA Form 1347 is not required including when:

i) The PLP Lender changes its name;

ii) The PLP Lender is acquired by another entity and the PLP Lender continues as a separate legal entity; or

iii) The PLP Lender acquires another Lender and the acquired Lender does not continue as a separate legal entity;

b) When a PLP Lender acquires another Lender and the acquired Lender continues to operate as a separate legal entity, the PLP Lender's delegated authority does not transfer to the acquired Lender; however, the acquired Lender may apply for its own PLP authority;

c) SBA will not renew a Lender's PLP authority or will revoke, suspend, or terminate a Lender's PLP authority when:

i) The Lender changes its operations so much that it cannot show that it handles SBA Loans appropriately;

ii) The PLP Lender is merged into a non-PLP lender (the surviving Lender may apply for PLP authority);

d) SBA will terminate the Lender's PLP authority and prohibit the Lender from making any new SBA loans when the Lender is dissolved, closed, or taken over by a regulatory authority.

e) If any SBA office discovers any of the above circumstances, OCRM must be immediately notified in writing.

iv. Requests for New SBA Guaranty Agreements:

When necessary, the Lender may obtain a new:

a) SBA Form 750 from the Lead District Office; and

b) SBA Form 1347 from OCRM.

3. SBA Express Program

a. SBA Express was established as a permanent SBA program under P.L.108-447 and 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 use, 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. SBA Express Lenders may make SBA Express loans in any area of the country and must apply and comply with all of SBA's Loan Program Requirements.

b. Qualifications for Initial SBA Express Lender Authority:

i. An existing SBA Lender must demonstrate to SBA's satisfaction that it meets the delegated authority criteria set forth above in paragraph E.1.

ii. For SBA Lenders with less than 3 years of SBA lending experience/data, the Agency may consider performance over the period of time the Lender has been an SBA Lender, but generally 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 SBA Form 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 A., Process to Become a 7(A) Participating Lender above, in support of 13 CFR § 120.440(a)(1), a lender that does not currently participate with SBA also must demonstrate to SBA's satisfaction that it:

i. Has at least 20 commercial or business loans for $350,000 or less in its portfolio at its most recent fiscal year end; and

ii. Ensures its primary SBA loan personnel have received appropriate training on SBA's policies and procedures (such training could include Lead 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

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

e. Process to become an SBA Express Lender:

i. To apply for initial SBA Express authority or to reapply for SBA Express authority, a Lender must submit a request with all applicable supporting documents to D/OCRM or designee at DelegatedAuthority@sba.gov.

ii. As noted above, lenders not currently participating with the SBA must meet the Agency's Lender requirements and must become an approved 7(a) Lender before participating in SBA Express. (An application for SBA Express authority may be made simultaneously with the application for 7(a) Lender authority.)

iii. The Lender's request should include:

a) Legal name and address of Lender;

b) Legal name of any holding company of Lender;

c) Name, title, address, phone number, email address, and fax number for contact person at Lender;

d) Lender's Lead District Office;

e) A copy of the Lender's SBA Form 750 and SBA Form 750B, if applicable; and

f) A good standing/satisfactory statement on the Lender's letterhead (as described in paragraph E.1.a.v.a) above.

iv. D/FA will make the final Agency decision in consultation with and upon receipt of recommendations from D/OCRM. OCRM notifies the Lender and the Lead District Office of SBA's decision.

v. SBA may limit a new SBA Express Lender to a yearly maximum of $25 million of SBA Express loans in its first year of participation.

f. Supplemental Guaranty Agreement:

i. If the Lender's request for SBA Express authority is approved, OCRM notifies the Lender of the decision and sends the Lender an SBA Form 2424, "Supplemental Loan Guaranty Agreement SBA Express Program." The lender must sign, attest/witness, and return the form to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender's SBA Express authority is effective.

ii. If the Lender is a PLP Lender, the term of its SBA Express authority, when possible, will be aligned with the Lender's remaining PLP term.

iii. 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.

g. Decline of SBA Express Authority:

If the request for SBA Express authority is declined, OCRM notifies the Lender and Lead District Office with the reason(s) for decline.

To reapply, the Lender must submit a request to OCRM at DelegatedAuthority@sba.gov explaining how it has overcome the reason(s) for decline. OCRM will review the request, make a recommendation, and send it to the D/FA for a final Agency decision. OCRM will notify the Lender in writing of SBA's final decision.

h. Renewals of SBA Express Authority:

For renewal of its SBA Express authority, the Lender must demonstrate to SBA's satisfaction that it meets the delegated authority criteria set forth in paragraph E.1. above.

i. OCRM will generally initiate the renewal process approximately 90 days prior to the expiration of the Lender's SBA Express authority. It is the Lender's responsibility to ensure its point of contact information is accurate in PIMS. However, if the Lender has not received any correspondence from OCRM 60 days prior to expiration of its SBA Express authority, it must initiate the process by submitting to OCRM at DelegatedAuthority@sba.gov a good standing/satisfactory status statement (as described in paragraph E.1.a.v.a) above) on the Lender's letterhead.

ii. OCRM may ask the Lead District Office and the appropriate processing, servicing, and liquidation centers for comments regarding the Lender's activity for its most recent SBA Express term, which may include:

a) Recommendation for or against, and why;

b) Whether the Lender can effectively process, close, service and liquidate SBA loans;

c) Changes in Lender's organization or management;

d) Any recurring denial of liability or repair situations with the Lender;

e) Reasons for any unfavorable loan volume or repurchase rate data;

f) Identification of any areas of concern; and

g) An explanation of any discussions with the Lender that may impact the SBA Express renewal decision.

iii. Lenders that have participated in SBA Express for 2 years or more may be renewed in the program for 2 years, SBA in its discretion 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 terms of up to 2 years thereafter.

i. Notification of Renewal:

OCRM makes the decision and notifies the Lender and the Lead District Office of the approval and term. OCRM sends the Lender a new SBA Form 2424. The Lender must sign, attest/witness, and return the form to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender's SBA Express renewal can be effective.

j. Non-Renewal and Short Renewal:

If SBA determines in its discretion that an SBA Express Lender does not meet the delegated authority criteria or that increased supervision is necessary, SBA may:

i. Grant a shorter renewal period; or

ii. Not grant renewal of the delegated authority.

a) If renewal is declined, OCRM notifies the Lender and the Lead District Office with the reason(s) for decline. The Lender may not make SBA Express loans after its SBA Express authority expires.

b) To reapply, the Lender must submit a request to OCRM at DelegatedAuthority@sba.gov explaining how it has overcome the reason(s) for decline. OCRM will review the request and make the final Agency decision. OCRM will notify the Lender in writing of the final decision. See paragraph E.3.l. Reapplying for SBA Express Authority, below.

See SOP 50 53, for more information on increased supervision.

k. Temporary Extension of SBA Express Authority:

If SBA has not completed the renewal process before the Lender's SBA Express authority expires, OCRM may extend the Lender's SBA Express authority for a short, interim period as determined by the D/OCRM.

l. Reapplying for SBA Express Authority:

If a Lender's SBA Express authority was revoked, not renewed, or voluntarily terminated, after 6 months the Lender may reapply for SBA Express authority by following paragraph E.3.e., Process to become an SBA Express Lender above.

m. SBA Express Lender Authority and Responsibilities

i. SBA Express Lenders may make SBA Express loans in any area of the country.

ii. Applications Previously Submitted to LGPC for Processing. Once submitted to LGPC, an application withdrawn by the Lender, screened-out, or declined by LGPC may not be approved by any Lender under its SBA Express Authority. E-Tran will not permit the submission of such an application under any Lender's SBA Express authority for a period of 12 months from the date of withdrawal, screen-out, or decline of the application.

iii. An application that did not receive an acceptable credit score under 7(a) Small Loan procedures may be withdrawn prior to submission through E-Tran or SBA One and may be processed under SBA Express.

iv. See Part 2, Section A, for the types of businesses that are not eligible for SBA financial assistance, and Part 2, Section B, Ch. 2 of this SOP for other restrictions on SBA Express loans.

v. SBA Express Lender's Processing Responsibilities:

a) Lender's Eligibility Review:

i) SBA Express is a streamlined program, so complex or ambiguous eligibility issues should be processed using Basic 7(a) Loan 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.

ii) Lenders may rely, in many instances, on certifications provided by the 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.

iii) Certain eligibility issues require additional lender review and/or verification. Lenders must follow all 7(a) loan eligibility requirements and maintain appropriate documentation supporting their eligibility screening in the loan file.

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

v) 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.

b) See Part 2, Section A, Core Requirements for all 7(a) and 504 loans, and Section B, Ch. 2, SBA Express Loans, for eligibility and underwriting requirements.

n. Closing, Servicing and Liquidation:

i. 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 similarly-sized, non-SBA guaranteed commercial loans.

ii. Within 15 business days after final disbursement, the SBA Express Lender must submit to SBA through E-Tran a copy of the final executed Authorization, along with any amendments or modifications, and retain all other documents in the SBA Express Lender's loan file. The Lender should not send SBA any other closing documentation, including disbursement information, except through the required periodic loan status reports using SBA Form 1502.

4. Export Express Program

a. The Export Express Program was 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 Part 2, Section B, Ch 4, Para. A. Export Express, of this SOP.)

b. Becoming an Export Express Lender:

i. Lenders must have a signed SBA Form 2426, "Supplemental Loan Guarantee Agreement Export Express Program," to make Export Express loans.

ii. The procedures for receiving Export Express authority are different based on the Lender's existing authority:

a) Active SBA Express Lenders:

i) 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 Lead District Office or SBA Export Finance Managers the lending unit works with on Export Express loans. These offices should submit the Lender's request to OCRM, at DelegatedAuthority@sba.gov. Note: A complete listing of Export Finance Managers and USEAC locations may be found at https://www.sba.gov/article/2017/nov/01/list-useacs-sba-staff.

ii) D/FA will make the final Agency decision in consultation with and upon receipt of recommendations from D/OCRM.

iii) OCRM will send the Lender the approval letter and SBA Form 2426 with a copy of the approval letter to OIT and the Lead District Office.

iv) The Lender must sign, attest/witness, and return the form to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender's Export Express authority can be effective.

b) Existing 7(a) Lenders that Do Not Participate in the SBA Express Program:

i) Existing 7(a) Lenders that would like to participate in the Export Express Program must submit a request to its Lead District Office or USEAC. These offices should submit the request to OCRM at DelegatedAuthority@sba.gov.

ii) If the request was received from the Lead District Office, OCRM will contact the Export Finance Manager in the appropriate USEAC for comments and process the request in accordance with the procedures and process for the SBA Express Program, as described in paragraph E.3.e., Process to become an SBA Express Lender, above.

iii) Lenders can request SBA Express and Export Express authority simultaneously but are not required to do so.

iv) D/FA will make the final Agency decision in consultation with and upon receipt of recommendations from D/OCRM.

v) If approved, OCRM will send the Lender the approval letter and SBA Form 2426, with a copy of the approval letter to OIT and the Lead District Office.

vi) The Lender must sign, attest/witness, and return the form to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender's Export Express renewal can be effective.

iii. To obtain or renew Export Express authority, SBA Express Lenders must demonstrate to SBA's satisfaction that it:

a) Meets the criteria for delegated authority set forth in paragraph E.1., Delegated Authority Criteria, above;

b) Can effectively process, make, close, service, and liquidate Export Express loans;

c) Is in compliance with SBA Loan Program Requirements;

d) Has received no major substantive objections regarding renewal from the Lead District Office covering the territory where the Lender generates significant numbers of Export Express loans; and

e) Has received acceptable review results on the Export Express portion of any SBA-administered Lender reviews.

f) OCRM will generally initiate the renewal process approximately 90 days prior to the expiration of the Lender's Export Express authority. It is the Lender's responsibility to ensure its point of contact information is accurate in PIMS. However, if the Lender has not received any correspondence from OCRM 60 days prior to expiration of its Export Express authority, it must initiate the process by submitting to OCRM at DelegatedAuthority@sba.gov a good standing/satisfactory status statement (as described in paragraph E.1.a.v.a) above) on the Lender's letterhead.

g) OCRM may ask the Lender's Lead District Office and the appropriate processing, servicing, and liquidation centers for comments regarding the Lender's activity for its most recent Export Express term, which may include:

i) Recommendation for or against, and why;

ii) Whether the Lender can effectively process, close, service and liquidate SBA loans;

iii) Changes in Lender's organization or management;

iv) Any recurring denial of liability or repair situations with the Lender;

v) Reasons for any unfavorable loan volume or repurchase rate data;

vi) Identification of any areas of concern; and

vii) An explanation of any discussions with the Lender that may impact the Export Express renewal decision.

iv. D/FA will make the final Agency decision on initial requests for Export Express authority, and D/OCRM will concur or non-concur in recommendations to the D/FA. OCRM will approve or decline renewals of Export Express authority.

v. SBA will generally grant Lenders Export Express loan authority for a term that aligns with the Lender's SBA Express term, unless the D/FA determines a shorter term is appropriate. The maximum term for all Export Express Lenders is 2 years. For lenders that have not participated in SBA Express prior to applying for Export Express authority, the term may be less than 2 years at the discretion of the D/FA.

vi. Notification of Renewal:

a) OCRM will approve or decline renewals of Export Express authority and will provide written notification to the Lender, OIT, and the Lead District Office of the approval and the term.

b) OCRM sends the Lender a new SBA Form 2426. The Lender must sign, attest/witness, and return the form to OCRM at DelegatedAuthority@sba.gov within 30 calendar days before the Lender's Export Express renewal can be effective.

vii. Non-Renewal and Short Renewal:

If SBA determines in its discretion that the Export Express Lender does not meet the delegated authority criteria or that increased supervision is necessary, SBA may:

a) Grant a shorter renewal period; or

b) Not grant renewal of Export Express authority.

i) If renewal is declined, OCRM notifies the Lender, OIT, and the Lead District Office with the reason(s) for decline. The Lender may not make Export Express loans after its Export Express authority expires.

ii) To reapply, the Lender must submit a request to OCRM at DelegatedAuthority@sba.gov explaining how it has overcome the reason(s) for decline. OCRM will review the request and make the final Agency decision. OCRM will notify the Lender in writing of the final decision. See paragraph E.4.b.ix, Reapplying for Export Express Authority, below.

See SOP 50 53 on Increased Supervision.

viii. Temporary Extension of Export Express Authority:

If SBA has not completed the renewal process before the Lender's Export Express authority expires, OCRM may extend the Lender's Export Express authority for a short, interim period as determined by the D/OCRM.

ix. Reapplying for Export Express Authority:

If a Lender's Export Express authority was revoked, not renewed, or voluntarily terminated, after 6 months the Lender may reapply for Export Express authority following paragraph E.4.b.iii. above.

c. Export Express Authority and Responsibilities

i. Export Express Lenders may make Export Express loans in any area of the country.

ii. Eligibility Requirements: In addition to SBA's business loan eligibility standards set forth in Part 2, Section A, and Section B, Chapter 4 of this SOP, the following restrictions apply to Export Express loans.

a) Lenders may not use Export Express for any pilot program unless SBA authorizes use of Export Express for the pilot..

b) Applications Previously Submitted to LGPC for Processing. Once submitted to LGPC, an application withdrawn by the Lender, screened-out, or declined by LGPC may not be approved by any Lender under its Export Express Authority. E-Tran will not permit the submission of such an application under any Lender's Export Express authority for a period of 12 months from the date of withdrawal, screen-out, or decline of the application.

c) See Part 2, Section A of this SOP for the types of businesses that are not eligible for SBA financial assistance.

iii. Export Express Lender's Processing Responsibilities:

a) Lender's Eligibility Review:

i) Export Express is a streamlined program, so complex or ambiguous eligibility issues should be processed using Basic 7(a) Loan procedures rather than through Export Express. SBA grants Export Express

Lenders increased responsibility for screening applicants and loans for SBA eligibility. Export Express Lenders must be fully familiar with SBA's eligibility requirements as set forth in the SBA Loan Program Requirements and must screen all Export Express Applicants and loans to ensure they meet those requirements.

ii) Lenders may rely, in many instances, on certifications provided by the Applicant, several of which are included in the Export 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.

iii) Certain eligibility issues require additional lender review and/or verification. Lenders must follow all 7(a) loan eligibility requirements, including any additional eligibility requirements specific to Export Express as set forth in Part 2, Section B, Ch. 4, Paragraph A.1. of this SOP, and maintain appropriate documentation supporting their eligibility determination in the loan file.

iv) Lenders must carefully review and screen Export Express Applicants and loans to ensure they meet all applicable SBA eligibility requirements before transmitting the Export Express guaranty request and supplemental information via E-Tran.

v) 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.

b) See Part 2, Section A, Core Requirements for all 7(a) and 504 loans, and Section B, Ch. 4. Para. A, Export Express, for eligibility and underwriting requirements.

d. Closing, Servicing and Liquidation:

i. The Export 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 similarly-sized, non-SBA guaranteed commercial loans.

ii. Within 15 business days after final disbursement, the Export Express Lender must submit to SBA through E-Tran a copy of the final executed Authorization, along with any amendments or modifications, and retain all other documents in the Export Express Lender's loan file. The Lender should not send SBA any other closing documentation, including disbursement information, except through the required periodic loan status reports using SBA Form 1502.

CHAPTER 2: SMALL BUSINESS LENDING COMPANIES

Small Business Lending Companies (SBLCs) 13 CFR 120.460-120.490

An SBLC is a non-depository lending institution that 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. An SBLC is:

- Regulated, supervised, and examined solely by SBA;
- Subject to additional SBA regulations specific to SBLCs regarding formation, capitalization, and enforcement actions; and
- Subject to all other 7(a) regulations specific to origination, servicing, and liquidation.

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

A. SBLC REQUIREMENTS

SBLCs are subject to the requirements in Chapter 1 of this Part. Additionally, SBLCs must:

1. Submit to the D/OCRM for review their credit policy that demonstrates compliance with Title 13 of the CFR and SBA's Standard Operating Procedures (SOPs) for origination, servicing, and liquidation of 7(a) loans, and which must be acceptable to SBA in its discretion.
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 that 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 who 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. Internal control policies and procedures must include provisions to ensure the SBLC exercises due diligence and prudent oversight of its third party vendors, including Lender Service Providers (LSP) and other loan Agents. Such policies and procedures should include, but not be limited to, monitoring performance of loans referred by an Agent or where an Agent provided assistance.

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

4. SBLCs must adhere to their internal policies and procedures 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 written policies and procedures that have been reviewed by SBA.

5. An SBLC may not make a loan to an Applicant that has received assistance from an affiliated Small Business Investment Company (SBIC). (13 CFR § 120.476)

B. PROCESS FOR ACQUIRING AN SBLC

1. SBA regulations restrict the issuance of the SBA lending authority to operate as an SBLC to 14 entities.[1] To become an SBLC, an entity must purchase one of the existing lending authorities from a current SBLC.

2. SBA reserves the right to deny any entity proposing to acquire an SBLC's SBA lending authority in its sole discretion. In addition to SBA's evaluation of the elements required in paragraph 5, "SBLC Application," below, SBA may consider risk factors in its evaluation of an SBLC application. These factors include, but are not limited to, historical performance measures (such as default, purchase and loss rate), and other performance data associated with the acquiring concern or its senior management team, along with other relevant information (such as SBA-observed gaps in small business lending not served by the existing 7(a) Lender population).

3. SBA does not participate in facilitating the transfer of an SBLC's SBA lending authority. Private party negotiations culminate in a definitive purchase and sale agreement which includes the terms and conditions related to the transfer of the SBA lending authority. This agreement must include provisions which condition the transfer upon the prior written approval of the SBA.

4. 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:

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[1] For purposes of the Community Advantage (CA) Pilot Program, on February 18, 2011, SBA waived the regulation imposing a moratorium on licensing of new SBLCs in order to allow organizations that meet the definition of an SBLC but that do not currently have an SBLC license to participate in the CA Pilot Program. Currently, the CA Pilot Program is not accepting additional Lenders. A Community Advantage Lender is not permitted to transfer or sell its Community Advantage lending authority to another entity. For other regulations waived for purposes of the CA Pilot, see the CA Participant Guide.

a. The name and address of the acquiring concern;

b. The primary name and contact information for the acquiring concern's contact.

5. SBLC Application:

The acquiring concern must file a request for transfer with the D/FA and submit two complete binders of fully executed paper copies and one executed electronic scanned copy (in pdf format) to OFA addressing each of the elements set forth below ("SBLC Application"). The SBLC Application must be complete and organized in tabular format. Incomplete SBLC Applications will not be processed by SBA and will be returned to the acquiring concern. An applicant that submits an incomplete SBLC Application (as determined by SBA) must wait 30 calendar days before reapplying. The application must include:

a. The Legal name, address, telephone, facsimile, and email address of the acquiring concern;

b. Identification of the form of organization of the proposed SBLC along with file-stamped copies of the concern's certificate of incorporation, certificate of formation or certificate of limited partnership (as applicable), and a copy of the concern's corporate bylaws, limited liability company operating agreement, or limited partnership agreement (as applicable);

c. 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;

d. The proposed SBLC's geographic area of operation;

e. Identification of all officers, directors, managing partners, managing members, Key Employee(s) of the acquiring concern, which includes senior managers, members of loan committees, and individuals who have a meaningful participation in the direction of the operations, policies, or financial decisions of the acquiring concern),and all other individuals or entities that propose to hold an equity interest of at least 10% of the economic interest in any class of stock or ownership interest in the proposed SBLC (such identification should include a discussion of any prior SBA experience);

i. An organization chart showing the relationship of the proposed SBLC with all related Associates (see Appendix 3, Definitions) and affiliates within the organization;

ii. All individuals or entities identified in this paragraph must submit an executed SBA Form 1081 and either a Form FD-258 (fingerprint card) or Electronic Fingerprint Submission. SBA Form 1081 and the Form FD-258 or Electronic Fingerprint Submission must be signed and dated within 90 days of submission to SBA.

iii. A director or Key Employee of the lender organization is only required to submit either Form FD-258 (fingerprint card) or Electronic Fingerprint

Submission if the director or Key Employee answered affirmatively to questions 10a, 10b, 10c, 11a and/or 11b on the SBA Form 1081.

f. Proof of fidelity insurance coverage as detailed in 13 CFR § 120.470(e).

g. A comprehensive business plan that details:

   i. The nature of proposed operations, including the organizational units involved in sourcing, evaluating, underwriting, closing, disbursing servicing, and liquidating small business loans in the organization;

   ii. The identification of all sources of capital used to finance lending operations;

   iii. An operations plan detailing the nature of the Lender's proposed loan activity, the volume of activity projected over the first 3 years as an SBA Lender, projected balance sheets, income statements and statement of cash flows of the Lender, with alternative profit and loss scenarios based on run rates equivalent to 70% and 50% of projected loan activity, the type and projected amount of financing needed to support its lending plan, along with a discussion of Lender's proposed wind-down plan in the event the Lender decides to leave the program;

   iv. A detailed analysis of the Lender's projected secondary market activities during the first 3 years of operation, including a sensitivity analysis of the effect any changes in premium from the sale of the guaranteed portion of 7(a) loans in SBA's secondary market may have on the Lender's prospective earnings. The analysis must also include a description of the Lender's plans (if any) to securitize or sell participations in the unguaranteed portion of 7(a) loans; and

   v. If the Lender intends to acquire any 7(a) loans, a written plan detailing the extent of this acquisition activity in its operating plan, and how the Lender will manage the transition of the 7(a) loan portfolio;

h. All documents associated with any type of external financing expected to be undertaken by the proposed SBLC;

i. A written statement from an authorized official of the acquiring concern certifying that the SBLC will not be primarily engaged in financing the operations of an Affiliate as defined in 13 CFR § 121.103.

j. The most recent audited financial statements of the acquiring concern if it has been in operation for more than 1 year, or the audited financial statements of the acquiring concern's parent company.

k. A certified copy of a Board, limited partners, or members resolution specifying the individual(s) or official(s) granted the authority by the organization to submit this SBLC application;

l. A certification by the acquiring concern that it is in full compliance with all Federal, State, and local laws;

m. A written legal opinion of independent counsel ("Independent Counsel" is counsel that is not an Associate of the lender), satisfactory to SBA that addresses whether the proposed SBLC:

i. Is duly formed, organized, and validly existing in good standing under the laws of the State of its organization, and is in full compliance with all Federal, State, and local laws in connection with the formation and organization of the proposed SBLC; and

ii. Has the power, legal right, and authority to enter into the sale transaction.

6. Once received, the D/FA or designee, in consultation with the Director, Office of Credit Risk Management (D/OCRM) or designee, makes the final determination on the application. If approved, the D/FA will provide written notification to the selling SBLC and the acquiring concern that SBA consents to the transfer of the lending authority. Included with this letter will be SBA Form 750 for execution and return to OFA. For change of control transactions, the Lender will need to reapply for any delegated authorities separately.

7. 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.

a. A new application in accordance paragraph 5, "SBLC Application," above must be submitted for SBA's prior written consent with respect to any change of ownership or control transaction as specified in 13 CFR § 120.475.

b. For change of control transactions, the Lender will need to reapply for any delegated authorities separately.

8. If the proposed change of ownership is for less than a majority interest, SBA may in its sole discretion limit the items required from the Lender in the "SBLC Application" paragraph above to support a request for prior SBA consent.

9. Receiverships of SBLCs (except Other Regulated SBLCs as defined in 13 CFR § 120.10):

a. Upon SBA's determination that grounds for an enforcement action against an SBLC (except an Other Regulated SBLC) exist under 13 CFR § 120.1400, SBA may, pursuant to 13 CFR § 120.1500(c)(3), apply to a Federal court for the appointment of a receiver. Typically, SBA will use its receivership authority as a remedy of last resort. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR § 120.1500.

b. SBA will review the facts and circumstances of the enforcement action when deciding whether or not to seek the appointment of a receiver. SBA will also make a determination regarding the scope of the receiver's duties and powers. In deciding whether to seek a receiver and in determining the scope of a receivership, SBA will consider the following:

i. The existence of fraud or false statements;

ii. An SBLC's refusal to cooperate with SBA enforcement action instructions or orders;

iii. An SBLC's insolvency (legal or equitable); and/or

iv. The dollar amount of any claims SBA may have against the SBLC.

c. Under 13 CFR § 120.1400(a)(2), an SBLC (except an Other Regulated SBLC) that makes SBA 7(a) guaranteed loans after October 20, 2017, has consented to SBA's right to seek a receivership in appropriate circumstances. Such consent is deemed to apply only if the SBLC makes 7(a) loans on or after January 1, 2018. The SBLC's consent does not in any way preclude the SBLC from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. An SBLC's consent to receivership as a remedy does not require SBA to seek the appointment of a receiver in any particular SBA enforcement action.

CHAPTER 3: LENDER FINANCING AND OPERATIONS

A. SECONDARY MARKET FOR GUARANTEED LOANS

1. Sale of SBA 7(a) Loans into SBA's Secondary Market:

   The SBA Secondary Market was established to provide liquidity to Lenders, and thereby expand the availability of commercial credit for small business. A Lender may sell the guaranteed portion of disbursed loans into the Secondary Market and must use SBA Form 1086, "Secondary Participation Guaranty Agreement." SBA Form 1086 provides the terms and conditions that govern the sale and all subsequent servicing of the loan sold, which must be executed by the Lender, Registered Holder (or investor), Fiscal and Transfer Agent (FTA), and SBA.

2. In order for a 7(a) loan to be sold, the Lender must certify, among other things, that:

   a. The Lender has underwritten, closed and serviced the loan in a prudent manner and in accordance with all SBA Loan Program Requirements;

   b. The Lender will not share any premium it has received from this sale with a Lender Service Provider, Packager, or other loan referral source;

   c. The loan is fully disbursed (a loan is considered to be fully disbursed and then may be sold on the secondary market when the Borrower has access to all of the loan proceeds and is able to use them in accordance with the loan authorization);

   d. The loan is not a revolving loan or line of credit facility;

   e. The SBA guaranty fee has been paid by the Lender;

   f. The Lender, including its officers, directors, and employees, has no knowledge of a default or likelihood of a default by Borrower; and

   g. The Lender has no authority to unilaterally repurchase the loan guaranty from the Registered Holder without SBA's written consent.

3. The following sale documents must be presented to the FTA:

   a. A fully executed SBA Form 1086;

   b. A true and certified copy of the Borrower's Note, including true and certified copies of any amendments or modifications. All Notes, modifications, or amendments presented for sale must have the SBA Loan Number on the first page of each document.

4. Loan and sale information is recorded on SBA Form 1086 by the Lender and purchaser, who then presents the sale documents to the FTA for examination and processing. The FTA will identify any errors on the Note or SBA Form 1086 and notify either the Lender or the broker/dealer.

5. Secondary Market Sale Settlement:
    a. Upon a confirmed settlement date, the Registered Holder (investor) will wire all sale proceeds, including all principal, interest and premium (if any), to the FTA. The FTA will wire sale proceeds to the Lender, pursuant to instructions, submitted to the FTA through a confirmation of sale document. The FTA will issue a Guaranteed Interest Certificate to the Register Holder (investor) evidencing ownership of the guaranteed portion of the loan. The guaranty to the Registered Holder or investor is unconditional.
    b. All Borrower payments received by the Lender after the settlement date must be remitted to the FTA using SBA Form 1502 pursuant to the instructions contained in SBA Form 1086. This includes, but is not limited to, note payments and Borrower prepayments. All payments must be remitted by the Lender to the FTA.

B. SECONDARY MARKET RESOURCES

SBA's web page for Lenders has specific information on the Secondary Market at: https://www.sba.gov/partners/lenders/7a-loan-program/secondary-market.

Colson Services Corporation is the Fiscal and Transfer Agent (FTA). Find additional information on their web page: https://colsonservices.bnymellon.com/

SBA's SOP 50 57 provides additional information and can be accessed on SBA's web page for Lenders.

C. LOAN TRANSFERS

1. SBA allows SBA 7(a) loan portfolio transfers under limited circumstances. Lenders may encounter situations that result in the ownership transfer of their entire interest in SBA 7(a) loans from one Lender to another. These situations may arise when Lenders merge, decide to leave a specific operating area, cease participation in the SBA 7(a) loan program, or as may be directed by other Federal financial regulators.
2. Pursuant to 13 CFR § 120.432(a), Lenders selling or transferring the entire interest in a SBA 7(a) loan are required to obtain SBA's prior written consent. All loan transfers must occur between Lenders in the 7(a) loan program. When the proposed transfer involves a single loan account, Lenders may request a transfer of participation from the appropriate SBA Commercial Loan Servicing Center (Fresno CLSC or Little Rock CLSC).
3. When a transfer involves more than one SBA 7(a) loan, Lenders are required to obtain SBA's prior written consent to the proposed portfolio transfer. Prior to conducting a review for approval, Lenders must pay all outstanding SBA receivables that are more than 30 days in arrears. Lenders must contact DFCActionDesk@sba.gov in advance of their consent request for information on any SBA receivables outstanding. All SBA receivables must be satisfied with proof of payment to SBA in order to consider a portfolio transfer of loans.
4. Requests for consent for transfers involving more than one SBA 7(a) loan are submitted to OFA at 7aPortfolioTransfers@sba.gov. Failure to secure SBA consent will prevent the transfer of related SBA loan guarantees accompanying the loans scheduled for transfer. The written request shall include documents describing the basis for the portfolio

transfer. These documents are either in the form of an asset purchase agreement or plan of merger agreement. If the transfer takes the form of an asset purchase, SBA will also require submission of a loan list (preferably in a Microsoft Excel spreadsheet) identifying the loans to be transferred. Listed loans are to be assembled in ascending order by SBA Loan Number and must include the name of the Borrower and the original loan amount. SBA will also require the proposed purchaser of the loan portfolio to submit a signed Lender Statement of Obligation which will identify points of contact and the purchasing Lender's responsibilities and obligations after the transfer is completed.

5. Upon SBA approval, the Lender purchasing the 7(a) loans and/or loan portfolio must take possession of the promissory notes and the other loan documents and service the 7(a) loans. The purchasing Lender will assume all of the obligations and responsibilities of the selling Lender, including but not limited to, all obligations, responsibilities and liabilities resulting from the making, servicing, closing and liquidation of the selling Lenders' loans. The purchasing Lender purchases the 7(a) loans subject to SBA's existing rights to deny liability on its guarantee as provided in 13 CFR § 120.524.
6. Lenders that receive SBA approval must notify the Secondary Market Division once the proposed transaction is completed. At that time, OFA will notify OPSM to transfer loan accounts into the purchasing Lender portfolio.

D. LOAN PARTICIPATION SALES

1. Lenders are permitted to enter into 7(a) loan participation sales, pursuant to 13 CFR § 120.432(b) and 13 CFR § 120.433 provided the purchaser is another 7(a) lender participant. Participation sales involve the sale of a portion of an SBA 7(a) loan and are private sale transactions between Lenders.
2. Lenders that sell loan participations are required to retain the SBA Note and service the loan on behalf of all participants. While participations may be for amounts equivalent to a loan's guarantee percentage, purchasing Lenders are not permitted to sell a participation interest into SBA's Secondary Market.
3. Lenders are required to notify OCRM at OCRM@sba.gov if the Lender sells a participation in any portion of an SBA 7(a) loan to another Lender. Lenders that wish to sell a participation in which the unguaranteed amount retained is below 10% of the outstanding principal balance of the loan must obtain SBA's prior written consent, which SBA may withhold in its sole discretion.
4. Requests for prior approval shall be made in writing to OFA's Secondary Market Division. The request from the selling Lender shall include a form of the participation agreement acceptable to SBA, identification of the purchasing Lender, and identification of the SBA loan(s) proposed for sale. These documents may be submitted electronically or by overnight mail or courier. OFA will coordinate its review with OCRM, and if approved, will issue conditional approval to the selling Lender. Lenders must close on the approved transaction and notify OFA upon the closing of the transaction.

E. SECURITIZATION AND OTHER CONVEYANCES

1. Securitizations.

   a. Lenders with an executed SBA Form 750, "Lender's Loan Guaranty Agreement (Deferred Participation)," are permitted to securitize the unguaranteed portion of their SBA-guaranteed 7(a) loans subject to SBA's prior written approval, which it may withhold in its sole discretion.

   b. A securitization is a financial transaction involving the pooling and sale of the unguaranteed portion of a 7(a) loan to a trust, special purpose vehicle or other mechanism, and the issuance of securities backed by such 7(a) loans to investors.

   c. Community Advantage Lenders are not permitted to securitize Community Advantage loans under the CA Pilot Program.

   d. A discussion of SBA's requirements for securitizations can be found at 13 CFR §§ 120.420 through 120.428.

2. Conditions to Securitize.

   There are certain basic conditions that a Lender must meet in order to securitize. SBA's consent to a Lender's securitization application may be withheld by SBA in its sole discretion. To securitize, a Lender must:

   a. Be in satisfactory standing with SBA (as defined in 13 CFR §120.420(f));

   b. Have satisfactory SBA performance;

   c. Use a securitization structure satisfactory to SBA;

   d. Use transaction documents acceptable to SBA (including the execution of an SBA Multi-Party Agreement for securitizations);

   e. Obtain SBA's written consent prior to executing a commitment to securitize; and

   f. Deposit the original 7(a) loan notes with SBA's Fiscal Transfer Agent.

3. There are certain minimum elements SBA requires for securitizations:

   a. All securitizers must be considered "well capitalized" by their regulator and meet SBA's capital requirements. A discussion of SBA's capital requirements for securitizations can be found at 13 CFR § 120.425(a). If a securitizer does not maintain the level of capital required for a securitization, SBA will not approve a securitization application.

   b. Each securitizer must retain a subordinated tranche of the securities issued in the securitization equal to the greater of two times the securitizer's Loss Rate (as defined in 13 CFR § 120.420(i)) or 2 percent of the principal balance outstanding at the time of securitization of the unguaranteed portion of the loans in the transaction. The securitizer's retained tranche must be subordinate to all other securities issued in the securitization (including other subordinated or junior tranches). The subordinated tranche may not be sold, pledged, transferred, assigned, participated, or otherwise conveyed by the securitizer during the first 6 years after the closing date of the securitization. A discussion of SBA's requirements for the subordinated tranche can be found at 13 CFR §120.425(b).

SBA expects all securitizers to be in compliance with other laws, rules or regulations related to securitizations.

c. OCRM may suspend a securitizer's PLP loan approval privileges based on the relationship between the securitizer's currency rate and the SBA 7(a) loan portfolio currency rate. See 13 CFR § 120.425(c).

d. Prefunding – Lenders may only securitize 7(a) loans that are fully disbursed within 90 days of the securitization's closing date. See 13 CFR § 120.423.

e. Once transaction documents have been drafted, Lenders shall submit key transaction documents (together with a closing checklist of all documents to be included in the transaction) in electronic form to the Chief of the Secondary Market Division within OFA. This unit will review the transaction documents and provide comments to the Lenders on unacceptable terms and conditions. Once resolved, OFA will coordinate the review of the transaction within SBA. If approved, OFA will issue a consent letter along with signature pages to the Multi-Party Agreement executed by both SBA and the FTA.

f. Secured Credit Facilities. Under 13 CFR § 120.434, Lenders are required to obtain SBA's prior written consent when pledging 7(a) loans as collateral for a secured credit facility. These credit facilities are entered into by Lenders as a source of funding for making 7(a) loans to small businesses. These credit facilities may only be used to finance the guaranteed and/or unguaranteed portions of 7(a) loans along with the cost and expenses of obtaining the credit.

g. Lenders are permitted to make financing arrangements with credit providers which culminate in the drafting of a loan and security agreement as well as other ancillary transaction documents. SBA requires each secured financing transaction to include an SBA Multi-Party Agreement (MPA). The form of the MPA is located at www.sba.gov/document/support-object-object-sba-multi-party-agreements. The MPA is a document executed by the Lender, the credit provider, SBA, and the Fiscal Transfer Agent (FTA). The MPA identifies rights and restrictions that limit actions that may be taken by the credit provider if a Lender default on the facility occurs. As stated in the MPA, inconsistent provisions identified between the MPA and other transaction documents are decided in favor of the MPA in all cases.

h. Once transaction documents are drafted, Lenders shall submit these documents in electronic form to the Chief of the Secondary Market Division within OFA. This unit will review the transaction documents and provide comment to the Lenders on unacceptable terms and conditions. Once resolved, OFA will coordinate the review of the transaction within SBA and the FTA. If approved, OFA will issue its consent letter along with signature pages for the MPA from both SBA and the FTA. Lenders are to ensure that all conditions in the MPA are satisfied at closing including the delivery of opinions of counsel from both the Lender and the credit provider. Lenders are to send electronic editions of the closing binders for these transactions to OFA in care of the Secondary Market Division.

F. LENDER LOAN REPORTING

1. Lenders must provide a monthly report on SBA Form 1502, "Guaranty Loan Status & Lender Remittance Form," ("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. International trade Lenders that participate in the EWCP must ensure that this reporting function is addressed within their own operation. Lenders with EWCP loans 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 combine loan portfolio reporting into one source point where possible.

   Detailed instructions for Form 1502 can be found at www.sba.gov/document/sba-form-1502-sba-form-1502-instructions.

2. Loan reporting in a current month reflects Borrower payments received or omitted in the prior month.

3. The report period begins with the first calendar day of the month and continues through the last calendar day of the month.

4. Lenders must compute and remit with the Form 1502 either the payments owed if the guaranteed portions have been sold in the secondary market or the ongoing guaranty fees due if the guaranteed portion has not been sold.

5. 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 thereafter if the third calendar day of the month is not a business day, plus a two business day grace period.

6. Lender must submit the Form 1502 to SBA's FTA using one of the following delivery methods: FTA's website facilities or Secure File Transfer Protocol (SFTP). Each method is described below, followed by wire instructions:

   a. FTA's Website:

      i. FTA provides Lender with the option of using its website to transmit Form 1502 information. The 1502 Dashboard and the 1502 Connection are found at https://colsonservices.bnymellon.com/.

      ii. The 1502 Dashboard's e-File Submission option allows Lender to securely upload Form 1502 file attachments in MS Excel format.

      iii. The 1502 Connection allows Lender to view its portfolio of loans and enter Form 1502 information on a Form 1502 data input screen directly on the site.

      iv. All 1502 Dashboard and 1502 Connection submissions must be accompanied with a corresponding wire transfer of funds.

      v. Lender must call FTA Client Service at 877-245-6159, Option 1 for enrollment information.

   b. SFTP:

      i. An SFTP server site is made available through FTA. Lenders are instructed to contact Colson Services Corporation's FTA Client Service number at

877-245-6159 and select Option 1 to receive instructions on obtaining a username and password to access the secure site.

ii. Wire Transfer instructions for Secondary Market and SBA Fee payments should be directed to the following wire address:

Bank of New York Mellon

ABA Routing: 021-000-018

For credit to Colson Services Corp.

7(a) Collection Account # 8900606797

Text: Bank Name & Payment Information

c. Wire Transfer instructions for Secondary Market Payoffs and Prepayments should be directed to the following wire address:

Bank of New York Mellon

ABA Routing: 021-000-018

For credit to Colson Services Corp.

7(a) Payoff Account # 8900606827

Text: GP #, Bank Name and P & I

Lender is responsible for any additional funds due to the secondary market for using the incorrect wire transfer instructions.

SECTION B. CERTIFIED DEVELOPMENT COMPANY (CDC) PARTICIPATION

13 CFR Part 120 Subpart H

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.

504 loans are issued through a partnership with Certified Development Companies (CDC) and private sector Third Party Lenders. CDCs are non-profit corporations (with the exception of several for-profit corporations grandfathered into the 504 Loan Program) certified and regulated by the Small Business Administration to package, process, close, and service 504 loans. Unless expressly provided otherwise in the regulations, any SBA Loan Program Requirement that applies to non-profit CDCs also applies to for-profit CDCs. (13 CFR § 120.818)

The 504 Loan Program was authorized by Congress under the Small Business Investment Act. The regulations governing the 504 program can be found in 13 Code of Federal Regulations (CFR) Part 103 and Part 120, (Sections 120.800 - 120.991 refer exclusively to the Development Company Loan Program). Terms and definitions specific to the 504 program can be found at 13 CFR § 120.802.

CHAPTER 1: CDC PARTICIPATION

A. APPLICATION TO BECOME CERTIFIED AS A CDC

13 CFR § 120.810

1. The Application for Certification as a Certified Development Company is SBA Form 1246. CDCs must also comply with all of the requirements prescribed in 13 CFR §§ 120.810 – 120.830. The applicant must demonstrate that it satisfies the CDC certification and operational requirements in 13 CFR §§ 120.816 through 120.830. It is important for the CDC to have adequate initial capital to reasonably assure its ability to sustain operations.

   A CDC applicant must provide evidence of the following in its application (additional information may be requested by the reviewing parties at the Lead District Office and/or the 504 Program Branch):

   a. Copy of its IRS tax exempt status;

   b. Applicant CDC is in good standing in the State in which it is incorporated;

   c. Applicant CDC is 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;

   d. List of Board of Directors and any Executive Committee or Loan Committee established, organized by area of expertise. For each of these individuals, identify the area(s) of expertise that he or she represents on the Board or committee to satisfy the representational requirements of 13 CFR 120.823(a), including a description of the individual's experience that demonstrates that he or she is qualified to represent that area of expertise;

   e. Organizational Chart;

   f. List of all officers and paid employees of the CDC (including all contracted staff and contractors assisting in performing 504 loan functions, including but not limited to loan packaging, processing, closing, servicing and liquidation (if applicable) for the CDC);

   g. Each of the following must undergo a character determination in accordance with paragraph B. of this Chapter, Form 1081 CDC Character Determinations: CDC manager; officers; Board members; CDC staff, and loan committee members.

      i. If SBA's character determinations have already been received at the time of application submission, include a copy of the character determinations with the application.

      ii. For loan committee members who do not require fingerprinting, provide a statement including the loan committee member's name and noting that the CDC is retaining the individual's SBA Form 1081 in the CDC's files.

iii. If SBA's character determination has not been received prior to submitting the application, include a statement that the original SBA Form 1081 and any supporting documentation have been forwarded to OCA and that individuals have been fingerprinted. Note: A CDC may not be approved to begin 504 Loan Program operations until all staff have been cleared by SBA in accordance with paragraph B. of this Chapter, Form 1081 CDC Character Determinations;

h. Certificate of Incorporation;

i. Articles of Incorporation;

j. Bylaws, which must include the regulatory requirements regarding the Board of Directors and Membership (if applicable);

k. Board Resolution authorizing the CDC's creation;

l. Plan of Operation - a detailed narrative describing the applicant's ability to package, process, close, and service the loans. The plan must identify the applicant's financial and legal capacity and identify how it plans to market the 504 program, the geographic area it plans to serve, and include plans for investment in economic development in their Area of Operations;

m. Operating budget, approved by the applicant's Board of Directors; financial statements; and detailed projections with assumptions demonstrating the CDC's financial ability to operate (See paragraph D.8 of this Chapter, Financial Ability to Operate), how the CDC can operate in a positive net asset position by the end of its two-year probationary period; and

n. Information regarding any affiliates.

2. Submission of Application

The completed application must be electronically submitted to the Lead District Office serving the proposed Area of Operations for review. If the Lead District Office determines that the application is complete and eligible, the Lead District Office will forward its recommendation to the 504 Loan Program Division for further review and recommendation to the Director, Office of Financial Assistance (D/FA).

a. In addition to the items listed above, the application package must include:

i. SBA Form 1246, Application to Become a CDC;

ii. An assessment of the application by the Lead District Office with a recommendation for application approval.

b. Decline at the Lead District Office: If the Lead District Office review determines that the CDC is not eligible for certification, it should decline the CDC application. If a CDC application is declined by the Lead District Office, the CDC will be notified in writing outlining the reasons for decline and the CDC's rights of appeal, with a copy to the appropriate SBA official, including the D/FA. The CDC applicant has 60 days to send an appeal to the Lead District Office for action by the next higher authority.

c. Final Decision: The final decision on CDC applications is determined by the D/FA. SBA will send a letter to the CDC applicant notifying it of the decision with a copy to the Lead District Office's District Director. If the decision is a decline by the D/FA, SBA will notify the CDC applicant and Lead District Office in writing of the decision and the reason(s) for decline. There is no process for appeal of a final decision of decline. The CDC may submit a new application to the Lead District Office after a waiting period of 6 months from the date of notification of the decline by SBA.

3. Probationary Period and Requests for Permanent Status

13 CFR § 120.812

The probationary period is meant for newly certified CDCs to establish their operation and demonstrate to SBA their ability to perform in accordance with the mission of the 504 Loan Program and comply with all Loan Program Requirements. Newly certified CDCs will be on probation for a period of 2 years. While in probationary status, the CDC is not eligible to apply for delegated authority, request expansions to their Area of Operations, receive portfolio transfers, or merge with another entity.

Ninety days prior to the end of the probationary period, the CDC must either apply for permanent status or a single one-year extension. SBA will consider failure to apply for permanent status or a single one-year extension of probation before the end of the probationary period as a voluntary withdrawal from the 504 program. In such case, or if the CDC otherwise voluntarily withdraws from the 504 program, it must transfer all funded and/or approved loans to another CDC, SBA, or other servicer approved by SBA, including all related servicing fees, as directed by SBA.

a. To be considered for permanent CDC status or an extension of probation. The CDC must have satisfactory SBA performance as determined by SBA. SBA will consider, among other factors:

   i. The CDC's Risk Rating;

   ii. Review/examination assessments;

   iii. Historical performance measures (e.g. default rate, purchase rate and loss rate);

   iv. Compliance with 504-specific Program requirements (e.g. loan volume, loan portfolio diversification, Job Opportunity average, and reporting requirements).

b. The request for permanent CDC status or a single 1-year extension of the CDC's probationary status should be sent to the Lead District Office with a copy to the 504 Loan Program Division at 504Requests@sba.gov and contain:

   i. A current Board of Directors List, identifying each Director's area of expertise;

   ii. A list of all members of all Board-established committees (if established);

   iii. A list of all current staff, including a description of each individual's duties and an organizational chart;

iv. Current bylaws, including any amendments; and

v. Current Articles of Incorporation, including any amendments.

c. The Lead District Office must obtain comments from the SBA processing and servicing centers as to the quality of the CDC's processing and servicing. The Lead District Office must include the centers' comments and its own comments on the CDC's performance in its recommendation and must submit the request/recommendation to the 504 Loan Program Division at 504Requests@sba.gov.

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

e. SBA will notify the CDC in writing of its decision, and, if the petition is declined, the reason(s) for the decision. If the petition is declined, the CDC must transfer all funded and/or approved loans to another CDC, SBA, or other servicer approved by SBA, including all related servicing fees, as directed by SBA.

B. FORM 1081 CDC CHARACTER DETERMINATIONS

SBA uses the character determination process to clear individuals (i.e., CDC manager, officer, Board member, CDC staff, loan committee member) to participate in a CDC's activities. Individuals may not begin activities at the CDC until the clearance process is complete. When fingerprints are required, the clearance process is complete when SBA provides written notification to the CDC. Once an individual is cleared by SBA, the clearance does not need to be renewed as long as the individual maintains uninterrupted service with the same CDC, and the CDC or SBA has no indication that the individual would need to update SBA Form 1081 due to a change in circumstances.

For the protection of personally identifiable information (PII) such as names, tax identification numbers, addresses, financial information, etc., the CDC must limit access to PII to only those who have been cleared through this process.

1. For each new CDC manager; officer; Board member; and CDC staff (including contractors who are providing services to the CDC under a professional services contract that requires prior SBA approval under 13 CFR 120.824) the CDC must submit to SBA the SBA Form 1081 and any supporting documentation. The Subject Individual must also undergo an FBI Fingerprint Background Check.

   However, if a professional services contractor has been cleared by SBA within the past 12 months for employment with a different CDC, and if the contractor answers "no" to question numbers 10a, 10b, 10c, 11a, and 11b on SBA Form 1081 (signed within 90 days of submission to SBA), a fingerprint background check is not required. The CDC must retain the signed SBA Form 1081 in the CDC's files. Do not submit the SBA Form 1081 for such an individual to SBA.

2. For each new Loan Committee Member that is not serving on the CDC's Board of Directors, the CDC must collect an SBA Form 1081.
    a. For those Loan Committee members who answer "no" to question numbers 10a, 10b, 10c, 11a, and 11b, the CDC must retain the signed SBA Form 1081 in the CDC's files. No FBI Fingerprint Background Check is required. Do not submit SBA Form 1081 to SBA.
    b. If a Loan Committee member answers "yes" to question numbers 10a, 10b, 10c, 11a, or 11b on SBA Form 1081, the CDC must submit to SBA the SBA Form 1081 and any supporting documentation. The Subject Individual must also undergo an FBI Fingerprint Background Check.
3. The following are not required to be cleared and do not have to complete SBA Form 1081:
    a. Attorneys providing legal services in connection with loan liquidation or litigation;
    b. Contractors providing services under co-employment contracts for payroll and employee benefits (although the staff co-employed through these contracts are not exempt).
4. FBI Fingerprint Background Check: When required, the Subject Individual must provide **one** of the following:
    a. Fingerprint Submission.
        i. SBA will use an FBI-approved, SBA-contracted channeler to conduct fingerprint background checks via Electronic Fingerprint Submission. The current SBA-contracted channeler for Electronic Fingerprint Submissions to the FBI is Biometrics4ALL.
        ii. After a CDC determines that a fingerprint background check is required, the CDC will refer the Subject Individual to the approved channeler's website where they must create an account and register. The Subject Individual will select the "SBA Form 1081" option and complete the fingerprint process by following the directions on the approved channeler's website: www.applicantservices.com/sba.
        iii. The channeler will provide expedited fingerprint processing by directing Subject Individuals to approved electronic fingerprinting facilities listed on the channeler's website based on the Subject Individual's location.

            Depending on the circumstances, the channeler will also provide additional locations where hard-copy fingerprints may be taken and will provide the FBI Form FD-258 Fingerprint Card for the Subject Individual to capture the fingerprints along with instruction on submitting the fingerprint cards to the SBA-contracted channeler for continued processing.
        iv. The channeler will electronically submit the fingerprints to the FBI, and the FBI will provide the results of the background check to the channeler who will, in turn, provide the results to SBA via a secure portal; or

b. Evidence of a Federal clearance (e.g. FDIC, OCC, Federal Reserve) from the individual's current employer.

5. Submission to SBA.

SBA Form 1081 must be signed and dated within 90 days of submission to SBA. After the CDC has verified that the Subject Individual has submitted fingerprints to the channeler, the CDC must submit SBA Form 1081 along with supporting documents such as resume and court documents (if applicable) to SBA either by:

a. Email: OCA1081@sba.gov; or

b. Hard copy: Overnight mail or courier to U.S. Small Business Administration, Office of Capital Access, Attn: 1081 Processing, 409 3rd Street SW, 8th Floor, Washington, DC, 20416.

NOTE: CDCs must also notify SBA at 504Requests@sba.gov of the following: changes in CDC's management, compensated and uncompensated officers, Board members, Executive Committee members, Loan Committee members, and staff (including contractors who are providing services to the CDC under a professional services contract that requires prior SBA approval under 13 CFR 120.824). See paragraph E, Reporting Requirements below.

6. CDC Certification Applications: Clearances made by SBA during the CDC certification application process will remain valid while the certification application is being processed; however, if the application is pending and more than 1 year has lapsed since an individual was cleared by SBA, the individual must certify under penalty of perjury either that nothing has changed on any of the responses to the questions in SBA Form 1081 or, if there have been changes, the individual must identify any such change(s) that have occurred since the individual signed and submitted the SBA Form 1081 that was used by SBA to clear the individual. The CDC must submit the certification to SBA at 504Requests@sba.gov and maintain a copy in the CDC's files.

C. TYPES OF AUTHORITIES

1. Priority CDCs

13 CFR § 120.802

a. A Priority CDC is a CDC with permanent status that SBA has approved to participate in an expedited 504 loan and Debenture closing process. A Priority CDC must apply separately for delegated authority. For more information on delegated authority, see paragraph C.4, Premier Certified Lenders Program - Delegated Authority below).

b. To become a Priority CDC, a CDC must have:

i. At least one 504 Designated Attorney (for more information, see Part 2, Section C, Ch. 2, Para. C.5, Designated Attorney, of this SOP);

ii. Adequate experience and expertise in 504 loan closings;

iii. A history of presenting complete and accurate closing packages;

iv. Satisfactory SBA performance (see first paragraph of Chapter 2 below for more information);

v. A qualified and knowledgeable staff;

vi. A satisfactory working relationship with its Lead District Office; and

vii. Evidence of Directors' and Officers' Liability and Errors and Omissions insurance in form and substance satisfactory to SBA as provided in paragraph D.17, CDC Insurance below.

c. Application Process – CDCs may obtain Priority Status either through the submission of an Application or by nomination from their Lead District Office.

i. Application by the CDC:

a) The CDC submits the complete application to the 504 Loan Program Division to 504Requests@sba.gov or by overnight mail or courier to SBA Headquarters (409 3rd Street SW, 8th Floor, Washington, DC 20416). The application must address each of the items in the previous paragraphs to ensure that the CDC remains in compliance with these requirements.

b) The 504 Loan Program Division will solicit comments and a recommendation from the Lead District Office's District Director, District Counsel, SLPC, the appropriate loan servicing center, and other SBA District Offices, if applicable.

c) If the application contains both a request for Designated Attorney delegation and a request for Priority Status, the CDC should send the complete package to the 504 Loan Program Division, who will forward the attorney information to the Office of General Counsel (OGC).

ii. Nomination by the Lead District Office:

The Lead District Office sends a nomination to the 504 Loan Program Division 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.

d. Notification to the CDC:

The D/FA will make the final decision, with the concurrence or non-concurrence of the Director of the Office of Credit Risk Management (D/OCRM). The D/FA will notify the CDC in writing of its approval with a copy to the Lead District Office and the attorney will receive a separate approval letter from OGC.

e. Termination of Priority CDC Status:

The D/FA or designee, with the concurrence or non-concurrence of the D/OCRM 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; failure to maintain a good working relationship and good communications with SBA District Office personnel; and/or failure to comply materially with an SBA Loan Program Requirement.

2. Accredited Lenders Program (ALP)

13 CFR § 120.840 and 120.841

SBA may designate a CDC as an Accredited Lender, which gives the CDC increased authority to process, close, and service 504 loans and provides expedited processing of loan approval and servicing actions. 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.

To be eligible for ALP status, a CDC must have permanent CDC status and meet all of the requirements of a Priority CDC set forth in this SOP.

A CDC may submit an ALP application electronically into the Corporate Governance Repository or may apply in writing to its Lead District Office, providing all applicable information for SBA Review. When the CDC chooses to upload the ALP application into the Corporate Governance Repository, it must also submit an email to 504Requests@sba.gov to notify OFA of the submission.

At a minimum, the following items must be included in the application package (NOTE: this list may not be all-inclusive, and the reviewing SBA official may request further information from the CDC in order to make a recommendation):

a. CDC Submission Requirements

The application must include, at a minimum, the following documentation:

i. A certified copy of the CDC's Board of Directors' resolution authorizing the application for ALP status.

ii. A current list of the CDC's staff with organizational chart and description of each staff member's responsibilities and experience. If any of the professional staff is obtained under contract from a third party, the CDC must certify that it has already provided a copy of the executed contract to SBA (with the date and person to whom the copy was provided) or provide a copy of the executed contract;

iii. A current list of CDC Board of Directors, to include the name and address of the entity represented (if applicable) and each Director's area(s) of expertise. Board composition must comply with 13 CFR § 120.823;

iv. A current list of Executive Committee and Loan Committee members (if applicable);

v. A copy of CDC's current bylaws and Articles of Incorporation;

vi. A copy of CDC's internal control policy in compliance with 13 CFR § 120.826(b);

vii. A copy of certificate and policy evidencing the Directors' and Officers' Liability and Errors and Omission insurance required by SBA in paragraph D. 17, CDC Insurance below;

viii. A copy of certificate and policy evidencing Designated Attorney's malpractice insurance. If the CDC has Multi-State or Local Expansion Area (LEA) authority, include verification that designated attorneys are licensed to practice law in each State represented; and

ix. A copy of the CDC's most current loan policy in compliance with 13 CFR § 120.823(d)14.

b. Lead District Office Submission Requirements

The Lead District Office will review the ALP application and submit a recommendation to OFA to 504Requests@sba.gov within 2 weeks of receipt of the CDC's letter. The Lead District Office's recommendation will include comments:

i. On its relationship and experience with the CDC, based on the criteria listed as part of the Lead District Office Review in the current version of the SOP 50 10; and

ii. From the District Counsel on Loan Closings.

c. 504 Loan Program Division Review

The Lead District Office forwards the application and its recommendation to the Chief, 504 Loan Program Division, at 504Requests@sba.gov. The 504 Loan Program Division reviews the application and recommendation, and considers the criteria listed as part of the 504 Program Division analysis in the current version of the SOP 50 10, along with the following:

i. Comments from the Office of Credit Risk Management (OCRM) on:

a) ALP qualifications; and

b) Compliance with program reviews including SMART Reviews and Annual Reports.

ii. Comments from Sacramento Loan Processing Center and Fresno/Little Rock Commercial Loan Servicing Center

The 504 Loan Program Division will forward its recommendation to the D/FA for final determination. The D/OCRM will concur or non-concur on the recommendation to the D/FA.

d. D/FA Review

The D/FA will make the final decision. The D/FA may consider any information submitted or available related to the applicant and the application and will notify the CDC and the Lead District Office, OCRM, Sacramento Loan Processing Center, and Fresno/Little Rock Commercial Loan Servicing Center of the final decision. If the application is denied, the notification will include the reason(s) for denial.

If the application is approved, the 504 Loan Program Division will update SBA's internal systems to reflect the CDC's ALP status.

e. Term of ALP Designation

SBA generally will designate a CDC as an ALP CDC for a 2-year period. SBA may renew the designation for additional 2-year periods if the CDC continues to meet the ALP program eligibility requirements.

f. Renewal of an ALP CDC's designation:

A CDC with ALP authority requesting renewal of its ALP designation must submit the information and documentation identified in paragraph 2.a., CDC Submission Requirements, to OCRM at CDCAnnualReports@sba.gov. The required information and documentation should be submitted at least 120 days prior to expiration of the CDC's ALP status to ensure sufficient processing time. After receipt of the required information and documentation, OCRM will ask for comments from the Lead District Office, SBA's processing, servicing, and liquidation centers. SBA's review will address all of the requirements found at 13 CFR §§ 120.840-120.841 and the items noted above. The D/OCRM will make the final decision.

3. Abridged Submission Method (ASM)

SBA has established a streamlined loan application processing procedure known as the Abridged Submission Method (ASM). (Note: ASM is a streamlined application process and does not involve the exercise of any delegated authority.) For more information on delegated authority, see paragraph C.4, Premier Certified Lenders Program - Delegated Authority below.

Under this process, the CDC is required to collect and retain all exhibits to SBA Form 1244, but is only required to submit certain documents to SBA. See SBA Form 1244 and Part 2 of this SOP, Submission of Loan Application.

SLPC selects CDCs to participate in ASM. To be selected, CDCs must submit complete, quality loan applications

a. To be eligible for ASM, a CDC must be selected by SLPC and:

i. Have either Accredited Lender Program (ALP) status or Premier Certified Lenders Program (PCLP) status;

ii. Have submitted at least 10 loans in the last 12 months, and have passed benchmark measures using the most recent loans processed; and

iii. 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.

b. Monitoring. SBA will monitor CDC's continued eligibility to use ASM by reviewing one loan out of 10 loan applications based upon the following:

i. Each CDC will have at least one loan reviewed during a 12-month period.

ii. No CDC will have more than 12 loans reviewed during a 12-month period.

iii. SLPC will send CDC a written notice for review, and CDC will have 3 business days to submit the entire file to the SLPC.

c. The CDC will lose its ASM status if:

i. 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.

ii. 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.

iii. A CDC fails to meet the required portfolio performance standards or any other criteria for ASM.

iv. SBA will rely more heavily on the analysis of the CDCs therefore, continued quality performance of the CDCs portfolio is essential.

v. 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.

vi. CDCs submitting applications using the ASM may upload documents using E-Tran.

4. Premier Certified Lenders Program – Delegated Authority

Under the Premier Certified Lenders Program (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). As an SBA Lender with delegated authority, PCLP CDCs are responsible for all loan approval decisions except eligibility as set forth in SBA Loan Program Requirements. Loans processed under a PCLP CDC's delegated authority are subject to the same loan terms and conditions as other 504 loans.

a. Application for PCLP Status:

A CDC may apply in writing to its Lead District Office providing all applicable information set forth in paragraph C.2.a., CDC Submission Requirements above and the following:

i. Documentation of meeting all ALP requirements to be eligible to obtain or retain PCLP status;

ii. 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);

iii. Evidence that the CDC:

a) Has established a Loan Loss Reserve Fund (LLRF) in compliance with the requirements set forth in 13 CFR § 120.847;

b) Has a demonstrated ability to process, close, service and liquidate 504 and/or PCLP loans; and

c) Has satisfactory SBA performance as determined by SBA in its discretion. Factors may include, but are not limited to, review/examination assessments, SMART metrics, historical performance measures (such as 60 days delinquent reports, 90 days or more past due reports, catch up reports, liquidation rates, past 12 month active purchase rates, Small Business Predictive Score (SBPS) average used by SBA's Office of Credit Risk Management, default rate, purchase rate and loss rate), and the CDC's Risk Rating.

iv. Summary of experience of each of the CDC's processing, closing, servicing, and liquidation staff members with significant authority; and

v. Name, address, and summary of experience of the CDC's Designated Attorney.

b. SBA Review and Determination:

The D/FA makes the final Agency decision with the D/OCRM concurring or non-concurring in the recommendation.

c. Notification of PCLP Status:

D/OCRM or designee will notify the CDC in writing and will notify all appropriate SBA offices.

d. Loan Guaranty Agreement - Premier Certified Lenders Program (PCLP):

Upon approval as a PCLP CDC, D/OCRM or designee will send the CDC an SBA Form 2006, "Loan Guaranty Agreement - Premier Certified Lenders Program (PCLP)." The CDC must sign and return the agreement before it can begin processing PCLP loans.

e. PCLP Term:

SBA will confer PCLP status for a period of up to 2 years and may renew the designation for additional periods of up to 2 years. The D/ORCRM approves or declines the renewal.

f. Area of Operations:

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

g. Loan Loss Reserve Fund (LLRF) 13 CFR § 120.847:

i. A PCLP CDC must establish and maintain an LLRF for its financings with a federally-insured depository institution. 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.

ii. 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] For each PCLP debenture a PCLP CDC issues, it must establish and maintain an LLRF equal to 1% of the original principal amount of each PCLP debenture. The amount the PCLP CDC must maintain in the LLRF for each PCLP Debenture remains the same even as the principal balance of the PCLP Debenture is paid down over time except that, after the first 10 years of the term of the Debenture, the amount maintained in the LLRF may be based on 1% of the current principal amount of the PCLP Debenture (the declining balance methodology), as determined by SBA. All withdrawals must be made in accordance with the requirements of 13 CFR § 120.847(g).

iii. A CDC may not use the declining balance methodology:

a) With respect to any Debenture that has been purchased. Within 30 days after purchase, the CDC must restore the balance maintained in the LLRF for the Debenture that was purchased to 1% of the original principal amount of that Debenture; or

b) With respect to any other Debenture if SBA notifies the CDC in writing that it has failed to satisfy the requirements in 13 CFR § 120.847(e),(f),(h),(i), or (j). In such case, the CDC will not be required to restore the balance maintained in the LLRF to 1% of the original principal amount of the Debenture but must base the amount maintained in the LLRF on 1% of the principal amount of the Debenture as of the date of notification. The CDC may not begin to use the declining balance methodology again until SBA notifies the CDC in writing that SBA has determined, in its discretion, that the CDC has corrected the noncompliance and has demonstrated its ability to comply with these requirements.

iv. 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

[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 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.

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.

v. When establishing an LLRF, a PCLP CDC must coordinate with OCRM to execute and deliver the required documentation. SBA created SBA Form 2230, "Control Agreement," and SBA Form 2229, "Security Agreement," that must be used in connection with the LLRF. The fully executed original control and security agreements, as well as any applicable financing statements, must be provided to OCRM.

vi. Other LLRF Requirements:

a) A PCLP CDC must contribute at least 50% of the required LLRF for a PCLP Debenture on or about the date that it issues the PCLP Debenture.

b) A PCLP CDC must contribute at least an additional 25% of the required LLRF for a PCLP Debenture no later than 1 year after it issues the PCLP Debenture.

c) A PCLP CDC must contribute any remainder of the required LLRF for a PCLP Debenture no later than 2 years after it issues the PCLP Debenture.

d) In the event of default on the payment of any PCLP Debenture and upon the conclusion of liquidation efforts, SBA will determine the amount of any loss owed by the PCLP CDC to SBA and notify the CDC of the amount. If the PCLP CDC agrees with SBA's calculation of the loss, it must reimburse SBA for ten percent of the amount of the loss no later than 30 days after notice from SBA.

e) If the PCLP CDC disputes SBA's calculations, it must reimburse SBA for ten percent of any loss amount that is not in dispute no later than 30 days after SBA's notice. No later than 30 days after SBA's notification, the PCLP CDC may submit to the D/FA (or his or her delegee) a written appeal of any disagreement regarding the calculation of SBA's loss. The PCLP CDC must include with the appeal an explanation of its reasons for the disagreement. Upon the D/FA's final decision as to the disputed amount of the loss, the PCLP CDC must promptly reimburse SBA for ten percent of that amount.

f) A PCLP CDC must diligently monitor the LLRF to ensure that it contains sufficient funds to cover its Exposure for its entire portfolio of PCLP Debentures. If, at any time, the LLRF does not contain sufficient funds, the PCLP CDC must, within 30 days of the earliest of the date it becomes aware of this deficiency or the date it receives notification from SBA of this deficiency, make additional contributions to the LLRF to make up this difference.

g) A PCLP CDC must report to and reconcile with OCRM any discrepancies between the Quarterly PCLP List of Required LLRF Deposits and its records as noted in paragraph E., Reporting

Requirements, below, no later than 45 days after the end of each quarter. This report may be made either by sending an email to PCLPQuarterlyReport@sba.gov or via the Corporate Governance Repository.

h) A PCLP CDC must submit the SBA Form 2233, "Quarterly Loan Loss Reserve Report," no later than 45 days after the end of each quarter, to OCRM, either at PCLPQuarterlyReport@sba.gov or via the Corporate Governance Repository, and to the Lead District Office serving the territory where the 504 Borrowers are located. See paragraph E., Reporting Requirements below.

i) A PCLP CDC must submit requests for withdrawals to the Lead District Office with a copy to OCRM at PCLPQuarterlyReport@sba.gov.

vii. Each Lead District Office Must:

a) Notify Sacramento Loan Processing Center (SLPC) when a PCLP CDC meets LLRF initial establishment requirements.

b) Process requests to withdraw interest earned on LLRF or excess funds in LLRF.

c) Transmit to PCLP CDC the Quarterly PCLP List of Required LLRF Deposits.

d) Work with PCLP CDCs to reconcile any differences in quarterly Loss Reserve calculations.

e) Review and approve the Quarterly PCLP List of Required LLRF Deposits.

f) Provide written notice to the PCLP CDC of SBA's intent to transfer funds from the LLRF.

h. Renewal of a PCLP CDC's designation:

A PCLP CDC requesting renewal of its PCLP CDC designation must submit the request and the previous quarter's confirmation of the CDC's Loan Loss Reserve to OCRM at CDCAnnualReports@sba.gov. 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, OCRM will ask for comments from the Lead District Office, SBA's processing, servicing, and liquidation centers. SBA's review will address all of the requirements found at 13 CFR § 120.846 and the items noted above. The D/OCRM will make the final decision.

D. OPERATING REQUIREMENTS

1. CDCs must comply with SBA Loan Program Requirements (as defined in 13 CFR § 120.10) for the 504 Loan Program, as such requirements are revised from time to time. SBA Loan Program Requirements in effect at the time that a CDC takes an action in connection with a particular loan govern that specific action. For example, although loan

closing requirements in effect when a CDC closes a loan will govern closing actions, a CDC'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). SBA Loan Program Requirements, Center contacts, and other information can be found at https://www.sba.gov/partners/lenders/cdc-504-loan-program;

2. Non-Profit Status (13 CFR § 120.816): A CDC must be a non-profit corporation (with the exception of certain grandfathered CDCs) and must:

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

    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.

3. 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 Part 2, Section A, Ch. 5, Ethics, Fees, and Agents, of this SOP when providing such assistance on a 7(a) loan.

4. CDC Membership: CDC membership is optional. If a CDC elects to have a membership, the membership requirements must be included in the CDC's bylaws. If the members are responsible for electing or appointing the voting directors to the CDC's Board of Directors, no person or entity can control more than 25 percent of the voting membership.

5. CDC Board of Directors Roles and Responsibilities under 13 CFR § 120.823(d)(10): The CDC must have a Board of Directors. The Board shall have and exercise all corporate powers and authority and be responsible for all corporate actions and business. The Board is responsible for ensuring that the structure and operation of the CDC as set forth in the CDC's bylaws complies with SBA's Loan Program Requirements. The Board must be actively involved in encouraging economic development in the CDC's Area of Operations in which it has a portfolio. The initial Board may be created by any method permitted by State law.

6. CDC Board of Directors Composition and Requirements: CDC Boards must comply with 13 CFR § 120.823, as follows:

    a. All CDCs must have a Board of Directors with at least seven voting directors who live or work in the CDC's State of incorporation or in an area that is contiguous to that State that meets the definition of a Local Economic Area for the CDC.

    b. At a minimum, the CDC's Board must have directors with background and expertise in internal controls; financial risk management; commercial lending: legal issues relating to commercial lending; corporate governance; and economic, community, or workforce development. Directors may be either currently employed or retired. Retirees may either represent the field from which they retired or represent the community. For purposes of complying with these representational requirements, one director may have more than one area of expertise.

c. At least two voting Directors, other than the CDC manager, must possess commercial lending experience.

d. No person who is a member of a CDC's staff (including contractors) may be a voting Director of the Board except for the CDC manager.

e. No CDC Board member may serve on the Board of another CDC. CDC Board members may serve on the Boards of civic, charitable, or comparable organizations.

f. The Board must meet at least quarterly and shall be responsible for all corporate actions and business of the CDC, including any committee(s) established by the Board.

g. The Board meetings require a quorum to transact business. A quorum must be present for the duration of the meeting. The number of Directors that constitute a quorum shall be set by the CDC, provided that a quorum shall not be less than 50% of the voting Directors of the CDC Board. Attendance may be through any format permitted by State law.

h. When the Board votes on SBA Loan approval or servicing actions, at least two voting members with commercial loan experience satisfactory to SBA, other than the CDC manager, must be present and vote.

i. There must be no actual or appearance of conflict of interest with respect to any actions of the Board. The Board must establish a policy in the bylaws of the CDC prohibiting an actual conflict of interest or the appearance of same, and enforce such policy (13 CFR § 120.823(d)).

j. Other Responsibilities of the CDC Board include, but are not limited to, the following:

   i. Approving the mission and policies of the CDC.

   ii. Hiring, firing, supervising, and annually evaluating the CDC manager.

   iii. Setting the salary for the CDC manager and reviewing all CDC staff salaries.

   iv. Establishing committees, at the Board's discretion.

   v. Ensuring that the CDC's expenses are reasonable and customary.

   vi. Directly hiring an independent auditor to provide the financial statements of the CDC in accordance with SBA Loan Program Requirements.

   vii. Monitoring the CDC's portfolio performance on a regular basis.

   viii. Reviewing a semi-annual report on portfolio performance from the CDC manager, which includes, but is not limited to, asset quality and industry concentration.

   ix. Ensuring that the CDC establishes and maintains adequate reserves for operations.

   x. Ensuring that the CDC invests in economic development in each of the states in its Area of Operations in which it has a portfolio and approving each

investment. (If the investment is included in the CDC's budget, the Board's approval of the budget may be deemed approval of the investment. If the investment is not included in the CDC's budget, the Board must separately approve the investment.)

xi. Retaining accountability for the actions of the CDC.

xii. Establishing written internal control policies in accordance with 13 CFR § 120.826.

xiii. Establishing written commercially reasonable loan approval policies, procedures, and standards. The CDC must establish and set forth in detail in a policy manual its credit approval process. All 504 loan applications must have credit approval prior to submission to SBA. If a Loan Committee or Executive Committee is not established, the CDC Board must provide credit approval of all 504 loans.

xiv. Each member of the Board must annually certify in writing that he or she has read and understands 13 CFR § 120.823, and copies of these annual certifications must be included in the CDC's Annual Report.

xv. Maintaining Directors' and Officers' Liability and Errors and Omission insurance in amounts required by SBA. See paragraph D.17, CDC Insurance below.

xvi. Ensuring compliance with loan servicing and liquidation requirements as set forth in SOP 50 55.

7. Committees (13 CFR § 120.823(d)): If the CDC Board exercises its discretion to establish committee(s), any such committee must be authorized by the CDC's bylaws. Delegation of authority to a committee(s) does not relieve the Board of its responsibility imposed by law or SBA Loan Program Requirements. Delegations of Authority to an Executive Committee or a Loan Committee, if established, must be included in the CDC's bylaws. No further delegation or re-delegation of a Board's authority is permitted.

   a. Executive Committee – The CDC Board may establish an Executive Committee and delegate management functions to the Executive Committee if this delegation is in compliance with 13 CFR § 120.823(d)(4)(i) and is authorized by the CDC's bylaws.

      i. The Executive Committee must:

         a) Be chosen by and from the Board of Directors; and

         b) Meet the same organizational and representational requirements as the Board of Directors, except that the Executive Committee must have a minimum of 4 voting members present to conduct business.

      ii. Only the Board or Executive Committee, if authorized by the Board, may provide credit approval for 504 loans greater than $2,000,000.

b. Loan Committees – The Board may establish a Loan Committee (13 CFR § 120.823(d)(4)(ii)). The Loan Committee may exercise the authority of the CDC Board as set forth below.

i. The Loan Committee reports to the Board, and members must:

a) Be chosen by the Board of Directors and consist of individuals with a background in financial risk management, commercial lending or legal issues relating to commercial lending who are not associated with another CDC.

b) Have a quorum of at least four Loan Committee members authorized to vote, with attendance by any method allowed by State law;

c) Have at least two Loan Committee members with commercial lending experience satisfactory to SBA;

d) Consist only of Loan Committee members who live or work in the Area of Operations of the State or in an area that meets the definition of Local Economic Area for the CDC, except that, for Projects that are financed under a CDC's multi-state authority, the CDC must satisfy the requirements described in paragraph f) below;

e) Not include CDC staff or the CDC manager, and;

f) For multi-state CDCs, there must be either:

i) A separate Loan Committee for each State into which the CDC expands that satisfies the requirements in paragraphs a) through d) above (13 CFR § 120.835(c)(1)); or

ii) For any Project located in the State into which the CDC has expanded, the CDC's Board or Loan Committee (if established in the CDC's State of incorporation) includes at least two members who live or work in that State when voting on that Project (13 CFR § 120.835(c)(2)). The CDC must submit a listing of the additional members of the committee that meets the requirements contained in 13 CFR § 120.823. Each new Loan Committee member must receive a character determination in accordance with paragraph B., Form 1081 CDC Character Determinations, in this chapter.

ii. The Loan Committee, if established, may be delegated the authority to:

a) For loans up to $1,000,000 provide credit approval; and

b) For loans of $1,000,000 to $2,000,000, provide credit approval with the ratification of the Board or Executive Committee prior to Debenture closing.

c) There must be no actual or appearance of a conflict of interest with respect to any actions of the Loan Committee, including for example, a Loan Committee member participating in deliberations on a 504 loan for which the Third Party Lender is the member's employer or the

member is otherwise associated with the Third Party Lender. 13 CFR § 120.823(d)(4)(ii)(D).

8. 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. SBA will consider the following factors in determining a CDC's financial ability to operate:

   a. Financial statements evidencing:

      i. Positive net cash flow trends.

      ii. Sufficient loan loss reserves, if required.

      iii. Solvency.

         a) Assets in excess of liabilities.

         b) A CDC must be able to pay its debts when they become due.

   b. A CDC must not have received a going concern opinion from its auditor.

   c. Other factors as determined by SBA.

9. Affiliation:

   a. A CDC must be independent and must not be affiliated (as determined in accordance with 13 CFR § 121.103) with any Person (as defined in 13 CFR § 120.10), except as authorized under 13 CFR § 120.820, which provides that:

      i. A CDC may be affiliated with an entity (other than a 7(a) Lender or another CDC) whose function is economic development in the same Area of Operations and that is either a non-profit entity or a State or local government or political subdivision (e.g., council of governments).

      ii. A CDC must not be affiliated (as determined in accordance with 13 CFR §121.l03) with or invest, directly or indirectly, in a 7(a) Lender. A CDC that was affiliated with a 7(a) Lender as of November 6, 2003, may continue such affiliation.

      iii. A CDC must not be affiliated (in accordance with 13 CFR § 121.103) with another CDC except as otherwise approved by SBA in accordance with 13 CFR § 120.824 and paragraph 18 below. In addition, a CDC must not directly or indirectly invest in or finance another CDC, except with the prior written approval of D/ FA or designee and D/OCRM or designee if they determine in their discretion that such approval is in the best interests of the 504 Loan Program.

      iv. A CDC may remain affiliated with a for-profit entity (other than a 7(a) Lender) if such affiliation existed prior to March 21, 2014. A CDC may also

be affiliated with a for-profit entity (other than a 7(a) Lender) whose function is economic development in the same Area of Operations with the prior written approval of the D/FA or designee if he or she determines in his or her discretion that such approval is in the best interests of the 504 Loan Program.

v. A CDC must not directly or indirectly invest in a Licensee (as defined in 13 CFR § 120.820(f)) licensed by SBA under the Small Business Investment Company Program. A CDC that has an SBA-approved investment in a Licensee as of November 6, 2003, may retain such investment.

b. Affiliation is determined in accordance with 13 CFR § 121.103. General principles of affiliation under this section include, but are not limited to the following:

i. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party (or parties) controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

ii. SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

iii. Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, bylaws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

iv. Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

v. In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

10. Minimum Level of Activity and Restrictions on Portfolio Concentrations (13 CFR § 120.828):

A CDC must have at least four different loans approved during the last 2 consecutive fiscal years, and the portfolio must be diversified as to type of business.

11. Job Opportunity Average (13 CFR § 120.829):

a. A CDC must maintain the required average of one Job Opportunity per an amount of 504 loan funding as specified by SBA from time to time in the Federal Register and must indicate in its annual report the Job Opportunities actually or estimated to be created or retained by each Project.

b. A CDC is permitted 2 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.

12. CDC Place of Business:
    a. Must be accessible and open to the public during regular business hours with an adequate staff (at least one qualified professional staff member available full-time as described in paragraph D.18.a., CDC Staff below) 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 a separately listed telephone number.
13. Internal Control Policies - Each CDC's Board of Directors must establish 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-established internal control policy must, at a minimum, comply with 13 CFR §120.826(b) and include Board oversight responsibilities under 13 CFR § 120.823(d) such as oversight for CDC operations, financial oversight, annual reports and certifications.
    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 a minimum of every 2 years by a person who is not directly or indirectly responsible for loan making or by outside contractors. OCRM, in its discretion, may require an off-cycle Independent Loan Review. Guidance for Independent Loan Reviews is available on SBA's website at https://www.sba.gov/document/support-object-object-independent-loan-review-guide.
    b. It must include a list of monthly reports provided by the CDC's management for Board review to support adequate Board oversight.
    c. It must provide for internal controls for loan making, closing, disbursing, 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. CDCs must provide documentation demonstrating that the internal control policies and procedures are fully implemented and followed.
14. 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 retain a copy of SBA's character determination, if any, in the CDC loan file for the life of the loan.

c. After closing, the CDC must forward all original loan documents to SBA as required by SBA Form 2286 and Part 2, Section C, Ch 2, Para. C.6.a.xii of this SOP. The Trustee retains the original Debenture.

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

e. Record Retention Guidelines: See Appendix 11, Record Retention Requirements.

15. 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. SBA Form 1081 and any supporting documents for Loan Committee Members; and

c. All organizational files must be accessible to SBA.

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

17. CDC insurance

The CDC must obtain and maintain Directors' and Officers' (D&O) Liability and Errors and Omissions (E&O) insurance in form and substance satisfactory to SBA with:

a. An endorsement covering CDC Board members, committees, staff, and contractors engaged in the 504 loan approval, closing, servicing, and liquidation process;

b. Minimum amounts of D&O and E&O insurance coverage required by SBA based on the CDC's annual revenues as reported in the CDC's Annual Report for their most recent fiscal year, and in accordance with the sliding scale as follows:

Table: Minimum D&O and E&O Insurance Requirements - 13 CFR § 120.823(e)

Annual Revenues of CDC	D&O Minimum per occurrence and in the aggregate	E&O Minimum per occurrence and in the aggregate
>$8.5 million	$ 5,000,000	$ 5,000,000
>$4.5M - $8.5 M	$ 3,000,000	$ 3,000,000
>$2 M - $4.5 M	$ 2,000,000	$ 2,000,000
$2 M or less	$ 1,000,000	$ 1,000,000

c. At SBA's discretion, higher levels of D&O and E&O insurance, but in no event in excess of $5.5 million, or reduced deductible levels may be required if the

D/OCRM identifies a CDC as having potentially inadequate coverage to protect the CDC or SBA from financial risk;

d. A declaration that SBA will receive at least 20 days prior notice of any lapse of coverage, failure to renew, or cancellation; and

e. The CDC must submit to SBA annually with the CDC's Annual Report a certificate from its insurance carrier confirming this coverage.

f. Each CDC must assess its risk factors and may determine that higher levels of insurance coverage and/or lower deductibles are prudent.

18. Staffing Requirements

a. CDC Staff (13 CFR § 120.824):

i. A CDC must directly employ full-time professional management, including an Executive Director (or the equivalent) to manage daily operations. A CDC may request that SBA waive the requirement of the manager being employed directly only if:

a) The requesting CDC will have full-time professional management that is employed by a non-profit entity (not another CDC) that has the economic development of the CDC's Area of Operations as one of its principal activities. Such full-time management may also work on and operate the other entity's economic development programs, but must be available to small businesses interested in the 504 Loan Program and to 504 loan Borrowers during regular business hours; or

b) The requesting CDC is rural and has insufficient loan volume to justify having management employed directly by the CDC. The rural CDC must contract with another CDC located (i.e., incorporated) in the same general area. The "same general area" means the rural CDC's SBA Region (Regions I-X) or a State contiguous to the rural CDC's State. SBA will grant the rural CDC's request in its sole discretion, considering factors including but not limited to the number of CDCs for which the other CDC is providing the assistance. The management contributed by the CDC may work on and operate both CDCs' economic development programs but should be available during regular business hours to small businesses interested in the 504 Loan Program and to 504 Borrowers located in the rural CDC's Area of Operations.

ii. The request for a waiver must be pre-approved by the D/FA (or designee) in consultation with the D/OCRM (or designee). If the request for a waiver is approved, the contract for management services must also be pre-approved by the D/FA (or designee) in consultation with the D/OCRM (or designee).

iii. A CDC must have qualified full-time professional staff to market, package, process, close and service loans and, if authorized by SBA, liquidate the loan portfolio, and sustain a sufficient level of service and activity in the CDC's Area of Operations.

iv. When any of the functions referred to in this paragraph are not performed by an employee directly employed by the CDC, the CDC must use a written professional services contract.

b. Professional Services Contracts: See Part 2, Section A, Ch. 5, Para. E.6.a. Professional Services Contractors in this SOP for more information on professional services contracts.

19. Voluntary Withdrawal and Loan Portfolio Transfer

SBA regulations at 13 CFR § 120.857 discuss the circumstances under which a CDC can voluntarily surrender its certification and withdraw from the 504 Loan Program. Upon voluntary withdrawal, SBA will direct the transfer of the surrendering CDC's loan portfolio at its discretion.

a. CDC Initial Submission Requirements

The CDC must notify the Lead District Office, the Director, Office of Financial Assistance (D/FA), and the Director, Office of Credit Risk Management (D/OCRM) 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. The notification and any required submissions outlined in the below process may be emailed to SBA at 504Requests@sba.gov.

b. Lead District Office Submission Requirements

The Lead District Office may make a recommendation to transfer the files of the withdrawing CDC to one or more CDCs. Generally, the Lead District Office will consider each CDC that reports to its Office or is incorporated in the state of the withdrawing CDC and provide a detailed explanation as to the reasons why or why not, in its opinion, each CDC would/would not be recommended to receive the portfolio in part or in its entirety. A Multi-state CDC may be considered to receive a portfolio transfer outside of its primary Area of Operations if:

- There are no CDCs in the withdrawing CDC's primary Area of Operations that have been determined to be capable or do not have the capacity to assume the additional servicing responsibilities; or
- There are no other CDCs authorized to operate in the withdrawing CDC's primary Area of Operations.

The Lead District Office may prepare a recommendation memo on behalf of the recipient CDC(s) that should include, but is not limited to, an evaluation of the CDC's:

i. Quality and completeness of loan packages, including commentary from the Sacramento Loan Processing Center;

ii. Credit analysis abilities as well as knowledge of SBA's policies and procedures;

iii. Capability and performance related to loan closing, including commentary from the District Counsel; and

iv. Servicing capability and performance, including commentary from the appropriate loan servicing center(s).

This recommendation should be addressed to D/FA and submitted to the 504 Loan Program Division at 504Requests@sba.gov. The decision regarding the transfer of a withdrawing CDC's portfolio will be made in SBA's sole discretion.

c. 504 Loan Program Division Review

The 504 Loan Program Division will review the CDC's request and the Lead District Office's recommendation and:

i. Obtain the withdrawing CDC's current active portfolio data and float balance.

ii. Obtain comments from OCRM on the CDC(s) nominated to assume the servicing responsibility for the withdrawing CDC's portfolio.

iii. Obtain comments from Sacramento Loan Processing Center and Fresno/Little Rock Commercial Loan Servicing Center on the capability of the CDC(s) identified to assume the servicing of the withdrawing CDC's portfolio.

iv. Recommend which CDC(s) should assume the responsibility for servicing the withdrawing CDC's portfolio.

v. Obtain a Board of Directors' Resolution from the CDC(s) nominated to assume the servicing of the withdrawing CDC's portfolio.

vi. Submit draft Voluntary Withdrawal and Portfolio Transfer Agreements to the Office of General Counsel (OGC) for review.

d. The Chief, 504 Loan Program Division will forward a recommendation to the D/FA for a final decision, with concurrence from the D/OCRM. For transfers in conjunction with increased supervision or enforcement activity, the D/OCRM will determine the transferee.

e. A responsible management official and the CDC Board Chair must execute a Voluntary Withdrawal Agreement prepared by SBA. If the Board of Directors is no longer functioning, or if no responsible management official is employed by the CDC, then either the CDC Board Chair or a responsible management official alone may execute the Voluntary Withdrawal Agreement and return it with original signature to SBA. (The "original signature" may be a wet signature or electronic signature. See Appendix 10, Electronic Signatures, of this SOP for more information.)

f. SBA will execute the Voluntary Withdrawal Agreement and return a copy to the withdrawing CDC. The transferee CDC(s) will be provided a Portfolio Transfer Agreement prepared by SBA, which must be signed by the manager of the transferee CDC(s) and returned with an original signature to SBA.

g. Upon submission of the executed Voluntary Withdrawal Agreement to SBA, the CDC must follow the requirements of the Voluntary Withdrawal Agreement,

including preparing for review and transfer all active loan files and files subject to the record retention requirements in Appendix 11.

h. The Lead District Office will coordinate the transfer of the files. The withdrawing CDC, the transferee CDC(s), and a representative from the Lead District Office will execute the Physical Inventory Transfer receipt prepared by SBA. The transferee CDC is responsible for:

   i. Reviewing each loan file for completeness; and

   ii. Recording any missing required documentation:

      a) On the Physical Inventory transfer receipt; and

      b) In each loan file.

The 504 Loan Program Division will provide copies of the fully executed agreements to the Central Servicing Agent and the Office of Performance and Systems Management (OPSM).

E. REPORTING REQUIREMENTS

CDCs must supply to SBA current and accurate information about all certification and operational requirements, maintain all records and submit all policies, procedures and reports required by SBA. (13 CFR § 120.826 and 13 CFR § 120.830)

1. Operational changes the CDC must report to SBA:

   The CDC must submit notice of all changes by email to 504Requests@sba.gov.

   a. Changes that require prior written approval by OFA:

      i. Changes in CDC legal structure - Any proposed change in the CDC legal structure (e.g., a CDC spins off its 504 operations into a separate non-profit entity) must have prior written approval and may require a new application for CDC certification.

      ii. Changes in CDC Management or Staff - Any changes in the CDC manager, compensated officers, or CDC professional staff (including contracted staff and interns paid by the CDC) must have prior written approval. Additionally, new individuals in these positions must receive a character determination in accordance with paragraph B., Form 1081 CDC Character Determinations above.

      iii. Changes to CDC Name - Requests for CDC name changes must be submitted to OFA for written approval by the D/FA prior to the CDC filing an amended Articles of Incorporation with the CDC's state of incorporation. Note: the CDC must use its legal name, not a "doing business as" name on all correspondence.

         a) CDC legal name changes must be submitted to the D/FA for prior approval. CDC must submit a letter of request to the 504 Loan Program Division at 504Requests@sba.gov, outlining the reasons for the requested change, a Board Resolution authorizing the change, and a draft of the amended Articles of Incorporation.

b) 504 Loan Program Division will review the request and, if acceptable to SBA, the CDC will be notified in writing by the D/FA that their request is contingently approved. After notification of contingent approval, the CDC must file the appropriate documents with their state to complete the legal name change and send evidence of the Amendment to the Articles of Incorporation approved by the State acknowledging the legal name change to OFA.

c) Upon receipt of the state-approved documents, the D/FA will notify the CDC in writing of final approval and send written notification of the name change to the SLPC, appropriate SBA CLSC, and to the CDC's Lead District Office.

d) The 504 Loan Program Division at Headquarters will update all SBA systems and notify the Central Servicing Agent (CSA) of the change.

b. Changes the CDC must report to SBA within 15 business days:

i. Changes in CDC's Uncompensated Officers or CDC's Board of Directors, or Executive Committees – Any changes in a CDC's uncompensated officers, or any director, board member, and/or executive committee member must be reported to the D/FA no later than 15 business days after the change takes place. Additionally, new individuals in these positions must receive a character determination in accordance with paragraph B., Form 1081 CDC Character Determinations above. For each new Board or Executive Committee member, the CDC must identify the area(s) of expertise that he or she represents on the Board or committee to satisfy the representational requirements of 13 CFR § 120.823(a), including a description of the member's experience that demonstrates that the member is qualified to represent that area of expertise.

ii. Changes to Loan Committees – Any changes in a CDC's Loan Committee must be reported to the D/FA no later than 15 business days after the change takes place. Additionally, new Loan Committee members must receive a character determination in accordance with paragraph B., Form 1081 CDC Character Determinations above. For each new member, the CDC must identify the area(s) of expertise that he or she represents on the committee to satisfy the representational requirements of 13 CFR § 120.823(a), including a description of the member's experience that demonstrates that the member is qualified to represent that area of expertise.

iii. Changes in CDC Governing Documents or fiscal year – Any changes in a CDC's bylaws, Articles of Incorporation or fiscal year must be reported to the D/OCRM no later than 15 business days after the change takes place. All documents are subject to SBA review and must comply with all Loan Program Requirements.

iv. Changes in CDC Contact Information – Any changes in CDC address, telephone number, or other contact information must be reported to D/FA no later than 15 business days after the change takes place.

c. Litigation or other Legal Proceedings – 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 or courier, to its local SBA counsel, D/FA and D/OCRM. The report must describe the proceedings and identify the parties involved and the CDC's relationship(s) to the other parties. Once proceedings are terminated by settlement or final judgment, the CDC must promptly advise the same parties listed above of the terms.

2. Basic Reporting

a. Financial Statements - This includes timely submission of complete financial statements audited in accordance with Generally Accepted Accounting Principles (GAAP) by an independent CPA for CDCs with 504 loan portfolio balances of $30 million or more. CDCs with 504 loan portfolio balances of less than $30 million must provide, at a minimum, a review by an independent CPA or independent accountant in accordance with GAAP; however, the D/OCRM may require audited financial statements if it is determined that such audit is necessary or appropriate, such as when the CDC is in material non-compliance with Loan Program Requirements.

When the CDC is providing audited financial statements, 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.

The CDC must also submit a copy of the CDC's Federal tax return in the Annual Report. (13 CFR § 120.830(a))

b. Annual Reports (See SBA Form 1253, "Certified Development Company (CDC) Annual Report Guide")

i. CDCs must prepare Annual Reports according to 13 CFR § 120.830 and SBA Form 1253. Annual Reports must be submitted to the CDC's Lead District Office within 180 days of the CDC's fiscal year-end. CDCs are requested to submit the Annual Reports to their Lead District Office via email with a copy to OCRM at CDCAnnualReports@sba.gov. (If the electronic file is larger than 10MB, CDCs may need to separate the electronic file into multiple attachments.) CDCs also have the option of submitting their Annual Reports through the Corporate Governance Repository located on the Capital Access Financial System (CAFS) (https://caweb.sba.gov/cls/dsp_loging.cfm) under the CDC Online function. Use of the Corporate Governance Repository will avoid email size limitations. 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.

ii. Within 60 days of receipt of the CDC Annual Report, the Lead District Office must forward a copy to OCRM at CDCAnnualReports@sba.gov, along with the Lead District Office's analysis and review of the Annual Report and a CDC operational review. These Annual Reports must also include board certifications, reports on compensation and reports on

investment in economic development, as outlined below and detailed in SBA Form 1253.

iii. If the Annual Report is incomplete, the Lead District Office must notify the CDC in writing and within 30 days of receipt of SBA's notice, the CDC must submit a complete Annual Report. Incomplete or unacceptable Annual Reports will not fulfill the submission requirement. If a CDC does not submit a complete, acceptable Annual Report in a timely manner, this non-compliance will be reported to OCRM for potential supervisory or enforcement actions and any request a CDC has submitted will not be processed by OFA or OCRM until such time as the complete, acceptable report is submitted.

iv. Lead District Office staff should refer to the Operational Review Example Format for guidance on completing their assessment of the Annual Report.

c. Certification of members of the Board - The Annual Report must include a copy of the written annual certification by each Board member that he or she has read and understands the requirements set forth in 13 CFR § 120.823.

d. Report on compensation - The Annual Report must provide detailed information on all compensation (including salary, bonuses, and expenses) paid within the CDC's most recent tax year for:

i. Current and former officers, directors, and Key Employees (even in cases where compensation for the aforementioned individuals is less than $100,000); and

ii. Current and former employees and independent contractors with total compensation of more than $100,000 during that period.

This report must include details of deferred compensation packages where applicable.

e. Report on investment in economic development - The Annual Report must include a written report on the CDC's investment in economic development in each State in which the CDC has an outstanding 504 loan, including explanation of each investment by type and amount. See SBA Form 1253 for specific requirements.

f. CDCs may include, along with the Annual Report, a request for renewal of their Accredited Lenders Program (ALP) status or Premier Certified Lender Program (PCLP) status. If the CDC chooses to do so, the CDC must clearly indicate in its Annual Report that a status renewal request is included. Any status renewal request submitted along with a CDC's Annual Report must meet SBA's Loan Program Requirements for the status request. CDCs using the Corporate Governance Repository to submit their Annual Reports will need to submit any ALP or PCLP renewal requests separately.

g. List of Shareholders – A for-profit CDC must include in its Annual Report a list that identifies all of the shareholders of the CDC's stock and the percentage of ownership that each shareholder owns. In calculating the percentage of

ownership, the CDC's corporate (or treasury) stock should not be included. No person or entity can own or control more than 25 percent of the voting stock. 13 CFR § 120.818(b)

h. List of Members – A non-profit CDC that has a membership that is responsible for electing or appointing voting directors to the CDC's Board of Directors must include in its Annual Report a list that identifies all of the CDC's members, the entity, if any, which the member represents on the membership, and the percentage of the CDC's voting membership that each member controls. No person or entity can control more than 25 percent of the voting membership. 13 CFR § 120.816(d)

i. A PCLP CDC must submit the SBA Form 2233, "Quarterly Loan Loss Reserve Report," to OCRM, either at PCLPQuarterlyReport@sba.gov or via the Corporate Governance Repository, and to the Lead District Office serving the territory where the 504 Borrowers are located no later than 45 days after the end of each quarter.

3. Notifying SBA of Suspected Fraud or Illegal Activity:

SBA Lenders, Borrowers, and others must notify both D/OCRM and the SBA Office of Inspector General (OIG) of any information that indicates fraud or illegal activity may have occurred in connection with a 7(a) or 504 loan. Notify D/OCRM at OCRM@sba.gov. Notify the OIG either at https://sbax.sba.gov/oigcss/ or by mail (preferably by overnight courier) to the Assistant Inspector General for Investigations, Office of Inspector General, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. Any substantiating evidence should be included when contacting the Office of the Inspector General and D/OCRM. 13 CFR § 120.197

F. EXPANDING SERVICE AREA

A CDC's Area of Operations (13 CFR § 120.821) is the State of the CDC's incorporation.

There are three ways a CDC may process 504 loans outside its approved area of operation. They are:

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

1. Case-by-case

13 CFR § 120.839

A CDC may apply to make a 504 loan for a Project outside its Area of Operations to the Sacramento Loan Processing Center (SLPC). The CDC must demonstrate that it can adequately fulfill its 504 Loan Program responsibilities for the 504 loan, including proper servicing. The SLPC may approve the application if the CDC has satisfactory SBA performance as determined by SBA in its discretion and any of these three conditions are met:

a. The applicant CDC has previously assisted the business or its affiliates 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.

2. Local Economic Area (LEA) Expansion

13 CFR § 120.835

A Local Economic Area (LEA) (13 CFR §120.802) is an area, as determined by SBA, that:

- Is in a State other than the State in which an existing CDC (or any applicant applying to become a CDC) is incorporated; and
- Is part of a local trade area that is contiguous to the CDC's State of incorporation.

Examples of a local trade area would include a city that is bisected by a State line or a Metropolitan Statistical Area (MSA), as defined by the Office of Management and Budget (OMB), which is bisected by a State line. If the requested county is not classified as a metropolitan statistical area, the CDC must provide a justification of how the county has shared commerce with the CDC's state of incorporation in order for SBA to consider the county a local trade area.

a. CDC Application

A CDC that meets all of the requirements to be an Accredited Lender Program (ALP) CDC may apply for an LEA expansion by electronically submitting a complete application package to the CDC's Lead District Office and to the Office of Financial Assistance (OFA) at 504Requests@sba.gov. The CDC must be able to demonstrate that it can competently fulfill its 504 Loan Program responsibilities in the proposed area. A complete application consists of the following:

i. A list of the requested area(s) (e.g., a county, parish, incorporated city, or MSA) in the contiguous State and information supporting how those area(s) meet the definition of an LEA. NOTE: If the proposed expansion area has already been approved by the D/FA (for any other CDC) or is part of a Metropolitan Statistical Area, then no supporting information is required.

ii. A copy of the resolution of the Board of Directors approving the proposed expansion.

iii. A copy of any changes to the Articles of Incorporation that are required for the CDC to operate in the LEA (or a statement that no changes were necessary) NOTE: The Articles of Incorporation must specifically identify where the CDC has authority to operate. If the Articles of Incorporation have been amended to include the expansion area, the Board must pass a resolution to approve the amendment. The amendment must be approved by the jurisdiction governing the CDC's operation, and the CDC must submit evidence of approval by the appropriate authority that governs the CDC's State of incorporation.

iv. A complete copy of the current bylaws, inclusive of any changes that are required for the expansion. If no bylaws changes are required, include a statement that no changes are necessary.

v. A listing of the CDC's Board members that meets the requirements contained in 13 CFR § 120.823.

vi. Evidence that the CDC's Director' and Officers' and Errors and Omission insurance is current, including a Certificate of Insurance reflecting the required minimum coverage of insurance. See paragraph D.17, CDC Insurance above.

vii. If the CDC has an Executive Committee, the CDC must submit a listing of the members of the committee that meets the requirements contained in 13 CFR § 120.823.

viii. If the CDC has established a Loan Committee in its State of incorporation, the CDC must submit a listing of the members of the committee that meets the requirements contained in 13 CFR § 120.823;

ix. A list of the CDC's members, if applicable, and only if the Membership has any governance authority (i.e., electing Board Directors, approving amendments to the Articles of Incorporation, etc.).

x. A list of all professional staff, with a summary of the qualifications and experience of those loan officers who will be responsible for marketing, packaging, processing, closing, servicing, and if applicable, liquidating the loans, in the LEA. All new staff must receive a character determination in accordance with paragraph B of this Chapter, Form 1081 CDC Character Determinations.

xi. If new employees will be provided under contract to serve in the LEA, CDCs must submit a copy of the proposed contract for their services that meets the requirements governing professional service contracts. Professional services contracts must be pre-approved by SBA in accordance with 13 CFR § 120.824. See Part 2, Section A, Ch. 5, Para E.6.a., Professional Services Contractors, in this SOP for more information.

xii. A written statement from the CDC's attorney certifying that the CDC is operating in compliance with its articles and bylaws and is in good standing with its State of incorporation. The CDC's designated attorney must review the CDC's corporate documents and minutes of board meetings before providing the certification.

xiii. A Certificate of Good Standing (or equivalent) from its State of incorporation.

xiv. Identification of the CDC's Designated 504 Closing Attorney who is licensed to practice in that jurisdiction, including evidence of the attorney's current professional liability insurance and 504 loan closing training.

b. Submission Requirements

The Lead District Office will review the request and prepare a recommendation of the request which may include comments on:

i. Whether the Lead District Office agrees that the area into which the CDC is requesting to expand meets the definition of an LEA. In making its recommendation on the application, the Lead District 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(s) of operation.

ii. The Lead District Office's relationship, experience, and any other pertinent comments regarding the CDC's application or operations. The Lead District Office will solicit the comments of any other SBA District Office in which the CDC operates or proposes to operate.

iii. From the District Counsel on the CDC's Designated Attorney's Loan Closings, if applicable.

The Lead District Office will submit the application, recommendation, and supporting materials within 60 days of receipt of the complete application to the D/FA at 504Requests@sba.gov.

c. 504 Loan Program Division Review

The 504 Loan Program Division will review the CDC's request and the Lead District Office's recommendation, and:

i. Obtain comments from the Office of Credit Risk Management on:

a) ALP qualifications; and

b) Compliance with program reviews including SMART Reviews and Annual Reports.

ii. Solicit the comments from Sacramento Loan Processing Center and the Fresno/Little Rock Commercial Loan Servicing Center.

The 504 Loan Program Division will forward its recommendation to the D/FA.

d. D/FA Review

The D/FA may consider any information submitted or available related to the applicant and the application and will notify the CDC and the CDC's Lead District Office, the SBA District Office into which the expansion is located, the Office of Credit Risk Management, the Sacramento Loan Processing Center, and the Fresno/Little Rock Commercial Loan Servicing Center of the final decision. If the application is denied, the notification will include the reason(s) for denial.

If the application for LEA expansion is approved, the 504 Loan Program Division will update SBA's internal systems to reflect that the LEA is included in the CDC's Area of Operations.

3. 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, 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, the U.S. Virgin Islands, and Florida.

CDCs must be ALP qualified at the time of application. 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, as required by13 CFR §120.825.

a. CDC Submission Requirements

A CDC may apply for a Multi-State expansion by submitting a complete application package to the SBA District Office in the State into which it wishes to expand and to the Office of Financial Assistance (OFA) at 504Requests@sba.gov.

The application should include the following documentation:

i. A brief description of the geographic location of the State that the CDC seeks to expand into to demonstrate that it is contiguous to the State of the CDC's incorporation;

ii. A copy of the resolution of the Board of Directors approving the proposed expansion;

iii. A copy of any changes to the Articles of Incorporation that are required for the CDC to operate in the new State (or a statement that no changes were necessary) NOTE: The Articles of Incorporation must specifically identify where the CDC has authority to operate. If the Articles of Incorporation have been amended to include the expansion area, the Board must pass a resolution to approve the amendment. The amendment must be approved by the jurisdiction governing the CDC's operation, and the CDC must submit evidence of approval by the appropriate authority that governs the CDC's State of incorporation;

iv. A complete copy of the current bylaws, inclusive of any changes that are required for the expansion. If no bylaws changes are required, include a statement that no changes are necessary;

v. A listing of the CDC's Board members that meets the requirements contained in 13 CFR § 120.823;

vi. If the CDC has an Executive Committee, the CDC must submit a listing of the members of the committee that meets the requirements contained in 13 CFR § 120.823.

vii. A listing of the members of the Loan Committee in the CDC's State of incorporation, if one has been established by the CDC, which must meet the requirements contained in 13 CFR § 120.823;

viii. The CDC has the option of either:

a) Establishing a Loan Committee in the State into which it is expanding that consists only of members who live or work in that State and who satisfy the other requirements in 13 CFR § 120.823(d)(4)(ii)(E), and submitting a listing of these members; or

b) For any Project located in the State into which the CDC is expanding, the CDC may add at least two members who live or work in that State to the CDC's Board or Loan Committee (if established in the CDC's State of incorporation) when voting on that Project. The CDC must submit a listing of the members to be added to either the Board or the CDC's Loan Committee, which must meet the requirements contained in 13 CFR § 120.823;

ix. Evidence of CDC's Directors' and Officers' and Errors and Omission liability insurance to include a current Certificate of Insurance reflecting at least the required minimum coverage of $1,000,000 Liability coverage or the appropriate level of insurance coverage required by SBA. See paragraph D.17, CDC Insurance above.

x. A list of the CDC's members, if applicable, and only if the Membership has corporate powers (i.e., elects Board Members or votes on Amendments to Articles of Incorporation).

xi. A list of Professional Staff with a summary of the qualifications and experience of those loan officers who will be responsible for marketing, packaging, processing, closing, servicing, and if applicable, liquidating the loans in the expanded area. All new staff must receive a character determination in accordance with paragraph B., Form 1081 CDC Character Determinations above.

xii. If any of the professional staff is or will be obtained under contract from a third party, the CDC must certify that it has already provided a copy of the executed contract to SBA (with the date it was provided and the person to whom the copy was provided) or provide a copy of the executed contract. Professional services contracts must be pre-approved by SBA in accordance with 13 CFR § 120.824. See Part 2, Section A, Ch. 5, Para E.6.a., Professional Services Contractors, in this SOP for more information;

xiii. The address where the CDC's principal office in the new State or Territory will be located, and a copy of the lease if the space is to be leased (13 CFR §120.835(c));

xiv. A written statement by the CDC's attorney certifying that the CDC is operating in compliance with its articles and bylaws and is in good standing with its State of incorporation. CDC's designated attorney must review the CDC's corporate documents and minutes of board meetings before providing the certification;

xv. A Certificate of Good Standing (or equivalent) from the CDC's State of incorporation;

xvi. A copy of its Foreign Corporation Registration (or equivalent) or a statement from the CDC's attorney that foreign corporation registration is not required in the State into which the CDC seeks to expand;

xvii. Identification of the CDC's Designated 504 Closing Attorney who is licensed to practice in the new State, including evidence of the attorney's current professional liability insurance and 504 loan closing training, or an application for Designated Attorney status that complies with the requirements in Part 2, Section C, Ch. 2, Para. C.5, Designated Attorney, in this SOP.

b. SBA District Office Submission Requirements

The SBA District Office for the State or Territory into which the CDC seeks to expand will review the request and prepare an analysis that includes comments:

i. On any previous experience with the CDC, including information regarding CDCs that may be affected by the application in the proposed area(s) of operation;

ii. From the District Counsel on the CDC's Designated Attorney's Loan Closings, if applicable; and

iii. From the CDC's Lead District Office in the State or Territory in which the CDC currently operates, which may include any information on its relationship and experience with the CDC and any other pertinent information.

If the SBA District Office for the State into which the CDC seeks to expand determines that the CDC is in compliance with SBA's regulations and policies governing CDCs, the SBA District Office will submit the application, recommendation, and supporting materials within 60 days of receipt of the complete application to the Director, Office of Financial Assistance (D/FA) at 504Requests@sba.gov. If the SBA District Office determines that the CDC is not in compliance with SBA's regulations and policies governing CDCs, it will return the application to the CDC identifying the outstanding issues to give the CDC an opportunity to come into compliance.

c. 504 Loan Program Division Review

The 504 Loan Program Division will review the CDC's request and the recommendation from the SBA District Office for the State or Territory into which the CDC seeks to expand, and will:

i. Obtain comments from the Office of Credit Risk Management (OCRM) on:

a) ALP qualifications; and

b) The CDC's performance, including SMART Review assessments and compliance with Annual Report requirements;

ii. Solicit comments from Sacramento Loan Processing Center and Fresno/Little Rock Commercial Loan Servicing Center; and

iii. Forward its recommendation to the D/FA.

d. D/FA Review

The D/FA may consider any information submitted or available related to the applicant and the application and will make the final decision. The D/FA will notify the CDC of his or her decision as well as the SBA District Office located in the State or Territory into which the CDC requested to expand, the Lead District Office in the CDC's State of incorporation, OCRM, Sacramento Loan Processing Center, and Fresno/Little Rock Commercial Loan Servicing Center. If the application is denied, the notification will include the reason(s) for denial.

If the application is approved, the 504 Loan Program Division will update SBA's internal systems to reflect the CDC's new Area of Operations.

G. **MERGERS**

A CDC with permanent status may merge with another CDC with permanent status that has the same Area of Operations. CDCs may not merge across State lines unless the surviving entity CDC has Multi-State authority to operate in both States. A CDC with a Local Expansion Area (LEA) is not eligible for mergers across State lines. All mergers are subject to the process and requirements outlined below.

CDCs wishing to merge must notify the SBA in writing of their desire to merge prior to any official action or legal filings. 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 Office of Financial Assistance (OFA) at SBA's headquarters by overnight mail or courier to 409 3rd Street SW, 8th floor, Washington, DC 20416, or by email to 504Requests@sba.gov.

1. CDC Submission Requirements

The following are required to be submitted with the request:

a. The name of the proposed merged entity;

b. A listing of the proposed Board of Directors of the merged entity, identifying which entity the Directors previously served;

c. An organizational chart with a listing of proposed merged staff, identifying responsibilities of each staff member and which entity they previously served. SBA reserves the right to deny merger requests if proposed staff does not represent an adequate level of 504 Loan Program experience, as determined by SBA in its sole discretion;

d. A resume for each of the proposed staff that includes a description of the staff's 504 lending experience;

e. Documentation that all staff have received a character determination by SBA in accordance with paragraph B of this Chapter, Form 1081 CDC Character Determinations;

f. An explanation of the purpose of the merger;

g. A Plan of Operations which indicates how the merged entity will provide enhanced service in its Area of Operations;

h. Copies of the proposed merger documents and any proposed amendments to the Articles of Incorporation and bylaws;

i. A pro forma balance sheet and income statement for the merged entity;

j. A letter from a responsible management official accompanied with Board Resolution authorizing the merger from each of the CDCs;

k. Documentation of approved transfer/withdrawal of SBA and non-SBA programs;

l. Explanation of the transfer of assets to and the assumption of liabilities by the surviving entity; and

m. A Certificate of Good Standing or equivalent for the merged entity.

n. Financial statements and detailed projections with assumptions demonstrating the CDC's financial ability to operate, and how the CDC can operate in a positive net asset position by the end of its two-year probationary period.

o. Information regarding any affiliates.

p. A Board Resolution authorizing the merger from each of the CDCs.

2. Lead District Office Submission Requirements

The Lead District Office will review the application and provide a recommendation that may include, but not be limited to:

a. Description of the Lead District Office's relationship with each CDC;

b. Description of each CDC's level of experience in the 504 loan program;

c. Impact of the merger on other CDCs in the area;

d. Any other pertinent comments regarding the CDC(s) application or operations; and

e. District Counsel comments on the CDC(s) loan closings.

3. 504 Loan Program Division review

The 504 Loan Program Division will:

a. Review the CDC's request and the Lead District Office's recommendation;

b. Obtain comments from the Office of Credit Risk Management (OCRM) on compliance with program reviews including SMART Reviews and Annual Reports.

c. Solicit the comments from Sacramento Loan Processing Center and the Fresno/Little Rock Commercial Loan Servicing Center.

d. The 504 Loan Program Division Chief will forward the request with a recommendation to the D/FA for a final decision. SBA will notify the CDC and Lead District Office(s) of the final decision.

e. If SBA supports the merger, the CDCs will be notified of approval, contingent upon the CDCs taking any action required by their State(s) to complete the legal merger and providing SBA with:

   i. Copies of the merger documents filed with the State(s);

   ii. Any executed or finalized amendments to the Articles of Incorporation and bylaws (if applicable); and

   iii. Finalized list of the Members of the merged CDC (if applicable), staff, Board of Directors, and any committees (if established), along with the corresponding Minutes of the meeting(s) and Board Resolution(s) reflecting the approval of the changes.

4. D/FA Review

   The D/FA may consider any information submitted or available related to the applicant and the application and will notify the CDC and the CDC's Lead District Office, the SBA District Office into which the expansion is located, OCRM, Sacramento Loan Processing Center, and Fresno/Little Rock Commercial Loan Servicing Center of the final decision. If the application is denied, the notification will include the reason(s) for denial.

5. Final Approval:

   Upon receipt, review, and acceptance of the merger documents, SBA will notify the CDCs in writing of final approval (with a copy to the appropriate SBA District Office(s)), take the steps necessary to merge the portfolios, and notify the Central Servicing Agent.

   If the merger is approved, the 504 Loan Program Division will update SBA's internal systems to reflect the change.

CHAPTER 2: SBA OVERSIGHT OF CDCS

A CDC must have **satisfactory SBA performance** as determined by SBA in its discretion. Factors may include, but are not limited to review/examination assessments, SMART metrics, historical performance measures (like default rate, purchase rate and loss rate), the CDC's Risk Rating, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA's mission).

SBA oversees CDCs through:

A. LOAN AND LENDER MONITORING SYSTEM (L/LMS)

1. 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 CDC's portfolio of SBA Loans. SBA uses this information to monitor the performance of individual CDCs, CDC peer groups, and the overall 504 loan portfolio.
2. 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. 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 recalculations on the common factors for each CDC, so CDCs' composite risk ratings are updated on a quarterly basis.
3. SBA established peer groups to minimize the differences in loan performance relative to portfolios of different sizes. The peer groups are based upon gross outstanding SBA Loan dollars, and for CDCs they are:
    a. $350,000,000 or more
    b. $100,000,000 to $349,999,999
    c. $30,000,000 to $99,999,999
    d. $10,000,000 to $29,999,999
    e. $5,000,000 to $9,999,999
    f. $0 to $4,999,999
4. SBA assigns a composite rating of "1" to "5" to each CDC generally 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, 75 FR 13145, March 18, 2010,

and 79 FR 24053, April 29, 2014, (Risk Rating Notices). As set forth in the Risk Rating Notices, SBA may take into account rapid growth that may skew metrics and other factors in considering a CDC's risk.

B. **LENDER PORTAL**

1. 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 metric averages and its SMART score (as discussed below). 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.
2. CDCs with at least one outstanding SBA Loan may apply for access to the Portal. Currently SBA issues only one Portal user account per CDC. Submission of initial requests for a Portal user account must be submitted to SBA's OCRM, and must include the following information:
    a. Request must be made by a senior officer of the CDC with proper authority (Senior Vice President or higher);
    b. Request must be sent via overnight mail or courier to OCRM at 409 Third Street SW, 8th Floor, Washington DC 20416, ATTN: Director, Office of Credit Risk Management;
    c. Request must be made using the CDC's stationery;
    d. Request must include the user's business card;
    e. The stationery and business card should include the CDC's name and address;
    f. The request should include the following data:
        i. SBA FIRS ID Number(s);
        ii. Account user's name and title;
        iii. Account user's mailing address, telephone number and email address at the CDC;
        iv. Requesting officer's name and title; and
        v. Requesting officer's mailing address, telephone number and email address at the CDC.
    g. Once SBA receives and approves the user's request, SBA will forward the approval to SBA's Portal contractor for issuance of a user account name and password. The Portal contractor will email the user his or her username and password within approximately 2 weeks of account approval. The user can then access its data by logging into the SBA Lender Portal web page. Before accessing the Portal, lenders must agree to the terms of a Confidentiality Agreement, which is found on the SBA Lender Portal web page.

h. CDCs are responsible for complying with and maintaining the Portal user accounts and passwords as set forth in the Confidentiality Agreement on the Portal web page, and as published by SBA from time to time. CDCs are also responsible for submitting a timely request to 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, SMART score, and confidential information and for ensuring the security of the data. See 13 CFR § 120.1060. Unless it first obtains express written permission from OCRM, a CDC is not permitted to share access to the SBA Lender Portal or its portal information with an individual or entity operating under a professional services contract entered into under 13 CFR § 120.824.

C. MONITORING AND REVIEWS

(13 CFR §§ 120.1025 and 120.1050-1060):

L/LMS provides performance information that allows SBA to monitor and conduct reviews of all CDCs. L/LMS-related monitoring/reviews serves as the primary means of reviewing CDCs with less than $30 million in gross outstanding SBA Loan dollars; however, SBA may determine at its discretion to conduct other more in-depth reviews (e.g., Analytical, Targeted, Full, or Delegated Authority Renewal reviews) of these CDCs. SBA may also perform Desk Reviews, Loan-by-Loan Reviews, Other Reviews, and pilot test reviews. ("L/LMS-related" refers to the L/LMS reviews and the Lender Profile Assessment (LPA), including the SMART Score.) SBA will contact the CDC if the review detects performance issues or trends requiring further discussion.

1. For CDCs with $30 million or more in gross outstanding SBA Loan dollars L/LMS details historical and projected performance data:
   a. For use in planning and conducting more in-depth reviews;
   b. To assist in prioritizing in-depth reviews, and
   c. As a system to monitor CDCs between in-depth reviews.
2. SBA's 504 Loan Program risk-based reviews generally feature a composite risk measurement methodology and scoring guide, "SMART." SMART is an acronym for the specific risk areas or components that SBA reviews: Solvency and Financial Condition; Management and Board Governance; Asset Quality and Servicing; Regulatory Compliance; and Technical Issues and Mission.
3. 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. In keeping with the CDC's responsibility to maintain complete loan files and allow SBA's authorized representatives access to those files during normal business hours, SBA expects that all loan files and related records will be under the direct control of the CDC (not an Agent or professional services contractor).
4. SBA may request reports on a case by case basis.

5. Additional information regarding in-depth reviews can be found in 13 CFR §120.1050-1060, SBA Policy Notice 5000-1348: Revised Risk-Based Review Protocol for Certified Development Companies (August 5, 2015), SBA Information Notice 5000-1398: Updated SMART Methodology for Oversight of CDCs (November 9, 2016), and SBA's SOP 51 00.

D. SUPERVISION AND ENFORCEMENT

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.)

E. 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 four loans during last two 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 Loan Program and fails to correct its actions after notice from SBA.
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 Loan Loss Reserve Fund (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 protect program integrity;
    b. Suspension or termination of the CDC's authority to:
        i. Participate in the 504 Loan Program or any pilot or other program within the 504 Loan Program; or
        ii. 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;

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

e. For ALP or PCLP CDCs, suspend or terminate 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. SBA may suspend the authority of a CDC to conduct 504 program activities, in accordance with 13 CFR §§ 120.1400-1600.

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

i. Failure to comply materially with any requirement imposed by Loan Program Requirements;

ii. Failure to underwrite SBA Loans in a commercially reasonable and prudent manner;

iii. Failure to maintain CDC eligibility requirements for SBA loan programs or delegated authority;

iv. Engaging in a pattern of uncooperative behavior (after notice);

v. Any other reason that SBA determines may increase SBA's financial risk, for example, a Less Than Acceptable examination/review assessment, indictment on felony or fraud charges of an officer, Key Employee or loan agent involved with SBA Loans for CDC, or repeated Less Than Acceptable Risk Rating, the latter generally in conjunction with other grounds.

c. SBA will consider the severity and frequency of violations among other facts.

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

5. Receiverships in Enforcement Actions Against CDCs.

a. Upon SBA's determination that grounds for an enforcement action against a CDC exist under 13 CFR § 120.1400, SBA may, pursuant to 13 CFR § 120.1500(e)(3), apply to a Federal court for the appointment of a receiver. Typically, SBA will use its receivership authority as a remedy of last resort. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR § 120.1500.

b. SBA will limit the scope of the receivership to the CDC's assets related to the SBA loan program(s) except where the CDC's business is almost exclusively

SBA-related. Further, SBA will only seek a receivership if either of the following circumstances are present:

i. The existence of fraud or false statements, or

ii. The CDC has refused to cooperate with SBA enforcement action instructions or orders.

c. Under 13 CFR § 120.1400(a)(1), a CDC that obtains approval for 504 loans after October 20, 2017, has consented to SBA's right to seek a receivership in appropriate circumstances. Such consent will be deemed to apply only if the CDC makes 504 loans on or after January 1, 2018. The CDC's consent does not in any way preclude the CDC from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. A CDC's consent to receivership as a remedy does not require SBA to seek the appointment of a receiver in any particular SBA enforcement action.

PART 2: SBA BUSINESS LOAN REQUIREMENTS

Failure to comply with SBA Loan Program Requirements may result in repair or denial of the SBA guaranty on a 7(a) loan. In 504, SBA may pursue a CDC Recovery Claim under 13 CFR 120.938, in the case of fraud, negligence, or misrepresentation by the CDC.

Once an SBA Loan (defined as the full amount of the 7(a) loan or the Gross Debenture amount of the 504 loan) is disbursed, SBA Lenders must comply with the servicing and liquidation requirements in SOPs 50 57 (for 7(a) loans) and 50 55 (for 504 loans).

Section A: Core requirements for all 7(a) and 504 loans: 7(a) Lenders and CDCs (SBA Lenders) must always start by reviewing the contents of this section. These core requirements apply to both 7(a) and 504 loan programs.

Section B: 7(a) Loan Program Specific Requirements: 7(a) Lenders must comply with the Core requirements in Section A and with the detailed guidance provided for each delivery method in the applicable chapter of Section B. Requirements for all 7(a) loans from the Authorization through loan closing are detailed in Chapter 5.

Chapter 1: Basic 7(a) Loans (Standard 7(a) Loans and 7(a) Small Loans)
Chapter 2: SBA Express Loans
Chapter 3: 7(a) CAPLines
Chapter 4: 7(a) Export Trade Finance
- A. Export Express
- B. Export Working Capital Program
- C. International Trade

Chapter 5: Authorization through Disbursement

Section C: 504 Loan Program Specific Requirements: CDCs must comply with the Core requirements in Section A and with the detailed guidance provided for the delivery of 504 Loan Program loans.

Exceptions to Policy: When the policy set forth in this Part does not adequately address the unique circumstances regarding a particular matter, the SBA Lender may submit a request for an exception to policy through E-Tran to the SBA loan processing center.

The loan processing center will analyze the request and make a recommendation to the D/FA for 504 loans and for 7(a) loans, except Export Working Capital Program (EWCP), Export Express, and International Trade (IT) loans, or to the Director, International Trade Finance (D/ITF) for EWCP, Export Express, and IT loans. The D/FA or D/ITF, or an individual acting in that capacity, will make the final decision (with the concurrence of the D/OCRM for Export Express loans).

The D/FA or D/ITF may not approve an exception to policy if such exception would be inconsistent with a statute or regulation. 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. The decision must be documented in the appropriate Agency loan file.

SECTION A. CORE REQUIREMENTS FOR ALL 7(A) AND 504 LOANS

Section A: Core requirements for all 7(a) and 504 loans:

7(a) Lenders and CDCs (SBA Lenders) must always start by reviewing the contents of this section. These core requirements apply to both 7(a) and 504 loan programs.

NOTE: "SBA Lender" is defined in 13 CFR 120.10 as a 7(a) Lender or a CDC. This term includes SBA Supervised Lenders.

CHAPTER 1: PRIMARY ELIGIBILITY REQUIREMENTS

Determining whether an Applicant is eligible for a loan guaranteed by the Small Business Administration is one of the most critical steps in the lending process. Program eligibility should be determined as early as possible in the application process and properly documented.

This chapter addresses the core program eligibility requirements that apply to all loans made under either the 7(a) or the 504 Programs. Except for size, the Applicant must meet all core requirements at the time of application and throughout loan closing and disbursement. See paragraph D of this Chapter for more information on size standards.

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 SBA 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.

Eligibility requirements for all Applicants for SBA business loans are outlined in 13 CFR § 120.100 and are discussed below.

The Applicant must:

A. OPERATING BUSINESS

Be an Operating Business (except for Eligible Passive Companies). For further guidance on Eligible Passive Companies/Operating Companies (EPC/OC), see Chapter 2, Para. A, Eligible Passive Companies of this Section.

B. ORGANIZED FOR PROFIT

Be organized for Profit. All Applicants must be organized for profit. Non-profit businesses are not eligible for SBA business loan assistance. For-profit subsidiaries of non-profits may be eligible.

1. In order to determine an Applicant's for-profit status, the SBA Lender may review the Applicant's organizational documents, for example:
    a. Articles of Incorporation/ Organization (filed with the Secretary of State or similar department in the state where the Applicant is organized);
    b. Corporate bylaws and any amendments;
    c. Partnership Agreements;
    d. Association Bylaws; and
    e. Tax Returns.

2. If all other eligibility requirements are met, 13 CFR 120.110(a) allows for-profit entities that are subsidiaries of a non-profit to be eligible for SBA assistance.
    a. The SBA Lender must include the non-profit affiliate's receipts or employees, as applicable, in determining the for-profit entity's size, except that the size of a business concern owned and controlled by a Native Hawaiian Organization (NHO) is measured independent of its parent NHO, and of other concerns owned by the NHO based on common ownership, management, or the performance of common administrative services. 13 CFR 121.103(b)(2).
    b. The loan proceeds must be used exclusively for the benefit of the for-profit business.
    c. 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.

C. LOCATED IN THE UNITED STATES

Be located in the United States (including its territories and possessions).

1. The Applicant must be located and primarily operate in the United States (including its territories and possessions), be authorized to conduct business in the state, territory, or possession where it seeks SBA financial assistance, pay taxes to the United States, and to the extent practicable, purchase only American-made equipment and products with the proceeds of the SBA loan.
2. If an Applicant has international operations, the loan 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).
3. Businesses involved in international trade are subject to U.S. trade restrictions.
4. Businesses Owned by Non-U.S. Citizens may be eligible. See Chapter 3, Para. C in this Section for more information.
5. The Applicant may not be owned in whole or part by undocumented (illegal) aliens.

D. SMALL UNDER SBA SIZE REQUIREMENTS

Be small under SBA Size Requirements (13 CFR Part 121). The Applicant may qualify under either the industry small business size standards or the alternative size standard.

1. Size Standards

a. "Industry Size Standard." The Applicant alone (without affiliates) must not exceed the small business size standard for the industry in which the Applicant is primarily engaged, and the Applicant when combined with its affiliates, must not exceed the size standard designated for either the primary industry (defined in 13 CFR § 121.107) of the Applicant alone or the primary industry of the Applicant and its affiliates, whichever is higher. SBA calculates annual receipts for both the Applicant and its affiliates based on Federal tax returns (13 CFR § 121.104). The table of size standards is found at 13 CFR § 121.201.

b. "Alternative Size Standard." The Applicant (including affiliates) must meet the following (Small Business Act, § 3(a)(5)):

   i. The maximum tangible net worth may not exceed $15 million; and

   ii. The average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the application date may not exceed $5.0 million.

c. The applicable size standards are increased by 25 percent when the Applicant agrees to use all of the financial assistance within a labor surplus area (labor surplus areas are designated by the Department of Labor). (13 CFR § 121.301(e))

2. When Applicant size is determined

(13 CFR § 121.302)

a. The size of an Applicant for SBA financial assistance is determined as of the date the application is accepted for processing by SBA. Changes in the size of the business subsequent to that date will not disqualify an Applicant for assistance.

b. For 7(a), if the Applicant is an existing business and is using the proposed loan proceeds to acquire another business through either the purchase of assets or stock, the sizes of the two businesses combined is used to determine if the application meets small business size standards. For 504, if the Applicant is using the proposed loan proceeds to finance the acquisition of assets in conjunction with a change of ownership, the sizes of the two businesses are combined to determine if the Applicant meets small business size standards.

c. For applications processed under an SBA Lender's delegated authority (PLP, SBA Express, Export Express, PLP-EWCP, and PCLP CDC), the size of the small business is determined as of the date of approval of the loan by the SBA Lender.

3. Formal size determinations

a. By signing the application, an Applicant has certified that it is small under the applicable small business size standard. SBA or the SBA Lender may request additional information concerning the Applicant's size based on information supplied in the application or any other source. SBA or an SBA Lender processing a loan under delegated authority may accept as true the size information provided by an Applicant, unless credible evidence to the contrary is apparent. (13 CFR § 121.303)

b. Prior to denial of eligibility based on size, a formal size determination may be requested by an Applicant or the SBA official with authority to take final action on the assistance requested. (13 CFR § 121.1001(b)(1))

c. The SBA official may also request a determination of whether affiliation exists between an Applicant for financial assistance and one or more other entities to determine whether the Applicant, together with any affiliates, would exceed the maximum loan amount and maximum guaranty amount set out in 13 CFR § 120.151.

d. The request for a size or affiliation determination 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.

4. Affiliation

a. Affiliation exists when:

i. One individual or entity controls or has the power to control another; or

ii. A third party or parties controls or has the power to control both.

b. SBA considers factors such as ownership, management, identity of interest between close relatives, newly organized concerns, and franchise, license or other agreements/relationships when determining whether affiliation exists. See 13 CFR 121.103 and 121.301(f) for SBA's requirements related to the determination of affiliation for the business loan programs.

5. Affiliation based on Management

(13 CFR § 121.301(f)(3))

a. Affiliation arises where:

i. The CEO or President of the Applicant (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns.

ii. A single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one or more other concerns.

iii. A single individual, concern or entity controls the management of the Applicant through a management agreement.

b. Management agreements that give the management company sole discretion over the business operations with minimal oversight of the decision-making by the Applicant, while not passive, create affiliation between the management company and the Applicant. (For a discussion of management agreements that do result in a passive business, see Chapter 3, Para A.3, Passive Businesses in this Section.) SBA has determined, however, that affiliation is not created between the Applicant and the management company if the management agreement includes meaningful oversight by the Applicant over the management company's activities.

c. "Meaningful oversight" by the Applicant means involvement in the decisions made concerning the operation of the business, which include a management agreement that provides for the Applicant to do all of the following:

i. Approve the annual operating budget;

ii. Approve any capital expenditures or operating expenses over a significant dollar threshold;

iii. Have control over the bank accounts; and

iv. Have oversight over the employees operating the business (who must be employees of the Applicant).

d. If the Applicant is also operating under a franchise agreement, see paragraph 6.j. below for guidance on Franchise Applicants with Management Agreements.

6. Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements

The procedures described below apply to all agreements or relationships that SBA determines meet the Federal Trade Commission (FTC) definition of "franchise" in 16 CFR § 436. While a relationship established under a license, jobber, dealer or similar agreement is not generally described as a "franchise" relationship, if SBA determines that the relationship meets the FTC's definition of a franchise, SBA will treat the relationship as a franchise solely for purposes of affiliation determinations in accordance with 13 CFR § 121.301(f)(5). All such relationships are referred to in this paragraph as "franchises," the agreements are referred to as "franchise agreements," and the parties to such agreements are referred to as "franchisor" and "franchisee."

For purposes of determining whether an Applicant is affiliated through a franchise, license, or similar agreement, SBA will only consider franchise, license, or similar agreements of the Applicant and not the agreements of any other franchisee or licensee owned or controlled by the Applicant. (13 CFR § 121.301(f)(5))

a. The FTC definition of "franchise."

The FTC definition of a "franchise" in 16 CFR § 436.1(h) states as follows:

Franchise means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller [franchisor] promises or represents, orally or in writing, that:

i. The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark;

ii. The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and

iii. As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.

When determining whether an agreement or relationship meets the FTC definition of a franchise, SBA considers guidance issued from time to time by the FTC (e.g., FTC Franchise Rule Compliance Guide, FTC Advisory Opinions, etc.).

Although exempt from FTC disclosure requirements, all agreements and relationships that are covered by the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. 2801 *et al.* (e.g., gas stations, dealer/jobber agreements), are included within the FTC definition of "franchise" and are, therefore, subject to the procedures described below.

SBA is no longer excluding dealer agreements with new car manufacturers from affiliation determinations. Therefore, Applicants that are or will be operating under a dealer agreement with a new car manufacturer that meets the FTC definition of a franchise are subject to the procedures described below.

b. The SBA Franchise Directory:

SBA has created the SBA Franchise Directory (the "Directory") of all franchise and other brands reviewed by SBA that are eligible for SBA financial assistance. The Directory will only include business models that SBA determines are eligible under SBA's affiliation rules and other eligibility criteria. Placement of a brand on the Directory is not an endorsement or a guaranty of the success of the brand. **If the Applicant's brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain SBA financing.** (To help minimize confusion over brands that may appear to be franchises but that do not meet the FTC definition, SBA will include such brands on the Directory at their request if they are eligible in all other respects.) **SBA Lenders will be able to rely on the Directory and will no longer need to review franchise or other brand documentation for affiliation or eligibility.**

The Directory will be maintained on SBA's website at www.sba.gov/document/support-object-object-sba-franchise-directory. It will contain the following information:

i. Whether SBA determined that the brand meets the FTC definition of a franchise for purposes of determining affiliation between the franchisor and franchisee;

ii. The SBA Franchise Identifier Code, if applicable (a code will only be issued if the agreement meets the FTC definition of a franchise);

iii. Whether an addendum is needed and, if so, whether the franchisor will use SBA Form 2462, "Addendum to Franchise Agreement," or an SBA Negotiated Addendum; and

iv. Whether there are additional issues the SBA Lender must consider with respect to the brand (e.g., documentation that the business will be open to all, review of any third party management agreement to ensure Applicant is not a passive business or affiliated with the management company in accordance with paragraph D.5, Affiliation Based on Management above.).

Franchisors may choose to use SBA Form 2462 even if they are listed on the Directory as using an SBA Negotiated Addendum. Certain franchisors, however, may not use SBA Form 2462. These franchisors are identified on the Directory in the Notes column. It is important to note that franchisors whose agreements are governed by other than U.S. law are not able to use SBA Form 2462.

c. Use of the Directory by SBA Lenders:

i. For applications involving a franchise or similar relationship that meets the FTC definition of a franchise, SBA Lenders must check the Directory to determine if it includes the Applicant's brand before:

a) Submitting the application to SBA for non-delegated processing; or

b) Approving the loan under the SBA Lender's delegated authority.

If the Applicant's brand is on the Directory, SBA Lenders may proceed with submitting the application to SBA or approving the loan under delegated authority.

If the Applicant's brand is not on the Directory, for non-delegated loans, SBA Lenders cannot submit the application to SBA, and for delegated loans, SBA Lenders cannot approve the loan under delegated authority. In that case, the SBA Lender should advise the Applicant and/or the franchisor of the process by which the brand can be added to the Directory as detailed in paragraph 6.d. Procedure to add brands to the Directory, below.

ii. Exception for Applicants Operating under Multiple Agreements:

a) When an Applicant operates under multiple agreements (i.e., multiple product lines), SBA Lenders first must check the Directory to ensure all of Applicant's agreements that meet the FTC definition of a franchise are on the Directory. **If any of the Applicant's agreements that meet the FTC definition of a franchise are not on the Directory, the application cannot proceed.** If all such agreements are on the Directory, SBA Lenders next must determine which agreement(s) is(are) "critical" to the Applicant's business operation.

As a general rule, SBA considers an agreement to be "critical" if the agreement (or the products, services or trademarks covered by it) accounts, individually or together with other agreements of the Applicant, for more than 50% of the applicant's revenues. SBA Lenders only need to follow the Directory (i.e., obtain an addendum, as applicable) for the agreements that meet the FTC definition of a franchise AND are critical to the Applicant's business operation.

For example, the Applicant is a dealership that sells 10 different brands of boats under separate agreements for each brand of boat. First, the SBA Lender must check the Directory for all of the Applicant's agreements that meet the FTC definition of a franchise. If, for example, 7 of the 10 agreements meet the FTC definition of a franchise, all 7 must be on the Directory for the application to proceed. Next, the SBA Lender needs to determine which of the Applicant's 10 agreements are critical to the Applicant's business operation. In this example, if 5 of the 10 agreements together represent 51% of the applicant's revenues, those 5 agreements are considered critical. If 3 of the 5 critical agreements meet the FTC definition of a franchise, the SBA Lender need only obtain an addendum, as identified on the Directory, for those 3 agreements.

b) If one of the Applicant's brands or agreements has been determined by SBA to be ineligible for SBA financial assistance, the loan cannot be processed, regardless of whether the brand or agreement meets the FTC

definition of a franchise or is critical to the Applicant's business operation.

iii. Exception for Applicants Operating under a Single, Non-critical Agreement: If the Applicant is operating under a single agreement that is not considered critical to the Applicant's business operation (i.e., it represents 50% or less of the Applicant's revenues), then the SBA Lender first must check the Directory to ensure that, if the Applicant's agreement meets the FTC definition of a franchise, it is on the Directory before processing the application. If the agreement meets the FTC definition of a franchise, but is not on the Directory, the application cannot proceed. For example, the Applicant is an auto body shop that also rents trucks and trailers under an agreement. The rental of the trucks and trailers only represents 10% of the Applicant's revenues. The SBA Lender must check the Directory to ensure that, if the agreement meets the FTC definition of a franchise, the agreement is on the Directory, but the SBA Lender does not need to obtain an addendum, if applicable, for that agreement. If the agreement is not listed on the Directory and the SBA Lender determines that the agreement does not meet the FTC definition of a franchise, the SBA Lender must determine the brand is eligible (e.g., does not have discriminatory hiring practices) before proceeding with the application. SBA will make the final determination for non-delegated applications. For delegated applications, SBA will review the SBA Lender's determination at time of purchase or when conducting lender oversight activities for 7(a) loans and prior to closing for 504 loans. The delegated SBA Lender bears the risk of an incorrect determination on a delegated application.

d. Procedure to add brands to the SBA Franchise Directory:

i. To add its brand to the Directory, a franchisor must submit the agreement, Franchise Disclosure Document (FDD) if applicable, and all other documents the franchisor requires the franchisee to sign to franchise@sba.gov for an affiliation and eligibility determination. If the documents are submitted to SBA by someone other than the franchisor, contact information for the Franchisor (name and email address only) must be included in the email. The new brands are reviewed in the order in which they are received. Under certain circumstances, SBA as part of its review may request the franchise operations manual and other documentation explaining business operations.

a) If the franchisor agrees to use SBA Form 2462, "Addendum to Franchise Agreement," SBA will conduct an eligibility review and will not conduct an affiliation review.

b) If the franchisor elects not to use SBA Form 2462, SBA will work with the franchisor to resolve any affiliation issues, including through the use of an SBA Negotiated Addendum, if necessary.

ii. The SBA Franchise Team will refer agreements involving brands that may be engaged in promoting religion, that may have activities of a prurient nature, that appear to cater to one gender, that were a party to litigation involving the

federal government, or that present such other issues as the SBA Franchise Team may, in its discretion, deem appropriate, to the Associate General Counsel for Litigation for a final Agency decision.

iii. Upon completion of SBA's review and a determination by SBA that the brand is eligible, SBA will list the brand on the Directory, along with an indication of the type of Addendum being used, if necessary, and will assign an SBA Franchise Identifier Code. If SBA determines that the brand does not meet the FTC definition of a franchise, SBA will list the brand on the Directory but will indicate that it is not a franchise and SBA will not assign an SBA Franchise Identifier Code.

e. Annual Certification from Franchisor:

For those franchises listed on the Directory that either do not need an addendum or are using an SBA Negotiated Addendum, in order to continue using no addendum or using an SBA Negotiated Addendum, the franchisor must submit to SBA each year SBA Form 2464, "Annual Franchisor Certification" (the "Certification"). The Franchisor must submit the Certification as soon as it issues an updated agreement, but in no event later than April 30 of each year. If the Certification is not received by SBA by April 30, or an extended date approved by SBA, the SBA will require the Franchisor to use the SBA Addendum to Franchise Agreement (SBA Form 2462) for all SBA-guaranteed loans and will update the Directory with the change. (For brands listed on the Directory as using SBA Form 2462, no certification is required to remain on the Directory.) This certification is provided by the Franchisor to SBA annually. SBA Lenders do not need to obtain SBA Form 2464 or provide it to SBA.

The Certification requires a duly authorized representative of the Franchisor with the authority to sign the Certification to represent that:

i. The terms of Franchisor's current agreement that relate to control by the Franchisor of its franchisees (resulting in a determination by SBA of affiliation between the Franchisor and its franchisees, as defined in 13 CFR Part 121 and in this SOP) have not substantively changed from those appearing in the most recent franchise agreement reviewed by SBA for placement on the Directory; and

ii. If the Franchisor is using an SBA Negotiated Addendum, no changes have been made to its SBA Negotiated Addendum.

If the Franchisor cannot certify as required or would like to change its addendum, the Franchisor will have to follow the procedures in subparagraph 6.d. above to add brands to the Directory.

To ensure the effectiveness of the certification process, SBA intends to inspect, on a periodic basis, a sample of updated franchise agreements where a Certification has been submitted. Therefore, SBA may request from the Franchisor copies of the current franchise agreement and related documents.

f. Issues that Result in Affiliation:

SBA has determined that each of the following provisions in a franchise agreement results in affiliation between a franchisor and a franchisee:

i. Transfer or Change of Ownership;

a) Franchisor has the option or right of first refusal (ROFR) to purchase an interest in the franchise and become a partial owner of the Franchisee.

b) Franchisor's consent to the sale or transfer of any interest in the franchise (full or partial) is based on the Franchisor's "sole discretion" or the agreement is silent on the standard for consent.

c) Franchisee remains liable for the actions of the transferee after transfer of the franchise.

ii. Sale of Assets;

a) Franchisor or an appraiser selected by the Franchisor solely controls the valuation of assets when the Franchisor has the option or ROFR to purchase assets, including real estate, upon default or termination of agreement.

b) Franchisor has the right to force the Franchisee to sell the Franchisee's real estate upon default or termination of agreement.

iii. Covenants or Use Restrictions; and

Franchisor has recorded or has the right to record against the Franchisee's real estate any restrictive covenants, branding covenants or environmental use restrictions (e.g., restricting the use of the property upon sale).

iv. Control of Employees.

a) Franchisor has the authority to directly control (hire, fire, or schedule) Franchisee's employees.

b) For temporary personnel franchises, Franchisor (not the Franchisee) employs the temporary employees.

If a franchise agreement contains any of the provisions identified above, the franchisor will be required to execute either SBA Form 2462 or an SBA Negotiated Addendum approved by SBA to resolve the affiliation issues. By executing the applicable addendum, the franchisor agrees that any provision identified above that is represented in the franchise agreement, or any other document the franchisor requires the franchisee to sign, will not be enforced against the franchisee during the life of the SBA-guaranteed loan.

g. Procedure to Submit Franchise Loan Applications:

i. For non-delegated loans:

a) If the Applicant's brand meets the FTC definition of a franchise, the SBA Lender must identify the name of the franchise and the SBA Franchise Identifier Code when entering the application into E-Tran or

SBA One. The SBA Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory.

b) No other franchise documentation must be submitted to the SBA loan processing center with the application.

c) SBA will confirm that the brand is listed on the Directory.

d) If the SBA Lender determines that the Applicant's brand does not meet the FTC definition of a franchise, and it is not on the Directory, then the SBA Lender needs to explain its determination in its credit memorandum when submitting the application to the SBA loan processing center and provide the agreement and any additional documentation required by the brand. SBA Lender also must provide contact information for the franchisor/licensor (name and email address only). The SBA loan processing center will forward the documentation and contact information to the SBA Franchise Team for review and final determination.

ii. For delegated loans:

a) If the Applicant's brand meets the FTC definition of a franchise, the SBA Lender must document in its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the application or request for loan number into E-Tran or SBA One. The SBA Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, type of agreement) listed on the Directory.

b) The SBA Lender will need to submit the documentation showing that the Applicant's brand is on the Directory:

i) For 7(a) loans: With any guaranty purchase request;

ii) For 504 loans: To SBA counsel (not the Franchise mailbox) for approval prior to submitting the closing documents to SBA counsel.

c) If the Applicant's brand is not on the Directory and the delegated SBA Lender determines the brand *does not meet the FTC definition:*

i) For 7(a) loans: If the SBA Lender proceeds with approving the loan under its delegated authority, SBA will review this decision at time of purchase or when conducting lender oversight activities and the delegated SBA Lender bears the risk of an incorrect determination.

ii) For 504 loans: The SBA Lender approving a loan under its delegated authority must submit the documents to franchise@sba.gov for a final determination by SBA. SBA Lender must provide contact information for the franchisor/licensor (name and email address only). After

receiving SBA's final determination, the delegated SBA Lender may proceed with approving the loan under its delegated authority.

iii. When an Applicant operates under multiple brands, the SBA Lender must enter the name of the franchise and the SBA Franchise Identifier Code for the brand that generates the largest amount of the Applicant's revenue when entering the application or request for a loan number in E-Tran or SBA One. The SBA Lender must identify all other brands and their SBA Franchise Identifier Codes (if applicable) in the SBA Lender's credit memorandum, and must identify which of the Applicant's brands are critical to the Applicant's business operation, including an explanation of the basis for that determination (e.g., a breakdown of revenue by brand). (See subparagraph 6.c.ii above for further guidance on Applicants with multiple brands.)

a) For non-delegated loans, the SBA loan processing center will confirm that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory.

b) For delegated loans, the delegated SBA Lender must document in its file that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory.

Delegated Lenders will be required to submit this supporting documentation to SBA with any guaranty purchase request and SBA will review this documentation when conducting lender oversight activities for 7(a) loans. PCLP CDCs will be required to submit this supporting documentation to SBA Counsel (not the franchise mailbox) for approval prior to submitting the closing documents to SBA Counsel.

iv. If the Applicant franchisee has multiple locations and each location operates under a separate franchise agreement, each location (i.e., each agreement) must have its own SBA Form 2462 or an SBA Negotiated Addendum, if applicable.

v. If the Applicant applies for further assistance under an agreement that already has an executed addendum, the SBA Lender will not need to obtain a new addendum in connection with the subsequent application for financial assistance.

vi. The SBA Lender must obtain a copy of the executed franchise agreement, the executed SBA Form 2462 or SBA Negotiated Addendum (if applicable), and any other document the franchisor requires the franchisee to sign. The SBA Lender must obtain the SBA Negotiated Addendum directly from the Franchisor. (While it is prudent for the SBA Lender to review the Franchise Disclosure Document, as it contains financial information on the franchise brand, it is not necessary for the SBA Lender to retain a copy in its file.)

a) For 7(a) loans, the SBA Lender must obtain these documents prior to any disbursement of loan proceeds.

b) For 504 loans:

i) Non-delegated loans: The SBA Lender must provide these documents to and receive approval from the SLPC prior to submitting the closing package for debenture funding;

ii) Delegated loans: Delegated SBA Lenders must submit these documents to and receive approval from SBA counsel (not the franchise mailbox) prior to submitting the closing package for debenture funding.

In order to ensure the SBA Lender obtained the required documents and the documents were properly executed, SBA may review these documents when conducting SBA Lender oversight activities, and they must be provided with any request for SBA to honor the guaranty on a defaulted 7(a) loan.

h. Applications involving an applicant franchisor:

If the Applicant is a franchisor, it must together with all affiliates 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. A franchisor's relationship with its franchisees under a franchise agreement must be considered when making a size determination. If affiliation is found between a franchisor and its franchisees based on the franchise agreement, the Franchisor may execute a global addendum to resolve any affiliation issue(s) with respect to all agreements with its franchisees. To request a determination of affiliation and, if necessary, obtain a franchisor global addendum for a franchisor Applicant, please contact franchise@sba.gov. The franchisor's brand must be listed on the Directory as an approved brand even if the franchisor will not be executing a franchise agreement in connection with the loan transaction.

i. Applications involving Franchise Development Agreements or Area Development Rights:

Franchise Development Agreements (also known as a "Master Franchise Agreements") provide the developer with a geographic area with which to establish additional franchise units. These additional franchise units are owned and operated by other franchisees, and the developer's income is derived from the royalty payments from each franchisee in the developer's geographic territory. Based on those features, these agreements have been determined to be passive and, therefore, an Applicant that is or will be operating under a Franchise Development Agreement is not eligible for SBA financial assistance.

If an Applicant franchisee has an affiliate that operates under an ineligible Franchise Development Agreement, the Applicant franchisee may be eligible for SBA financial assistance, provided that the Applicant and its affiliates are small, and no SBA loan proceeds are used for the benefit of the ineligible affiliate franchise developer.

An Applicant franchisee that is or will be operating under a franchise agreement that provides the franchisee with the right to develop additional units that the franchisee or its affiliates own and operate within its territory ("area development

rights" or "Multi-Unit Franchise Agreement"), however, may be eligible provided that the Applicant and its affiliate franchise units is small.

j. Franchise Applicants with Management Agreements:

   i. If the Applicant will be using a management agreement, for non-delegated loans, the SBA Lender must submit the management agreement to the SBA loan processing center to determine if it creates affiliation between the Applicant and the management company or results in a passive business. The SBA Franchise Team does not review management agreements and such agreements will not be included on the SBA Franchise Directory.

      If a delegated SBA Lender is processing the loan under its delegated authority, the SBA Lender must review the management agreement to determine if it creates affiliation between the Applicant and the management company or results in a passive business. SBA will review this decision when conducting lender oversight activities. The delegated SBA Lender bears the risk of an incorrect determination. For 7(a), SBA will also review this decision at the time of purchase.

   ii. If the Applicant franchisee is operating under a management agreement where the management company is, or is affiliated with, the franchisor, the Applicant is not eligible. Such a relationship does not result in the franchisee operating as an independent small business.

   iii. See paragraph D.5, Affiliation Based on Management above for guidance on affiliation based on management and Chapter 3, Para. A.3, Passive Businesses below for guidance on passive businesses.

k. Questions on SBA's Franchise Policy, Requests for Reconsideration and Appeals:

   i. Questions on SBA's Franchise Policy should be directed to franchise@sba.gov.

   ii. Franchisors that would like to appeal SBA's decision not to place them on the Directory may do so by forwarding a copy of the decision, along with an explanation of how the determination is perceived to be inconsistent with SBA Loan Program Requirements, to franchise@sba.gov. Franchise appeals will be reviewed by the SBA Franchise Committee comprised of OFA and OGC personnel.

   iii. There is no right of appeal for final Agency decisions made by the Associate General Counsel for Litigation.

   iv. Franchisors that would like to request reconsideration of SBA's determination that they meet the FTC definition of a franchise or that their agreement creates affiliation between the franchisor and franchisee may do so by forwarding a copy of the decision, along with an explanation of why that decision is perceived to be incorrect, as well as any supporting documentation, to franchise@sba.gov.

E. DEMONSTRATE THE NEED FOR DESIRED CREDIT

(Credit not available elsewhere - 13 CFR § 120.101

1. The SBA Lender must certify that the Applicant does not have the ability to obtain some or all of the requested loan funds on reasonable terms from non-Federal, non-State, or non-local government sources, including from the SBA Lender or Third Party Lender, without SBA assistance. If the Applicant's cash flow and collateral, including the adequacy of any third party guaranty, would cause the Applicant's loan to meet conventional credit standards of the SBA Lender or Third Party Lender, the Project is not eligible for an SBA Loan. Failure of the SBA Lender to adequately address the Applicant's need for the desired credit in the credit memorandum may result in SBA declining the application submitted under non-delegated processing or denying liability on the guaranty if the application is approved by a 7(a) Lender under its delegated authority or, in 504, the pursuit of a CDC Recovery Claim under 13 CFR 120.938 in the case of fraud, negligence, or misrepresentation by the CDC.
2. The SBA Lender must include in its credit memorandum:
    a. A determination that some or all of the loan is not available from any of the following sources:
        i. The liquidity of owners of 20% or more of the equity of the Applicant, their spouses and minor children, and the Applicant itself; or
        ii. Conventional lenders or other non-Federal, non-State, or non-local government sources of credit including the SBA Lender, and for 504 loans, the Third Party Lender. Note: This includes any commitment by a third party to provide financial assistance to the Applicant in the event of a delinquency or default on a payment (e.g., a commitment by a franchisor or licensor to provide financial assistance to the franchisee or licensee).
    b. Substantiate that credit is not available elsewhere by discussing acceptable factors that demonstrate an identifiable weakness in the credit. The SBA Lender must include in its credit memorandum the specific reasons why the Applicant does not meet conventional loan policy requirements, along with relevant supporting documentation. The SBA Lender may not cite the Applicant's inability to meet the SBA Lender's or Third Party Lender's conventional credit score policy as the sole reason that credit is not available elsewhere.

        Acceptable factors that demonstrate an identifiable weakness in the credit or exceed policy limits of the SBA Lender or the Third Party Lender include, among others:

        i. The business needs a longer maturity than the SBA Lender's/Third Party Lender's policy permits to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business (for example, the business needs a loan that is not on a demand basis);
        ii. The requested loan exceeds the SBA Lender's/Third Party Lender's policy limit regarding the amount that it can lend to one customer;

iii. The collateral does not meet the SBA Lender's/Third Party Lender's policy requirements;

iv. The SBA Lender's/Third Party Lender's policy normally does not allow loans to new businesses (e.g., a business that has been in operation for a period of not more than 2 years) or businesses in the Applicant's industry; and/or

v. Any other factors relating to the particular credit that, in the SBA Lender's/Third Party Lender's opinion, cannot be overcome except for the guaranty. These other factors must be specifically explained in the SBA Lender's credit memorandum, and relevant supporting documentation must be included in the loan file. Examples of "other factors" may include business and personal credit history, management experience, leverage ratio, global cashflow, and loan size relative to the age of the business.

3. The SBA Lender/Third Party Lender may not rely on the following factors as the sole basis to demonstrate that the Applicant does not have credit available elsewhere:

   a. For 7(a) loans, the fact that the liquidity of the SBA Lender depends upon the guaranteed portion of the loan being sold on the secondary market; or

   b. SBA's participation will allow the SBA Lender/Third Party Lender to exceed its legal lending limit.

4. The SBA Lender may not rely in any manner on the following factors to demonstrate that the Applicant does not have credit available elsewhere:

   a. The maintenance or improvement of the SBA Lender's/Third Party Lender's rating or performance evaluation under the Community Reinvestment Act (CRA) or its implementing regulations; or

   b. The improvement of the SBA Lender's/Third Party Lender's collateral lien position.

CHAPTER 2: SPECIAL TRANSACTION STRUCTURES

This chapter provides additional details on certain complex transaction structures. This information is provided in addition to the SBA Loan Program Requirements detailed in Sections A, B, and C of this Part.

A. ELIGIBLE PASSIVE COMPANIES

13 CFR § 120.111

The Eligible Passive Company (EPC) Rule is an exception to SBA regulations that prohibit financing assets that are held for their passive income. (13 CFR § 120.130(d)) Because the EPC rule is an exception, the EPC and the OC must comply with all of the conditions in 13 CFR § 120.111 and each condition is interpreted strictly. If all conditions are not complied with, in the event of default on a 7(a) loan, SBA may deny liability on the guaranty. In 504, SBA may pursue a CDC Recovery Claim under 13 CFR § 120.938 in the case of fraud, negligence, or misrepresentation by the CDC.

An Eligible Passive Company (EPC) must use loan proceeds only 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 (OCs) for conducting the OC's business, or to finance a change of ownership between the existing owners of the EPC. An EPC may only use loan proceeds to finance a change of ownership between existing owners of the EPC when the real estate or personal property has been held by the selling owner(s) for at least 36 months.

For specific information on change of ownership loans with an EPC/OC structure:

- For 7(a), see the eligible uses of proceeds section of each delivery method chapter. Note, change of ownership is not an eligible use of proceeds for the CAPLines and EWCP delivery methods, or for revolving facilities.
- For 504, see Section C, Ch. 1, Para. C.13, Change of Ownership, in this Part for the circumstances under which change of ownership is permitted. Note: See Para. C.13.a.iii. of such Section for important restrictions that apply if using a 504 loan to finance a change of ownership between existing owners of the EPC.

With the exception of a change of ownership between existing owners of the EPC, 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.

In addition, when the EPC and OC(s) are co-borrowers:

- A 7(a) loan may include loan proceeds for working capital and/or the purchase of other assets, including intangible assets for the OC's use; and
- A 504 loan may include loan proceeds for the purchase of fixed assets to be owned by the OC(s).

An EPC can take any legal form or ownership structure (e.g., corporation, partnership, LLC, sole proprietor, tenancy in common, etc.)

A tenancy in common is a form of legal ownership and does not create a new or separate legal entity. There may be several individuals or entities in a tenancy in common, but the tenancy in common is considered one EPC. The loan documents must be signed by all of the members of the tenancy in common.

Multiple OCs can be separately owned, however, multiple EPCs in one transaction are not permitted.

1. Conditions that apply to all EPCs:
    a. The OC(s) must be an eligible small business;
    b. The proposed use of proceeds must be an eligible use as if the OC(s) were obtaining the financing directly;
    c. The EPC (with the exception of a trust) and the OC(s) each must be small under the appropriate size standard of 13 CFR Part 121 (see paragraph A.3, Size determinations under the EPC rule below);
    d. The EPC must lease the project property directly to the OC(s); and
        i. Obtain a fully executed written lease;
        ii. The lease must be subordinated to the SBA's mortgage, trust deed lien, or security interest on the property (Note: This is not the same as a Landlord's Waiver);
        iii. The lease must have a term, including options to renew exercisable solely by the OC(s), at least equal to the term of the loan;
        iv. 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 under applicable law, or to enable the SBA Lender to exercise the tenant's rights upon default;
        v. 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 direct expenses of holding the property, such as routine maintenance, utility expenses, insurance, and property taxes.

            For 504 loans, loan payments to the SBA and to the Third Party Lender are included in the calculation of "loan payment to the Lender." Rent or lease payments cannot include amounts for accelerated payments on the Third Party Loan;
        vi. When calculating repayment ability, the SBA Lender must consider whether the OC's cash flow will be sufficient to cover the loan payment (for 504 loans, including the loan payment to the Third Party Lender), in addition to the expenses of holding the property including the payment of routine maintenance, property taxes, utility expenses, insurance, and all other ongoing expenses;
        vii. The OC(s) 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 (see Chapter 4, Para. C, Occupancy and Leasing Requirements of this Section for more information);

viii. 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(s); and any such assignment must be subordinated to all Deeds of Trust or Mortgages. In addition, the SBA Lender must take the following actions if applicable:

a) If subordination is not possible:

i) For 7(a) loans: The 7(a) Lender must obtain a legal opinion to that effect;

ii) For 504 loans: CDC Closing Counsel must provide a legal opinion to that effect;

b) If the mineral lease has been terminated, the SBA Lender should attempt to have it removed from the Title Policy;

c) If the SBA Lender is unable to have the mineral lease removed from the Title Policy:

i) For 7(a) loans:

(a) The SBA Lender must provide supporting documentation evidencing the proper assignment of the lease to the OC(s) and obtain a title endorsement to protect SBA's interest in the real property (see, for example, California Land Title Association (CLTA) 100.23 or 100.24).

(b) SBA Lenders processing loans under non-delegated procedures must submit a copy of the lease agreement between the EPC and OC(s) with the application for loan guaranty to SBA. SBA Lenders processing loans under delegated authority must keep a copy of the executed lease in their loan file and must submit the lease with any request to SBA to purchase the guaranty.

ii) For 504 loans: 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 (see, for example, California Land Title Association (CLTA) 100.23 or 100.24).

e. An EPC (excluding a trust) may not engage in any business activity other than leasing the property to the OC(s).

f. The OC(s) must be a guarantor or a co-Borrower on the loan.

   i. Each holder of an ownership interest constituting at least 20% of either the EPC or the OC(s) must guarantee the loan (if the holder is a trust, then the Trustee shall execute the guarantee on behalf of the trust).

   ii. Each spouse owning less than 20% of an EPC or OC must personally guarantee the loan in full when the combined ownership interest of both spouses and minor children is 20% or more.

   iii. For a non-owner spouse, the SBA 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.

   iv. If a person has executed the Note as a Borrower in an individual capacity, that person does not also have to execute a personal guaranty.

   v. When deemed necessary for credit or other reasons, SBA or, for a loan processed under an SBA Lender's delegated authority, the SBA Lender, may require other appropriate individuals or entities to provide full or limited guaranties of the loan without regard to the percentage of their ownership interests, if any.

   vi. The OC(s) must be a co-Borrower if it receives any proceeds or if proceeds will be used to purchase any assets for the OC(s) use.

g. The amount of any loan received by an EPC applies to the loan limit of both the EPC and the OC.

2. 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.

      i. 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.

      ii. Beneficiaries that exercise any control over the actions of the trust also must guarantee the loan.

   e. The Trustee shall certify in writing to SBA, or to the SBA Lender processing a loan under its delegated authority, that:

      i. The Trustee has authority to act;

      ii. The trust has authority to borrow funds, pledge trust assets, and lease the property to the OC(s);

iii. The Trustee has provided accurate, pertinent language from the trust agreement confirming the above; and

iv. The Trustee has provided SBA or the SBA Lender processing a loan under its delegated authority with a true and complete list of all trustors and donors and will provide an updated list to SBA or the SBA Lender processing a loan under its delegated authority any time the list changes.

f. The trust itself does not have to be small by SBA size standards.

3. Size Determinations under the EPC rule.

a. If the EPC and the OC(s) are affiliated, the two companies are combined for determining size.

i. If there is only one OC, use the OC's NAICS code.

ii. If there are multiple, unaffiliated OCs, use the NAICS code of the OC that generates the most revenue. Note: Each OC must be small based on its own NAICS code.

iii. 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(s) are not affiliated, each entity must be small under the size requirement for its particular industry.

The existence of a lease between the EPC and the OC(s) does not, in and of itself, create an affiliation, even if the EPC and OC(s) are co-Borrowers.

4. When sending data to SBA, use the same NAICS Code that was used to determine size for the Applicant.

5. Submission of Financial Statements by the EPC and the OC(s):

a. 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.

B. LOANS TO EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS)

For 7(a) loans only: SBA may assist a qualified employee trust (or equivalent trust) that meets the requirements and conditions for an ESOP prescribed in all applicable IRS, Treasury, and Department of Labor regulations. 13 CFR §§ 120.350 - 120.354

1. SBA may guarantee a 7(a) loan to an ESOP for two purposes:

a. Purchasing a controlling interest (at least 51 percent) in the employer small business; or

   b. Re-lending loan proceeds to the employer small business by purchasing qualified employee securities. The small business may use the funds for any general 7(a) purpose.

2. SBA may guarantee a 7(a) loan to an eligible employer small business for the sole purpose of making a loan to a qualified employee trust (ESOP) that results in the qualified employee trust owning at least 51 percent of the employer small business concern.
3. Transaction costs associated with the purchase of the controlling interest by the ESOP or equivalent trust may be included in the use of proceeds, but any transaction costs associated with setting up the ESOP may not be included in the use of proceeds.
4. If the seller of the employer small business remains as a partial owner, the seller must provide a full, unlimited guarantee regardless of percentage of ownership.
5. Lenders may not process loans to an ESOP or to an eligible small business owned or controlled by an ESOP under delegated authority.
6. The IRS prohibits ESOPs from guarantying a loan; therefore, SBA does not require the ESOP to guarantee the loan. In addition, members of the ESOP are not required to personally guarantee the loan. However, all owners of the Applicant who hold an ownership interest in the small business outside the ESOP are subject to SBA's guaranty requirements. (See Chapter 6, Para. A, Guaranties, of this Section for more information.)
7. 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.
8. Prior to first disbursement, the Lender must obtain documentation that the ESOP or equivalent trust meets the requirements of all applicable IRS, Treasury, and Department of Labor regulations.

C. **COOPERATIVES**

1. Eligibility: All Applicants operating under a cooperative structure must meet SBA's eligibility requirements.
2. SBA Lenders may not process loans to a cooperative or to an eligible small business owned or controlled by a cooperative under delegated authority.
3. Each loan must be guaranteed by at least one individual or entity. (See Ch. 6, Para. A, Guaranties, of this Section for more information.)
4. For 7(a) only:
   a. SBA may guarantee a loan to a cooperative to purchase a controlling interest (51% or more) in the employer small business. Any transaction costs associated with the purchase of the controlling interest, but not costs associated with setting up the cooperative, may be included in the use of proceeds.
   b. If the seller remains as a partial owner, the seller must provide a full, unlimited guarantee regardless of percentage of ownership.

5. The SBA Lender must submit supporting organizational documents and agreements as applicable with the loan application depending on the type of cooperative and the purpose of the loan (e.g., a loan to a cooperative to acquire a controlling interest in the employer concern), which may include Cooperative Agreement; Organization documents; Articles of Incorporation/Organization; Bylaws; Operating/Conversion/Redemption/Membership Agreement(s); or any other agreements as necessary.

D. 401(K) PLANS INCLUDING ROLLOVERS AS BUSINESS START-UPS (ROBS) PLANS

A business that is owned in whole or in part by a 401(k) plan (including a Rollovers as Business Startups (ROBS) plan) may be eligible provided the SBA Lender complies with the requirements in this section and the plan complies with all applicable IRS, Treasury, and Department of Labor requirements.

When evaluating applications involving such businesses, SBA Lenders must consider that a 401(k) plan sponsor's failure to administer the plan properly may result in plan disqualification and adverse tax consequences to the plan's sponsor and its participants, which may impact the Borrower's ability to repay the loan.

Applications where the Applicant or any owner (including a corporation formed through a ROBS plan) is a:

- Single Employer Plan, including ROBS plans, may be processed under an SBA Lender's delegated authority if the only investment held by the 401(k) plan is the equity in the Applicant business.
- Multiple-Employer Plan, (i.e. plans that hold in trust the assets of other businesses), including ROBS plans, must be submitted to the SBA processing center under non-delegated processing. NOTE: Size standards and maximum SBA guarantee limits to a Borrower and its affiliates apply to the multiple-employer plan.

1. The SBA Lender must:
    a. Document 100% of the ownership of the Applicant and the 401(k) plan, including but not limited to, the Trust, corporations, individuals, etc.;
    b. Verify all sources of equity injection in accordance with Loan Program Requirements;
    c. Identify in E-Tran or SBA One and in the credit memorandum:
        i. The specific type of 401(k) plan (Single Employer Plan, Multiple Employer Plan, etc.); and
        ii. If applicable, that the Applicant is using a ROBS plan for the equity contribution or other purpose (if the latter, specify the purpose of the ROBS plan).
    d. Obtain the full unconditional guaranty of the sponsor(s) of the 401(k) plan regardless of the sponsor's individual ownership interest in the Applicant concern. This guaranty must be a secured guaranty if required by SBA's existing collateral policies. For more information on collateral: For 7(a), see the collateral section in

each delivery method chapter of Section B of this Part. For 504, see Section C, Ch. 1, Para. E.2.a., Collateral, of this Part.

e. The SBA Lender must obtain the following 401(k) plan documentation with the loan application:

   i. A favorable determination letter from IRS providing advance assurance that the terms of the 401(k) plan satisfies qualification requirements. IRS Publication 794 explains the significance of the favorable determination letter, points out critical areas that may affect the qualified status of a 401(k) plan, and provides general information on the reporting requirements for the 401(k) plan;

   ii. For an existing 401(k) plan, the Annual Return/Report of Employee Benefit Plan (e.g., IRS Form 5500, IRS Form 5500-EZ, etc.);

   iii. For a ROBS plan:

      a) C Corporation formation documents;

      b) 401(k) plan adoption documents;

      c) Stock purchase agreements; and

      d) Related corporate resolutions.

2. SBA loan proceeds may not be used for any 401(k) plan formation costs.

3. 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.

4. Prior to any disbursement of loan proceeds, the SBA Lender must obtain the Borrower's certification that the Borrower and the 401(k) plan are in compliance with all applicable IRS, Treasury, and Department of Labor requirements and that it will comply with all relevant operating and reporting requirements.

CHAPTER 3: INELIGIBLE BUSINESSES

A. TYPES OF INELIGIBLE BUSINESSES

The SBA Lender must determine whether the Applicant is one of the types of businesses listed as ineligible in SBA regulations (13 CFR § 120.110). Certain business types appearing on this list may be eligible under limited circumstances, as discussed below.

1. Businesses organized as non-profit businesses are ineligible (for-profit subsidiaries may be eligible). 13 CFR § 120.110 (a)
2. Businesses Engaged in Lending 13 CFR § 120.110 (b).
    a. SBA cannot guarantee a loan that provides funds to businesses primarily engaged in lending, investment, or to an otherwise eligible business engaged in financing, factoring, or investment not related or essential to the business. This prohibits SBA Loans to:
        i. Banks;
        ii. Life Insurance Companies (but not independent agents);
        iii. Finance Companies;
        iv. Factoring Companies;
        v. Investment Companies;
        vi. Bail Bond Companies; and
        vii. Other businesses whose stock in trade is money.
    b. The limited circumstances under which certain businesses engaged in lending may be eligible are as follows:
        i. 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.
        ii. A business that provides financing in the regular course of its business (such as a business that finances credit sales) is eligible, provided less than 50% of its revenue is from financing its sales.
        iii. A mortgage servicing company that disburses loans and sells them within 14 calendar days of loan closing is eligible. Mortgage companies primarily engaged in the business of servicing loans are eligible. Mortgage companies that make loans and hold them in their portfolio are not eligible.
        iv. A check cashing business is eligible if it receives more than 50% of its revenue from the service of cashing checks.

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

3. Passive Businesses 13 CFR § 120.110(c):

a. Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds are not eligible, except Eligible Passive Companies under 13 CFR § 120.111. (See Ch. 2, Para. A., Eligible Passive Companies, of this Section for more information.)

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

c. Businesses that are primarily engaged in owning or purchasing real estate and leasing it for any purpose are not eligible. For example, shopping centers, salon suites, and similar business models that generate income by renting space to accommodate independent businesses that provide services directly to the public are not eligible.

d. Businesses that lease land for the installation of a cell phone tower, solar panels, billboards, or wind turbine also are not eligible. However, the business operating the cell phone tower, solar panel, billboard, or wind turbine is eligible.

e. Businesses that have entered into a management agreement with a third party that gives the management company sole discretion to manage the operations of the business, including control over the employees, the finances and the bank accounts of the business, with no involvement by the owner(s) of the Applicant, are not eligible. (See Chapter 1, Para. D.5, Affiliation Based on Management in this Section for additional guidance on management agreements.)

f. Apartment buildings and mobile home parks are not eligible.

g. Residential facilities that are not licensed as nursing homes or assisted living facilities and do not provide healthcare and/or medical services are not eligible.

h. The limited circumstances under which certain businesses engaged in renting or leasing may be eligible are as follows:

i. 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 and the business complies with all zoning and other legal requirements. If the Applicant is a Start-Up Business, 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.

ii. Businesses that are licensed as nursing homes or assisted living facilities and provide healthcare and/or medical services are eligible. Healthcare and/or medical services include but are not limited to services such as wellness checks, monitoring and/or helping take medications, monitoring blood sugar levels, having medical staff onsite (even on a part-time basis). The SBA

Lender must consider the terms of the license under which the business operates or will operate when determining eligibility.

iii. Businesses that are engaged in leasing equipment, household goods or other items are eligible. (See subparagraph A.2. above regarding the eligibility of businesses engaged in lending.)

iv. Businesses such as barber shops, hair salons, nail salons, and similar types of personal services businesses are eligible, regardless of whether they have employees or contract with individuals to provide the services that the business is providing directly to the public. (See subparagraphs a) and c) above regarding ineligibility of developers and landlords.)

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

4. Life Insurance Companies 13 CFR § 120.110(d):

a. Life insurance companies are not eligible.

b. A life insurance agent may qualify as an eligible independent contractor if in the operation of the business, the insurance agent:

i. Is not subject to the control or direction of another agent in conjunction with the sale and servicing of life insurance;

ii. Has full discretion over the means and method for rendering services;

iii. Hires, supervises, and pays employees needed to perform his or her services;

iv. Performs services at his or her own place of business rather than at the life insurance company's place of business;

v. Is paid by the job or on a commission basis, rather than by the hour, week, or month;

vi. Is responsible for paying his or her own business expenses;

vii. 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;

viii. Invests in facilities that are used 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

ix. Can realize a profit or incur a loss as a result of his or her services.

5. Businesses Located in a Foreign Country or Owned in Whole or in Part by Undocumented (Illegal) Aliens 13 CFR § 120.110 (e)

Businesses located in a foreign country or owned in whole or in part by undocumented (illegal) aliens are not eligible for SBA assistance.

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

Businesses using pyramid or multilevel sales distribution plans are not eligible for SBA assistance.

7. Businesses Engaged in Legal Gambling Activities 13 CFR § 120.110(g)
    a. 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.
    b. If the purpose of the business is gambling, such as a pari-mutuel betting racetrack or a gambling casino, the business is not eligible, regardless of the percentage of gross revenue derived from gambling.
    c. Circumstances exist in which businesses engaged in legal gambling activities may be eligible, including if the Applicant obtains one-third or less of their annual gross revenue, including rental income from:
        i. Commissions from official State lottery ticket sales under a State license; or
        ii. Gambling activities licensed and supervised by a state authority in those states where the activities are legal.
8. Businesses Engaged in any Illegal Activity 13 CFR § 120.110 (h)
    a. Applicants that are engaged in illegal activity under federal, state, or local law are not eligible. This includes Applicants who make, sell, service, distribute, or promote products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the Applicant's intended market.
    b. Marijuana-Related Businesses:
        i. Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance.
        ii. Whether a business is eligible is determined by the nature of the business's specific operations. The following businesses are ineligible:
            a) "Direct Marijuana Business" - a business that grows, produces, processes, distributes, or sells marijuana or marijuana products, edibles, or derivatives, regardless of the amount of such activity. This applies to recreational use and medical use even if the business is legal under local or state law where the Applicant is or will be located.
            b) "Indirect Marijuana Business" - a business that derived any of its gross revenue for the previous year (or, if a Start-Up Business, projects to derive any of its gross revenue for the next year) from sales to Direct Marijuana Businesses of products or services that could reasonably be determined to aid in the use, growth, enhancement or other development of marijuana. Examples of Indirect Marijuana Businesses include businesses that provide testing services, or sell or install grow lights, hydroponic or other specialized equipment, to one or more Direct

Marijuana Businesses; and businesses that advise or counsel Direct Marijuana Businesses on the specific legal, financial/accounting, policy, regulatory or other issues associated with establishing, promoting, or operating a Direct Marijuana Business. However, for purposes of illustration, SBA does not consider a plumber who fixes a sink for a Direct Marijuana Business or a tech support company that repairs a laptop for such a business to be aiding in the use, growth, enhancement, or other development of marijuana.

Indirect Marijuana Businesses also include businesses that sell smoking devices, pipes, bongs, inhalants, or other products if the products are primarily intended or designed for marijuana use or if the business markets the products for such use.

iii. Consistent with the Agriculture Improvement Act of 2018 (Public Law No. 115-334), a business that grows, produces, processes, distributes or sells products made from hemp is eligible only if the hemp meets the definition in section 297A of the Agricultural Marketing Act of 1946 and any applicable state definition of hemp. *(It is important to note that some states define hemp as having a lower level of THC than the federal definition.)*

The SBA Lender is responsible for obtaining from the Applicant documentation sufficient to demonstrate that the hemp meets the applicable definitions. In addition, for Applicants who will be growing, producing, and/or processing hemp, the SBA Lender is responsible for obtaining from the Applicant documentation of the testing protocols the business will follow to ensure that the hemp and any product(s) they extract or produce from it continue to meet the applicable definitions.

iv. Cannabidiol (CBD) related businesses: The factors to be considered in determining the eligibility of CBD-related businesses include, but are not limited to, the following:

a) Where the CBD is derived from (hemp or marijuana);

b) What types of products are being produced and/or sold (e.g., topical products or products to be ingested);

c) What health claims, if any, are being made about the product(s); and

d) Whether all products being produced and/or sold comply with all applicable federal laws and regulations, including those issued by the Food and Drug Administration.

9. Businesses That Restrict Patronage or Have Discriminatory Hiring Practices 13 CFR § 120.110(i) and 13 CFR § 113.3(a)

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

b. Circumstances exist in which certain businesses, like fitness centers that market to one gender, may be eligible if they permit both men and women to join and/or use the facility. SBA Lenders must document the file with the following:

   i. Affidavit signed by the Applicant that the business is open to both men and women; and

   ii. Evidence that the facility is open to both men and women, such as appropriate bath/locker rooms, or documented membership demographics.

c. Except as permitted under §702(a) of the Civil Rights Act of 1964 (42 USC § 2000e-1), businesses that have discriminatory hiring practices are not eligible. For example, a restaurant that employs only servers of one gender is not eligible.

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

a. Businesses owned by municipalities and other political subdivisions are not eligible.

b. Special Requirements Applicable to Native American Businesses:

   i. A Native American tribe is a Governmental entity and is not eligible.

   ii. A small business that is owned in whole or in part by a state or federally-recognized Native American Tribe may be eligible, provided the small business meets all other criteria set forth in SBA Loan Program Requirements and:

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

      b) For federally-recognized tribes, the tribe waives sovereign immunity with respect to the collateral pledged for the loan, and collection of the loan from the Applicant, AND agrees to a "sue and be sued" clause specifically naming U.S. Federal courts as "courts of competent jurisdiction." (Note: Tribes that are recognized only by a state do not have sovereign immunity. Therefore, this requirement is not necessary if the tribe is only recognized by a state.)

c. SBA 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.

11. Loan Proceeds for Religious Activity

a. If it appears that the proceeds of a loan sought by an Applicant may be used to fund religious activities, the SBA Lender must complete SBA Form 1971, "Religious Eligibility Worksheet." Any questions regarding this worksheet may be addressed to the Associate General Counsel for Litigation through Form1971Review@sba.gov.

b. Prior to submitting an application to the SBA loan processing center (non-delegated) or processing a loan under delegated authority, the SBA Lender must submit the completed Form 1971 to the Associate General Counsel for Litigation

at Form1971Review@sba.gov for a final Agency decision as to whether SBA-guaranteed loan proceeds may constitutionally be used in the manner intended by the Applicant. SBA may request additional documentation (e.g., SBA Lender's Credit Memorandum, the Applicant's business plan, and, where applicable, a detailed statement of Applicant's curriculum) to complete its review. Upon approval by SBA, the SBA Lender may proceed to submit the application to the SBA loan processing center (non-delegated) or process the loan under its delegated authority. For non-delegated applications, the SBA Lender must submit a copy of SBA's approval to the SBA loan processing center with the application. An SBA Lender processing a loan under its delegated authority must retain Form 1971, supporting documentation, and evidence of SBA's approval in its loan file and, for 7(a) loans, must submit all of the foregoing to SBA with any request for guaranty purchase. SBA also may review the worksheet and supporting documentation when conducting SBA Lender oversight activities.

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

    An Applicant that receives more than one third of its gross annual revenue from packaging SBA Loans, including as a Lender Service Provider, is not eligible.

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

    a. An SBA Lender or any of its Associates may not obtain an equity interest, either directly or indirectly, in the Applicant.

    b. The only exception is when the Associate of the Applicant is a Small Business Investment Company (SBIC), in which case the requirements of 13 CFR § 120.104 apply. See also Ch. 5, Para. A, Ethical Requirements, of this Section, and 13 CFR § 120.140 for a list of ethical requirements that apply to SBA Lenders.

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

    a. SBA has determined that financing lawful activities of a prurient sexual nature is not in the public interest. The SBA Lender must consider whether the nature and extent of the sexual component causes the business activity to be prurient.

    b. A business is not eligible for SBA assistance if:

        i. It presents live or recorded performances of a prurient sexual nature; or

        ii. 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.

    c. If an SBA Lender finds that the Applicant may have a business aspect of a prurient sexual nature, prior to submitting an application to the SBA loan processing center (non-delegated) or processing a loan under delegated authority, the SBA Lender must document and submit its analysis and supporting documentation to the Associate General Counsel for Litigation at PSMReview@sba.gov for a final Agency decision on eligibility. Upon approval by SBA, the SBA Lender may submit the application to the SBA loan processing center or may proceed to process the loan under its delegated authority. An SBA Lender processing a loan under non-delegated procedures must submit a copy of

SBA's approval with the application to the SBA loan processing center. An SBA Lender processing a loan under delegated authority must retain its analysis, supporting documentation, and evidence of SBA's approval in its loan file and, for 7(a) loans, must submit all of the foregoing to SBA with any request for guaranty purchase. SBA also may review such documentation when conducting SBA Lender oversight activities.

15. Prior Loss to the Government 13 CFR § 120.110 (q)

    a. Unless waived by SBA for good cause, an Applicant is not eligible for a 7(a) or 504 loan if there is a prior loss to the Federal government. A "Prior Loss" has occurred when:

        i. The Applicant has previously defaulted on a Federal loan or federally assisted financing, resulting in a loss to the Federal government or any of its agencies or departments; or

        ii. Any other business owned, operated, or controlled by the Applicant or an Associate of the Applicant, previously defaulted on a Federal loan or federally assisted financing (or guaranteed a loan which was defaulted), resulting in a loss to the Federal government or any of its agencies or departments.

    b. For purposes of this paragraph, "loss" means any deficiency on a Federal loan or federally assisted financing that 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 and includes any amount compromised for less than the full amount, discharged through bankruptcy, and any unreimbursed advance payment under 8(a) or a similar program operated by a Federal agency.

        NOTE: "Loss" does not include unpaid/delinquent taxes or any loss incurred by the Federal Deposit Insurance Corporation (FDIC) when it sells a loan at a discount.

    c. "Federal loan or federally assisted financing" includes:

        i. Any loan that is made for business purposes (including Federal disaster loans) by any Federal agency or department either directly or on a guaranteed basis; and

        ii. Any advance payments under 8(a) or similar programs operated by any Federal agency.

            NOTE: "Federal loan or federally assisted financing" does not include any loan purchased, held, or securitized by Fannie Mae or Freddie Mac or any Federal loan or federally assisted financing issued to an individual.

    d. 7(a) Lenders processing a loan under delegated authority and all CDCs are responsible for accessing their records in E-Tran and checking the Credit Alert Verification Reporting System (CAIVRS), to determine if the Applicant is ineligible for a 7(a) or 504 loan because the Applicant or a business owned, operated, or controlled by the Applicant or any of its Associates has a Prior Loss.

i. CAIVRS allows the SBA Lender to enter multiple tax identification numbers (either SSN or EIN) to conduct a search in connection with a loan application.

ii. SBA Lenders may access CAIVRS at https://entp.hud.gov/caivrs/public/home.html.

e. Waiver Requests:

i. For good cause, SBA may waive the ineligibility of an Applicant due to the Prior Loss rule. The SBA Lender may send a written request for a waiver to the SBA loan processing center. The SBA Lender must describe the Prior Loss, including the agency or department of the Federal Government that sustained the loss, and explain the relationship of the Applicant, or the Associate(s) of the Applicant, to the business that caused the loss and the circumstances justifying the waiver.

ii. The D/FA or designee will review the request for a waiver of the Prior Loss rule and make the final decision.

f. If the Prior Loss to the Government is fully satisfied, the application can be processed without a waiver from the D/FA, including under an SBA Lender's delegated authority. The SBA Lender must document its file as to how the loss has been fully satisfied.

g. All SBA Lenders must inform the Applicant that if the small business defaults on the SBA-guaranteed loan and SBA suffers a loss, the names of the small business, the guarantors of the SBA-guaranteed loan, and any Associate(s) that control the Applicant, will be referred for listing in the CAIVRS database, which may affect the eligibility of a business owned or controlled by any such individual(s) or entity(ies) for future financial assistance from SBA or other Federal agencies or departments.

16. Delinquent Federal Debt

31 CFR § 285.13

a. Unless waived by SBA in accordance with subparagraph f below, an Applicant is not eligible for a 7(a) or 504 loan if the Applicant or any guarantor owes an outstanding nontax debt to the Federal Government, or any agency thereof, that is in delinquent status (hereafter referred to as "Delinquent Federal Debt").

b. A nontax debt owed to the Federal Government includes any amount of money, funds, or property that has been determined by an appropriate official of the Federal Government to be owed to the United States, or an agency thereof, by a person (including an individual, corporation, partnership or other type of entity), including debt administered by a third party as an agent for the Federal Government.

c. A debt is in "delinquent status" when the debt has not been paid within 90 days of the payment due date. The payment due date is specified in the creditor agency's initial written demand for payment or other applicable agreement. A debt is

considered "delinquent" even if the creditor agency has suspended or terminated collection activity with respect to such debt.

d. A debt is not considered "delinquent" if:

   i. The creditor agency has released the obligor from paying the debt or has agreed to accept a compromise amount in lieu of payment in full, or the obligor has cured the delinquency under terms acceptable to the creditor agency;

   ii. The obligor is subject to, or has been discharged from, the debt in a bankruptcy proceeding and, if applicable, the obligor is current on any court authorized repayment plan;

   iii. The obligor has entered into a satisfactory written repayment agreement with the creditor agency to pay the debt, in whole or in part, under terms and conditions acceptable to the creditor agency, and the obligor is paying as agreed; or

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

   NOTE: If there was a Loss (as defined in paragraph 15.b. above) associated with any of these debts, however, the Applicant remains subject to the Prior Loss rule.

e. 7(a) Lenders processing a loan under delegated authority and all CDCs are responsible for accessing their records in E-Tran, and checking the Credit Alert Verification Reporting System (CAIVRS), to determine if the Applicant is ineligible for a 7(a) or 504 Loan because the Applicant, or any guarantor or Associate of the Applicant, has any Delinquent Federal Debt. CAIVRS allows the SBA Lender to enter multiple tax identification numbers (either SSN or EIN) to conduct a search in connection with a loan application. SBA Lenders may access CAIVRS at https://entp.hud.gov/caivrs/public/home.html.

f. Waiver Requests:

   i. The SBA Lender may send a written request to the SBA loan processing center for a waiver of the Applicant's ineligibility due to Delinquent Federal Debt. The SBA Lender must identify the individual or entity that owes the debt, the relationship of the debtor to the Applicant, the agency or department of the Federal Government to which the debt is owed, and the circumstances justifying the waiver.

   ii. The SBA Chief Financial Officer (CFO) has the authority to waive the Applicant's ineligibility due to Delinquent Federal Debt. The CFO may redelegate this authority only to the Deputy CFO.

   iii. The CFO should balance the following factors when deciding whether to grant a waiver:

      a) Whether the denial of the financial assistance to the Applicant would tend to interfere substantially with or defeat the purposes of the 7(a) or

504 Loan Programs or otherwise would not be in the best interests of the Federal Government; and

b) Whether granting the financial assistance to the Applicant is contrary to the Federal Government's goal to reduce losses from debt management activities by requiring proper screening of potential borrowers.

iv. In balancing the above factors, the CFO should consider:

a) The age, amount, and cause(s) of the delinquency and the likelihood that the Applicant will resolve the delinquent debt; and

b) The amount of total debt, delinquent or otherwise, owed by the Applicant and the Applicant's credit history with respect to repayment of debt.

g. If the Delinquent Federal Debt is fully satisfied, the application can be processed without a waiver from the CFO, including under an SBA Lender's delegated authority. The SBA Lender must document its file as to how the debt has been fully satisfied.

h. All SBA Lenders must inform the Applicant small business that if the small business defaults on the SBA-guaranteed loan and the Applicant is deemed to have a Delinquent Federal Debt, the names of the small business, the guarantors of the SBA-guaranteed loan, and the Associates of the small business, will be referred for listing in the CAIVRS database, which may affect their eligibility for further financial assistance from SBA or other Federal agencies or departments.

17. Businesses primarily engaged in political or lobbying activities 13 CFR § 120.110 (r)

An Applicant that derives over 50% of its gross annual revenue from political or lobbying activities is not eligible.

18. Speculation 13 CFR § 120.110 (s)

a. Speculative businesses are not eligible. This prohibits loans to an Applicant for:

i. The sole purpose of purchasing and holding an item until the market price increases; or

ii. Engaging in a risky business for the chance of an unusually large profit.

b. Speculative businesses include:

i. Wildcatting in oil;

ii. Dealing in stocks, bonds, commodity futures, and other financial instruments;

iii. Mining gold or silver in other than established fields;

iv. Research and Development; and

v. Building homes for future sale (except under the 7(a) Builders CAPLines program). Note: Construction of homes for future sale with no sales contract in place (spec homes) is eligible under the 7(a) Builders CAPLines program. 13 CFR § 120.391

c. Non-speculative businesses that may be eligible include:

i. A business, such as a grain elevator, that uses a commodity contract to lock in a price;

ii. A farmer who uses a commodity contract to lock in the sale price of his or her harvest;

iii. A business engaged in drilling for oil in established fields; and

iv. A business engaged in building a home under contract with an identified purchaser.

19. Small Business Lending Company (SBLC)

An SBLC may not make a loan to an Applicant that has received financing (or a commitment for financing) from a Small Business Investment Company (SBIC) that is an Associate of the SBLC. 13 CFR § 120.476

20. Coastal Barrier Islands

SBA Lenders may not make any loan within the Coastal Barrier Resource System. 13 CFR § 120.175

B. CHARACTER DETERMINATIONS

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 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. 13 CFR § 120.110(n)

A Subject Individual may not reduce his/her ownership in an Applicant within 6 months prior to the date of the application for the purpose of avoiding compliance with this section. The only exception to the 6-month rule is when a Subject Individual completely divests his/her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Applicant (and any associated Eligible Passive Company) in any capacity, including being an employee (paid, unpaid, or contracted).

The Agency cannot provide financial assistance to businesses with Associates who are:

- Incarcerated, on probation, or on parole (an individual with a deferred prosecution, conditional discharge, order of protection, or who is on a sex offender registry is treated as if the individual is on probation or parole); or
- Currently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction.

The character determination process to determine eligibility under this section begins with Subject Individuals answering the applicable questions on one of the following forms:

- For all 7(a) loans: SBA Form 1919, "Borrower Information Form;" or
- For all 504 loans: SBA Form 1244, "Application for Section 504 Loan."

NOTE: A Subject Individual must respond "Yes" even when the individual believes the record is sealed, expunged or otherwise unavailable. SBA Lenders must keep this information private and confidential. There are no exceptions or waivers to this policy.

a. The loan application may be processed and a character determination is not required if all Subject Individuals respond "No" on:
   i. SBA Form 1919, to Questions 17, 18, and 19;
   ii. SBA Form 1244, to Section Two, Questions 2, 3, and 4.

b. The Applicant is **not** eligible for an SBA 7(a) or 504 loan if:
   i. The Subject Individual responds "Yes" on:
      a) SBA Form 1919, Question 17;
      b) SBA Form 1244, Section Two, Question 2; or
   ii. Any Subject Individual is currently on parole or probation (including probation before judgment).

c. A character determination for the Subject Individual is required to establish eligibility under this section if any Subject Individual responds "Yes" on:
   i. SBA Form 1919, Question 18 or 19; or
   ii. SBA Form 1244, Section Two, Question 3 or 4.

d. A character determination begins when the Subject Individual provides the SBA Lender with a complete Character Determination Package, which must include:
   i. A completed SBA Form 1919 or 1244, as applicable, signed and dated within 90 days of submission to SBA; and
   ii. A detailed written statement, which is separately signed and dated by the Subject Individual, describing the events and circumstances of any "Yes" response, which must include the following:
      a) Date(s) of each offense;
      b) City or county and State where the offense(s) occurred;
      c) The specific charge(s) and final conviction(s) (e.g. DUI, assault, forgery, etc.) and the level of each charge and conviction (either a misdemeanor or felony); and
      d) Disposition of the charge(s) and conviction(s), including all sentencing, conditions, or requirements of the court. This includes conditions such

as registration on the Sex Offenders Registry, which provides for incarceration upon failure to comply with the conditions.

iii. Court documentation evidencing that any sentencing or other conditions of the court have been met. If sentencing and other conditions of the court have not been satisfied, then the Applicant is not eligible.

a) Court documentation may include but is not limited to:

i) Evidence of the status (paid/unpaid) of fines or restitution imposed;

ii) Evidence of attendance or completion of any class or workshop required by the court;

iii) Jail time served; or

iv) If applicable, the terms of probation including evidence and dates of successful conclusion of the probation.

b) If court documentation is not available, the Subject Individual must submit:

i) A written statement from the applicable court indicating documents are not available; and

ii) Verification that there are no outstanding warrants, unpaid fines, or other conditions of the court that have not been satisfied.

e. Character Determination by the SBA Lender:

The SBA Lender must process the application without review of the Character Determination Package by SBA if, after review of all of the information described above, the SBA Lender determines that the case(s) resulted in:

i. One or multiple misdemeanor convictions whose conditions were met more than 6 months prior to receipt of the application, and the convictions did not involve a crime against a minor (for example, child abuse or endangerment, possession of child pornography, etc.);

ii. Reduction of the original felony charge(s) to misdemeanor(s); or

iii. Dismissal of the charges.

The SBA Lender must retain the supporting information and court documentation, including the original complete Character Determination Package in the file for the life of the loan.

f. Circumstances Requiring an FBI Fingerprint Background Check and a Character Determination by SBA:

The SBA Lender must submit to SBA a copy of the complete Character Determination Package for a background investigation by SBA and the Subject Individual must complete an FBI fingerprint background check in accordance with the following paragraph if, after review of all of the information described above, the SBA Lender determines that the case(s) resulted in:

i. Felony conviction(s);

ii. Misdemeanor conviction(s) within 6 months of the date of the loan application;

iii. Charge(s) filed and final disposition against the Subject Individual has been completed within 6 months of the date of the loan Application; and/or

iv. Misdemeanor conviction(s) for crime(s) against a minor (for example, child abuse or endangerment, possession of child pornography, etc.).

For 7(a) loans, the Lender may not disburse the loan until it has received written clearance from SBA.

For 504 loans, the SLPC will not approve the loan until written clearance is received from OFA.

g. FBI Fingerprint Background Check:

i. SBA will use an FBI-approved, SBA-contracted channeler to conduct fingerprint background checks via Electronic Fingerprint Submission. The current SBA-contracted channeler for Electronic Fingerprint Submissions to the FBI is Biometrics4ALL.

ii. After the SBA Lender has obtained the complete Character Determination Package and determined that a fingerprint background check is required, the SBA Lender will refer the Subject Individual to the approved channeler's website where they must create an account and register. The Subject Individual will select the "Non-Disaster" option and complete the fingerprint process by following the directions on the channeler's website: www.applicantservices.com/sba.

iii. The channeler will provide expedited fingerprint processing by directing Subject Individuals to approved electronic fingerprinting facilities listed on the channeler's website based on the Subject Individual's location. Depending on the circumstances, the channeler will also provide additional locations where hard-copy fingerprints may be taken and will provide the FBI Form FD-258 Fingerprint Card for the Subject Individual to capture the fingerprints along with instruction on submitting the fingerprint cards to the SBA-contracted channeler for continued processing.

iv. SBA Lenders may not directly submit fingerprint cards associated with a loan application to the Office of Capital Access (OCA) or any other SBA office. All required fingerprints from Subject Individuals associated with a loan application must be submitted through the FBI-approved SBA-contracted channeler as directed on the channeler's website. The channeler will electronically submit the fingerprints to the FBI and the FBI will provide the results of the background check to the channeler who will, in turn, provide the results to SBA via a secure portal.

h. SBA Lender Submission of Character Determination Package to SBA:

i. After the SBA Lender has verified with the Subject Individual that the fingerprint submission process has been completed, the SBA Lender must upload the complete signed Character Determination Package into E-Tran,

inclusive of all court documentation. The file name format for the Character Determination Package must not have any spaces or special characters (e.g., JohnDoeApp123456).

ii. The SBA Lender is not required to complete the entire application file in E-Tran at this time; however, the SBA Lender may choose to complete and save (not submit) the entire file if the SBA Lender needs to keep the data set intact for a third-party software product. Character Determination Packages must be uploaded via E-Tran; however, after completion of the character determination process, SBA Lenders may upload loan applications via either E-Tran or SBA One.

iii. The SBA Lender must notify SBA that the fingerprint submission process has been completed and the complete Character Determination Package has been uploaded into E-Tran by sending an email to OCA912@sba.gov with the Subject Individual's last name and the E-Tran application identification number in the email subject line. The email must state:

a) The Subject Individual has completed the fingerprint submission process; and

b) The SBA Lender has uploaded the complete Character Determination Package in E-Tran.

iv. When SBA receives the results of the FBI fingerprint background check from the channeler, SBA will complete the character determination.

i. Character Determination by SBA:

The Director, Office of Financial Assistance (D/FA), or designee, will make the character determination as follows:

i. Based on the information received from the FBI fingerprint check, OCA will determine either that the Subject Individual has good character, or is not eligible for SBA financial assistance; and

ii. OCA will advise the SBA Lender in writing of the Agency's character determination.

j. Record Retention: SBA Lenders must retain a copy of the Agency's character determination in their loan file for the life of the loan.

k. If the Subject Individual was cleared by the D/FA or designee on a previous application submitted within 6 months of the date of the current application, and the Subject Individual certifies that no other offenses have occurred since the previous application was cleared by the D/FA or designee:

i. SBA Lenders processing the loan non-delegated may submit a copy of the prior clearance and the Subject Individual's certification with the application.

ii. An SBA Lender processing a loan under its delegated authority must retain this documentation in the loan file and may proceed to process the application.

l. Character Determination Appeals: A Subject Individual may request a reconsideration of an adverse character determination within 6 months of the date of SBA's decision.

   i. Any request for reconsideration must include additional information or documentation supporting the request to reconsider the adverse character determination. Factors that contribute to a favorable reconsideration include:

      a) Additional information provided by the Subject Individual that satisfactorily explains the circumstances of the prior offense(s);

      b) The passage of time between the date of the disclosed offense(s) and the date of the application, during which the Subject Individual has not committed additional offenses and has generally led a responsible life and contributed to the community; and/or

      c) Any additional law enforcement and/or court documentation that supports the request.

   ii. The request for reconsideration must be submitted to OCA912@sba.gov. The email subject line must start with "Reconsideration" followed by the Subject Individual's last name and the E-Tran application identification number. For example: Reconsideration Smith 11XXXXXX.

C. BUSINESSES OWNED BY NON-U.S. CITIZENS

SBA can provide financial assistance to businesses that are at least 51% owned and controlled by persons who are not citizens of the U.S., provided the persons are Lawful Permanent Residents (LPRs) and comply with the requirements in this paragraph. 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 SBA Lenders, including SBLCs, to comply with the U.S. Department of the Treasury regulations for Customer Identification Programs (CIP) for banks, savings associations, credit unions, and certain non-federally-regulated banks found at 31 CFR § 1020.220.

For 504 loans: 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(r)) 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 Applicant. The CDC has the option of performing its own verification of the identity of the SBA Applicant even if a Third Party Lender has already complied with 31 CFR § 1020.220. If the Third Party Lender has not submitted the requisite annual certification to the CDC, the CDC must perform its own verification of identity.

1. Businesses owned by Naturalized Citizens are eligible and the naturalized citizens are not subject to any special restrictions or requirements. No further verification of status is required if an individual is reflected as a U.S. Citizen on the SBA application.

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), Lawful Permanent Resident Card, commonly referred to as the "green card," is evidence of LPR status. USCIS has two versions of the 551:

      i. Resident Alien Card (issued through 1997); and

      ii. Permanent Resident Card. (This is the most recent version and has been issued since 1997.)

      iii. Because it can take up to a year for a newly arrived immigrant to receive a 551, new immigrants are issued an immigrant visa with a Customs and Border Protection (CBP) stamp evidencing their lawful permanent residence for a full year from the date the new immigrant entered the U.S. This visa with CBP stamp serves as evidence of LPR status, so long as the visa is not expired.

   b. Since 1997, USCIS has issued the 551 with a 10-year validity, at which time it expires and must be renewed. A 551 issued between 1979 and August 1989, however, does not have an expiration date.

      Replacing the 551 may be necessary if the 551 is lost, the individual changes his/her name, etc. Replacement of the 551 may take more than a year. The expiration of the immigrant's 551 does not affect the LPR status of the immigrant. Acceptable forms of evidence when the 551 has been submitted to USCIS for replacement or renewal upon expiration include the following:

      i. Temporary I-551 stamps. A temporary stamp, issued by USCIS to replace lost or expiring 551s, either on the immigrant's unexpired foreign passport (that reads "Upon endorsement, serves as temporary I-551 evidencing permanent residency for 1 year"), or in cases where there is no passport or it is expired, on Form I-94 with passport photo (that reads "Processed for I-551 – Temporary Evidence of Lawful Permanent Residence");

      ii. USCIS Form I-327, "Re-entry Permit," issued to LPRs in lieu of a visa, which is valid for only 2 years (the I-327 is issued for LPRs who need to be overseas for longer than 1 year); or

      iii. USCIS Form I-797, Notice of Action. Aliens with Conditional LPR status (those who married a U.S. citizen and were married for less than 2 years at the time of being granted LPR status) must file Form I-751 to remove conditional status within 90 days of their 551 expiration. LPRs awaiting approval of their I-751 should be issued Form I-797, which along with the expired 551, is proof of current LPR status. Please note that there are numerous types of Form I-797 (e.g., I-797A, I-797-B, I-797C, etc.). For purposes of removing conditional status, only I-797 is acceptable.

   c. SBA requires the 551 or an acceptable substitute be current at the time it is submitted with an application or it will be returned and not processed. SBA

Lenders processing a loan under delegated authority or through a Pilot Loan Program must have a copy of the current 551 or acceptable substitute prior to requesting a loan number.

3. Documentation to evidence and verify an alien's status.

   a. At time of application, for any individual who is not a U.S. citizen and is located in the U.S., and is required to complete the SBA application, the following applies:

      i. The individual must provide his or her alien registration number on the SBA application. If the individual does not have an alien registration number, he or she may provide an I-94 card/document which has a departure record number issued on the card.

      ii. SBA Lenders must obtain a copy of the individual's USCIS documentation and maintain all documentation in the loan file.

      iii. SBA Lenders must request Document Verification from the Sacramento Loan Processing Center (SLPC).

         a) In order to request Document Verification from the SLPC, all SBA Lenders must register designated personnel with the SLPC at Sacramento504Register@sba.gov.

         b) The SLPC will respond to such requests by providing instructions on how to complete registration and to use the electronic verification process.

         c) The SBA Lender submits a USCIS Form G-845, "Document Verification Request," (G-845) with supporting information to the SLPC. The SBA Lender must state on the G-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 SBA Lenders or other non-governmental entities ONLY when a signed and dated authorization from the alien is attached to and submitted with the G-845 on that alien providing name, address, and date of birth.

         e) 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 SBA 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 SBA Lender], because I am applying for a U.S. Small Business Administration loan."

      iv. As required by USCIS, all verification requests must include an authorization with the original signature of the alien for SBA to release information to

SBA Lenders on the status of a verification. The original Document Verification Request (G-845) and authorization for release must be maintained by the SBA Lender in the Applicant's file for review by SBA and USCIS, if requested.

v. The authorization statement must not be on SBA or SBA Lender stationery.

vi. 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.

b. SBA 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 SBA Lender must document the findings in the loan file and delegated SBA Lenders must retain the notification from the SBA in the Borrower's 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, for 7(a), SBA Form 1919, Questions 17, 18, or 19, or for 504, SBA Form 1244, Section Two, Questions 2, 3, or 4, 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.

d. Businesses with ownership that includes foreign nationals or foreign entities may be eligible only if the business is at least 51% owned by U.S. citizens and/or those who have LPR status from USCIS and control the management and daily operations of the business.

CHAPTER 4: USES OF PROCEEDS

A. ELIGIBLE USES OF PROCEEDS

13 CFR 120.120

1. A Borrower may use loan proceeds from any SBA Loan to:
    a. Acquire land (by purchase or lease) as part of an eligible project;
    b. Improve a site (e.g., grading, streets, parking lots, landscaping) including up to 5 percent for community improvements such as curbs and sidewalks;
    c. Purchase one or more existing buildings;
    d. Convert, expand, or renovate one or more existing buildings;
    e. Construct one or more new buildings;
    f. Acquire (by purchase or lease) and install fixed assets;
    g. Refinance certain outstanding business debts; and/or
    h. Finance a Lender's Other Real Estate Owned (OREO):

        When loan proceeds will be used to finance the purchase of real estate owned by the 7(a) Lender; or for 504, the Third Party Lender, making the loan, the application must:

        i. Be submitted to the SBA loan processing center (delegated authority may not be used to process these applications);
        ii. Include an independent real estate appraisal that meets the SBA Loan Program Requirements (the appraisal requirement cannot be delayed until loan closing). For 7(a), the appraisal must also provide the liquidation value of the real estate.

            Note: For 7(a), the appraisal requirements are found in the collateral section of each 7(a) delivery method chapter found in Section B, Chapters 1 through 4 of this Part. For 504, the appraisal requirements are found in Section C, Ch. 1, Para. E.2 of this Part;
        iii. Include an explanation of the circumstances surrounding the 7(a) Lender or 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 SBA Lender must submit a detailed explanation of why the new Applicant will succeed at that same location; and
        iv. For 7(a): Identify the SBA 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 will be 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%

2. For 7(a) only, Borrower may also use loan proceeds for:
   a. Inventory;
   b. Supplies;
   c. Raw materials (including work-in-progress);
   d. Working capital (if the Operating Company is a co-Borrower with the Eligible Passive Company, part of the loan proceeds may be applied for working capital and/or the purchase of other assets, including intangible assets, for use by the Operating Company). **Working capital proceeds may not be used to refinance existing debt or to finance any ineligible purpose**;
   e. Revolving lines of credit under CAPLines, SBA Express, Export Express, and the Export Working Capital Program (EWCP);
   f. Standby Letter of Credit when required as a bid bond, performance bond, or advance payment guarantee under Export Express or EWCP.
3. Farm Enterprises

   13 CFR § 120.103

   a. The purchase of land, buildings, and land improvements (fencing, irrigation systems, construction of dikes, silos, barns, hog and dairy facilities, etc.) as part of an eligible project;
   b. Construction, renovation, or improvement (including water systems) of farm buildings other than residences;
   c. For 7(a) only:
      i. The purchase of farm machinery and equipment;
      ii. The purchase of seed and the acquisition of animals;
      iii. Operating expenses directly related to the farming operation, excluding personal or family living expenses; and
   d. The refinancing of debt related to the farming operation, excluding personal or family debt, provided the refinancing meets SBA Loan Program Requirements. Note: For 7(a), the requirements for eligibility of debt refinancing are found in the Eligible Uses of Proceeds section of each 7(a) delivery method chapter found in

Section B, Chapters 1 through 4 of this Part. For 504, the requirements for eligibility of debt refinancing are found in Section C, Ch. 1, Para. C of this Part;

Note: The acquisition of land in excess of the farming operation's needs is not an eligible use of proceeds. In addition, the Applicant must not use loan proceeds to purchase vacant or row crop land for possible future use, future construction, or to lease to third parties. For example, a concentrated animal feedlot operation (CAFO) that only requires 10 acres of land for its operation (including housing and feeding of the animals, service and access roads, and waste management facilities) may not use SBA-guaranteed loan proceeds to obtain excess farmland that is not used in the operation of the Applicant. If excess land is being acquired at the same time as the SBA Loan, the excess land must be financed from sources other than SBA and the source of the financing must be documented in the loan file.

B. RESTRICTIONS ON USES OF PROCEEDS

13 CFR § 120.130

Loan proceeds may not be used for any of the following purposes (including the replacement of funds used or borrowed for any such purpose):

1. A purpose that does not benefit the Applicant small business, including a loan to an Applicant for the benefit of an affiliated business;
2. Payments, distributions, or loans to an Associate of the Applicant (as defined in 13 CFR § 120.10), except for compensation for services actually rendered at a fair and reasonable rate;
3. Refinancing debt owed to an SBIC or a New Markets Venture Capital Company (NMVCC);
4. Floor plan financing;
5. Revolving lines of credit, except under the Export Working Capital Program (EWCP), CAPLines, SBA Express, and Export Express programs;
6. Investments in real or personal property acquired and held primarily for sale, lease, or investment;
7. Payment of Delinquent Taxes; or
    a. Loan proceeds must not be used to pay past-due Federal, state, or local payroll taxes, sales taxes, or similar taxes that are required to be collected by the Applicant and held in trust on behalf of a Federal, state, or local government entity.
    b. Payment of delinquent business income taxes may be permitted if the Applicant has an approved payment arrangement with the IRS and the Applicant is current on the payments in the arrangement.
8. To finance the relocation of the Applicant 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 SBA 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.

9. To pay any creditor in a position to sustain a loss causing a shift to SBA of all or part of a potential loss from an existing debt 13 CFR 120.201 and 13 CFR 120.884(b).

10. Any use restricted by 13 CFR §§ 120.201, 120.202, and 120.884 (specific to 7(a) loans and 504 loans respectively)

C. OCCUPANCY AND LEASING REQUIREMENTS

1. Occupancy

13 CFR § 120.131

a. Amount of Rentable Property that can be leased:

i. When the real estate is owned by the eligible small business concern:

a) For an existing building, the Applicant must occupy 51% of the Rentable Property and may lease to a third party up to 49%; or

b) For new construction, the Applicant must occupy 60% of the Rentable Property, may permanently lease to a third party up to 20% and temporarily lease an additional 20% with the intention of using some of the additional 20% within 3 years and all of it within 10 years.

ii. When the real estate is owned by an EPC:

a) The EPC must lease 100% of the Rentable Property to an eligible OC(s).

b) For an existing building, the OC(s) must occupy 51% of the Rentable Property and may sublease up to 49%; or

c) For new construction, the OC(s) must occupy 60% of the Rentable Property, may permanently sublease to a third party up to 20% and temporarily sublease an additional 20% with the intention of using some of the additional 20% within 3 years and all of it within 10 years.

b. "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 (dining 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.

i. To determine the occupancy percentage allocated to the Applicant or OC(s), the SBA Lender may include the square footage of all common areas.

ii. In an existing building zoned for both commercial and residential use, the business owner may either occupy or rent to a third party the space zoned for residential use. However, if the business owner occupies this space, it is not considered as occupied by the business, unless the residential portion of the property meets the requirements of subparagraph h, Residential Space as Part of the Business, below.

iii. The SBA Lender must document in its loan file the basis for determining that the exterior space is actively used in Borrower's business operations.

c. The SBA Lender must independently substantiate projected rental income when it is included in the global cash flow analysis.

d. Circumstances may justify allowing the Applicant 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.

For 504 loans, generally, closing and funding of the 504 loan must not take place until the Borrower is occupying the required amount of the Project property and the Borrower is operating at the Project property. A CDC may request SBA's approval to allow the Borrower additional time after closing and funding to meet the occupancy requirements by either:

i. Under non-delegated authority: Submitting information regarding the timing of the borrower's compliance with the occupancy requirements in the CDC Credit Memo; or

ii. Under non-delegated or delegated authority: Submitting a 327 action through E-Tran before the 504 loan closes and funds.

The underlying premise is that an SBA 504 loan is permanent, take out financing. A CDC must not submit a 504 closing package where the Borrower is not occupying and operating upon funding, unless facts to the contrary have been submitted to and approved by the SLPC in advance.

If SLPC approves such request under either i. or ii. above, once the Borrower is occupying the property in accordance with the Authorization, the CDC must submit a 327 action certifying the Borrower's compliance within the approved timeframe.

e. The restrictions above apply regardless of whether the Rentable Property is leased to a commercial or residential tenant.

f. The Borrower may not use loan proceeds to improve or renovate any of the Rentable Property to be subleased to a third party. For 504 loans, such improvements may not secure the Third Party Loan.

g. During the life of the loan, the real estate pledged as collateral for the loan, or where the Borrower or Operating Company conducts its business operations, may

not be leased to or occupied by any business that the Borrower or Operating Company knows is engaged in any activity that is illegal under Federal, state or local law or any activity that can reasonably be determined to support or facilitate any activity that is illegal under Federal, state or local law (such as a marijuana dispensary). If a Borrower or Operating Company does lease space to such a business, for 7(a) loans, the Lender must notify SBA counsel as soon as the Lender becomes aware of the lease and advise of the action(s) the Lender intends to take and, for 504 loans, the CDC must notify SBA counsel as soon as the CDC becomes aware of the lease to determine what action(s) should be taken.

h. 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 essential to the business. The square footage of the residential space must be appropriate to the needs of the business and may not exceed 49% of the total property. For example, a horse-boarding facility may require that someone be on premises at all times to care for the horses. In this case, the residential property would be considered to be occupied by the business.

2. Responsibilities When Leasing Space

a. An assignment of lease and Landlord's waiver should be obtained either 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.

i. The SBA Lender should obtain an Assignment of Lease with:

a) A term including renewal options, exercisable only by the lessee, that equals or exceeds the term of the loan;

b) A requirement that the lessor provide a 60-day written notice of default to the SBA Lender with option to cure the default;

ii. In the event that the SBA Lender is unable to obtain an Assignment of Lease in accordance with paragraph i. above, the lease term, including renewal options exercisable only by the lessee, must equal or exceed the term of the loan;

iii. The SBA Lender should obtain a Landlord's Waiver for all loans with tangible personal property as collateral. The Landlord's Waiver should:

a) Waive the lessor's right to the collateral;

b) Provide for written notice of default and a reasonable opportunity to cure; and

c) Grant the SBA Lender access to the leased premises to facilitates the liquidation of the collateral on the Borrower's premises.

b. 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:

   i. Tenant's right to encumber leasehold estate;

   ii. No modification or cancellation of lease without SBA Lender's or assignee's approval;

   iii. SBA 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 SBA Lender or successors; lessor may not unreasonably withhold, condition, or delay the reassignment;

      b) Sublease;

      c) Share in hazard insurance proceeds resulting from damage to improvements;

      d) Share in condemnation proceeds; and

      e) SBA Lender's or assignee's rights upon default of the tenant or termination.

c. For lease requirements concerning EPCs and OCs, see Chapter 2, Para. A, Eligible Passive Companies of this Section above.

d. 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.

e. If the SBA Lender is unable to obtain the assignment of lease or landlord's waiver, SBA Lender must document its file with the attempt to obtain the assignment and the landlord's reason(s) for not providing it.

CHAPTER 5: ETHICS, FEES, AND AGENTS

13 CFR Parts 103, 105, and 120.

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).

A. ETHICAL REQUIREMENTS

1. Conflicts of Interest:

   Neither an SBA Lender nor its Associates may have a real or apparent conflict of interest with a small business with which it is dealing or SBA (13 CFR § 120.140 and 13 CFR Part 105). SBA Lenders 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 SBA Lender, its Associates, partner(s), or a close relative:

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

   SBA is released from liability on its guaranty, in its discretion, if the SBA Lender, its Associates, partner(s) or a close relative acquires such an interest at any time during the term of the loan.

2. Standards of Conduct Reviews for Applicants

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

   b. If an Applicant has, as an employee, owner, general partner, managing member, 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)

   c. If an Applicant has, as its sole proprietor, general partner, managing member, 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:

      i. The spouse of the Employee;

      ii. The minor children of the Employee; and

      iii. 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)

d. If an Applicant has, as its sole proprietor, general partner, managing member, 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 or employee 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).

e. 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 SBA Lender accordingly.

3. Other Government Employees:

a. The Applicant must submit to the SBA Lender a statement of no objection signed by the appropriate **ethics official** of the pertinent department or military service if its sole proprietor, general partner, managing member, 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) in a grade of at least GS-13 (or its equivalent).

b. SBA Lenders must submit the statement as a PDF attachment to SNOMemos@sba.gov and receive written clearance from SBA prior to submitting the application to the SBA loan processing center (non-delegated) or processing the application under their delegated authority. SBA Lenders processing a loan under non-delegated procedures must submit a copy of SBA's written clearance with the application to the SBA loan processing center. (13 CFR § 105.301(a)) SBA Lenders processing a loan under delegated procedures must retain SBA's written clearance in the loan file. SBA will review the statements when conducting lender oversight activities and, for 7(a) loans, the statement must be included in any request for SBA to honor its guaranty in the event of default by the Borrower.

B. DEBARMENT, SUSPENSION, AND EXCLUSION (SAM.GOV)

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. See 2 CFR Part 180, adopted by reference in 2 CFR Part 2700 (SBA Debarment Regulations).

SBA Lenders are responsible for consulting the System for Award Management's Exclusions (SAM Exclusions) or any successor system to determine if any of the following have been suspended, debarred, revoked, or otherwise excluded by SBA or another Federal agency. (www.sam.gov/SAM/).

1. Evidence of the SAM Exclusions search (for example, a screen shot of the search results) for each of the following must be documented in the loan file:
    a. Agents;
    b. Small business Applicant;
        i. For a sole proprietorship, the sole proprietor;
        ii. For a partnership, all general partners; limited partners owning 20% or more of the equity of the firm; or any partner that is involved in management of the Applicant business;
        iii. For a corporation, all owners of 20% or more of the corporation, and each officer and director;
        iv. For limited liability companies, all members owning 20% or more of the company; each officer; director; and managing member;
        v. Any Key Employee;
        vi. Any Trustor (if the Applicant business is owned by a trust); and
        vii. The legal entity, when 20% or more ownership interest in the applicant is held by a corporation, partnership, or other form of legal entity.
2. Evidence of the SAM Exclusions search (for example, a screen shot of the search results) for each of the following must be documented in the SBA Lender's files. The SAM Exclusions search is only required once and must be completed prior to the entity or person's first day of work on SBA-related business.
    a. SBA Lender's employees;
    b. For 7(a), Lender Service Providers (LSP) and LSP employees; and
    c. For 504, contractors who are providing services to the CDC under an SBA-approved professional services contract in accordance with 13 CFR § 120.824. See Para E.6.a., Professional Services Contractors, in this Chapter for more information.

C. 7(A) LOAN PROGRAM FEES

1. Fees the Lender Pays SBA

SBA Guaranty Fee and the 7(a) Lender's Annual Service Fee. (13 CFR § 120.220) The 7(a) Lender is responsible for payment to SBA of the upfront SBA guaranty fee and the Annual Service fee (also known as the "SBA On-Going Guaranty Fee") in order to obtain and maintain the SBA guaranty.

a. SBA Guaranty Fee (Upfront fee).

The SBA guaranty fee is the fee a 7(a) Lender must pay to SBA for each loan guaranteed under the 7(a) program. The 7(a) Lender is permitted to pass the cost of the SBA upfront guaranty fee to the Borrower. 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 below or contact the processing center or Lead District Office.

The Borrower may use loan proceeds to pay the guaranty fee; however, the first disbursement may not be made primarily for the purpose of paying the guaranty fee. If the Borrower plans to use loan proceeds to pay the guaranty fee, the Authorization must include a Use of Proceeds category for this purpose. *Note: When an escrow closing is used, the* 7(a) *Lender may charge the Borrower the guaranty fee only when all loan funds have been disbursed to the Borrower from the escrow account.*

i. Calculation of the SBA Guaranty Fee.

The total loan amount determines the percentage that is used to calculate this fee. However, 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.

SBA 7(a) GUARANTY FEE CHART

Gross Loan Size	FEES (See Note 1)
Loans of $150,000 or less (Maturity more than 12 months) (See Note 2)	2% of guaranteed portion 7(a) Lender is authorized to retain 25% of the fee.
$150,001 to $700,000 (Maturity more than 12 months)	3% of guaranteed portion
$700,001 to $5,000,000 (Maturity more than 12 months) (See Note 3)	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 (Maturity of 12 months or less)	0.25% of the guaranteed portion

Note 1: SBA specifies the amount of certain fees each fiscal year for all loans approved during that year.

Note 2: 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 7(a) Lender may retain $425.

Note 3: 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.

ii. Guaranty Fee Calculation for Multiple Loans Within 90 Days.

a) If more than one loan (with maturities exceeding 12 months) is approved for an Applicant, including loans approved to its affiliates, within 90 days of each other, the loans are considered as one loan for the purpose of determining the percentage of guaranty and the guaranty fee calculation. This rule applies regardless of whether the loans were approved by the same or different 7(a) Lenders.

b) When two or more loans are approved within 90 calendar days of each other, the applicable fee for the subsequent loans is equal to the guaranty fee that would have been charged had all the loans been combined into one loan. The applicable fee for the subsequent loan(s) will equal the amount of the fee that would have been charged had the loans been combined, less the amount of the fee from the first loan approved.

c) 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.

d) 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.

e) This rule also applies to any subsequent increases to either of the loans made within the 90 day period, even if one of the loans subsequently is paid in full.

iii. When the Guaranty Fee Must be Paid (13 CFR § 120.220(b)):

The 7(a) Lender must pay the guaranty fee to SBA as follows:

a) Short-term loans (maturities of 12 months or less):

i) The 7(a) Lender must pay the guaranty fee through www.pay.gov within 10 business days from the date the SBA Loan Number is assigned. If the fee is not received within 10 business days after issuance of the SBA Loan Number, SBA will cancel the guaranty.

ii) For EWCP loans re-issued after 12 months, each time the loan is re-issued it is a new loan, and another guaranty fee is due. SBA earns the short-term guaranty fee when the SBA loan number is issued.

iii) The 7(a) Lender may only charge the guaranty fee to the Borrower after the 7(a) Lender has paid the guaranty fee.

b) Loans with maturities in excess of 12 months:

i) The 7(a) Lender must pay the guaranty fee to SBA within 90 days of the date of loan approval. If the guaranty fee is not paid within 90 days, the guaranty will be cancelled. The 7(a) Lender may charge the guaranty fee to the Borrower after initial disbursement; however, the first disbursement may not be made solely or primarily for the purpose of paying the guaranty fee.

ii) Notification of Fee Due: The Authorization is the SBA 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 7(a) Lender

when the guaranty fee has not been received by SBA within the required time frame. Neither the issuance by SBA of any notice of non-payment nor the receipt of any notice of non-payment by the 7(a) Lender waives the 7(a) 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 7(a) Lender.

c) THE DUE DATE FOR GUARANTY FEE PAYMENT MAY NOT BE WAIVED OR EXTENDED EVEN IF THE DISBURSEMENT PERIOD IS EXTENDED.

iv. Additional Guaranty Fee for Loan Increases.

a) 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).

b) The additional guaranty fee associated with the increase must be paid electronically within 30 days from the date the increase was approved, or the total loan guaranty will be cancelled.

c) 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.

v. Additional Guaranty Fee for Extensions of Short-Term Loans.

a) When the maturity of a short-term 7(a) loan is extended beyond 12 months, an additional guaranty fee is due. The 7(a) Lender may contact the appropriate SBA CLSC for assistance. The additional fee must be paid electronically within 30 days from the date the 7(a) Lender agrees to the extension or the total loan guaranty will be cancelled. The 7(a) Lender may charge the additional fee to the Borrower after the 7(a) Lender has notified SBA that the maturity has been extended and has paid the additional guaranty fee.

b) 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.

vi. Method of Guaranty Fee Payment.

The 7(a) Lender must electronically pay the guaranty fee 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. Any questions regarding this requirement can be emailed to payment.services@sba.gov.

vii. Reinstatement of Guaranty After Cancellation.

If SBA cancelled its guaranty because the 7(a) Lender did not pay the guaranty fee, the 7(a) Lender may request that SBA consider reinstating its guaranty. The 7(a) Lender must submit a written request to either the LGPC or the appropriate SBA CLSC in accordance with Section B, Ch 5, "Authorization through Disbursement for all 7(a)Loans" of this Part. If SBA reinstates the guaranty, the required guaranty fee must be electronically paid within 30 days from the date of reinstatement or the guaranty will be cancelled. The request must include the following:

a) SBA Loan Number and the SBA Loan Name;

b) A certification that there has been no unremedied adverse change in the financial condition, organization, operations, or fixed assets of the Borrower or Operating Company since the date of application for guaranty;

c) If the loan has been disbursed in whole or in part, a certification that the loan is current, the 7(a) Lender has been reporting the loan on all SBA Form 1502 monthly reports since the loan was disbursed, and the 7(a) Lender has been paying the SBA on-going guaranty fee in a timely manner on this loan; and

d) A complete written explanation as to why the 7(a) Lender failed to pay the guaranty fee and what the 7(a) Lender has done to correct any deficiencies in its procedures.

viii. Guaranty Fee Refunds (13 CFR §120.220(c)).

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 7(a) Lender to decrease the approved amount must be approved by SBA prior to the date the loan is closed and initially disbursed by the 7(a) Lender in order for the guaranty fee to be reduced. The 7(a) Lender must submit a request to the appropriate SBA CLSC via E-Tran for an adjustment to the approved amount of the loan and guaranty fee.

a) Full refund: The guaranty fee may be refunded only for a loan with a maturity of more than 12 months and when the loan has not been closed and initially disbursed and the 7(a) Lender submits a written request to SBA to cancel the guaranty. Once a loan has been initially disbursed, no refund is permitted.

b) 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.

b. 7(a) Lender's Annual Service Fee ("SBA On-Going Guaranty Fee") (13 CFR § 120.220(f)).

The 7(a) Lender is required to pay SBA an annual service fee ("on-going guaranty fee"). The fee is based on the outstanding principal balance of the guaranteed portion of the loan at the time of SBA Loan approval. 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.

The 7(a) Lender pays this fee on a monthly basis with submission of SBA Form 1502, "Guaranty Loan Status and Remittance Form." (For further guidance on SBA Form 1502 reporting, see Part 1, Section A, Ch 3, Lender Financing and Operations of this SOP.) SBA may charge the 7(a) Lender a late fee if the on-going guaranty fee is not paid timely.

For EWCP payment options, see Section B, Ch. 4, Para. B.5.e., Payment Options for EWCP Ongoing Guaranty Fee of this Part.

Note: The fee will be listed in the Authorization and, unless SBA drafts and executes the Authorization, it is the 7(a) Lender's responsibility to ensure that the Authorization includes the correct fee.

2. Fees and Expenses the Lender May Collect from the Applicant or Borrower

In 13 CFR § 120.221, SBA provides specific guidance on the fees a 7(a) Lender or its Associates may collect from an Applicant or Borrower in connection with an SBA-guaranteed loan.

a. Packaging Fees 13 CFR § 120.221(a)

A 7(a) Lender may charge an applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging. "Packaging services" include assisting the Applicant with completing one or more applications, preparing a business plan, cash flow projections, and other documents related to the application. The 7(a) Lender must complete an SBA Form 159 in accordance with Paragraph D.8., Disclosure of Fees – SBA Form 159, in this Chapter.

The fees a 7(a) Lender may charge an Applicant for packaging services:

i. Must be reasonable and customary for the services actually performed;

ii. Must be consistent with those fees the 7(a) Lender charges on its similarly-sized, non-SBA guaranteed loans; and

iii. May be based on an hourly rate or on a percentage of the loan amount. In either case, all fees over $2,500 must be supported by documenting the service performed.

a) For fees charged on an hourly rate, there is no maximum, but the fees must be reasonable and customary for the services actually performed. The hourly rate and time spent on each service must be documented.

b) For fees charged based on a percentage of the loan amount, the fee may not exceed:

i) 3% on loans of $50,000 or less;

ii) 2% for loans between $50,000 and the first $1,000,000 and 0.25% on the portion over $1,000,000; however,

iii) The maximum fee that may be charged to an Applicant on a percentage basis is $30,000.

iv. SBA does not allow a 7(a) Lender to charge an Applicant:

a) A standard or flat fee charged to all Applicants;

b) A contingency fee (fees paid only if the loan is approved or closed);

c) For services that are not reasonably necessary in connection with an application;

d) For costs associated with underwriting the loan, including the completion of the 7(a) Lender's analysis and SBA Form 1920, "Lender's Application for Guaranty for all 7(a) Loan Programs."; or

e) For consulting as to what financing is needed and what type, or broker or referral fees. This prohibition also applies to Associates of the 7(a) Lender.

The 7(a) Lender may not split a loan into two loans for the purpose of charging an additional fee to the Applicant. Even if there is a legitimate business need for the Applicant's loan request to be split into two loans (e.g., a term loan and a line of credit), the 7(a) Lender may only charge the Applicant one fee within the maximums set forth above, based on the combined loan amounts. However, it is not SBA's intention to restrict a 7(a) Lender from charging a new fee if an Applicant subsequently returns to the 7(a) Lender to apply for a new loan for a different project or purpose. (Loans approved more than 90 days apart are considered to be for a different project or purpose.)

b. Extraordinary Servicing Fee. 13 CFR § 120.221(b)

i. A 7(a) Lender may not 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 of the loan 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. In addition, if the 7(a) Lender charges an extraordinary servicing fee on its similarly-sized, non-SBA guaranteed commercial loans, it may not charge a higher fee on its SBA-guaranteed loans. If the 7(a) Lender does not charge an extraordinary servicing fee on its similarly-sized, non-SBA guaranteed commercial loans, it may not charge an extraordinary servicing fee on its SBA-guaranteed loans.

ii. A 7(a) Lender may charge extraordinary servicing fees in excess of 2% for EWCP or Working Capital CAPLine loans that are disbursed based on a Borrowing Based Certificate. The fees charged must be reasonable and prudent based on the level of extraordinary effort required and must not be higher than the fees charged on the 7(a) Lender's similarly-sized, non-SBA guaranteed commercial loans.

iii. 7(a) Lenders must obtain SBA's prior written approval for the fees in subparagraph b.i. and b.ii. above and must include the extraordinary servicing fees to be charged to administer the loan/line in its credit memorandum. 7(a) Lenders submitting applications under delegated authority must enter the amount of the fee to be charged in E-Tran and certify in the credit memorandum 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 7(a) Lender oversight activities and at time of guaranty purchase. If SBA determines the fee is excessive, the 7(a) 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.

iv. The following actions do not qualify as extraordinary servicing and therefore a participating 7(a) 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.

v. Past due financial statements: SBA does not permit a 7(a) Lender to charge a default interest rate or a separate servicing fee for past due financial statements. 7(a) 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 may require a servicing action by the 7(a) Lender. At that time, the 7(a) Lender can require past due financial statements.

c. Out-of-Pocket Expenses. 13 CFR § 120.221(c)

i. 7(a) Lenders may be reimbursed by the Borrower for all direct costs including UCC filings or recording fees, photocopying, delivery charges, collateral appraisals and environmental investigation 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 review.

ii. 7(a) Lenders may be reimbursed by the Applicant for the direct costs (including reasonable overhead) of legal services performed by the 7(a) Lender's in-house counsel in connection with an SBA-guaranteed loan, but in no event may the 7(a) Lender be reimbursed for an amount that would exceed the cost of outside counsel.

iii. In accordance with 13 CFR § 120.221(e), charges for legal services (regardless of who provides the service) must be charged on an hourly basis. The 7(a) 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.

iv. Fees associated with technology services (whether developed internally or purchased from a third party) are not considered to be out-of-pocket expenses and may not be passed on to the Borrower or paid for out of SBA-guaranteed loan proceeds. Examples of technology services fees that may not be passed on to the Borrower or paid for out of SBA-guaranteed loan proceeds include:

a) The costs or fees for software or technology used in connection with preparing SBA loan documents, underwriting, or closing the SBA-guaranteed loan;

b) Acquisition costs or fees for licensing software or software platforms to 7(a) Lenders solely for the purpose of performing administrative functions (not including any underwriting functions), such as generating SBA-required forms; and

c) Fees associated with entities that develop systems or lending platforms to automate the 7(a) Lender's internal loan decision making process, including but not limited to the use of basic credit algorithms or data-based scoring/models where the 7(a) Lender inputs Applicant data in order to determine eligibility or creditworthiness.

Note: SBA does not consider entities providing technology services that do not include underwriting to be Agents. Entities providing technology services that include underwriting are considered to be LSPs and must be providing their services to the 7(a) Lender under an SBA-reviewed LSP Agreement. See Paragraph D.6, Lender Service Provider Agreements, in this Chapter for more information.

v. Direct costs associated with out-of-pocket expenses described in this section in connection with the loan closing should not be reported on SBA Form 159, but must be itemized in the loan file and available for SBA review either at time of guaranty purchase or when conducting lender oversight activities.

d. Late Payment Fee. 13 CFR § 120.221(d)

7(a) 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 7(a) 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.

e. Assumption Fee.

7(a) Lenders should review SBA's SOP 50 57, 7(a) Loan Servicing and Liquidation, for procedures to process an assumption request.

i. In the case of an assumption of the loan by another entity, 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 7(a) Lender to retain an existing loan, SBA allows a 7(a) Lender to charge an assumption fee that is consistent with its assumption fee the 7(a) Lender charges on its non-SBA guaranteed loans. The fee must be reasonable in relation to services provided and cannot exceed 1 percent 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.

ii. This fee may be paid by the seller or the assumptor.

f. SBA Express and Export Express Fee Policy.

i. The SBA guaranty and on-going servicing fees are the same for SBA Express and Export 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 C.2. Fees and Expenses the Lender May Collect from the Applicant or Borrower, in this Chapter above. In addition, the 7(a) Lender may charge the same fees for SBA Express and Export 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 in accordance with paragraph D.8., Disclosure of Fees – SBA Form 159, in this Chapter below.

ii. As with Standard 7(a) Loans, 7(a) 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 2.b. above.

iii. Renewal fees are not permitted.

iv. 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 7(a) Lender requests that SBA honor its guaranty on an SBA Express and Export 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.

3. Fees the Borrower Pays to SBA

Subsidy Recoupment Fee 13 CFR § 120.223

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 more than 25% of its loan in any 1 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. SBA does not consider death that results in a prepayment a voluntary occurrence. No determination by SBA is required in this circumstance, and the 7(a) Lender must confirm and document their file. If the 7(a) Lender otherwise believes that the prepayment of the loan is not voluntary, the 7(a) Lender may submit a request for a determination, with the 7(a) Lender's supporting analysis, to the appropriate CLSC. The CLSC will submit the request, along with its recommendation to the Director of the Office of Financial Program Operations (D/OFPO) and the D/FA for a joint determination as to whether a prepayment is involuntary.

4. Prohibited Fees

Any fee not expressly permitted in 13 CFR § 120.221 is prohibited. For example, 7(a) Lenders and/or their Associates may not:

a. Require the Applicant or Borrower to pay the 7(a) Lender, a 7(a) Lender's 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. Charge prepayment fees;

e. Charge renewal fees; or

f. Share any portion of the premium received from the sale of an SBA-guaranteed loan in the Secondary Market with a Service Provider, Packager, or other non-employee loan referral source.

D. 7(A) LOAN PROGRAM AND USE OF AGENTS

SBA permits a third party to charge an Applicant fees for packaging and other services. Prior to any services being provided, the 7(a) Lender must advise the Applicant in writing that the Applicant is not required to obtain or pay for unwanted services.

1. Use of Agents in the 7(a) Loan Program

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 of the Agent's privilege to conduct business with SBA.

i. SBA expects 7(a) Lenders to exercise due diligence and prudent oversight of their third party vendors, including LSPs, and other loan agents.

ii. Prudent oversight should include having written policies governing such relationships and monitoring performance of loans referred by an Agent or where an Agent provided assistance.

iii. SBA will review evidence of such due diligence and oversight of such relationships when conducting lender oversight activities.

iv. Federally-regulated 7(a) Lenders are reminded that they must comply with the requirements of their primary Federal Financial Institution Regulator regarding third party vendors.

b. The Director of SBA's Office of Credit Risk Management may, for good cause, suspend or revoke the privilege of an Agent to conduct business with the government. The suspension or revocation will remain in effect during any administrative proceedings under SBA regulations at 13 CFR Part 134. The meaning of "good cause" can be found at 13 CFR § 103.4.

c. Agents and Privacy Act Considerations.

Proprietary information is protected by the Right to Financial Privacy Act and the Privacy Act. Private information about a loan cannot be discussed with anyone who claims to be an Agent for an Applicant or 7(a) Lender without evidence of representation. SBA may require that an Agent supply written evidence of his or her authority to act on behalf of an Applicant or 7(a) Lender as a condition of revealing any information about the Applicant's or 7(a) Lender's current or prior dealings with the SBA.

d. Employment of Agent Initiated by Applicant.

7(a) Lenders and Agents must clearly inform any Applicant that the SBA does not require the use of an Agent for packaging or referring a loan application. When an Applicant employs an Agent:

i. The Agent may bill and be paid by the Applicant for providing packaging services as long as compensation is reasonable and customary for those services; the compensation complies with SBA Loan Program Requirements; and the compensation is not contingent on the loan being approved or closed.

ii. The Agent who works for an Applicant as a packager may also work as a Loan Referral Agent for the Applicant and receive a referral fee from the Applicant. However, if the Agent performs multiple services for the Applicant, the total fee for all services may not exceed the stated maximums in paragraph D.7. below.

iii. The Agent may be a Loan Referral Agent for a 7(a) Lender and a Packager for an Applicant, provided both the Applicant and the 7(a) Lender are aware of both relationships, and the Agent does not receive a referral fee from the Applicant or a packaging fee from the 7(a) Lender.

e. Employment of Agent by 7(a) Lender (not an LSP).

i. When a 7(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 7(a) Lender may use an Agent.

ii. The compensation for these services should be reasonable and customary for the services actually provided and compensation for services associated with preparation of the application through loan closing cannot be contingent upon the loan being approved or closed by SBA.

iii. The Agent must bill and be paid by the 7(a) Lender for all services and the 7(a) Lender may not pass these charges through to the Applicant or pay them with SBA-guaranteed loan proceeds under any circumstances.

2. Agents

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 individual or entity representing an Applicant or participant by **conducting business with SBA**.

b. For Lender Service Providers, SBA reviews the written agreement between the Lender and the Lender Service Provider, thus SBA Form 159 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 Applicant.

c. For all other Agents paid by either an Applicant or a Lender, SBA Form 159 must be completed and signed by the Applicant and the Lender. For each Agent paid by the 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 and the Lender and Applicant must sign the form.

d. The only situation where an Agent can receive compensation from both the Lender and the Applicant is when the Agent is providing different services by providing packaging services to the 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 closed) or charges for services which are not reasonably necessary in connection with an application.

3. 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, but not both. 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.

4. Packager

13 CFR § 103.1(e)

a. "Packager" means an Agent who is employed and compensated by an 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.

5. 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 exercises day-to-day responsibility for evaluating, processing, closing, disbursing, servicing, liquidating, and litigating its SBA portfolio. SBA determines whether or not an Agent is an LSP on a loan-by-loan basis. If an Agent meets the definition of an LSP, a formal agreement between the Agent and Lender is required and must be reviewed by SBA.

c. All participating Lenders must submit each LSP agreement to the LGPC for review. Lenders may submit the agreements to LSPagreements@sba.gov. If there are any changes to an LSP agreement after review by SBA, the Lender must submit the revised agreement to SBA for review.

d. SBA will investigate any complaint by an Applicant, Lender, or any other participant in an SBA program, concerning the activity, services completed, or fees charged by any LSP.

e. SBA reserves the right to audit compliance with any SBA-reviewed LSP agreement.

6. **Lender Service Provider Agreements**

   13 CFR § 103.1(d)

   A 7(a) Lender may contract with a third party LSP to assist the 7(a) Lender with one or more lender functions. The LSP must perform these services under a written LSP Agreement between the 7(a) Lender and the LSP that must be submitted to SBA for review.

   a. A 7(a) Lender must have a continuing ability to evaluate, process, close, service, liquidate and litigate small business loans (13 CFR § 120.410).

   b. The 7(a) Lender itself, not the LSP, bears full responsibility for all aspects of its SBA Loan operation and must be able to demonstrate that it exercises day-to-day responsibility for evaluating, processing, closing, disbursing, servicing, liquidating, and litigating its SBA portfolio.

   c. An LSP may only receive compensation from the 7(a) Lender for services provided under an SBA-reviewed LSP Agreement. Such charges must not be passed on to the Applicant or paid out of the SBA-guaranteed loan proceeds.

   d. Services performed by the LSP for the 7(a) Lender in accordance with the LSP Agreement are not reported on SBA Form 159. (13 CFR § 103.5(c)).

   e. The following are examples of when SBA considers an Agent to meet the definition of an LSP:

      i. An individual or entity engaged by a 7(a) Lender to provide services for the purposes of obtaining Federal financial assistance that include interaction with the Applicant either in-person or through the use of technology, to request or obtain eligibility and/or financial information that will be provided to the 7(a) Lender. This includes Agents who:

         a) Perform any pre-qualification review based on SBA's eligibility and credit criteria or the 7(a) Lender's internal policies prior to submitting the Applicant's information to the 7(a) Lender; or

         b) Provide to the 7(a) Lender an underwritten application, whether through the use of technology or otherwise.

      ii. Entities providing technology services to a 7(a) Lender that include underwriting.

      iii. An individual or entity generates a significant number of the 7(a) Lender's loan originations. As a general rule, SBA considers a "significant number" to be two-thirds (66%) or more of the 7(a) Lender's loan originations for the prior 12 months.

      Note: SBA does not consider entities providing technology services that do not include underwriting to be Agents.

   f. SBA will investigate any complaint by an Applicant, 7(a) Lender or any other participant in an SBA program concerning the activity, services completed, or fees charged by any LSP.

g. An LSP Agreement may not grant the LSP power of attorney to act on behalf of the 7(a) Lender.

h. If the 7(a) Lender engages an LSP to handle its SBA Borrower payments:

   i. The funds must be held in an account in the 7(a) Lender's name, not the name of the LSP; however, consistent with the LSP Agreement, the LSP may be permitted limited access to the account in order to process Borrower payments;

   ii. For those loans where the guaranteed portion has been sold on the secondary market, the account also must be properly titled in accordance with SBA Form 1086, "Secondary Participation Guaranty Agreement."

   iii. The LSP may not commingle any funds from multiple lenders; there must be separate accounts for each of its lender clients.

   iv. The LSP may not net its fee out of any Borrower payments or other funds collected on the 7(a) Lender's behalf.

i. All participating 7(a) Lenders must submit each LSP agreement to the LGPC for review at LSPagreements@sba.gov. If there are any changes to an LSP agreement after review by SBA, the 7(a) Lender must submit the revised agreement to SBA for review. SBA reserves the right to audit compliance with any SBA-reviewed LSP agreement.

j. Upon the termination or cancellation of any LSP Agreement, a copy of the notification of termination must be sent to LSPagreements@sba.gov. The notification must include the date of termination and the 7(a) Lender's SBA Location ID.

k. SBA does not provide a form of LSP Agreement but expects 7(a) Lenders and LSPs to negotiate the terms of the contract to meet the needs of the 7(a) Lender. Each agreement must include the following:

   i. Identification of both parties including full legal name, trade name or dba, address, and contact person's name, address, phone number, email address, and the 7(a) Lender's Location ID Number.

   ii. Services: The contract must specifically identify the services that will be performed by the LSP.

   iii. 7(a) Lender's responsibility: There must be a statement that the 7(a) Lender bears full responsibility for all aspects of its 7(a) loan operation, including, but not limited to, approvals, closings, disbursements, servicing actions and due diligence. The LSP only provides assistance to the 7(a) Lender. If an LSP is authorized to access SBA's Capital Access Financial System (CAFS), including E-Tran, on behalf of a 7(a) Lender, the 7(a) Lender acknowledges it is responsible for all entries and certifications made into CAFS by the LSP.

   iv. If the 7(a) Lender plans to engage an LSP to handle its SBA Borrower payments, the LSP Agreement must describe the specific parameters governing the LSP's access to the funds;

v. 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) Fees related to assisting the 7(a) Lender with packaging, processing, or underwriting cannot be contingent on whether the loan is approved or closed.

b) The contract must state that all compensation paid to the LSP will be paid by the 7(a) Lender and that the 7(a) Lender and the LSP are prohibited from charging the Applicant for the same services.

c) **The 7(a) Lender and the LSP cannot share in any Secondary Market premium**.

d) The billing for loan packaging or for other loan processing services must identify the Applicant's name.

vi. Term: The full term of the contract including renewal 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 either party to terminate the contract prior to its expiration date on a reasonable basis (usually 60 days or sooner for cause).

vii. The contract also must include the following statements or disclosures:

a) The LSP will not assume a portion of the risk of the un-guaranteed portion of any loan.

b) Disclosure by the LSP of any affiliations with other financial institutions, commercial lenders, CDCs, CUSOs, other LSPs, or loan brokers.

c) Disclosures of any prior or existing relationship other than the contractual one created by the agreement, or a statement that no such relationship exists.

d) The agreement is subject to all applicable laws, regulations, and policies including all SBA Loan Program Requirements.

e) In the event this Lender Service Provider Agreement conflicts with any other contract or agreement between the parties, now or in the future, this Lender Service Provider Agreement will control with respect to the 7(a) Lender's SBA Loan portfolio.

viii. 7(a) Lenders are responsible for the actions of their LSPs and must ensure that they comply with all applicable laws and regulations governing confidentiality. 7(a) Lenders should consult with their Counsel on appropriate language to be included in their LSP Agreements.

ix. The contract must not evidence any actual or apparent conflict of interest or self-dealing on the part of any of the 7(a) Lender's officers, management, or staff.

7. Fees an Agent May Charge an Applicant for Packaging and Other Services

a. An Agent may charge an Applicant for:

i. Packaging services to assist the Applicant with completing one or more applications, preparing a business plan, cash flow projections, and other documents related to the application; and

ii. Other services that include consulting as to the amount and type of financing needed and broker or referral fees. (As stated above, the 7(a) Lender and its Associates are prohibited from charging an Applicant for these services.)

b. Regardless of who pays the Agent, the fees must be reasonable and customary for the services actually performed and, for those Lenders with non-SBA guaranteed portfolios, must be consistent with those fees charged on the 7(a) Lender's similarly-sized, non-SBA guaranteed commercial loans. If the 7(a) Lender does not charge a particular fee on its similarly-sized, non-SBA guaranteed commercial loans, it may not charge the fee on its SBA guaranteed loans.

c. An Agent may charge an Applicant fees for packaging and other services based on an hourly rate or on a percentage of the loan amount. In either case, all fees over $2,500 must be supported by documenting the service performed.

i. For fees charged to an Applicant on an hourly rate, there is no maximum, but the fees must be reasonable and customary for the services actually performed. The hourly rate and time spent on each service must be documented.

ii. For fees charged to an Applicant based on a percentage of the loan amount, the fee may not exceed (if multiple services are provided to the Applicant, the combined fee for all services cannot exceed the stated maximums below):

a) 3 percent on loans of $50,000 or less;

b) 2 percent for loans between $50,000 and the first $1,000,000 and 0.25 percent on the portion over $1,000,000; however,

c) The maximum fee that may be charged in the aggregate to an Applicant on a percentage basis is $30,000.

iii. SBA does not allow an Agent to charge an Applicant:

a) A standard or flat fee charged to all Applicants;

b) Contingency fees (fees paid only if the loan is approved or closed); or

c) For services that are not reasonably necessary in connection with an application.

d. SBA may review these fees at any time. Agents must refund any fee considered unreasonable or impermissible by SBA.

e. Review of Agent Fees.

i. 7(a) Lenders must review all services and related fees charged to either the 7(a) Lender or the Applicant by any Agent 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) An Applicant complains about the fees charged by an Agent.

ii. In cases where fees appear to be unreasonable or impermissible, 7(a) Lenders should contact the D/OCRM to report the fees.

iii. 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.

8. Disclosure of Fees – SBA Form 159

Section 13 of the Small Business Act (15 U.S.C. § 642) requires that an Applicant identify the names of Persons (as defined in 13 CFR 120.10) engaged by or acting on behalf of the 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 the Applicant, 7(a) Lender, and 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 Applicant or 7(a) Lender in any matter involving SBA assistance.

a. 7(a) Lenders must identify in E-Tran whether the 7(a) Lender charged any fees and whether an Agent was involved in any way with the transaction.

b. When an Agent was involved in the transaction, the 7(a) Lender must provide the name, street address, city, state, and zip code of the Agent. Failure to do so may result in a finding by OCRM when conducting lender oversight activities. SBA Form 159 can be generated using E-Tran.

c. For Agents other than LSPs performing duties under an SBA-reviewed LSP Agreement, if the Agent is paid by an Applicant or a 7(a) Lender, an SBA Form 159 must be completed in accordance with form instructions and signed by the Applicant, the Agent, and the 7(a) Lender. Separate SBA Forms 159 are required for each Agent who provides services to the Applicant. Failure of an Agent to fully complete and execute the required SBA Form 159 may result in suspension or revocation of the Agent's privilege to conduct business with SBA under13 CFR Part 103.

d. SBA Form 159 "Fee Disclosure Form and Compensation Agreement"

i. Information on this form will be used to monitor fees charged by Agents and the relationship between Agents and 7(a) Lenders. 7(a) Lenders must complete all appropriate data fields on SBA Form 159 in accordance with the

form instructions. For example, the seven-digit FIRS number must be included exactly as assigned by SBA and without any extra characters.

ii. If the aggregate compensation for all fees provided by the same Agent exceeds $2,500, the compensation must be itemized.

a) When an Agent charges an Applicant in connection with multiple applications (for example, an Applicant is seeking a term loan and a revolver):

i) Separate SBA Forms 159 must be completed for each application .

ii) Fees are aggregated to establish the $2,500 threshold for itemization.

b) When the Agent provides multiple services to an Applicant in connection with the same loan application (for example, an Agent is providing both loan packaging and referral services to the Applicant), each service must be separately reported on the same SBA Form 159. For example:

i) In the "Type of Agent" section, select both the "Independent Loan Packager" and the "Referral Agent/Broker" boxes; and

ii) In the "Type of Service" table, separately itemize the amounts paid in each appropriate box.

c) In-kind compensation (i.e., non-monetary contributions for goods or services) paid or to be paid to the 7(a) Lender must be itemized.

iii. The following are not considered Agents for purposes of this Agreement and are not required to complete SBA Form 159:

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 7(a) Lender to appraise collateral in connection with the SBA Loan;

c) An LSP performing services for the 7(a) Lender under an SBA-reviewed LSP agreement;

d) An individual who is a Qualified Source (see definition in Appendix 3) and employed by the 7(a) Lender to conduct an independent business valuation in connection with the SBA Loan;

e) An environmental professional employed by the 7(a) Lender to conduct an environmental assessment of the collateral in connection with the SBA Loan;

f) Any attorney in connection with the SBA Loan closing; and

g) A real estate agent who is receiving a commission for the sale of real estate in connection with the SBA Loan.

e. 7(a) Lenders must submit all SBA Forms 159 to the Fiscal Transfer Agent ("FTA"). This submission is required after the initial disbursement on the loan and must be submitted with the 7(a) Lender's SBA Form 1502 report within two SBA Form 1502 reporting cycles. The information must be emailed in either pdf or tif format to Form159@ColsonServices.com. 7(a) Lenders are required to retain an original signature version of the form in their files for compliance review purposes.

E. 504 LOAN PROGRAM FEES AND USE OF AGENTS

1. 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:

A written agreement between the CDC and the Applicant should include the following:

i. If the CDC or SBA declines the application, the deposit will be refunded in full within 10 business days after decline, including any period for reconsideration;

ii. If SBA approves the loan, the deposit may be applied toward the CDC processing fee described in 13 CFR § 120.883; and

iii. If the Applicant withdraws its loan application at any time before SBA issues the Authorization, the CDC may deduct its reasonable and necessary costs incurred in packaging and processing the loan application. Such costs must be documented and cannot be a percentage of the loan. Any remaining deposit balance must be remitted to the Applicant within 10 business days of the withdrawal.

c. A copy of the agreement must be placed in the CDC's file.

2. Allowable Fees

The fees that a 504 Borrower may be charged can be found at: 13 CFR §§ 120.971, 120.972, 120.883(e) and 120.882(g)(4) and are described in the table below.

Fees that a 504 Borrower May be Charged		
CDC Fees		
(1) Processing fee (Packaging fee)	Up to 1.5% of the Net Debenture	Paid by Borrower to CDC.

Fees that a 504 Borrower May be Charged		
(2) Closing Fee	Maximum of $2,500 may be financed from the debenture proceeds.	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.	Collected by CSA (Central Servicing Agent) on behalf of the CDC.
(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		
Initiation fee	In accordance with the contract between the CSA and SBA.	
On-going fee	In accordance with the contract between the CSA and SBA.	
Underwriter's Fees		
Underwriter's fee for 20 and 25-year Debenture	Upfront fee of 0.4%	Paid by Borrower to Underwriter.
Underwriter's fee for 10-year Debenture	Upfront fee of 0.375%	Paid by Borrower to Underwriter.
SBA Fees		
(1) SBA Guaranty Fee - (up-front fee)	Refer to www.sba.gov for notices on fee updates by fiscal year	One-time fee
(2) Annual Fee -- (Ongoing fee)	Refer to www.sba.gov for notices on fee updates by fiscal year	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.

Fees that a 504 Borrower May be Charged		
(3) 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.
(4) 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).
(5) Debt Refinancing Without Expansion Supplemental Fee	Refer to www.sba.gov for notices on fee updates by fiscal year	Paid by Borrower.
Funding Fee	0.25% of the net Debenture Proceeds	Changed to cover the costs incurred by the trustee, fiscal agent, and transfer agent.

3. Fees for Other Services

a. The CDC may be compensated for other services such as packaging and servicing a 7(a) loan or providing assistance unrelated to the 504 loan program to a small business. Such fees are to be charged pursuant to a written agreement, between the CDC and the entity for which the CDC is providing services, setting forth the roles and relationships of the parties as well as terms and conditions and must be in compliance with SBA Loan Program Requirements. The CDC may not make such assistance a condition of the CDC accepting from a small business an application for a 504 loan.

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:

i. Based upon a contractual agreement between the Third Party Lender paying the referral fee and the CDC; and

ii. Not paid by the Borrower or funded from the debenture proceeds.

c. Fees associated with technology services (whether developed internally or purchased from a third party) may not be passed on to the Borrower. Examples of technology services fees that may not be passed on to the Borrower include:

i. The costs or fees for software or technology used in connection with preparing SBA loan documents, CDC underwriting, or closing the SBA-guaranteed loan;

ii. Acquisition costs or fees for licensing software or software platforms to CDCs solely for the purpose of performing administrative functions (not including any underwriting functions), such as generating SBA-required forms; and

iii. Fees associated with entities that develop systems or lending platforms to automate the CDC's internal loan decision making process, including but not limited to the use of basic credit algorithms or data-based scoring/models where the CDC inputs Applicant data in order to determine eligibility or creditworthiness.

Note: SBA does not consider entities providing technology services that do not include underwriting to be Agents. Entities providing technology services that include underwriting are considered to be professional services contractors and must be providing their services to the CDC under an SBA-approved professional services contract. See Paragraph E.6.a, Professional Services Contractors, in this Chapter for more information.

4. Use of Agents in the 504 Loan Program

SBA expects CDCs to exercise due diligence and prudent oversight of their third party vendors, including professional service contractors and other loan agents, which should include having written policies governing such relationships and monitoring performance of loans referred by an Agent or where an Agent provided assistance. SBA will review evidence of such due diligence and oversight of such relationships when conducting CDC oversight activities.

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 of the Agent's privilege to conduct business with SBA.

In 13 CFR § 103.1(a), SBA defines an "Agent" to mean an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an Applicant or participant by conducting business with SBA. Note: The term Agent in 13 CFR 103.1(a) includes Lender Service Providers, which are used only in the 7(a) Loan Program. Professional Services Contractors are used in the 504 Loan Program and are described in Paragraph 5. below

a. For individuals or entities operating under a professional services contract with a CDC, SBA approves the written agreement or contract with the CDC and the SBA Form 159 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 paragraph 6.a. Professional Services Contractors, below, for guidance on professional service contracts.) Fees paid by the CDC in accordance with the professional services contract cannot be passed onto the Applicant.

b. For all other Agents, paid by either an Applicant or a CDC, an SBA Form 159 must be completed and signed by the Applicant, the CDC, and the Agent. See paragraph 6. Disclosure of Fees – SBA Form 159, below, for more information on SBA Form 159.

c. The only situation where an Agent can receive compensation from both the CDC and the Applicant is when the Agent is providing different services by providing packaging services to the Applicant and receiving a referral fee from the CDC.

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

e. The Director of SBA's Office of Credit Risk Management (D/OCRM) may, for good cause, suspend or revoke the privilege of an Agent to conduct business with the government. The suspension or revocation will remain in effect during any administrative proceedings under SBA regulations at 13 CFR Part 134. The meaning of "good cause" can be found at 13 CFR § 103.4.

f. Agents and Privacy Act Considerations:

   Private information about a loan cannot be discussed with anyone who claims to be an Agent for an 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. 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.

5. Fees an Agent May Charge an Applicant for Packaging and Other Services

CDCs and Agents must clearly inform any Applicant in writing that the SBA does not require the use of an Agent for packaging or referring a loan application.

a. An Agent may charge an Applicant for:

   i. Packaging services to assist the Applicant with completing one or more applications, preparing a business plan, cash flow projections, and other documents related to the application; and

   ii. Other services that include consulting as to the amount and type of financing needed and broker or referral fees.

b. The fees must be reasonable and customary for the services actually performed.

c. An Agent may charge an Applicant fees for packaging and other services based on an hourly rate or on a percentage of the loan amount. In either case, all fees over $2,500 must be supported by documenting the service performed.

d. For fees charged to an Applicant on an hourly rate, there is no maximum, but the fees must be reasonable and customary for the services actually performed. The hourly rate and time spent on each service must be documented.

e. For fees charged to an Applicant based on a percentage of the loan amount, the fee may not exceed (if multiple services are provided to the Applicant, the combined fee for all services cannot exceed the stated maximums below):

   i. 3 percent on loans of $50,000 or less;

ii. 2 percent for loans between $50,000 and the first $1,000,000 and 0.25 percent on the portion over $1,000,000; however,

iii. The maximum fee that may be charged in the aggregate to an Applicant on a percentage basis is $30,000.

f. If an Agent or Agents charge an Applicant fees in connection with obtaining a 504 loan, the Agent(s) must disclose the fees to SBA by completing SBA Form 159 in accordance with paragraph E.7 below.

g. SBA does not allow an Agent to charge an Applicant:

i. A standard or flat fee charged to all Applicants;

ii. Contingency fees (fees paid only if the loan is approved or closed); or

iii. For services that are not reasonably necessary in connection with an application.

h. SBA may review these fees at any time. Agents must refund any fee considered unreasonable or impermissible by SBA.

i. Review of Agent Fees:

i. 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.

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

iii. 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.

6. Professional Services Contractors

13 CFR § 120.824

a. Pre-approval of a professional services contract by the D/FA is required prior to engaging the services of a contractor for any of the following functions:

- Managing (a request for a waiver of the requirement that the manager be employed directly by the CDC must be submitted in accordance with Part 1, Section B, Ch. 1, Para. D.18, Staffing Requirements, of this SOP);
- Marketing;
- Packaging;
- Processing;
- Closing;
- Servicing;

- Liquidating;
- Legal services in connection with loan liquidation or litigation;
- Independent Loan Reviews to be conducted by another CDC. CDCs may not review each other's portfolios or exchange any other services, nor may they enter into any other arrangement with each other that could appear to bias the outcome or integrity of the independent loan review; or
- Co-employment contracts (e.g., for paying wages and taxes and providing retirement and health benefits to the CDC's staff under which the CDC and the contractor are deemed to be co-employers of the CDC's staff).

b. CDCs may contract for the following functions without SBA approval:

- Accounting;
- Legal services (except in connection with loan liquidation or litigation);
- Information technology; and
- Independent loan review services performed by a non-CDC.

c. CDCs entering into a contract to provide services to another CDC:

i. Must be located in the same SBA Region (except for contracts for liquidation services or independent loan reviews); or

ii. If not located in the same SBA Region, must be located in a contiguous State (except for contracts for liquidation services or independent loan reviews); and

iii. May provide assistance to only one CDC per State (except for contracts for liquidation services or independent loan reviews);

iv. Must not provide assistance to another CDC in its State of Incorporation or any State in which the CDC has multi-state authority (except for contracts for liquidation services or independent loan reviews);

v. Must have a separate and independent Board of Directors;

vi. If either CDC is for-profit, neither may own stock in the other CDC;

vii. CDCs are prohibited from comingling any funds.

viii. Notwithstanding the prohibition in 13 CFR § 120.820(d) against a CDC affiliating with another CDC, a CDC may, with SBA's prior written approval, obtain services through a contract with another CDC even if the arrangement would give rise to an affiliation between the CDCs based on an "identity of interest," as defined under 13 CFR §121.103(f). However, affiliation between CDCs based on grounds other than identify of interest, including but not limited to, through ownership or common management under §121.103(c) and (e), respectively, would continue to be prohibited.

d. Review and Pre-Approval:

i. For all contracts that require prior approval (except for contracts involving legal services in connection with loan liquidation or litigation), the 504 Loan

Program Division reviews the contracts and provides its recommendation to the D/FA, or designee, who makes the final decision.

ii. With respect to contracts for management or independent loan reviews performed by another CDC, the D/FA's final decision will be made in consultation with the D/OCRM (or designee).

iii. The Office of Financial Assistance (OFA) will notify the CDC in writing of the D/FA's final decision and will provide a copy of the decision to the Lead District Office.

iv. For contracts involving legal services in connection with loan liquidation or litigation, Fresno/Little Rock Commercial Loan Servicing Center will review and approve the contracts.

v. If a CDC engages the services of a contractor without obtaining SBA's approval in accordance with the process described below, the CDC's non-compliance will be reported to OCRM. In addition to any other appropriate action, any loan application requests sent to the SLPC by an individual employed under the contract may be delayed for processing and approval until such time as the professional services contract is approved by the D/FA.

e. Submission Process:

i. At least 60 days prior to the date on which the CDC intends to engage the contractor's services, the CDC must submit to OFA at 504Requests@sba.gov:

a) A request from a responsible CDC management official to review the draft materials;

b) An unsigned draft of the contract; and

c) A justification from the CDC's Board of Directors explaining its reasoning for why the Board believes it is in the best interest of the CDC to contract for CDC functions. (13 CFR § 120.824(2)(e)).

ii. The request for SBA's approval of a contract may not be submitted with the CDC's Annual Report. (The Annual Report must include a list of all CDC contracts by status (e.g. current, not current, expired) with renewal dates and/or expiration dates.)

iii. If the D/FA approves the contract, the CDC must submit a copy of the fully executed contract to OFA upon its execution by the parties.

iv. If the CDC wishes to renew a professional services contract, the CDC must re-submit the contract at least 60 days prior to the end of the approved contract term (including any approved optional renewal years) for review and pre-approval.

f. The professional services contract:

i. Must state the following:

a) The CDC's Board of Directors specifically acknowledges and retains the ultimate responsibility for all loan approvals and loan servicing actions, and that such responsibility must be carried out independently of any control by the contractor, 13 CFR §120.823;

b) No contractor or any officer, director, 20 percent or more equity owner, or Key Employee of a contractor may be a voting or non-voting member of the CDC's Board of Directors;

c) All compensation paid to the contractor will be paid by the CDC and the contractor cannot charge the Borrower for the same services; and

d) The contractor is prohibited from requiring a 504 Applicant or Borrower to purchase other services from the contractor as a condition of the contractor's performing CDC staff or management functions;

e) Each individual performing services must receive a character determination in accordance with Part 1, Section B, Ch. 1, Para. B., Form 1081 CDC Character Determinations, of this SOP.

f) CDCs are responsible for the actions of their contractors and must ensure that they comply with all applicable laws and regulations governing confidentiality. CDCs should consult with their Counsel to obtain appropriate language to be included in the contracts.

ii. Must include the following:

a) A description of services that the contractor will perform;

b) A description (resume or summary of work history/relevant experience) of each individual providing services under the contract;

c) A breakdown of compensation by individual if more than one person is being compensated under the contract;

d) The rate of compensation for all parts of the contract except servicing 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));

e) The basis for its determination that the fees are customary and reasonable for similar services in the area;

f) A statement that additional compensation from CDC fee income such as multipliers or bonuses is not permitted;

g) A provision that allows the CDC procuring the services to terminate the contract with written notice (usually a 30 to 60 day notice) without penalty and with or without cause at any time prior to the expiration date of the contract;

iii. Must not:

a) Include any contractual services provided by the Executive Director of a CDC;

b) Evidence any actual or apparent conflict of interest or self-dealing on the part of any of the CDC's officers, management, and staff, including any members of the Board or any Loan Committee;

c) Diminish the responsibility of the Board of Directors for the operations of the CDC;

iv. Must be accompanied by a Board of Directors' Resolution containing the following statements:

a) The contract is in compliance with 13 CFR §§ 120.823, 120.824 and 120.825 and SBA Loan Program Requirements;

b) Of understanding that the contract is subject to pre-approval by SBA D/FA upon each new contract term; and

c) Of understanding that approved contracts are subject to yearly review by SBA.

7. Disclosure of Fees – SBA Form 159

Section 13 of the Small Business Act (15 U.S.C. § 642) requires that an Applicant identify the names of Persons (as defined in 13 CFR 120.10) engaged by or acting on behalf of the 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 the Applicant, CDC, and 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 Applicant or CDC in any matter involving SBA assistance.

a. CDCs must identify in E-Tran whether an Agent was involved in any way with the transaction and provide the name, street address, city, state, and zip code of the Agent. For Applications involving an Agent, SBA Form 159 can be generated using E-Tran.

b. For Agents other than professional services contractors performing duties for the CDC under an SBA-approved professional services contract, if the Agent is paid by an Applicant or CDC, an SBA Form 159 must be completed in accordance with form instructions and signed by the Applicant, the Agent, and the CDC. Do not report fees paid for the Third Party Lender's loan on SBA Form 159. Separate SBA Forms 159 must be completed for each Agent who provides services to the Applicant. Failure of an Agent to fully complete and execute the required SBA Form 159 may result in suspension or revocation of the Agent's privilege to conduct business with SBA under 13 CFR Part 103.

c. SBA Form 159 "Fee Disclosure Form and Compensation Agreement"

i. Information on this form will be used to monitor fees charged by Agents and the relationship between Agents and CDCs. CDCs must complete all appropriate data fields on SBA Form 159 in accordance with the form

instructions. For example, the seven-digit FIRS number must be included exactly as assigned by SBA and without any extra characters.

ii. If the aggregate compensation for all fees provided by the same Agent exceeds $2,500, the compensation must be itemized.

a) When an Agent charges an Applicant in connection with multiple applications (for example, an Applicant is seeking a 504 loan and a 7(a) loan):

i) Separate SBA Forms 159 must be completed for each application and for each Agent.

ii) Fees are aggregated to establish the $2,500 threshold for itemization.

b) When the Agent provides multiple services (for example, an Agent is providing both loan packaging and referral services to the Applicant), each service must be separately reported on the same SBA Form 159. For example:

i) In the "Type of Agent" section, select both the "Independent Loan Packager" and the "Referral Agent/Broker" boxes; and

ii) In the "Type of Service" table, separately itemize the amounts paid in each appropriate box.

c) In-kind compensation (i.e., non-monetary contributions for goods or services) paid or to be paid to the CDC must be itemized.

iii. The following are not considered Agents for purposes of this Agreement and are not required to complete SBA Form 159:

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) A professional services contractor performing services for the CDC under an SBA-approved professional services contract;

d) An environmental professional employed by the CDC to conduct an environmental assessment of the collateral in connection with the 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.

iv. CDCs must upload SBA Form(s) 159 into E-Tran within 30 calendar days after the debenture funds.

CHAPTER 6: OTHER CORE REQUIREMENTS

A. GUARANTIES

13 CFR § 120.160(a)

Each loan must be guaranteed by at least one individual or entity. If no one individual or entity owns 20% or more of the 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 3, Corporate/Other Guaranties below must be met.

1. Personal Guaranties:
    a. Individuals who own 20% or more of an Applicant must provide an unlimited full guaranty. (SBA Form 148 or, for 7(a) loans, equivalent Lender's form). If a person has executed the Note as a Borrower in an individual capacity, that person does not also have to execute a personal guaranty.
    b. When ownership interest of an Applicant is held by a corporation, partnership or other form of legal entity, the ownership interests of all individuals must be disclosed.
    c. When deemed necessary for credit or other reasons, SBA or, for a loan processed on a delegated basis, the SBA Lender, may require other appropriate individuals or entities to provide full or limited guaranties of the loan without regard to the percentage of their ownership interests, if any. For example, an individual with a minority ownership or no ownership interest in the Applicant or OC who is critical to the operation of the business may be required to provide a personal guaranty.
    d. If a limited guaranty is used, the SBA Lender must choose one of the payment limitation options in SBA Form 148L (Unconditional Limited Guaranty) or, for 7(a) loans, equivalent Lender's form and specify the option in the Authorization.
    e. The SBA Lender must obtain a personal financial statement from all individuals guaranteeing the loan.
    f. The guaranty may be secured or unsecured but must meet SBA's collateral requirements. For more information on collateral requirements: For 7(a), see the Collateral section of each delivery method chapter in Section B of this Part. For 504, see Section C, Ch.1, Para. E.2.a., Collateral, of this Part.
2. Guaranty of Spouse:
    a. Each spouse owning less than 20% of an Applicant must personally guarantee the loan in full when the combined ownership interest of both spouses and minor children is 20% or more.
    b. For a non-owner spouse, the SBA 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.

3. Corporate/Other Guaranties:
    a. All entities that own 20% or more of an Applicant must provide an unlimited full guaranty. If the entity that owns 20% or more of the 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 Section A, Ch 2, paragraph A.3., Conditions that apply when the EPC is owned in whole or in part by a trust, of this Part. In addition, if the trust is revocable, the Trustor also must guarantee the loan.
    b. The SBA Lender must obtain financial statements from all entities guaranteeing the loan in order to determine the assets available to support the guaranty.
    c. When deemed necessary for credit or other reasons, SBA or, for a loan processed on a delegated basis, the SBA Lender, may require other appropriate entities to provide full or limited guaranties of the loan without regard to the percentage of their ownership interests, if any. This may include entities who manage the day-to-day operations of the Applicant or OC through a Management Agreement without an ownership interest in the Applicant or OC.
4. Reducing Ownership Interest:
    a. Any Person (as defined in 13 CFR 120.10) subject to the 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 their ownership interest to less than 20%.
    b. The only exception to the 6-month rule is when that Person completely divests their interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Applicant (and any associated Eligible Passive Company) in any capacity, including being an employee (paid or unpaid).

B. IRS TAX TRANSCRIPT/VERIFICATION OF FINANCIAL INFORMATION

1. The purpose of SBA's Tax Verification process is to determine if:
    a. The Applicant filed business tax returns; and
    b. The 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 SBA Lender must verify the Schedule C.
3. For a change of ownership, the SBA Lender must verify the seller's business tax returns or a sole proprietor's Schedule C. For 7(a) loans, when there is an acquisition of a division or a segment of an existing business, other forms of verification acceptable to SBA may be used in lieu of the IRS Form 4506-T (e.g. Sales tax payment records).
4. SBA Lender must obtain, for 7(a) loans, prior to first disbursement of loan proceeds, or for 504 loans, prior to submitting the closing documents to SBA counsel:

a. Borrower's/Seller's Consent:

In order to comply with Section 2202 of the Taxpayer First Act (P.L. 116-25), SBA Lenders submitting an IRS Form 4506-T must obtain the borrower's and seller's (as applicable) written consent to the use of the tax return transcript(s) for the purpose of compliance with SBA Loan Program Requirements, including verification of financial information, verification of tax return filing, and verification of tax return information. Additionally, SBA Lenders must obtain the borrower's and seller's (as applicable) written permission for the SBA Lender to share the tax return transcript(s) with SBA and its agents for the purpose of compliance with SBA Loan Program Requirements, including discrepancy resolution, lender oversight activities, purchase reviews, complete file reviews, and other SBA reviews.

b. Verification of Financial Information:

i. SBA Lenders must obtain tax return transcripts through the IRS's Income Verification Express Service (IVES) program. (For 504 loans, the CDC must submit IRS Form 4506-T to the IRS within 10 days of receipt of the Authorization.)

a) SBA Lenders may either enroll in IVES or contract with an IVES participant. Additional information on IVES enrollment is available at www.irs.gov/individuals/ives-enrollment-procedures.

b) IVES currently requires the March 2019 version of Form 4506-T, "Request for Transcript of Tax Return," available at: www.irs.gov/pub/irs-prior/f4506t--2019.pdf. (Note: Although the IRS has a more recent version of the form on its website, it is not compatible with IVES at this time.) All fields on the form must be completed, or the form will not be processed. The back of Form 4506-T contains instructions and user tips, and the IRS website has more information on completing the form.

ii. SBA Lenders must obtain tax return transcripts for the following:

a) The Applicant, or the Operating Company if the Applicant is an EPC:

i) For the last 3 years, (unless Applicant or Operating Company is a Start-Up Business). If the business has been operating for less than 3 years, the SBA Lender must obtain the information for all years in operation. Or:

ii) If the SBA Lender is using the Alternative Size Standard for determining eligibility under the SBA size requirements, only 2 years are required. If the business has been operating for less than 2 years, the SBA Lender must obtain the information for all years in operation. See Chapter 1, Para. D, Small Under SBA Size Requirements of this Section for more information.

b) The SBA Lender is required to document in its file confirmation of collection of business tax returns and verification and reconciliation of

the Applicant's financial data against income tax data received in response to IRS Form 4506-T for 7(a) loans prior to first disbursement, or for 504 loans prior to submitting the closing documents to SBA counsel.

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, the SBA Lender must obtain a copy of the extension along with evidence of payment of estimated taxes.

iii. Except for the SBA Express and Export Express Programs, the SBA Lender must compare the tax data received from the IRS with the financial data or tax returns submitted with the loan application.

iv. The Applicant must resolve any significant differences to the satisfaction of the SBA Lender and the SBA loan processing center. Failure to resolve differences may result in cancellation of the loan.

v. For 7(a) loans, for a change of ownership, the SBA Lender must verify financial information provided by the seller of the business in the same manner as above.

vi. For 7(a) loans, if an SBA Lender processing a loan under its delegated authority does not receive a response from the IRS or the copy of the tax transcript within 10 business days, the SBA Lender:

a) May proceed to close and disburse the loan; however, if the SBA Lender disburses the loan and is unable to reconcile the IRS information, the guaranty may be subject to repair or denial;

b) Must follow-up with the IRS to obtain and verify the tax data by resubmitting a copy of IRS 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 as soon as the IRS response is received.

c. For 7(a) loans and for 504 loans where 3 years of transcripts are required: If the IRS transcript reflects "Record Not Found" for the middle year of the 3 years requested, the SBA Lender has verified the other 2 years, AND the Applicant has some record of either receiving a refund or paying the taxes for the missing year, then the SBA Lender may reasonably assume that the Applicant filed a return for the missing year. If the SBA Lender documents all these steps in its loan file, the SBA 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 SBA Lender is unable to reconcile the IRS information to the Applicant's financial information, either the loan must be cancelled or the closing must be postponed until the issue is resolved:

i. For 7(a) loans: SBA Lenders processing a loan under non-delegated procedures must report the issue to the LGPC via E-Tran. If an SBA Lender processing the loan under its delegated authority has disbursed the loan and is unable to reconcile the IRS information, the guaranty may be subject to repair or denial.

ii. For 504 loans: the SBA Lender must report the issue to SLPC via E-Tran.

e. If an Applicant has not filed required Federal tax returns, the Applicant is not eligible for SBA financial assistance.

f. SBA Express and Export Express Programs:

i. If the Lender uses business financial information to determine the creditworthiness of an SBA Loan, the Lender must follow the IRS tax verification process set out in this section.

ii. If the Lender does not use business financial information to determine creditworthiness, such as with some credit scoring models, Lender must obtain IRS tax transcripts in order to verify that the returns were filed and for the purpose of determining the Applicant's size, but reconciliation of the tax transcripts is not required.

iii. SBA Express and Export Express Lenders are authorized to close and disburse a loan immediately if disbursement is requested by the Borrower; however, Lenders must follow-up and verify the business financial data with IRS tax data and must document the loan file accordingly. If, after loan disbursement, 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. SBA will consider appropriate action.

C. INSURANCE REQUIREMENTS

SBA Lenders must ensure all appropriate insurance requirements are included in the Authorization.

1. Hazard Insurance

13 CFR § 120.160(c)

a. SBA requires hazard insurance on all assets pledged as collateral. The Applicant/Borrower must also maintain a separate policy if the business is located in a state that requires additional coverage such as wind, hail, earthquake, or other.

b. Real Estate

i. Coverage must be in the amount of the full replacement cost.

ii. If full replacement cost insurance is not available, coverage must be for the maximum insurable value.

iii. Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504).

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 the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504). The policy or endorsements must provide for at least 10 days prior written notice to the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504), of policy cancellation.

c. Personal Property

i. Coverage must be in the amount of full replacement cost.

ii. If full replacement cost insurance is not available, coverage must be for maximum insurable value.

iii. Insurance coverage must contain a LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504). 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 the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504). The policy or endorsements must provide for at least 10 days prior written notice to the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504), of policy cancellation.

2. SBA Express and Export Express

If the Lender does not require hazard insurance (for example, if it would impose an undue burden on an Applicant given the small size of a loan), the Lender must document the reason in its loan file.

3. Marine Insurance

a. When a vessel(s) is(are) the collateral on the loan, SBA Lender must obtain coverage in the amount of the full insurable value on the vessel(s) with the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504), designated as "Mortgagee."

b. The policy must contain a Mortgagee clause providing that the interest of the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504), will not be invalidated by any:

i. Act, omission, or negligence of the mortgagor, owner, master, agent, or crew of the vessel;

ii. Failure to comply with any warranty or condition out of mortgagee’s control; or

iii. Change in title, ownership, or management of the vessel.

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 of policy cancellation to the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504).

4. **Flood Insurance**

a. SBA flood insurance requirements are based on the Standard Flood Hazard Determination (FEMA Form 086-0-32 or its successor). CDCs must obtain a FEMA Form 086-0-32 (or its successor) or a copy of the form obtained by the Interim or Third Party Lender. The mandatory purchase of flood insurance, as set

forth by the requirements of the National Flood Insurance Program (NFIP), applies 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.

b. Private flood insurance will be accepted; however, it must meet the same requirements as the standard NFIP policy. If used, private flood insurance must:

   i. Provide coverage that is at least as broad as the coverage provided under the standard NFIP policy, including when considering deductibles, exclusions, and conditions offered by the insurer;

   ii. Include an endorsement that the insurer must give 45 days' notice of cancellation for non-renewal to the insured and the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504);

   iii. Include information about the availability of flood insurance coverage under the NFIP;

   iv. Contain a mortgage interest clause similar to the one in the standard NFIP policy;

   v. Contain a provision requiring an insured to file suit not later than 1 year after date of a written denial of all or part of a claim under the policy; and

   vi. Contain cancellation provisions that are as restrictive as the provisions contained in the standard NFIP policy.

c. If any portion of a building that is collateral for the loan is located in a special flood hazard area, the SBA Lender must require the Applicant to obtain flood insurance for the building under the NFIP or comparable private flood insurance (see subparagraph b above).

d. If any equipment, fixtures or inventory that is collateral for the loan ("Personal Property Collateral") is in a building of which any portion is located in a special flood hazard area and that building is collateral for the loan, SBA Lender must require Applicant to also obtain flood insurance for the Personal Property Collateral either under the NFIP or through comparable private flood insurance (see subparagraph b above).

e. If any Personal Property Collateral is in a building of which any portion is located in a special flood hazard area and that building is not collateral for the loan, SBA Lender must require Applicant to obtain available flood insurance for the Personal Property Collateral. For non-delegated loans, the SBA Lender may request a waiver of this requirement from the SBA loan processing center. The SBA Lender 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. For loans processed under an SBA Lender's delegated authority, the SBA Lender may waive this requirement when the building is not collateral for the loan if it:

i. Uses prudent lending standards to determine that flood insurance is not economically feasible or not available; and

ii. Includes a written justification in the loan file that fully explains why flood insurance is not economically feasible or, if flood insurance is not available, the steps taken to determine that it is not available.

f. Insurance coverage must be at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), whichever is less. ("Maximum limit of coverage available" is the lesser of the maximum limit available under the NFIP for the type of structure or the insurable value of the structure.)

g. Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504). 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 the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504). The policy or endorsements must provide for at least 10 days prior written notice of policy cancellation to the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504), or 45 days in the case of private flood insurance.

5. Life Insurance

a. If the SBA Lender determines that the principal is uninsurable, the SBA Lender must obtain written documentation from a licensed insurer of the same.

b. For each policy required under this paragraph, SBA Lenders must obtain a collateral assignment identifying the 7(a) Lender (for 7(a)), or the CDC/SBA (for 504), as assignee that is acknowledged by the Home Office of the Insurer. SBA Lenders must ensure that the Applicant/Borrower pays the premiums on the policy (13 CFR § 120.970(c)).

c. SBA Lenders may accept the pledge of an existing life insurance policy. Credit life insurance or whole life insurance should not be required.

d. 7(a) Loans

i. For Standard 7(a), EWCP, and CAPLines loans, 7(a) Lenders may follow their internal policy for similarly-sized non-SBA guaranteed commercial loans, except:

a) 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.

b) The amount and type of collateral available to repay the loan may be factored into the determination of the appropriate amount of life insurance.

ii. For 7(a) Small Loans, SBA Express and Export Express loans, SBA Lenders may follow their internal written policy for their similarly-sized, non-SBA guaranteed commercial loans.

e. 504 Loans

i. CDCs must assess whether the viability of the business is tied to an individual or individuals. Life insurance is required for the principals of sole proprietorships, single member LLCs, or for businesses otherwise dependent on one owner's active participation when the SBA Loan is not fully collateralized.

ii. When required, the minimum term of life insurance is:

a) 10 years for a 10 year debenture.

b) 20 years for a 20 or 25 year debenture.

iii. For the purpose of life insurance calculation, the loan is considered fully collateralized when the value of the discounted collateral is equal to or greater than the net debenture amount. When the loan is not fully collateralized, the amount of life insurance required is equal to the difference between the net debenture amount and the value of the discounted collateral.

iv. For life insurance only, the calculation of discounted collateral is as follows:

a) Improved real estate at 85% of fair market value determined in accordance with the appraisal requirements in Section C, Chapter 1, paragraph E.2.b., Appraisals, of this Part.

b) New machinery and equipment (excluding furniture and fixtures) at 75% of price minus any prior liens.

c) Used or existing machinery and equipment (excluding furniture and fixtures) at a maximum of 50% of Net Book Value or 80% with an Orderly Liquidation Appraisal minus any prior liens.

6. Other Insurance Included in the Authorization

SBA Lender must require and include in the Authorization any other insurance appropriate to the loan, including but not limited to:

a. Product liability insurance;

b. Dram shop/host liquor liability insurance;

c. Disability insurance;

d. Workers' compensation insurance; and

e. Malpractice insurance.

D. HISTORIC PROPERTIES

Section 106 of the National Historic Preservation Act requires Federal agencies to consider whether their federally-funded projects directly or indirectly adversely impact properties and sites that are listed or eligible to be listed on the National Register of Historic Places (NRHP).

(54 U.S.C. § 300101 et seq.; 36 CFR §§ 60.1 et seq. and 800.1 et seq.) An SBA Loan is considered to directly or indirectly impact such a property or site if the SBA Loan transaction involves the purchase or renovation of a property or site (including installation of equipment). As set forth below, SBA will conduct a Section 106 review to determine whether the impact is adverse.

For all SBA Loan transactions involving the purchase or renovation of a property or site, all SBA Lenders must conduct due diligence to determine whether the SBA Loan transaction involves a property or site that is listed on the NRHP or has historic significance such that it may be eligible to be listed on the NRHP (either individually or as part of a historic district). The due diligence conducted must follow prudent lending practices and be documented in the SBA Loan file.

1. If the SBA Lender's due diligence does not yield information indicating that the property or site is listed on the NRHP or has historic significance such that it may be eligible to be listed on the NRHP (either individually or as part of a historic district), the SBA Lender must document its file and does not need to request a Section 106 review by local SBA counsel. However, the SBA Lender may request a Section 106 review by local SBA counsel if it subsequently receives a screen out notice from the SBA loan processing center.
2. If the SBA Lender's due diligence yields information indicating that the property or site is listed on the NRHP or has historic significance such that it may be eligible to be listed on the NRHP (either individually or as part of a historic district), the SBA Lender must take the following actions:
    a. For SBA Loan transactions involving property or site acquisition where the Borrower, Co-Borrower, and/or Operating Company has no intention of altering, renovating, rehabilitating, restoring, and/or demolishing any part of the property or site:
        i. Prior to submitting the SBA Loan application to the SBA loan processing center (non-delegated) or requesting an SBA Loan Number when processing the SBA Loan under delegated authority, the SBA Lender must obtain a Historic Property Borrower Certification executed by the Borrower, Co-Borrower, and/or Operating Company. This is a self-certification that no modifications will be made to the property or site during the term of the SBA Loan. This self-certification must be made on SBA Form 2481, Historic Property Borrower Certification.
        ii. The SBA Lender must provide a copy of the executed SBA Form 2481 to local SBA counsel for review and clearance. This clearance will become null and void and a Section 106 review will be required if, between the date the SBA Form 2481 is executed and the date the SBA Loan is disbursed, the Borrower, Co-Borrower, and/or Operating Company changes its intentions or it is determined the property or site requires any alteration, addition, renovation, rehabilitation, restoration, and/or demolition.
        iii. SBA Lenders processing the loan under their delegated authority must retain the executed SBA Form 2481 and clearance from local SBA counsel in the SBA Loan file. The executed SBA Form 2481 and clearance from local SBA

counsel must be provided with any guaranty purchase request and may be reviewed by SBA when conducting lender oversight activities.

iv. SBA Lenders processing the loan under non-delegated procedures must include the executed SBA Form 2481 and clearance from local SBA counsel with the application for review by the SBA loan processing center.

b. For SBA Loan transactions where the Borrower, Co-Borrower, and/or Operating Company intends to alter, renovate, rehabilitate, restore, and/or demolish any part of the property or site (regardless of the source of the funds to finance these modifications), the SBA Lender must request a Section 106 review by local SBA counsel. All SBA Loans falling within this category must be processed non-delegated through the SBA loan processing center.

i. In its request for a Section 106 review to local SBA counsel, the SBA Lender must provide:

a) The names of the Borrower, Co-Borrower, and/or Operating Company;

b) The SBA Loan Name;

c) The results of its due diligence;

d) A full and complete description of the planned modifications; and

e) A statement regarding whether any of the planned modifications have commenced. If so, SBA Lender must instruct the Borrower, Co-Borrower, and/or Operating Company to stop work, otherwise the SBA Loan may not be approved and/or disbursed.

f) If the Borrower, Co-Borrower, and/or Operating Company is under contract for the purchase of the property or site and the seller will not agree to extend the closing deadline to accommodate the Section 106 review process or other extenuating circumstances exist that would cause a hardship if the loan authorization were not issued until after the completion of the Section 106 review process, the SBA Lender may identify these circumstances in the request. Depending upon the circumstances, SBA may exercise its discretion to issue the loan authorization with a Section 106 review condition consisting of the following or similar language: "Historic Property / Section 106 Review: Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations, prior to the SBA Loan closing and the commencement of any renovations, modifications, or repairs to the Property, Borrower, Co-Borrower, and Operating Company (if applicable) must obtain a historic property review clearance from SBA."

ii. Local SBA counsel will review the request and may request additional information from the SBA Lender to facilitate the review.

a) If local SBA counsel determines during the review that the property or site is not listed on the NRHP and is not eligible to be listed on the NRHP because the property or site does not have any historic significance, local SBA counsel will provide a response to the SBA

Lender indicating that a Section 106 review is not required. The response must be retained in the SBA Loan file and may be requested by the SBA loan processing center during application processing.

b) If local SBA counsel determines during the review that the property or site is listed on the NRHP or may be eligible to be listed on the NRHP because the property or site has historic significance, and the modifications to the property or site have already commenced, local SBA counsel is required to perform a Section 110(k) review before proceeding with a Section 106 review under 54 U.S.C. § 306113 and 36 C.F.R. § 800.9(c). If the modifications to the property or site have not yet commenced, local SBA counsel is not required to perform a section 110(k) review and instead will proceed directly to the Section 106 review.

c) If local SBA counsel determines during the review that the property or site is listed on the NRHP or may be eligible to be listed on the NRHP because the property or site has historic significance, local SBA counsel will perform a Section 106 review following the procedures set forth in 36 CFR § 800.4 et seq.

i) Among other things, the Section 106 review will involve evaluation of the property or site under the NRHP criteria (located at 36 CFR § 60.4) and consultation with the relevant State Historic Preservation Office (SHPO) regarding the historic significance of the property or site and whether the planned modifications will adversely affect the property or site, including any associated historic district.

ii) Depending upon the nature of the review, consultation with additional parties (e.g., Native American Tribes, Native Hawaiian Organizations, local governments) may be required by 36 CFR § 800.4(d)(2).

iii) Pursuant to 36 CFR § 800.4(d), the SHPO has thirty (30) days to provide a response to local SBA counsel. The SHPO's response may consist of a statement of no objection or concurrence with SBA's determination; an objection to SBA's determination; or a request for additional information.

iv) After receiving the SHPO's response, local SBA counsel will consult with the Associate General Counsel for Litigation or designee, and advise the SBA Lender of the next steps in the review.

d) If consultation with the SHPO results in a determination that the property or site does not satisfy the NRHP criteria, or that the property or site satisfies the NRHP criteria but there will not be an adverse effect, local SBA counsel will receive an approval from the Associate General Counsel for Litigation or designee indicating that the SBA Loan transaction may proceed and will issue a Section 106 review clearance to the SBA Lender.

e) SBA Lenders processing the loan under their delegated authority must retain the clearance from local SBA counsel in the SBA Loan file. The clearance must be provided with any guaranty purchase request and may be reviewed by SBA when conducting lender oversight activities.

f) SBA Lenders processing the loan under non-delegated procedures must include the clearance from local SBA counsel with the application for review by the SBA loan processing center.

g) If consultation with the SHPO results in a determination that the property or site satisfies the NRHP criteria and there will be an adverse effect, SBA must further consult with SHPO and, depending upon the review, other parties to resolve the adverse effect. This may result in a Memorandum of Agreement between SBA and SHPO, and other parties as applicable, regarding the resolution of the adverse effect.

E. ENVIRONMENTAL POLICIES AND PROCEDURES

SBA's environmental policies and procedures apply to all SBA Lenders on all 7(a) and 504 loan programs, except where otherwise indicated. For 7(a) loans, failure to comply with the provisions of this paragraph may result in a denial of SBA's guaranty. Prudent lending practices may dictate additional Environmental Investigations or safeguards.

Definitions: Terms that are capitalized in this paragraph are defined in Appendix 4.

1. Environmental Contamination Risks

   The risks of environmental contamination include:

   a. The costs of Remediation could impair the Borrower's ability to repay the loan and/or continue to operate the business;

   b. The value and marketability of the Property could be diminished. If the Borrower defaults, the SBA Lender or SBA might have to abandon the Property to avoid liability or accept a reduced price for the Property;

   c. The SBA 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 the SBA Lender or SBA exercises operational control at the Property; and

   d. 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.

2. 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 and internal lending policy may dictate additional Environmental Investigations or safeguards.

3. Submission of Environmental Investigation Reports

   The SBA Lender must submit the Environmental Investigation Report to the SBA Center processing the application, **except on loans processed under delegated authority, 7(a) Small Loans, SBA Express, and Export Express loans.** SBA Lenders processing delegated, 7(a) Small Loans, SBA Express and Export Express loans do not have to submit Environmental Investigation Reports to the SBA Center, but they must keep a copy of any Environmental Investigation Report in the loan file. All SBA Lenders must comply with and meet the requirements of the Environmental Policies and Procedures as set forth in this SOP. For example, 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 5. (A Reliance Letter is required even if the Environmental Investigation Report is addressed to the SBA Lender.) Any request for an exception to SBA's Environmental Policies and Procedures must be directed to the Environmental Committee, regardless of the method of processing used for the loan.

4. Environmental Investigation Steps

   a. NAICS Codes. For all Property *except* a unit in a Multi-Unit Building, the SBA 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 6. For a unit in a Multi-Unit Building, the SBA Lender may proceed directly to subparagraphs ii.a) and b) of this paragraph below.

      i. If there is a NAICS code match to an environmentally sensitive industry identified in Appendix 6, 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 SBA Lender must also refer to and, if applicable, comply with "Environmental Investigation Requirements for Gas Station Loans" in Appendix 7.

      ii. 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 SBA Lender must proceed as follows:

         a) If the loan amount is up to and including $250,000, the Environmental Investigation may begin with an Environmental Questionnaire.

         b) If the loan amount is more than $250,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and Records Search with Risk Assessment.

   b. 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, the SBA 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, the SBA Lender must obtain, at a minimum, a Records Search with Risk Assessment.

c. Environmental Questionnaire and Records Search with Risk Assessment Results:

   i. 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, the SBA Lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

   ii. If the Records Search with Risk Assessment concludes that the Property is anything other than "low risk" for Contamination, the SBA Lender must obtain a Phase I ESA.

d. Transaction Screen Results:

   i. If the Environmental Professional conducting the Transaction Screen concludes that no further investigation is warranted, the SBA Lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

   ii. If the Environmental Professional conducting the Transaction Screen concludes that further investigation is warranted, the SBA Lender must obtain a Phase I ESA. If an Environmental Professional recommends proceeding directly from the Transaction Screen to a Phase II (thus bypassing the Phase I), and the SBA Lender concurs, the SBA Lender must seek in advance an exception to policy from the SBA Environmental Committee, which may be granted on a case-by-case basis.

e. Phase I ESA Results:

   i. If the Environmental Professional conducting the Phase I ESA concludes that no further investigation is warranted, the SBA Lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

      If the Environmental Professional conducting the Phase I ESA concludes that further investigation is warranted (typically a Phase II), and the SBA Lender still wants to make the loan, the SBA 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.).

   ii. In the rare instance where an exception to policy may be warranted, SBA Lenders must provide the SBA Environmental Committee with justification

for not wanting to follow the Environmental Professional's recommendations and obtain committee approval.

f. Phase II ESA Results:

i. If the Environmental Professional conducting the Phase II ESA concludes that no further investigation is warranted, the SBA Lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

ii. If the Phase II ESA reveals Contamination and the SBA Lender still wishes to make the loan, the SBA Lender must ensure that the Environmental Professional has documented:

a) Whether the Contamination quantities exceed the reportable or actionable levels;

b) Whether Remediation is necessary;

c) 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

d) The projected completion date of any Remediation.

iii. If the Environmental Investigation reveals Contamination, the SBA Lender should determine whether disbursement is appropriate under one or more of the factors identified below in paragraph 6, Property Contamination or Remediation.

iv. If at any stage of the Environmental Investigation SBA concurs with an SBA Lender's recommendation that environmental risk has been sufficiently minimized and that no further investigation is required, the loan may be disbursed.

5. Lead District Office and Center Counsel Responsibilities

With respect to environmental investigations that are required to be submitted to an SBA Loan Processing Center, SBA loan processing personnel must obtain SBA District 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.

6. Property Contamination or Remediation

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 District Counsel or Center Counsel. SBA 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:

a. Nature and Extent of the Contamination including copies of the following documents pertaining to the Property:

   i. All relevant Environmental Investigation Reports;

   ii. All publicly available Governmental Entity correspondence.

b. Remediation:

   i. Recommended method of Remediation;

   ii. Status of on-going Remediation, if any;

   iii. Environmental Professional's estimated cost of Remediation;

   iv. Environmental Professional's estimated completion date;

   v. Governmental Entity's designation of responsible Person(s) (as defined in 13 CFR 120.10);

   vi. Person(s) paying for on-going Remediation;

c. Collateral Value:

   i. Proposed loan amount and proposed use of proceeds;

   ii. Appraised or the estimated value of the Property;

   iii. Institutional Controls and Engineering Controls, if any, and their impact on repayment ability, collateral value, and marketability of the Property; and

d. Mitigating Factors:

   SBA will rely upon one or more of the following factors when deciding to disburse before completion of Remediation or monitoring.

   i. Indemnification. If any Person (as defined in Appendix 4) who possesses sufficient financial resources to cover the costs of completing Remediation executes the SBA Environmental Indemnification Agreement in Appendix 8, approval or disbursement may be considered. The SBA 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 Applicant or the operating company.

      The SBA Environmental Indemnification Agreement:

      a) Cannot be modified;

      b) Must be executed by the Applicant and (if applicable) Operating Company;

      c) Must have a copy of the Environmental Investigation Report attached to it; and

      d) Must be properly recorded in the memorandum format in Exhibit C to Appendix 8.

      For 7(a) loans: All 7(a) Lenders (except when submitting requests through PLP, 7(a) Small Loans, SBA Express and Export Express) must submit the

finalized SBA Environmental Indemnification Agreement to SBA for review and approval prior to a request that SBA fund the loan.

For 504 loans: All CDCs, including PCLP CDCs, must submit each finalized SBA Environmental Indemnification Agreement (located in Appendix 8 of this SOP) to the SLPC for review and approval no less than 2 weeks in advance of submission of the loan closing package if they want the loan to be considered in that closing cycle.

ii. 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) An 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.

iii. No Further Action. If an SBA Lender obtains a "no further action letter" or "closure letter" from a Governmental Entity (or state equivalent of a "no further action letter" or "closure letter") stating that no further Remediation or monitoring of Contamination previously found is required, approval or disbursement may be considered. A state equivalent of a closure letter includes a written determination from a licensed professional in those jurisdictions that delegate authority to such professionals for site closures.

iv. Minimal Contamination with Minimal Remediation. 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 1 year, approval or disbursement may be considered. The SBA 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.

v. Clean-up Funds. If the SBA Lender provides evidence from a Governmental Entity that the Applicant 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. The SBA Lender must also address any conditions of Remediation that might preclude payment or reimbursement and the financial capability of the fund.

vi. Escrow Account. If an escrow account is available that equals a minimum of 150 percent of the total estimated cost of required Remediation and 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: The SBA Lender's, or for 504 loans, the Third Party Lender's role as trustee of the escrow account is solely to release funds upon the satisfactory completion of Remediation work – the SBA Lender or Third Party Lender must not control or manage the Property being remediated.

vii. 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:

a) Another Person with sufficient resources is performing Remediation pursuant to a Remediation action plan that has been approved by the appropriate Governmental Entity; or

b) 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

c) The Governmental Entity provides satisfactory written assurance that it will not hold the Property owner liable for the Contamination. The SBA Lender should attempt to have the SBA Lender and SBA included by name in the letter along with the Property owner and future purchasers.

viii. 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.

ix. Other Factor(s). The SBA 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 that is already in place and already paying remediation costs, bonds, agreements not to sue present and future property owners from the Governmental Entity, brownfields agreements, 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, 7(a) Small Loans, SBA Express and Export Express.

For 7(a) loans processed under delegated authority, 7(a) Small Loans, SBA Express and Export Express, 7(a) 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 paragraph d.ix, Other Factor(s) immediately above.

7. Special Use Facilities

a. Child-Occupied Facilities

Prudent lending practices dictate that specific additional environmental assessments be performed for Child-Occupied Facilities (see definition in Appendix 3). Such facilities, constructed prior to 1978, must undergo a lead risk assessment and also testing for lead in drinking water at all taps and fountains potentially used as a drinking water source for children. All lead assessments must be conducted in conformance with U.S. Environmental Protection Agency (EPA) regulations at 40 CFR 745 and U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing Second Edition, July 2012. 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.

b. Drycleaners

On-site dry cleaning facilities, which may have utilized chlorinated solvents such as tetrachloroethene (PCE) and trichloroethene (TCE) and/or petroleum-based solvents in the course of their business operations, may present significant clean-up costs if these contaminants have entered the soil, soil vapor and/or groundwater. Prudent lending practices dictate and SBA requires that for any Property with on-site dry cleaning facilities, whether currently in operation or operated historically at the site, that uses, used, or likely used chlorinated and/or petroleum-based solvents, a Phase I followed by a Phase II Environmental Assessment is required. (Any deviation from this requirement must be directed to EnvironmentalAppeals@sba.gov as a request for an exception to policy). For on-site dry cleaners, the investigation must address soil, groundwater, and soil vapor. A 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 3 years of full time relevant experience.*

c. Gasoline Stations

Gasoline stations also present significant clean-up costs if contaminated (for specific requirements pertaining to gasoline stations, please refer to Appendix 7).

8. Release of Rights to Indemnification from SBA/Lender

   If any Person has a right to indemnification from subsequent owners of the Property (e.g., SBA or 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 the SBA Lender related to Contamination at the Property including the right to indemnification. The document containing the waiver and release must be recorded.

   Additionally, for 504 loans: SBA Lenders must submit all waiver and release documents 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.

9. 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 Mitigating Factors in paragraph 6.d. above.

10. Questions on SBA's Environmental Policy and Appeals

    Questions on SBA's Environmental Policy should be directed to local SBA counsel for the area where the Property is located.

    SBA 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 email address cannot receive submissions larger than 15MB. If the email and attachments exceed this size, the appeal must be sent in more than one email.)

    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.

SECTION B. 7(A) LOAN PROGRAM SPECIFIC REQUIREMENTS

This section, along with section A, Core Requirements for all 7(a) and 504 Loans, contains the policies and procedures governing SBA's 7(a) business loan programs. Because Paycheck Protection Program (PPP) loans authorized under § 7(a)(36) of the Small Business Act are 7(a) loans, this SOP applies to the making of PPP loans, to the extent that the SOP is not superseded by or in conflict with PPP-specific requirements. **Lenders must always start by reviewing the contents of Section A, Core Requirements for all 7(a) and 504 Loans.**

CHAPTER 1: BASIC 7(A) LOANS

This chapter covers Basic 7(a) Loans, which consist of Standard 7(a) Loans and 7(a) Small Loans. **These loans may be processed under Preferred Lender Program (PLP) authority or non-delegated through the Loan Guaranty Processing Center (LGPC).**

See Part 1, Section A, Chapter 1, paragraph E, Delegated Authority in the 7(a) Loan Program of this SOP for information on PLP.

Basic 7(a) Loans are Standard 7(a) Loans and 7(a) Small Loans.

- **Standard 7(a) Loans** are:
  - Greater than $350,000;
  - $350,000 or less that do not meet SBA's minimum acceptable credit score requirement for 7(a) Small Loans; and
- **7(a) Small Loans** are loans of $350,000 or less that meet the minimum acceptable credit score set by SBA and are eligible for abbreviated credit underwriting.

Basic 7(a) Loans exclude SBA Express, Export Express, CAPLines, Export Working Capital Program (EWCP), International Trade loans, and Community Advantage Pilot Program loans.

Lenders must always start by reviewing the contents of Section A, Core Requirements for all 7(a) and 504 Loans, in this Part.

A. ELIGIBLE USES OF PROCEEDS

In addition to the eligible uses of proceeds in the Core requirements, Standard 7(a) Loans and 7(a) Small Loans may use loan proceeds for:

1. **Debt Refinancing**

   SBA-guaranteed loan proceeds may not be used to pay a creditor in a position to sustain a loss (including the same institution's debt). This includes any refinancing that will shift all or part of a potential loss from the original Lender to the SBA. 13 CFR §§ 120.140(j)(1) and 120.201

   a. SBA-guaranteed loan proceeds may not be used to refinance debt:

      i. Originally used to finance a loan purpose that would have been ineligible for SBA financing at the time it was originally made unless the condition that would have made the loan ineligible no longer exists; or

      ii. That is already on reasonable terms.

   b. Debt reflected on the Applicant's business balance sheet may be eligible for refinancing if it is reflected on the Applicant's business tax returns (Schedule C for sole proprietorships) showing the interest expense associated with the debt.

i. The Lender must document and the Applicant must certify that the proceeds from the debt were used exclusively for the Applicant's business and were not used for any ineligible purpose as set forth in 13 CFR § 120.130; and

ii. If the debt to be refinanced was used in whole or in part to refinance a prior debt, the loan being refinanced, including the associated interest, must be reflected on the Applicant's balance sheet and business tax returns (Schedule C for sole proprietorships) for two full tax cycles prior to application. The Applicant must certify that the debt to be refinanced was used exclusively for the Applicant business and was not used for any ineligible purpose as set forth in 13 CFR 120.130.

iii. Except for interim debt in accordance with paragraph A.1.l.ii, Interim Advances below, the Lender must not refinance a short-term obligation that was created with the intent of refinancing it with a 7(a) loan.

c. The loan must be secured with at least the same collateral and lien priority as the debt that is being refinanced. However:

i. When the current balance of the debt being refinanced is considered over collateralized relative to SBA collateral requirements and the SBA Loan will remain fully secured, the Lender is not required to take the excess collateral.

ii. Different collateral may be taken to secure the new loan if it is of comparable value and useful life and is determined to be acceptable by SBA or the Lender under its PLP authority.

d. Loan proceeds may be used to refinance the following types of business debt (see paragraph A.1.h. below for additional requirements if refinancing same institution debt).

i. Any debt structured with a demand note or balloon payment;

ii. Debt with an interest rate that exceeds the SBA maximum interest rate based on size or term;

iii. Business Credit Card Debt - Loan proceeds must not be used to refinance any personal expenses. The Lender may refinance credit card debt if the credit card is in the name of the business and the Applicant certifies in writing that any credit card debt being refinanced was incurred exclusively for business related purposes. If the business credit card was also used for personal purposes, the Lender must ensure that those charges are deducted from the credit card balance proposed to be refinanced;

iv. Debt that is over-collateralized based on SBA's collateral requirements - see paragraph C.3, Collateral below, which describes SBA's collateral requirements used to determine if a loan is "fully secured;"

v. 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;

vi. 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);

vii. Debt used to finance a change of ownership of a going concern business (complete change of ownership or an eligible partner buyout – see paragraph A.2., Change of Ownership, below for more information on types of changes of ownership);

a) Refinancing debt owed to a financial institution or any third party (other than the seller) within 12 months of the change of ownership may not be processed under a Lender's PLP authority.

b) To be eligible for refinancing, any seller financed note must have been in place and current (not on standby) for at least 24 months following the change of ownership. The refinancing request must meet the requirements set forth in paragraphs 1.e. and f. below.

c) 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.

d) If the existing debt is SBA-guaranteed and with the same Lender (SID), the application cannot be processed under PLP authority.

e) Paying off debt as part of a change of ownership is not a refinance of debt. In a complete change of ownership situation, the option to assume the existing SBA debt should be offered to the buyer.

viii. Debt that is not identified above but the Lender believes no longer meets the needs of the Applicant must be processed through non-delegated procedures and the Lender:

a) Must cite in the credit memorandum the specific reasons why the existing debt no longer meets the needs of the Applicant; and

b) May not cite "improving the lien position" as the sole reason for the refinancing.

ix. Personal Debt Used Exclusively for Business Purposes.

a) Home Equity Line of Credit (HELOC): It the debt is in the form of a HELOC, the Lender must document and the Applicant must certify that the amount being refinanced was used exclusively for business purposes. For example, a sole proprietor would demonstrate that the debt was used for business purposes by providing documentation that shows the interest deduction is reported on the Schedule "C" of the proprietor's tax return. If the interest deduction reported on the Schedule C includes multiple debts, then the Lender must obtain from the Applicant a copy of the appropriate IRS Form 1098 related to the debt being refinanced.

b) Personal Credit Card: If the debt is in the form of an outstanding balance on a credit card issued to an individual personally, the Lender must confirm which of the credit card obligations were used for business purposes. The Lender must document the specific business purpose of the credit card debt and ensure that the Applicant certifies and documents that the loan proceeds are being used exclusively to refinance business expenses. Documentation required for refinancing personal credit card debt includes a copy of the credit card statements and individual receipts for any business expenses in excess of $500.

e. Ten Percent Payment Improvement. With the exception of debt under paragraphs 1.d.i (debt with a demand note/balloon payment); 1.d.iii (business credit card debt); 1.d.v. (revolving lines of credit with Lender unwilling to renew); and 1.d.ix.b) (personal credit card debt used for business purposes) above, when refinancing debt, the new installment amount must be at least 10 percent less than the existing installment amount(s) in the aggregate.

i. 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.

ii. If other debt is being refinanced at the same time, such debt may be included in the cash flow improvement calculation.

f. When refinancing debt, the loan application must include:

i. A written analysis that addresses the following issues:

a) The reason the debt was incurred;

b) The factor(s) that support that the proposed refinancing will not pay a creditor in a position to sustain a loss;

c) The reason for restructuring the debt (for example, over-obligated or imprudent borrowing);

d) The factor(s) that support that the debt being refinanced is not currently on reasonable terms;

e) How the new loan will improve the financial condition of the Applicant;

f) The reason(s) the Lender believes the debt to be refinanced no longer meets the needs of the Applicant (See paragraph 1.d.viii above); and

ii. Supporting documentation for each debt to be refinanced: Lenders are required to:

a) For PLP loans, retain copies of notes, security agreements, leases, and other documentation evidencing the debt to be refinanced;

b) For non-delegated loans, submit with the application to the LGPC, copies of all supporting documentation for the debt to be refinanced; and

c) Include, when applicable, a copy of the most recent credit card statement evidencing the holder of the account and the current balance. (See also paragraph 1.d.ix.b) Personal Credit Card.)

g. The Authorization must include:

i. In the Use of Proceeds section, the refinancing must be specifically identified;

ii. An itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid $10,000 or more; and/or

iii. The loan number and dollar amount of any existing SBA being debt refinanced.

h. Refinancing Same Institution Debt (SID). Refinancing of SID may not be processed under a Lender's PLP authority.

i. An SBA-guaranteed loan may not be used to refinance SID 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)

ii. The Lender must:

a) 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; and

b) 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.)

iii. For loans processed under a Lender's PLP authority, SBA does not consider the following to be refinancing of SID:

a) 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

b) The debt is a construction loan that has not been disbursed at the time the PLP loan number is issued.

i. Refinancing a same institution SBA 7(a) guaranteed loan. A Lender may refinance its own SBA 7(a) guaranteed loans only through the LGPC under non-delegated authority and only if:

i. It is unable to modify the terms of the existing loan because a secondary market investor will not agree to modified terms, or

ii. An increase in the amount of an existing SBA-guaranteed loan is not possible.

j. Refinancing an SBA-Guaranteed Loan of another Lender. Proceeds may be used to refinance existing SBA-guaranteed loans from other Lenders provided the conditions of paragraphs 1.d, e, and f above are satisfied and:

i. The Lender obtains 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 is either unwilling or unable to modify the current payment schedule; and

ii. The Lender must submit this evidence with the application to the LGPC (for non-delegated loans) and retain this evidence in the loan file (for loans processed under the Lender's PLP authority).

k. Refinancing of an SBA 504 loan. Refinancing an existing 504 loan must be processed in the LGPC under non-delegated authority and may be approved only if:

i. The loan meets the requirements of paragraphs 1.d, e, and f, 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 justification to refinance the existing SBA-guaranteed 504 loan must be included in the credit memorandum and submitted to the LGPC with the application.

ii. Any applicable 504 prepayment penalties will apply.

iii. The 7(a) Lender may not solely refinance the Third Party Lender's loan for an existing 504 project.

l. Other conditions that apply to debt refinancing:

i. A 7(a) loan may not be used to refinance a debt owed to an SBIC.

ii. Interim Advances: For loans processed on a non-delegated basis, after an SBA Authorization has been issued, but prior to disbursement, 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 risk. Lender notification to SBA of such advances is not required. See paragraph h.iv.a) above for information on an interim loan processed on a PLP basis.

iii. The payment of trade payables is not considered to be debt refinancing.

2. Change of Ownership

(13 CFR § 120.202)

a. A Borrower(s) (and any individual Co-Borrower as permitted under this paragraph), 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 under this paragraph. An asset purchase will be deemed a change of ownership and must comply with all of the requirements of this paragraph if the Applicant(s) is

purchasing all or substantially all of the assets of the seller's business and is continuing the operations of the seller's business. The following requirements apply:

i. The change of ownership must promote the sound development and/or preserve the existence of a small business;

ii. Change of Ownership Between Existing Owners: A change of ownership between existing owners may be financed under the following circumstances:

a) One or more current owners is purchasing the entire interest of another current owner, resulting in 100% ownership of the business by the remaining owner(s).

b) 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).

iii. Change of Ownership Resulting in a New Owner: A change of ownership resulting in a new owner may be financed under the following circumstances:

a) A small business is purchasing 100% of the ownership interest in another business.

b) An individual(s) who is not an existing owner is purchasing 100% of the ownership interest in the small business.

c) A small business is acquiring another small business through an asset purchase.

d) An Employee Stock Ownership Plan (ESOP) or equivalent trust is purchasing a controlling interest (51% or more) in the employer small business. (Note: any transaction costs associated with the purchase of the controlling interest by the ESOP or equivalent trust, but not costs associated with setting up the trust, may be included in the use of proceeds.) (13 CFR § 120.352(b)) These loans may not be processed under PLP authority.

e) A small business is obtaining a loan for the sole purpose of re-lending the funds to an ESOP or equivalent trust to acquire a controlling interest (51% or more) in the small business. (Note: any transaction costs associated with making the loan to the ESOP or equivalent trust, but not the costs associated with setting up the trust, may be included in the use of proceeds.) These loans may not be processed under PLP authority.

f) A cooperative is purchasing a controlling interest (51% or more) in the employer small business. (Note: any transaction costs associated with the purchase of the controlling interest, but not costs associated with setting up the cooperative, may be included in the use of proceeds.) These loans may not be processed under PLP authority.

b. Except as provided below, 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 to assist the business, the small business may contract with the seller as a consultant for a period not to exceed 12 months including any extensions.

The seller may stay on as an owner, officer, director, stockholder or Key Employee of the business when the purchaser is an ESOP or equivalent trust or a cooperative and is acquiring a controlling interest (51% or more) in the employer business (including when the ESOP or equivalent trust or cooperative is acquiring 100% ownership of the small business). In such cases, any seller who remains as an owner, regardless of percentage of ownership interest, must provide his or her guaranty. See Section A, Ch. 6, Para. A, Guaranties, of this Part for further guidance on guaranty requirements.

c. 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:

   i. In a change of ownership under section 2.a.ii.a) or 2.a.iii.b) above, the small business and the individual owner(s) who is acquiring the ownership interest 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.

   ii. In a change of ownership under section 2.a.ii.b) above, the small business must be the Borrower, and the remaining owner(s) are subject to the requirements for guaranties in Section A, Ch. 6, Para. A, Guaranties, of this Part.

   iii. In a change of ownership under section 2.a.iii.a) or 2.a.iii.c) above, the acquiring entity will be the Borrower. If, however, the business being acquired will continue to exist as a separate entity, the acquiring entity and the small business being acquired must be Co-Borrowers. All owners of the Applicant business, and the business being acquired if it is a Co-Borrower, are subject to the requirements for guaranties in Section A, Ch. 6, Para. A, Guaranties, of this Part.

d. The Lender must comply with the requirements in Section A, Ch. 6, Para. B, IRS Tax Transcript/Verification of Financial Information, of this Part.

e. If the Applicant 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. The non-SBA guaranteed loan may not have a maturity that is shorter than the SBA-guaranteed loan.

   This provision does not apply if the business real estate is being financed as part of a 504 project.

f. The following changes of ownership are not eligible:

   i. A non-owner who is purchasing less than 100% of the ownership interests in the business, except for eligible ESOP or cooperative purchases; or

   ii. An existing owner who is purchasing the ownership of another existing owner that will not result in 100% ownership of the business by the purchasing owner.

g. 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.

h. The Lender's loan documentation must include:

   i. A current business valuation (not to include any real estate) that meets SBA requirements in paragraph C.3.f.v, Business Valuation Requirements - Change of Ownership below.

   ii. 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.

   iii. A real estate appraisal for commercial real estate that meets SBA requirements. See paragraph C.3.f, Real Estate Appraisal and Business Valuation Requirements below.

   iv. 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, the loan is not eligible for an SBA guaranty.

   v. Business, stock, and asset purchase agreements.

   vi. Evidence that all assets, including transferable licenses (e.g. liquor license) conveyed as a result of purchase are properly secured as collateral by Lender.

i. The "purchase price of the business" includes all assets being acquired such as real estate, machinery and equipment, and intangible assets.

   i. Intangible Assets: An SBA-guaranteed loan may be used to finance a change of ownership that includes intangible assets (including, but not limited to, goodwill, client/customer lists, patents, copyrights, trademarks, intellectual property, and agreements not to compete) as long as it is supported by an independent business valuation that complies with paragraph C.3.f.v, Business Valuation Requirements - Change of Ownership below.

   ii. 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.

   iii. 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.

3. Other Restrictions that Apply to PLP Loans

i. 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.

ii. The following types of loans are not eligible under PLP processing:

a) Disabled Assistance Loans (DAL);

b) Loans to an ESOP (under 13 CFR §§ 120.350 through 120.354) or to an eligible small business owned or controlled by an ESOP (see Section A, Ch. 2, Para. B., Employee Stock Ownership Plans, of this Part for more information);

c) Loans to a cooperative or to an eligible small business owned or controlled by a cooperative (see Section A, Ch. 2, Para. C, Cooperatives, of this Part for more information);

d) Loans involving a Single Employer 401(k) plan, including a ROBS plan, unless the only investment held by the 401(k) plan is the equity in the Applicant business;

e) Loans involving a Multiple-Employer 401(k) plan (i.e., a plan that holds in trust the assets of other businesses), including a ROBS plan (see Section A, Ch. 2, Para. D, 401(k) Plans Including Rollovers as Business Start-Ups (ROBS) Plans, of this Part for more information); and

f) Pollution Control Program Loans.

B. **LOAN TERMS AND CONDITIONS**

1. Maximum Loan Amount

a. Standard 7(a) Loans have a maximum of $5,000,000.

b. 7(a) Small Loans have a maximum per loan of $350,000.

c. Maximum Loans to Businesses with Affiliates

Lenders must determine whether the Applicant has any affiliates and document the results in their credit analysis. If affiliation exists, SBA's loan maximums apply to the Applicant, including all affiliates, as if all were a single business.

d. Maximum Loan Amount for multiple loans approved within 90 days of each other – "90 Day Rule."

i. If two SBA-guaranteed loans to any one business (including affiliates) are approved within 90 days of each other, the maximum gross amount of all such loans in that time frame cannot exceed $5,000,000.

ii. Two SBA-guaranteed loans approved within 90 days of each other may impact the maximum guaranty percentage available to the Borrower and its affiliates as well as the guaranty fee and any fee relief.

iii. The 90-day rule does NOT apply if the Borrower is receiving a 7(a) loan and a 504 loan.

2. Maximum Guaranty Amounts and Percentages

The maximum dollar amount outstanding of SBA's guaranty to any one business and its affiliates must not exceed $3,750,000 (13 CFR 121.151). When calculating the maximum guaranty percentage available to a Borrower and its affiliates, the Lender must include the approved loan amount and any existing 7(a) or 504 loans, including revolving lines of credit. The SBA's guaranty is also known as the "SBA share" or "guaranteed portion."

a. The maximum guaranty amount is $3,750,000.

b. The maximum guaranty percentage is:

i. 85% for loans of $150,000 or less

ii. 75% for loans over $150,000

c. Combination of 7(a) and 504 loans.

i. 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 processed and approved first.

ii. Lenders must advise the SBA processing centers that there is a companion 504 application to ensure the 7(a) loan is processed and approved prior to the 504 loan application being processed and approved.

d. Maximum Guaranty Percentage for Multiple 7(a) Loans (13 CFR § 120.210).

i. Excluding multiple 7(a) loans approved within 90 days of each other, the maximum guaranty percentage for 7(a) loans of $150,000 or less is 85 percent.

ii. For loans approved within 90 days of each other, 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 must not be more than 75 percent (subject to the $3,750,000 limit).

For example, if a business receives an 85 percent 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 to 47 percent so the combined guaranty is no more than $142,500, or 75 percent of the total amount of both loans ($190,000).

e. Zero Percent Guaranty Cannot be Provided for Ineligible Purposes:

A 7(a) loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business and no part of an SBA 7(a) loan may be guaranteed at zero percent.

3. Loan Maturities

a. The loan term must be the shortest appropriate term based on the use of proceeds and the Borrower's ability to repay.

i. Working capital or inventory loans and the financing of intangible assets (including goodwill) must not exceed 10 years.

ii. Generally, equipment, fixtures, or furniture loans should not exceed 10 years. However, the term may be up to 15 years if the IRS asset class useful life supports the term. The Lender must document in the credit memorandum justification of any term that exceeds 10 years.

iii. Real estate loans (including acquisition, rehabilitation, renovation, or construction) must not exceed 25 years unless a portion of the loan is used for construction or renovation of the real estate. If the use of proceeds on a real estate loan includes construction or renovation, an additional period reasonably necessary for the construction or renovation period may be added to the 25-year maximum maturity.

iv. Loans for leasehold improvements may not exceed 10 years, plus an additional period reasonably necessary to complete the leasehold improvements, as determined based on the specific nature of the leasehold improvements, but in no case more than 12 months.

v. Mixed purpose loans (including change of ownership): When loan proceeds are used for multiple purposes (land and building, working capital, machinery & equipment, or the refinancing of any of these purposes), the maturity may be a blended maturity or, if 51% or more of the use of proceeds are for real estate, the maximum maturity may be up to 25 years.

b. Establishing the Repayment Period (13 CFR § 120.212):

When Lenders establish a repayment schedule and loan maturity, they must consider the following:

i. The Borrower's ability to repay,

ii. Use of loan proceeds,

iii. Useful life of the assets being financed, and

iv. The appropriate maturity for mixed purpose loans (including change of ownership). The Lender may use a blended maturity or the maturity up to the maximum for the asset class comprising 51% or more of the use of proceeds. Lenders must include the calculation used to determine the maturity in the credit memorandum.

v. For loans to farm enterprises:

a) Where land and structures (including poultry houses) for farming comprise 51% or more of the use of proceeds, the maximum maturity is 20 years.

b) Where machinery and equipment comprise 51% or more of the use of proceeds, the maximum maturity is the useful life of the machinery and equipment, not to exceed 15 years, plus an additional period reasonably necessary for installation, which may not exceed 12 months.

vi. SBA has instructed the fiscal and transfer agent to stop the sale into the secondary market of a loan when the maturity exceeds these limits.

c. Establishing the Maturity Date:

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

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

d. Maturity When Refinancing Existing Assets or a Business Acquisition:

i. The maximum maturity for a loan used to refinance a real estate or fixed asset loan must 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.

ii. The maximum maturity for a loan used to refinance a business acquisition shall be 10 years, unless 51% or more of the use of proceeds consist of real estate which would permit a maturity up to 25 years.

4. Interest Rates

SBA QUICK REFERENCE CHART: Maximum Interest Rates Allowed (See additional information below)

Product **Standard 7(a) Loans and 7(a) Small Loans**	**Interest Rate** **The published maximum allowable fixed rate or if variable:**
Loans $25,000 or less (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 4.25%
Loans $25,000 or less (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 4.75%
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%
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%
Loans greater than $50,000 (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 2.25%

Product Standard 7(a) Loans and 7(a) Small Loans	Interest Rate The published maximum allowable fixed rate or if variable:
Loans greater than $50,000 (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 2.75%

a. General Policy on Interest Rates 13 CFR §§ 120.213; 120.214; 120.215

i. 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 Applicant, subject to SBA's maximum allowable rates.

ii. SBA will periodically publish the maximum allowable fixed interest rate in the Federal Register. The maximum allowable fixed interest rate will be the Prime rate in effect on the first business day of the month, plus an allowable spread over Prime, as set forth in the most recent Federal Register Notice. For a listing of the current maximum allowable fixed interest rates, go to SBA's Capital Access Financial System homepage. 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.

iii. 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.

iv. Default interest rates are not permitted.

v. For loans with a variable interest rate, the following terms must be defined:

a) Base Rate:

i) 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.

ii) 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 decimal places with .004 being rounded down to .00 and .005 being rounded up to .01.

NOTE: This SOP continues to include the LIBOR Base Rate as an option for the calculation of the maximum allowable variable interest rate for 7(a) loans in accordance with 13 CFR § 120.214(c). The U.K. Financial Conduct Authority announced that it would phase-out LIBOR by the end of 2021. SBA encourages Lenders to consider LIBOR's imminent phase-out when selecting a base rate. For existing 7(a) loans with LIBOR as the base rate, SBA encourages Lenders to examine their loan documents to determine whether LIBOR may be replaced with a fallback rate. If no such provision exists in individual loan documents, Lenders should consider amending the appropriate document(s) in anticipation of LIBOR's phase-out. It is important to note that any changes to the interest rate must be made in accordance with paragraph c.ii.b) below. The Federal Reserve Alternative Reference Rates Committee has drafted recommended fallback language for contracts tied to LIBOR: https://www.newyorkfed.org/arrc/fallbacks-contract-language.

b) Frequency of change;

c) Range of fluctuation; and

d) Ceiling and floor (if any).

vi. After approval and prior to final disbursement, Lender must either notify the LGPC of any changes to the Note terms related to the interest rate or make the change through E-Tran servicing. After final disbursement, Lender must either notify the appropriate Commercial Loan Servicing Center of any changes to the Note terms related to the interest rate or make the change through E-Tran servicing.

b. Loans up to and including $50,000: Base Rate, Allowable Spread, and Allowable Variance (13 CFR § 120.214):

i. 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.

ii. The allowable spread is based on the maturity of the loan.

a) For loans with an original maturity less than 7 years, the maximum allowable rate cannot exceed 2.25 percentage points over the prime rate.

b) 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.

c) The spread as identified in the Note may not be changed during the life of the loan without the Borrower's written consent.

iii. 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.

iv. 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.

v. 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

i. Standard Policy:

SBA's maximum allowable interest rate applies only to the initial Note rate on a variable rate loan. Subsequent changes 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.

ii. 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 changed 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 consent to the change in the interest rate (separate and apart from executing the loan documents) and must either 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, the prime rate changed. The Borrower has asked the Lender if the loan can be switched to a fixed rate. If 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, the Lender may make this change per the Borrower's request.

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 either notify the appropriate SBA CLSC of the change or make the change through E-Tran servicing. For further guidance see SOP 50 57.

iii. 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.

i) This adjustment period as identified in the Note may not be changed without the written consent of the Borrower.

ii) 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.

iii) 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.

c) 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.

iv. Interest Rate Requirements for an SBA Note:

a) For fixed rate loans, the Lender must state the specific interest rate in the Note.

b) For variable rate loans, the Lender must include the following information in the Note:

i) Identification of the rate being used as the base rate;

ii) The publication in which the designated base rate appears regularly (e.g. Wall Street Journal or the Federal Register if using the SBA Optional Peg Rate);

iii) The permanent percentage spread to be added to the base rate;

iv) The initial interest rate of the loan (from disbursement to first adjustment);

v) The date or timing of the first rate adjustment; and

vi) The frequency of rate adjustment.

v. 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:

a) Both the floor and ceiling are stated in the Note; and

b) 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.

vi. 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.

vii. Amortization: (13 CFR § 120.214(f)):

Lender should use an amortization schedule that is appropriate for the type of loan. SBA does not allow balloon payments. A fixed interest rate loan must use a payment that will fully amortize the loan by the maturity date. Typically, variable rate loans are re-amortized every time the interest rate is adjusted to ensure full amortization by the maturity date. The amortization schedule may also 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 neither rate exceeds 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. If the Lender uses a combination, the entire loan is

considered to be a variable interest rate loan. The interest rate on both the guaranteed and unguaranteed portions must be based on the variable rate.

e. Interest Rate Swap Contracts:

i. 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. The Borrower could purchase an interest rate swap contract that would set the interest rate at 8%. When the Note rate is lower than the rate paid by the Borrower on the swap contract (8%), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 8%. 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 8% and the swap seller would pay the difference above 8% 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.

ii. 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 SBA 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.

C. CREDIT STANDARDS

The policies that make up SBA's credit standards begin with the requirements outlined in 13 CFR §§ 120.101 and 120.150. This section provides procedural guidance as to what the Lender should or must consider when analyzing any request for financial assistance that will be guaranteed by SBA.

A Lender must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. The cash flow of the Applicant is the primary source of repayment, not any expected recovery from the liquidation of collateral. Thus, if the Lender's financial analysis demonstrates that the 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 repayment.

1. Processing Methods

Once submitted to the LGPC, an application withdrawn by a Lender, screened-out, or declined by the LGPC may not be approved by any Lender under its PLP Authority. E-Tran and SBA One will not permit the submission of such an application under any Lender's PLP authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application.

a. Non-delegated – When a Lender submits a Standard 7(a) or 7(a) Small loan guaranty request under the non-delegated processing method, the Lender submits the application and supporting documents to SBA. SBA will make the final determination as to the eligibility and creditworthiness of the Applicant, including approving the uses of proceeds, the adequacy of the collateral being pledged, the structure of the loan, and any equity contribution to be required from the Applicant.

b. PLP – When a Lender submits a Standard 7(a) or 7(a) Small loan guaranty request under the Lender's PLP authority, the Agency does not review the Lender's determination of eligibility, analysis of the credit, or structure of the loan or line of credit prior to issuing a loan number. The Lender must analyze eligibility and credit worthiness in accordance with SBA Loan Program Requirements and properly document its file. The PLP Lender's analysis is subject to SBA's review and determination of adequacy, when the Lender requests SBA to purchase its guaranty or when SBA is conducting lender oversight activities.

2. Underwriting

a. Standard 7(a) Loans (Loans greater than $350,000 and loans of $350,000 or less that do not meet SBA's minimum acceptable credit score):

i. Lender's Credit Analysis:

The Lender's credit memorandum and analysis must address the Applicant's ability and likelihood to repay the loan from the cash flow of the business and past performance by documenting the following:

a) A description and history of the business, including:

i) Nature of the business;

ii) Length of time in business under current management;

iii) Depth of management experience in the industry or a related industry;

iv) Brief description of the business's management team including principal's involvement in the daily onsite management of the business or how the daily operations will be managed if the principals are not there on a daily basis; and

v) If the daily operations will be handled under a management agreement,

(a) PLP Lenders processing an application under their delegated authority must obtain a copy of the management agreement, review it to determine if it creates affiliation between the Applicant and the management company or results in a passive business, and retain in their loan file. SBA will review this determination at time of guaranty purchase or when conducting lender oversight activities. The PLP Lender bears the risk of an incorrect determination.

(b) Lenders processing an application on a non-delegated basis must submit a copy of the management agreement to the LGPC with their application.

(c) See Section A, Ch. 1, Para. D.5, Affiliation based on Management of this Part for further guidance on management agreements. (13 CFR § 121.301(f)(3))

b) Financial analysis of repayment ability:

i) For existing businesses based on the three most recent years of historical financial information (tax returns or balance sheet with debt schedule and income statement) plus an interim financial statement. (13 CFR § 120.191)

ii) For new businesses, based on detailed projections, including the supporting assumptions which reflect positive cash flow within 2 years.

iii) The financial analysis for all Applicants must address the following as applicable:

(a) Historical cash flow for existing businesses, that demonstrates total debt service coverage after the SBA loan; if the historical cash flow does not show sufficient debt service coverage, Lender must obtain from the Applicant and analyze 2 years of detailed projections including the supporting assumptions justifying relying on projections instead of historical performance;

(b) Calculation of operating cash flow (OCF) defined as earnings before interest, taxes, depreciation, and amortization (EBITDA);

(c) Justification for additions and subtractions to cash flow such as the following:

(i) Unfunded capital expenditures;

(ii) Non-recurring income;

(iii) Expenses and distributions;

(iv) Distributions for S-Corp taxes;

(v) Rent payments;

(vi) Owner's Draw; and/or

(vii) Global cash flow analysis that includes assessment of impact on cash flow to/from any affiliate business;

(d) The effect any affiliates may have on the ultimate repayment ability of the Applicant.

c) Debt Service (DS) is defined as the future required principal and interest payments on all business debt inclusive of new SBA loan proceeds. The Applicant's debt service coverage ratio (OCF/DS) must be equal to or greater than 1.15 on a historical and/or projected cash flow basis and 1:1 on a global basis. To perform a complete analysis of debt service, it is important for a Lender to obtain a current debt schedule prepared by the Applicant, including any shareholder debt.

d) For cash flow projections, the Lender must calculate the debt service coverage and provide the assumptions supporting the projected cash flow coverage, including as applicable:

i) Justification for revenue growth, i.e. new product lines, sales channels, and new production facilities;

ii) Justification for any reduction in expenses; and

iii) A comparison to current industry trends.

e) Spread of pro-forma Business Balance Sheet (current business balance sheet adjusted for all changes in assets and liabilities as a result of the SBA loan, other debt, any required equity injection and use of loan proceeds);

f) 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 any other ratios the Lender considers significant for the business/ industry (e.g., inventory turnover, receivables turnover, and payables turnover, etc.) including discussion of Lender's comparison to industry trends;

g) Analysis of working capital adequacy, at a minimum over the next 12 months;

h) Assessment of collateral adequacy adjusted in accordance with paragraph C.3.d., Collateral Requirements for Standard 7(a) Loans in this Chapter below to offset risk of default;

i) Insurance Requirements, including:

i) Life Insurance – on whom and how much. If Life Insurance will not be required, provide justification.

ii) Business hazard & liability insurances.

iii) Other Insurances, such as specialty insurance appropriate for the type of business, e.g. malpractice insurance or product liability insurance. (See Section A, Ch 6, Para. C, Insurance Requirements, of this Part for further guidance.)

j) Explanation of and justification for the refinancing of any debts as part of the loan request, along with supporting documentation, in accordance with the debt refinancing requirements in paragraph A, 1. above in this Chapter. In addition, Lender must include a written explanation for any late payments.

k) Lender's rationale for recommending approval, including a discussion and analysis of the following:

i) The factors demonstrating the Applicant does not have credit available elsewhere on reasonable commercial terms from non-Federal, non-State, non-local government sources, in accordance with Section A, Ch. 1, Para. E., Demonstrate the Need for Desired Credit in this Part;

ii) When 50 percent or more of the loan proceeds will be used for working capital, Lender must explain in its credit memorandum why this level of working capital is necessary and appropriate for the subject business;

iii) Competition;

iv) Seller financing;

v) Stand-by agreements;

vi) 90+ day delinquencies;

vii) Trade disputes and/or;

viii) Federal, State, or local citations which would preclude the Applicant from normal business operations;

ix) For a change of ownership, discussion/analysis of the business valuation used to support the purchase price (see paragraph C.3.f.v, Business Valuation Requirements - Change of Ownership below.);

x) Discussion of any liens, judgments, bankruptcy filings or pending litigation including divorce proceedings; and

xi) Discussion of other relevant information (for example, if the application involves a franchise, Lender must review any credit information provided such as the number of failed franchisees and cash flow projections provided by the franchisor).

ii. Equity requirements (13 CFR § 120.150(f)):

a) Depending on whether the loan is processed on a non-delegated or PLP basis, the Lender or SBA must determine that there is sufficient invested equity. To do this, the Lender (for PLP loans) or SBA (for non-delegated loans) must determine if the equity position, any required equity contribution, and the pro forma debt-to-worth are acceptable based on the factors related to the type of business, experience of management and the level of competition in the market area. The Lender must include in its credit memorandum a detailed discussion of the equity position (net worth) and any required equity injection. (See Chapter 5, Para. D., Loan Closing and Disbursement of this Section for requirements concerning documenting and verifying equity injection.)

b) Minimum equity injection requirements for certain Applicants or loans:

i) Start-Up Businesses – At a minimum, SBA considers an equity injection (Applicant contribution) of at least 10 percent of the total project costs (all costs required to become operational, regardless of the source of funds) to be necessary for a Start-Up Business to operate on a sound financial basis. SBA considers a business to be a “start-up” for the purpose of determining equity injection requirements if it has been in operation (i.e., generating revenue from intended operations) for 1 year or less;

ii) Changes of ownership:

(a) Resulting in a new owner (complete change of ownership): At a minimum, SBA considers an equity injection of at least 10 percent of the total project costs (all costs required to complete the change of ownership, regardless of the source of funds) to be necessary for such transactions. Seller debt may not be considered as part of the equity injection unless it is on full standby for the life of the SBA loan and it does not exceed half of the required equity injection;

(b) Change of ownership between existing owners ("partner buyout"): If the 7(a) loan will finance more than 90% of the purchase price of a partner buyout, both of the following must be met:

(i) The remaining owner(s) must certify that he/she has been actively participating in the business operation and held the same or an increasing ownership interest in the business for at least the past 24 months. Lender must include in the credit memorandum confirmation that the Borrower has made the required certification and retain such certification in the file.

(ii) The business balance sheets for the most recent completed fiscal year and current quarter must reflect a debt-to-worth ratio of no greater than 9:1 prior to the change in ownership.

In the event the Lender is unable to document that both (i) and (ii) above are satisfied, the remaining owner(s) must contribute cash in the amount of at least 10% of the purchase price of the business, as reflected in the purchase and sale agreement.

c) Source of Equity Injection:

i) The following may be considered as equity injection:

(a) Cash that is not borrowed.

(b) Cash that is borrowed through a personal loan to the business owner with repayment demonstrated to come from a source other than the cash flow of the business (the salary paid to the owner by the business does not qualify). If the personal loan is made by the participating Lender, the Lender must submit the application through non-delegated 7(a) processing.

(c) Assets other than Cash – Lenders must carefully evaluate the value of assets other than cash that are injected by owners. An appraisal or other valuation by an independent third party is required if the valuation of the fixed assets is greater than the Net Book Value. A valuation of the fixed assets provided as part of a business valuation will not meet these requirements.

(d) Standby debt – Only debt that is on full standby (no payments of principal or interest for the term of the SBA-guaranteed loan) may

be considered as equity for SBA's purposes. A copy of the note must be attached to the standby agreement.

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

(a) Value or cost of education; and

(b) Funds that are borrowed and do not meet the exception noted in paragraph 2.c)i.(b) above.

iii) Standby Agreements:

(a) Lender may use SBA Form 155 or its own Standby Agreement form. 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.

b. 7(a) Small Loans

(Note: If any requested increase to a 7(a) Small Loan results in a total loan(s) in excess of $350,000 (including loans made within 90 days of another), the Lender must follow the underwriting procedures for Standard 7(a) loans in paragraph C.2.a. above.)

i. All 7(a) Small Loan applications will begin with a screening for a FICO® Small Business Scoring Service℠ Score (SBSS Score).

a) The SBSS Score is calculated based on a combination of consumer credit bureau data, business bureau data, Borrower financials, and application data (The SBSS 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. As of the effective date of this SOP, the minimum acceptable SBSS score is 155, but that score may be adjusted up or down from time to time. Loans with an SBSS score lower than 155 must be fully underwritten under Standard 7(a) procedures. SBA will post on its website the minimum acceptable SBSS credit score for 7(a) Small Loan applications at www.sba.gov/partners/lenders/7a-loan-program.

b) To screen the application for a credit score:

The credit scoring system is intended as a screening tool to determine whether a loan is eligible for an SBA guaranty under expedited small loan processing. Because of the costs associated with use of this system, Lenders should not score the same loan multiple times or use the scoring system for loans that will be processed conventionally without a 7(a) guaranty.

The Lender will enter a minimal set of fields into E-Tran or SBA One Loan Origination. At this point, the Lender will not be required to complete the entire set of E-Tran/SBA One screens, but the Lender may choose to submit the entire set of E-Tran/SBA One loan origination data if it is easier to keep the data set intact while processing via a third-party software product.

The below data fields are required to generate a credit score and are part of the screens used for the E-Tran/SBA One loan origination process and part of the specifications for loan origination software packages, which will make it easier to move forward with the loan application if the credit score is acceptable.

i) business_legal_name

ii) business_address

iii) business_city

iv) business_state

v) business_zip

vi) business_phone

vii) fed_tax_id

viii) DUNs number (if available)

ix) For all owners of 20% or more equity in the Applicant small business, the following is necessary to generate the credit score:

(a) first_name

(b) last_name

(c) SSN

(d) city

(e) state

(f) zip

c) An acceptable SBSS credit score satisfies the requirement to consider the following:

i) The 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 (character and reputation will be determined through the appropriate questions on SBA Form 1919);

ii) The strength of the business;

iii) Past earnings, projected cash flow, and future prospects; and

iv) Subject to the additional analysis required below, the Applicant's ability to repay the loan with earnings from the business.

d) If the Applicant does not receive an acceptable SBSS credit score:

i) Lenders may submit via E-Tran or SBA One a 7(a) loan application to the LGPC following the procedures in paragraph C.2.a., Standard 7(a) Loans.

ii) PLP Lenders may process the application using their PLP authority following the procedures in paragraph C.2.a., Standard 7(a) Loans above. Lenders with SBA Express authority may submit the application via that processing method (see Chapter 2 of this Section).

ii. Abbreviated Credit Analysis for 7(a) Small Loans:

The Lender's credit memorandum must demonstrate reasonable assurance of repayment and must include the following:

a) A brief description and history of the business;

b) When 50 percent or more of the loan proceeds will be used for working capital, Lender must explain in its credit memorandum why this level of working capital is necessary and appropriate for the subject business;

c) A brief description of the management team of the company. 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. If the loan will be for a change of ownership, Lender must address the experience of the new management and potential impact on the business going forward;

d) Owner/Guarantor analysis, including obtaining personal financial statements, consistent with Lender's policies for their similarly-sized non SBA-guaranteed commercial loans;

e) The reason(s) why credit is not available elsewhere on reasonable commercial terms from non-Federal, non-State, non-local government sources, (see Section A, Ch. 1, Para. E, Demonstrate the Need for Desired Credit in this Part);

f) A description of proposed collateral and estimated value, if secured, in accordance with paragraph 3, Collateral, below.

g) Insurance – Lender must address whether life insurance or other insurances will be required. Lender may follow the same written policies and procedures it uses for its similarly-sized non-SBA guaranteed commercial loans.

h) Lender must address other specifics relating to the loan as applicable, including:

i) The terms of any seller financing and standby agreements;

ii) Discussion of any liens, judgments, or pending litigation including divorce proceedings;

iii) Franchise, dealer, or similar agreements (see Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements for further guidance);

iv) Management agreements (see paragraph C.2.a.1, Lender's Credit Analysis above for Standard 7(a) loans and Section A, Ch. 1, Para. D.5, Affiliation based on Management of this Part for further guidance); and

v) Any debt refinancing, including justification and original purpose (copies of all notes to be refinanced must be submitted with any loan submitted to the LGPC), meeting the requirements of Para. A.1 of this Chapter. Note: Any debt refinancing must be specifically identified in the Use of Proceeds section of the Authorization in accordance with Paragraph A.1.g. of this Chapter.

vi) The effect any affiliates may have on the ultimate repayment ability of the Applicant.

iii. Equity Requirements for 7(a) Small Loans.

a) The Lender must include in its credit analysis a detailed discussion of the required equity and its adequacy. (See Chapter 5, Para. D., Loan Closing and Disbursement, of this Section, for requirements concerning documenting and verifying equity injection).

b) Minimum equity injection requirements for certain Applicants and loans:

i) Start-Up Businesses – At a minimum, SBA considers an equity injection (Applicant contribution) of at least 10 percent of the total project costs (all costs required to become operational, regardless of the source of funds) to be necessary for a Start-Up Business to operate on a sound financial basis. SBA considers a business to be a "start-up" for the purpose of determining equity injection requirements if it has been in operation (i.e., generating revenue from intended operations) for 1 year or less;

ii) Changes of ownership:

(a) Resulting in a new owner (complete change of ownership): At a minimum, SBA considers an equity injection of at least 10 percent of total project costs (all costs required to complete the change of ownership, regardless of the source of funds) to be necessary for such transactions. Seller debt may not be considered as part of the equity injection unless it is on full standby for the life of the SBA loan and it does not exceed half of the required equity injection;

(b) Change of ownership between existing owners ("partner buyout"): If the 7(a) Small Loan will finance more than 90% of the purchase price of a partner buyout, the following requirements must be met:

(i) The remaining owner(s) must certify that he/she has been actively participating in the business operation and held the same or an increasing ownership interest in the business for at least the past 24 months. Lender must include in the credit memorandum confirmation that the Borrower has made the required certification and retain such certification in the file.

(ii) The business balance sheets for the most recent completed fiscal year and current quarter must reflect a debt-to-worth ratio of no greater than 9:1 prior to the change in ownership.

In the event the Lender is unable to document that both (i) and (ii) above are satisfied, the remaining owner(s) must contribute cash in the amount of at least 10% of the purchase price of the business, as reflected in the purchase and sale agreement.

c) Source of Equity Injection: Lenders must document and verify the Borrower's equity injection per paragraph C.2.a.ii.c), Source of Equity Injection, requirements for Standard 7(a) Loans above and Chapter 5, Para. D.3.b, Documentation of Equity Injection of this Section below.

3. Collateral

See Section A, Ch. 6, Para. A of this Part for guaranty requirements.

a. Lenders must use commercially reasonable and prudent practices to identify collateral, which conforms to procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans. Decisions regarding what collateral must be taken to secure a loan are based on the circumstances of the individual loan, including size, and must meet the minimum requirements set forth in this section.

b. When loan proceeds from a Standard 7(a) Loan or 7(a) Small Loan will be used to refinance existing debt, the loan must be secured with at least the same collateral and lien priority as the debt that is being refinanced. When the debt being refinanced is considered to be over collateralized based upon SBA collateral requirements and the SBA loan will remain fully secured, the Lender may approve the release of excess collateral. Substitute collateral may be offered providing it is of comparable value and useful life and is determined to be acceptable by SBA or a PLP Lender processing the loan under its PLP authority.

c. Adequacy of Collateral.

i. A loan request is not to be declined solely on the basis of inadequate collateral. In fact, one of the primary reasons Lenders use the SBA-guaranteed program is for those Applicants that demonstrate repayment ability but lack adequate collateral to repay the loan in full in the event of

default. However, SBA does not permit its guaranty to be a substitute for available collateral.

ii. When assessing the adequacy of collateral, the Lender must consider the impact that covenants and other restrictions recorded against the collateral may have on its value and marketability. The Lender must document this analysis in the file. Examples of items to review include:

a) Deed restrictions, covenants, easement provisions, reversionary interests, subordinations, leases and options, and other provisions that restrict the use of the property for the benefit of a third party (note: certain deed restrictions pertaining to the use of the property, which are intended to protect the health and safety of occupants, may be acceptable, e.g., deed restrictions based upon environmental concerns including restrictions on residential use, use as a day care center for children or seniors, use as a school, or use as a hospital); and

b) Engineering Controls that require the Applicant 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.

d. Collateral Requirements for Standard 7(a) Loans (excludes 7(a) Small Loans).

i. SBA considers a loan as "fully secured" if the Lender has taken security interests in all available fixed assets of the Applicant with a combined Net Book Value as adjusted below, up to the loan amount. For 7(a) loans, the term "fixed assets" means real estate, including land and structures, machinery and equipment owned by the business or an EPC.

a) New machinery and equipment (excluding furniture and fixtures) may be valued at no more than 75% of price minus any prior liens for the calculation of "fully secured";

b) Used or existing machinery and equipment (excluding furniture & fixtures) may be valued at no more than 50% of Net Book Value or 80% with an Orderly Liquidation Appraisal minus any prior liens for the calculation of "fully secured";

c) Improved real estate can be valued at no more than 85% and unimproved real estate can be valued at 50% of the market value for the calculation of "fully secured" and the value must be determined in accordance with the requirements set forth in paragraph C.3.f, Real Estate Appraisal and Business Valuation Requirements below; and

d) Furniture and Fixtures may be valued at no more than 10% of Net Book Value or appraised value.

ii. Collateral Shortfall

If there is a collateral shortfall (not "fully secured") on the SBA-guaranteed loan the Lender:

a) Must take available equity in the personal real estate (residential and investment property) of any owners of 20% or more of the Applicant and guarantors. Liens on personal real estate may be limited to the amount of the collateral shortfall. In addition, liens on personal real estate may be limited to 150% of the equity in the collateral, if there are tax implications associated with the lien amount in the state where the lien is filed.

b) May include trading assets as necessary (using no more than 10% of current book value for the calculation).

iii. SBA does not require a Lender to collateralize a loan with real estate (including commercial, residential and investment properties owned by the Applicant or personally by the owners) to meet the "fully secured" definition when the equity in the real estate is less than 25% of the property's fair market value. The Lender must document in their loan file the source (other than the personal financial statement) for making the determination of less than 25% equity.

iv. When loan proceeds from a Standard 7(a) Loan will be used to purchase or improve assets, a first security interest in those assets must be obtained.

v. Assets owned by an owner of the Applicant and Spouse:

a) When an individual alone or together with his or her spouse or minor children owns 20% or more of the Applicant, the Lender must consider taking as collateral a lien on personal real estate (including commercial and investment properties not occupied by the Applicant) that is owned individually by the Applicant owner, or jointly owned by the individual and his or her spouse or minor children.

b) Real estate transferred by the Applicant to the non-owning spouse or minor children within 6 months of the date of the application will not be exempt from consideration as available collateral.

vi. For all loans that are collateralized by commercial real estate, Lenders must comply with Paragraph C.3.f., Real Estate Appraisal and Business Valuation Requirements, below, and with Section A, Ch. 6, Para. E, Environmental Policies and Procedures, of this Part.

e. Collateral Requirements for 7(a) Small Loans.

i. For loans of $25,000 or less, the Lender is not required to take collateral. (Guaranties must still be obtained in accordance with Section A, Ch. 6, Para. A.1, Guaranties, of this Part); and

ii. 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:

a) Lender must take a first lien on assets financed with loan proceeds;

b) Lender must take a lien on all of the Applicant's fixed assets, including real estate, up to the point that the loan is fully secured, based on the collateral valuations used in subparagraph d., "Collateral Requirements for Standard 7(a) Loans (excluding 7(a) Small Loans)" above. Lender is not required to take a lien against Applicant's real estate when the equity is less than 25% of the fair market value. The Lender may limit the lien taken against real estate to the amount necessary to ensure the loan is fully secured; and

c) Lender may secure Applicant's trading assets if it does so for its similarly-sized non-SBA guaranteed commercial loans. Lender may also take personally-owned investment and/or residential real estate as collateral and may limit the liens on that collateral in accordance with the provisions in subparagraph d., Collateral Requirements for Standard 7(a) Loans (excluding 7(a) Small Loans), above.

f. Real Estate Appraisal and Business Valuation Requirements

The regulation governing real estate appraisal is set forth at 13 CFR § 120.160(b).

i. Commercial Real Estate:

a) For all Standard 7(a) Loans greater than $500,000 secured by commercial real property, all Lenders must obtain an appraisal by a State licensed or certified appraiser. Appraisals must be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Additionally, SBA requires that completed appraisals be dated within 12 months of the application for guaranty. For federally-regulated Lenders, no exemption is granted under the Interagency Appraisal and Evaluation Guidelines dated December 2, 2010, for Transactions Insured or Guaranteed by a U.S. Government Agency.

b) For all Standard 7(a) Loans $500,000 or less, and 7(a) Small Loans, secured by commercial real property:

i) If the loan finances a transaction involving parties with a close relationship (for example, transactions between existing owners or family members), or if SBA or the Lender otherwise concludes that an appraisal is necessary to appropriately evaluate creditworthiness, the Lender must obtain an appraisal.

ii) If an appraisal is not required under the preceding paragraph, all Lenders must obtain an appropriate evaluation of the commercial real estate securing the loan that is consistent with safe and sound banking practices. Evaluations are not required to be performed in accordance with USPAP or by State licensed or certified appraisers but should be consistent with the Interagency Appraisal and Evaluation Guidelines and the Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions, issued by the Federal Banking Regulators.

c) The appraiser must be:

i) Independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and

ii) Either State-licensed or State-certified, 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 USPAP, except that federally-regulated Lenders may follow their primary regulator's FIRREA requirements to the extent they permit otherwise. The Lender may not use an appraisal prepared for the seller or the Applicant. The cost may be passed on to the Applicant.

e) The appraisal must be an "Appraisal Report" prepared in compliance with USPAP.

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, general contractor, project architect, or construction management firm 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 Lender cannot obtain 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 Lender is unable to obtain 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 obtain 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) 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.

j) 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.

k) 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.

l) If at time of closing the appraised value:

i) Is 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

ii) Is 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.

iii) 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 conducting lender oversight activities. 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.

ii. 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.

iii. Other Fixed Assets:

If the valuation of fixed assets is greater than their 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.

iv. Additional Appraisal Requirements for all 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 $500,000, 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.

v. Business Valuation Requirements – Change of Ownership:

a) Determining the value of a business (not including real estate which is separately valued through a real estate 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 potentially the creation of intangible assets. A business valuation assists the buyer in making a determination that the seller's asking price is supported by an independent Qualified Source (see definition in Appendix 3).

b) 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 conclusion of value, the qualifications of the individual performing the business valuation and their signature certifying to the information contained in the business valuation. The Lender may not use a business valuation prepared for the Applicant or the seller. The cost of the business valuation may be passed on to the Applicant.

i) Non-Special Purpose Properties:

(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 existing owners or family members), the Lender must obtain an independent business valuation from a Qualified Source.

ii) Special Purpose Properties: A "Special Purpose Property" is a limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the specific use for which it was built.

(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 being financed is over $250,000 or if there is a close relationship between the buyer and seller (for example, transactions between existing owners or family members) and the business operates from a Special Purpose Property, the Lender must obtain an independent business valuation performed by a Certified General Real Property Appraiser.

(c) The business valuation must allocate separate values to the individual components of the transaction including land, building, equipment, and intangible assets.

(d) The Certified General Real Property Appraiser must have completed no less than four going concern appraisals of equivalent special use property as the property being appraised, within the last 36 months, as identified in the qualifications portion of the Appraisal Report.

(e) Each business valuation assignment under this section must be undertaken with a specific instruction for the Certified General Real Property Appraiser to conduct the appraisal in compliance with current USPAP guidelines.

iii) If the application will be submitted to the LGPC, the business valuation must be submitted as part of the loan application.

iv) If the application will be submitted under PLP 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 PLP 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.

v) Any amount(s) of the loan proceeds that will be used to facilitate a change of ownership may not exceed the business valuation.

vi) 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. SUBMISSION OF APPLICATION FOR GUARANTY

1. Contents of Lender's Application for Guaranty

The contents of the Lender's application for guaranty vary depending on the size of the loan and the method of processing chosen by the Lender. Based on the method of processing, the Lender may or may not be required to submit the documentation and exhibits to SBA, but in all cases must maintain those documents and any that support the guaranty request in their loan files.

The Lender must disclose 100% of the Applicant's ownership on SBA Form 1919 and in E-Tran or SBA One in order to submit a loan application. Each owner must be identified in E-Tran or SBA One.

SBA Form 1919 includes 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.

a. Standard 7(a) Loans and 7(a) Small Loans:

Program forms can be found at www.sba.gov/document.

i. Centralized 7(a) Loan Submission Instructions can be found at the 7(a) Loan Guaranty Processing Center ("LGPC") website along with other forms, telephone numbers and fax numbers: www.sba.gov/CitrusHeightsLGPC.

ii. All Standard 7(a) Loan and 7(a) Small Loan files must include the forms and information the Lender requires in order to make an informed eligibility and credit decision. Any application form obtained by the Lender from the Applicant must be certified by the Applicant as true and complete.

b. PLP Lenders processing loans under their PLP authority must obtain and retain the documentation listed below in their file.

c. Standard 7(a) Loans (see subparagraph d. below for specific requirements for 7(a) Small Loans):

For all loans submitted using the non-delegated process through the LGPC (including loans from PLP Lenders using this processing method), Lender must obtain and retain in its file all documentation listed below. In addition, Lender must submit as part of the application for guaranty those items below emphasized in **bold**.

i. Lender must complete and sign SBA Form 1920.

ii. Applicants and Associates must complete and sign SBA Form 1919, "Borrower Information Form." SBA Form 1919 must be signed by the following:

a) For a sole proprietorship, the sole proprietor;

b) For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm, or any partner that is involved in management of the Applicant;

c) For a corporation, all owners of 20% or more of the corporation and each officer and director;

d) For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;

e) Any Key Employee; and

f) Any Trustor (if the Small Business Applicant is owned by a trust).

g) When the combined ownership interest between spouses and minor children is 20% or more, both spouses must complete SBA Form 1919.

When 20% or more ownership interest is held by a corporation, partnership, or other form of legal entity in the Applicant or OC, the ownership interests of all individuals must be disclosed.

A separate Section I of SBA Form 1919 is required to be completed and signed for each co-applicant (e.g. Eligible Passive Company (EPC) and Operating Company (OC)).

All parties listed in subparagraph c.ii. above are considered "Associates" of the Small Business Applicant as defined in 13 CFR 120.10. A separate Section II is required to be completed and signed by each principal of the Small Business Applicant.

iii. **Lender's Credit Memo** must address all requirements detailed in paragraph C, Credit Standards in this chapter.

iv. Character Determination:

a) If questions 17, 18, and 19 of SBA Form 1919 are all answered "no," a Character Determination is not required.

b) If question 17 is answered "yes," the loan is not eligible.

c) If question 18 or 19 is answered "yes," the Subject Individual and Lender must follow the steps as outlined in Section A, Ch. 3, Para. B, Character Determinations, of this Part prior to submission of the application to the LGPC for a non-delegated loan and prior to submitting the request for a loan number for a PLP loan.

v. **Personal Financial Statement** dated within 90 days of submission to SBA, for all owners of 20% or more (including the assets of the owner's spouse and minor children), and proposed guarantors. Lenders may use SBA Form 413 or their own equivalent form.

vi. **Business financial statements** and/or tax returns dated within 120 days prior to submission to SBA, consisting of:

a) Year End Balance Sheet for the last 3 years, including detailed debt schedule;

b) Year End Profit & Loss Statements for the last 3 years;

c) Reconciliation of Net Worth;

d) Interim Balance Sheet; and

e) Interim Profit & Loss Statements;

vii. Affiliate/Subsidiary financial statement requirements same as above;

viii. Copy of Lease, if applicable;

ix. Detailed listing of machinery and equipment to be purchased with loan proceeds and cost quotes, if applicable;

x. Detailed listing of collateral (may be included in the Lender's credit memo);

xi. Provide the following if real estate is to be purchased with loan proceeds:

a) Appraisal (See appraisal requirements in paragraph C.3.f, Real Estate Appraisal and Business Valuation Requirements in this Chapter;

b) **Copy of signed purchase agreement**;

c) **Lender's environmental questionnaire** (if applicable – see Section A, Ch. 6, Para. E, Environmental Policies and Procedures, of this Part); and

d) **Cost breakdown** where improvements to the real estate are included;

xii. Provide the following if purchasing an existing business with loan proceeds:

a) **Copy of buy-sell agreement**;

b) Copy of business valuation that meets the requirements in paragraph C.3.f.v, Business Valuation Requirements - Change of Ownership in this Chapter;

c) **Pro forma balance sheet** for the business being purchased as of the date of transfer;

d) **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. The financial statements must be dated and either signed or certified by the seller within 120 days prior to submission to SBA; and

e) **Seller's interim financial statements** no older than 120 days from date of submission to SBA. The financial statements must be dated and either signed or certified by the seller. If seller's financial statements are not available, the seller must provide an alternate source of verifying revenues. If seller's financial statements are not available, Lender must discuss in its credit analysis:

i) Why financial statements are not available; and

ii) How the Lender verified business revenue.

xiii. Franchise:

a) For non-delegated loans:

i) If the Applicant's brand meets the FTC definition of a franchise, Lender must identify the name of the franchise and the SBA Franchise Identifier Code when entering the application into E-Tran or SBA One. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. The LGPC will confirm that the brand is listed on the SBA Franchise Directory;

ii) If the Lender determines that the Applicant's brand does not meet the FTC definition of a franchise, and it is not on the Directory, Lender must explain its determination in its credit memorandum when submitting the application to the LGPC and provide the agreement and any additional documentation required by the brand. Lender also must provide contact information for the franchisor/licensor (name and email address only). The LGPC will forward the documentation and contact information to the SBA Franchise Team for review and final determination;

iii) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran or SBA One. The Lender must identify all other brands and SBA Franchise Identifier Codes (if applicable) in the Lender's credit memorandum, and must identify which of the Applicant's brands are critical to the Applicant's business operation, including an explanation of the basis for that determination (e.g., a breakdown of revenue by brand). The LGPC will confirm that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory. (See Section A,

Ch 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements for further guidance.)

b) For PLP loans:

i) If the Applicant's brand meets the FTC definition of a franchise, Lender must document in its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the request for loan number into E-Tran or SBA One. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. (Lender will need to submit the documentation showing that the Applicant's brand is on the Directory with any guaranty purchase request.)

ii) If the Applicant's brand is not on the Directory and the PLP Lender determines the brand does not meet the FTC definition and proceeds with approving the loan under its PLP authority, the Lender must document its file and will be required to submit that documentation with any guaranty purchase request and the PLP Lender bears the risk of an incorrect determination;

iii) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code (if applicable) for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran or SBA One. The Lender must document in its file that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory, and must document their file with the basis for their determination of which brands are critical to the Applicant's business operation (e.g., a breakdown of revenue by brand). PLP Lenders will be required to submit all of this supporting documentation to SBA with any guaranty purchase request. (See Section A, Ch 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements for further guidance.)

xiv. IRS Form 4506-T, Request for Transcript of Tax Return:

xv. IRS Transcripts and complete verification.

xvi. **Debt Refinancing**. Lenders must maintain copies of all notes, security agreements, leases, or other documentation evidencing the debt to be refinanced in the loan file. For non-delegated loans, Lender must submit copies of all supporting documentation for the debt to be refinanced to the LGPC with the application.

xvii. **Documentation of USCIS status verification** – Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application or request for loan number to SBA.

Lender may submit a copy of the verification received from USCIS or SBA-SLPC or confirm in its credit memorandum that verification has been obtained.

xviii. **Draft Loan Authorization** *(only required for PLP Lenders using the non-delegated processing method).* The latest version of the Authorization Boilerplate and Wizard is available at www.sba.gov/document/support-object-object-standard-7a-authorization-file-library.

d. Specific 7(a) Small Loans requirements:

For loans up to and including $350,000 that meet the requirements of a 7(a) Small Loan (including the minimum acceptable SBSS credit score), the items identified in paragraph D.1.c.i.-iii. above must be submitted to the LGPC. In addition, the items identified in paragraph D.1.c.iv, v (if the Lender requires Personal Financial Statements for its similarly-sized, non-SBA guaranteed commercial loans), vii, xi, xii, xiii, and xvi above may also need to be submitted to the LGPC depending on the conditions of the loan.

2. Where to Submit Applications for Guaranty

All 7(a) Lenders are permitted to submit applications for guaranty under non-delegated processing procedures.

a. Non-delegated applications – Lenders submitting applications using non-delegated procedures (including loans from PLP Lenders) must submit applications for guaranty and all attachments via E-Tran or SBA One to the LGPC. *Documents greater than 250MB must be separated into multiple documents. The system does not support uploads greater than 250MB.*

b. PLP applications – Lenders submitting applications using their PLP authority must submit guaranty applications via E-Tran or SBA One, retaining all required documentation in the Lender's loan file.

c. Reconsideration of Declined non-delegated Standard 7(a) Loans and 7(a) Small Loans Applications (13 CFR § 120.193):

i. If the Lender believes the reason(s) for decline have been overcome, a request for reconsideration may be submitted along with a detailed written explanation of how the Applicant has overcome the reason(s) for decline. Lender must submit a request for reconsideration to the LGPC within 6 months of the date of decline. Any request submitted more than 120 days after the date of decline must include current financial statements.

ii. If a request for reconsideration is declined by the LGPC, a second reconsideration may be requested from the D/FA, whose decision is final. The request to the D/FA 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 reason(s) identified for decline and how the Applicant has overcome those reason(s). The LGPC will forward the request to the D/FA for a final decision.

3. See Chapter 5, Authorization through Disbursement, in this Section, for SBA requirements for the loan Authorization, post-approval and pre-disbursement requests for changes, transfer of guaranty between participating Lenders, and loan closing and disbursement.

CHAPTER 2: SBA EXPRESS LOANS

SBA Express was established as a permanent SBA program under P.L.108-447 and 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.

Lenders must always start by reviewing the contents of Section A, Core Requirements for all 7(a) and 504 Loans, in this Part.

A. ELIGIBLE USES OF PROCEEDS FOR SBA EXPRESS

SBA Express Lenders must apply and comply with all of SBA's Loan Program Requirements, including the Core Requirements in Part 2, Section A of this SOP.

SBA Express loan proceeds must be used exclusively for business-related purposes subject to 13 CFR §§ 120.120 and 120.130

In addition to the Core Requirements for all 7(a) and 504 Loans identified in Part 2, Section A of this SOP, SBA Express Loans loan proceeds may be used for:

1. **Debt Refinancing**

   Loan proceeds may not be used to pay a creditor in a position to sustain a loss (including the same institution's debt). This includes refinancing debt that will shift all or part of a potential loss from the original Lender to the SBA. 13 CFR §§ 120.140(j)(1) and 120.201

   a. A Lender may refinance an existing non-SBA-guaranteed loan or Borrower debt from another lender if:

      i. The Lender determines that 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

      ii. The new loan meets the SBA 10 percent improvement to debt service coverage requirement in paragraph e. below; however, a new SBA Express loan is not subject to SBA's 10 percent improvement to debt service coverage requirement if the debt to be refinanced is a revolving line of credit.

   b. A Lender may refinance its own non-SBA guaranteed debt to the Applicant if:

      i. The conditions in a.i) and a.ii) above are met;

      ii. The debt to be refinanced is, and has been, current for at least the last 36 months or for the life of the loan, whichever is longer. (SBA Form 1920 includes the relevant 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

iii. The Lender's credit exposure to the Applicant will not be reduced.

c. An SBA Express Lender may refinance an existing SBA-guaranteed loan from another lender only if:

i. The transaction is the purchase of an existing business that has an existing SBA loan with the other lender; or

ii. The Applicant needs additional financing and the existing Lender is unable or unwilling to increase the existing SBA loan or make a second loan, and the new loan will meet the 10 percent improvement to debt service coverage requirements in paragraph e. below.

d. An SBA Express Lender may not refinance its own existing SBA-guaranteed debt under SBA Express.

e. Ten Percent Payment Improvement. With the exception of debt (short-term or long-term) structured with a demand note or balloon payment, credit card obligations used for business-related purposes, and revolving lines of credit (short-term or long-term) where the original lender is unable or unwilling to renew the line or the Applicant is restructuring its financing in order to obtain a lower interest rate or longer term, 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 cash flow improvement calculation. However, no debt(s) on reasonable terms may be refinanced. 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.

f. 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 the amount being refinanced only comprises business-related debt. (SBA Form 1919, Borrower's Information Form, contains such a certification.)

g. The Authorization must include:

i. In the Use of Proceeds section, the refinancing must be specifically identified;

ii. An itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid $10,000 or more; and/or

iii. The loan number and dollar amount of any existing SBA-guaranteed debt being refinanced.

h. Other conditions that apply to debt refinancing:

i. An SBA Express loan may not be used to refinance a debt owed to an SBIC.

ii. The payment of trade payables is not considered to be debt refinancing.

2. Change of Ownership

(13 CFR § 120.202).

a. A Borrower(s) (and any individual Co-Borrower as permitted under this paragraph), 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 under this paragraph. An asset purchase will be deemed a change of ownership and must comply with all of the requirements of this paragraph if the Applicant(s) is purchasing all or substantially all of the assets of the seller's business and is continuing the operations of the seller's business. The following requirements apply:

   i. The change of ownership must promote the sound development and/or preserve the existence of a small business;

   ii. Change of Ownership Between Existing Owners: A change of ownership between existing owners may be financed under the following circumstances:

      a) One or more current owners is purchasing the entire interest of another current owner, resulting in 100% ownership of the business by the remaining owner(s);

      b) 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).

   iii. Change of Ownership Resulting in a New Owner: A change of ownership resulting in a new owner may be financed using SBA Express under the following circumstances:

      a) A small business is purchasing 100% of the ownership interest in another business.

      b) An individual(s) who is not an existing owner is purchasing 100% of the ownership interest in the small business.

      c) A small business is acquiring another small business through an asset purchase.

b. 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 to assist the business, the small business may contract with the seller as a consultant for a period not to exceed 12 months including any extensions.

c. 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:

   i. In a change of ownership under section 2.a.ii.a) or 2.a.iii.b) above, the small business and the individual owner(s) who is acquiring the ownership interest 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.

ii. In a change of ownership under section 2.a.ii.b) above, the small business must be the Borrower and the remaining owner(s) are subject to the requirements for personal guaranties in Section A, Ch. 6, Para. A, Guaranties, of this Part.

iii. In a change of ownership under section 2.a.iii.a) or 2.a.iii.c) above, the Borrower will be the acquiring entity. If, however, the small business being acquired will remain in existence, the acquiring entity and the small business being acquired must be Co-Borrowers. All owners of the Applicant business, and the business being acquired if it is a Co-Borrower, are subject to the requirements for guaranties in Section A, Ch. 6, Para. A., Guaranties, of this Part.

d. The Lender must comply with the SBA Express requirements in Section A, Ch. 6, Para. B., IRS Tax Transcript/Verification of Financial Information of this Part.

e. If the Applicant 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. The non-SBA guaranteed loan may not have a maturity that is shorter than the SBA Express loan.

   This provision does not apply if the business real estate is being financed as part of a 504 project.

f. The following changes of ownership are not eligible for SBA Express:

   i. A non-owner who is purchasing less than 100% of the ownership interests in the business;

   ii. An existing owner who is purchasing the ownership of another existing owner that will not result in 100% ownership of the business by the purchasing owner;

   iii. Loans to an Employee Stock Ownership Plan (ESOP) or equivalent trust to purchase a controlling interest (51% or more) in the employer small business or to the employer small business to re-lend the funds to an ESOP to acquire a controlling interest (51% or more) in the employer concern; or

   iv. Loans to a cooperative to purchase a controlling interest (51% or more) in the employer small business.

g. 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.

h. The Lender's loan documentation must include:

i. A current business valuation (not to include any real estate) that meets SBA requirements in paragraph C.3.d, SBA Express Real Estate Appraisal and Business Valuation Requirements, below .

ii. 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.

iii. 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, the loan is not eligible for an SBA guaranty.

iv. Business, stock, and asset purchase agreements, as applicable.

v. Evidence that all assets, including transferable licenses (e.g. liquor license) conveyed as a result of purchase are properly secured as collateral by Lender.

i. The "purchase price of the business" includes all assets being acquired such as real estate, machinery and equipment, and intangible assets.

i. Intangible Assets: An SBA Express loan may be used to finance a change of ownership that includes intangible assets (including, but not limited to, goodwill, client/customer lists, patents, copyrights, trademarks, intellectual property, and agreements not to compete) as long as it is supported by an independent business valuation that complies with paragraph C.3.d, SBA Express Real Estate Appraisal and Business Valuation Requirements, below.

ii. 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.

iii. 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.

3. Other Restrictions on SBA Express Loans

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

b. The following types of loans are not eligible under SBA Express processing:

i. Disabled Assistance Loans (DAL);

ii. Loans to an ESOP (under 13 CFR §§ 120.350 through 120.354) or to an eligible small business owned or controlled by an ESOP (see Section A, Ch. 2, Para. B., Employee Stock Ownership Plans, of this Part for more information);

iii. Loans to a cooperative or to an eligible small business owned or controlled by a cooperative (see Section A, Ch. 2, Para. C, Cooperatives, of this Part for more information);

iv. Loans involving a Single Employer 401(k) plan, including a ROBS plan, unless the only investment held by the 401(k) plan is the equity in the Applicant business;

v. Loans involving a Multiple-Employer 401(k) plan (i.e., a plan that holds in trust the assets of other businesses), including a ROBS plan (see Section A, Ch. 2, Para. D, 401(k) Plans Including Rollovers as Business Start-Ups (ROBS) Plans, of this Part for more information);

vi. Pollution Control Program Loans; and

vii. CAPLines program.

B. LOAN TERMS AND CONDITIONS FOR SBA EXPRESS

SBA Express Lenders must comply with the requirements in Section A, Ch. 5, Para. C, 7(a) Loan Program Fees, and Section A, Ch. 5, Para. D., 7(a) Loan Program and Use of Agents, of this Part.

1. Maximum Loan Amount

a. The maximum aggregate loan amount is $350,000, (gross) inclusive of all outstanding SBA Express, Community Express, and Patriot Express loans the Applicant and its affiliates may have.

b. Maximum Loans to Businesses with Affiliates.

Lenders must determine whether the Applicant has any affiliates and document the results in their credit analysis. If affiliation exists, SBA's loan maximums apply to the Applicant, including all affiliates, as if all were a single business.

c. Maximum Loan Amount for multiple loans approved within 90 days of each other – "90 Day Rule."

i. If two SBA-guaranteed loans to any one business (including affiliates) are approved within 90 days of each other, the maximum gross amount of all such loans in that time frame cannot exceed $5,000,000.

ii. Two SBA-guaranteed loans approved within 90 days of each other may impact the maximum guaranty percentage available to the Borrower and its affiliates as well as the guaranty fee.

2. Maximum Guaranty Amounts and Percentages

a. The maximum dollar amount outstanding of SBA's guaranty to any one business (including affiliates) must not exceed $3,750,000. When calculating the maximum guaranty percentage available to a Borrower and its affiliates, the Lender must include the approved loan amount for a revolving line of credit. The SBA's guaranty is also known as the "SBA share" or "guaranteed portion."

b. Multiple SBA Express loans are allowed up to $350,000 in the aggregate. The guaranteed amount of all SBA Express loans counts toward the $3,750,000 maximum SBA exposure that may be outstanding for all SBA loans to a Borrower and its affiliates at any one time.

c. The maximum SBA Express guaranty percentage is 50 percent.

d. Combination of 7(a) and 504 loans.

   i. 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 processed and approved first.

   ii. Lenders must advise the SBA processing centers that there is a companion 504 application to ensure that the 7(a) loan is processed and approved prior to the 504 loan application being processed and approved.

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

e. Zero Percent Guaranty Cannot be Provided for Ineligible Purposes:

   A 7(a) loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business and no part of an SBA 7(a) loan may be guaranteed at zero percent.

3. Loan Maturities

a. SBA Express loans must have a stated maturity. The loan term must be the shortest appropriate term based on the use of proceeds and the Borrower's ability to repay.

   i. SBA Express lines of credit:

      a) May not exceed 10 years inclusive of a term-out period.

      b) Revolving loans:

         i) Revolving loans of more than 12 months must be structured with a term-out period that is not less than the draw period, with no draws permitted during the term-out period. Under no circumstances may there be any advances after the initial 60 month period.

            For example, the loan can have an 8 year maturity with a 2 year draw period and a term-out period of 6 years. Conversely, a loan with an 8 year maturity cannot have a draw period of 6 years and term-out period of 2 years.

         ii) May be established as renewable each year, provided they do not exceed the maximum maturity. Lender may not charge a renewal fee. 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 Section A, Ch. 5, Para. C.1.a.v., Additional Guaranty Fee for Extensions of Short-Term Loans, of this Part.

iii) Revolving loans with maturities of 12 months or less may be initially structured without a term-out; however, if the loan is renewed or the maturity extended beyond 12 months, the requirements in paragraph b)i) above will apply.

ii. SBA Express Term Loans:

a) Working capital or inventory loans and the financing of intangible assets (including goodwill) must not exceed 10 years.

b) Generally, equipment, fixtures, or furniture loans should not exceed 10 years. However, the term may be up to 15 years if the IRS asset class useful life supports the term. The Lender must document in its credit memorandum justification of any term that exceeds 10 years.

c) Real estate loans (including acquisition, rehabilitation, renovation, or construction) must not exceed 25 years unless a portion of the loan is used for construction or renovation of the real estate. If the use of proceeds on a real estate loan includes construction or renovation, the construction or renovation period may be added to the 25 year maximum maturity.

d) Loans for leasehold improvements may not exceed 10 years, plus an additional period reasonably necessary to complete the leasehold improvements, as determined based on the specific nature of the leasehold improvements, but in no case more than 12 months.

e) Mixed purpose loans (including change of ownership): When loan proceeds are used for multiple purposes (land and building, working capital, machinery & equipment, or the refinancing of any of these purposes), the maturity may be a blended maturity; or, if 51% or more of the use of proceeds are for real estate, the maximum maturity may be up to 25 years.

f) The term of a loan may not exceed the period of the SBA guaranty commitment.

b. Establishing the Repayment Period (13 CFR § 120.212):

When Lenders establish a repayment schedule and loan maturity, they must consider the following:

i. The Borrower's ability to repay;

ii. Use of loan proceeds;

iii. Useful life of the assets being financed; and

iv. The appropriate maturity for mixed purpose loans (including change of ownership). The Lender may use a blended maturity or the maturity up to the maximum for the asset class comprising 51% or more of the use of proceeds.

Lenders must include the calculation used to determine the maturity in the credit memorandum.

v. For loans to farm enterprises:

a) Where land and structures (including poultry houses) comprise 51% or more of the use of proceeds, the maximum maturity is 20 years.

b) Where machinery and equipment comprise 51% or more of the use of proceeds, the maximum maturity is the useful life of the machinery and equipment, not to exceed 15 years, plus an additional period reasonably necessary for installation, which may not exceed 12 months.

vi. SBA has instructed the fiscal and transfer agent to stop the sale into the secondary market of a loan when the maturity exceeds these requirements.

c. Establishing the Maturity Date:

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

ii. The maturity date for an SBA Express 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.

d. Maturity When Refinancing Existing Assets or a Business Acquisition:

i. The maximum maturity for a loan used to refinance a real estate or fixed asset loan must 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.

ii. The maximum maturity for a loan used to refinance a business acquisition is 10 years, unless 51% or more of the use of proceeds consist of real estate which would permit a maturity up to 25 years.

e. SBA Express Non-Financial Default Provisions:

Non-financial default provisions are allowed under SBA Express under the following conditions:

i. 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.

ii. Non-financial default provisions must be substantive and must be agreed to by the Borrower in writing at loan closing;

iii. The provisions must be consistent with those used by the Lender on its similarly-sized non-SBA guaranteed commercial loans;

iv. 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

v. 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.

4. Interest Rates

SBA QUICK REFERENCE CHART: Maximum Interest Rates Allowed (See additional information below)

Product SBA Express Loans	Interest Rate The published maximum allowable fixed rate or if variable:
$50,000 or less (All maturities)	Cannot exceed Prime + 6.5%
More than $50,000 (All maturities)	Cannot exceed Prime + 4.5%

a. General Policy on Interest Rates (13 CFR § 120.213):

i. 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 Applicant, subject to SBA's maximum allowable rates.

ii. SBA will periodically publish the maximum allowable fixed interest rate in the Federal Register. The maximum allowable fixed interest rate will be the Prime rate in effect on the first business day of the month, plus an allowable spread over Prime, as set forth in the most recent Federal Register Notice. For a listing of the current maximum allowable fixed interest rates, go to SBA's Capital Access Financial System homepage. 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.

iii. For variable interest rate loans, the basis for the SBA maximum interest rate is an acceptable base rate plus an allowable spread. 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 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.

iv. For loans with a variable interest rate, the following terms must be defined:

a) Base Rate 13 CFR 120.214(c):

i) 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.

ii) 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 decimal places with .004 being rounded down to .00 and .005 being rounded up to .01.

Note: This SOP continues to include the LIBOR Base Rate as an option for the calculation of the maximum allowable variable interest rate for 7(a) loans in accordance with 13 CFR § 120.214(c). The U.K. Financial Conduct Authority announced that it would phase-out LIBOR by the end of 2021. SBA encourages Lenders to consider LIBOR's imminent phase-out when selecting a base rate. For existing 7(a) loans with LIBOR as the base rate, SBA encourages Lenders to examine their loan documents to determine whether LIBOR may be replaced with a fallback rate. If no such provision exists in individual loan documents, Lenders should consider amending the appropriate document(s) in anticipation of LIBOR's phase-out. It is important to note that any changes to the interest rate must be made in accordance with paragraph b.ii. below. The Federal Reserve Alternative Reference Rates Committee has drafted recommended fallback language for contracts tied to LIBOR: https://www.newyorkfed.org/arrc/fallbacks-contract-language.

iii) For variable rate loans, the Lender is not required to use the base rate identified above in this paragraph and 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. A Lender may charge up to 4.5% over the Prime rate on loans over $50,000 and up to $350,000 and up to 6.5% over the Prime rate for loans of $50,000 or less, regardless of the maturity of the loan. However, the interest rate throughout the term of the loan may not exceed the maximum allowable SBA Express interest rate and the loan may be sold on the Secondary Market only if the base rate is one of the base rates allowed in 13 CFR § 120.214(c)..

b) Frequency of change;

c) Range of fluctuation; and

d) Ceiling and floor (if any).

v. Default Interest Rates:

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.

a) 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 permitted for SBA Express loans.

vi. 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.

b. Policy on Variable Interest Rates

i. Standard Policy:

SBA's maximum allowable interest rate applies only to the initial Note rate on a variable rate loan. Subsequent changes 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.

ii. Post-Approval Changes to the Interest Rate:

After approval, the Lender may change the initial Note rate, including changing the base rate, the spread over the base rate, or change 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 consent to the change in the interest rate (if prior to disbursement, Borrower's consent to the change in interest rate must be separate and apart from executing the loan documents), and must make the change through E-Tran servicing.

For example, an SBA-guaranteed loan was approved with a variable rate. Since the loan was approved, the prime rate changed. The Borrower has asked the Lender if the loan can be switched to a fixed rate. If 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, the Lender may make this change per the Borrower's request.

For further guidance see SOP 50 57.

iii. Frequency of Interest Rate Adjustment:

a) SBA Express Lenders are permitted to use the same change intervals used on their similarly-sized, non-SBA guaranteed commercial loans. 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.

i) This adjustment period as identified in the Note may not be changed without the written consent of the Borrower.

ii) 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.

iii) 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.

iv. Interest Rate Requirements for an SBA Note:

a) For fixed rate loans, the Lender must state the specific interest rate in the Note.

b) For variable rate loans, the Lender must include the following information in the Note:

i) Identification of the rate being used as the base rate;

ii) The publication in which the designated base rate appears regularly (e.g. Wall Street Journal or the Federal Register if using the SBA Optional Peg Rate);

iii) The permanent percentage spread to be added to the base rate;

iv) The initial interest rate of the loan (from disbursement to first adjustment);

v) The date or timing of the first rate adjustment; and

vi) The frequency of rate adjustment.

v. 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 both the floor and ceiling are stated in the Note.

vi. 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 method.

vii. Amortization 13 CFR § 120.214(f):

Lender should use an amortization schedule that is appropriate for the type of loan. SBA does not allow balloon payments. A fixed interest rate loan must use a payment that will fully amortize the loan by the maturity date. Typically, variable rate loans are re-amortized every time the interest rate is adjusted to ensure full amortization by the maturity date. The amortization schedule may also be adjusted to meet the cash flow needs of the business.

c. 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 neither rate exceeds 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. If the Lender uses a combination, the entire loan is considered to be a variable interest rate loan. The interest rate on both the guaranteed and unguaranteed portions must be based on the variable rate.

d. Interest Rate Swap Contracts:

i. 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. The Borrower could purchase an interest rate swap contract that would set the interest rate at 8%. When the Note rate is lower than the rate paid by the Borrower on the swap contract (8%), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 8%. 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 8% and the swap seller would pay the difference above 8% 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.

ii. 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 SBA 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.

C. CREDIT STANDARDS FOR SBA EXPRESS

The policies that make up SBA's credit standards begin with the requirements outlined in 13 CFR §§ 120.101 and 120.150. This section provides procedural guidance as to what the Lender should or must consider when analyzing any request for financial assistance that will be guaranteed by SBA.

A Lender must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. The cash flow of the Applicant is the primary source of repayment, not any expected recovery from the liquidation of collateral. Thus, if the Lender's financial analysis demonstrates that the 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 repayment.

To the maximum extent practicable, SBA Express Lenders may use their own forms, internal credit memoranda, notes, collateral documents, and 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.

1. **Processing Method**

   Once submitted to the LGPC, an application withdrawn by a Lender, screened-out, or declined by the LGPC may not be approved by any Lender under its SBA Express authority. E-Tran will not permit the submission of such an application under any Lender's SBA Express authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application.

   An application that did not receive an acceptable credit score under 7(a) Small Loan procedures may be withdrawn prior to submission through E-Tran or SBA One and may be processed under SBA Express.

   SBA Express loans are only processed via an SBA Express Lender's delegated authority. When a Lender submits an SBA Express loan guaranty request under the Lender's SBA Express authority, the Agency does not review the Lender's determination of eligibility, analysis of the credit, or structure of the loan or line of credit prior to issuing an SBA Loan Number. The Lender must analyze eligibility and credit worthiness in accordance with SBA Loan Program Requirements and properly document its file. The SBA Express Lender's analysis is subject to SBA's review and determination of adequacy, when the Lender requests SBA to purchase its guaranty or when SBA is conducting lender oversight activities.

2. **Underwriting**

   SBA has authorized SBA Express Lenders to make the credit decision without prior SBA review.

   a. Lenders must not make an SBA Express loan that would be available on reasonable commercial terms from either the Lender itself or another source without an SBA guaranty. The credit analysis must include the factors demonstrating the Applicant does not have credit available elsewhere on reasonable commercial terms from non-Federal, non-State, non-local government sources, in accordance with Section A, Ch. 1, Para. E, Demonstrate the Need for Desired Credit, in this Part;

   b. The credit analysis must demonstrate that there is a reasonable assurance of repayment.

   c. Lenders must 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 the Lender's similarly-sized non-SBA guaranteed commercial loans.

   d. SBA Express Lenders may use a business credit scoring model (such a model cannot rely solely on consumer credit scores) to assess character, reputation, and credit history of the applicant and/or repayment ability if they do so for their similarly-sized, non-SBA guaranteed commercial loans.

i. The business credit scoring model may only be used in addition to the Lender's appropriate, prudent, and generally accepted industry credit analysis and procedures.

ii. If used, the business credit scoring results must be documented in each loan file and available for SBA review.

iii. Lenders must validate (and document) with appropriate and accepted statistical methodologies that their business credit scoring model is predictive of loan performance and they must provide that documentation to SBA upon request.

iv. Although SBLCs do not make non-SBA guaranteed loans, SBA has determined they may use credit scoring. SBLCs are required to provide credit scoring model validation to SBA on an annual basis.

e. The credit decision on SBA 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 similarly-sized, non-SBA guaranteed commercial loans verifies the equity injection, it must do so for SBA Express loans. 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.

f. Lenders must also address other specifics, such as:

i. Franchise, license, dealer, or similar agreements (see Section A, Ch 1, Para. D.6, Franchise, License, Dealer, Jobber, and Similar Agreements of this Part for further guidance); and

ii. Management agreements: (see Section A, Ch 1, Para. D.5, Affiliation based on Management, of this Part for further guidance).

3. Collateral

See Section A, Chapter 5, Paragraph A of this Part for guaranty requirements.

a. With respect to collateral, Lenders must use commercially reasonable and prudent practices to identify collateral, which conforms to procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans. Decisions regarding what collateral must be taken to secure a loan are based on the circumstances of the individual loan, including size, and must meet the minimum requirements set forth in this section.

i. For loans of $25,000 or less, Lenders are not required to take collateral.

ii. For loans over $25,000, the Lender must, to the maximum extent practicable, follow the written collateral policies and procedures that it has established and implemented for its similarly-sized, non-SBA guaranteed commercial loans.

b. Adequacy of Collateral:

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 Applicants that demonstrate repayment ability but lack adequate collateral to repay the loan in full in the event of default. However, SBA does not permit its guaranty to be a substitute for available collateral.

c. Real Estate Appraisal and Business Valuation Requirements

The regulation governing real estate appraisal is set forth at 13 CFR § 120.160(b).

i. Commercial Real Estate:

a) For all SBA Express loans secured by commercial real property:

i) If the loan finances a transaction involving parties with a close relationship (for example, transactions between existing owners or family members), or if SBA or the Lender otherwise concludes that an appraisal is necessary to appropriately evaluate creditworthiness, the Lender must obtain an appraisal. Appraisals must be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Additionally, SBA requires that completed appraisals be dated within 12 months of the application for guaranty.

ii) If an appraisal is not required under the preceding paragraph, all Lenders must obtain an appropriate evaluation of the commercial real estate securing the loan that is consistent with safe and sound banking practices. Evaluations are not required to be performed in accordance with USPAP or by State licensed or certified appraisers but should be consistent with the Interagency Appraisal and Evaluation Guidelines and the Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions, issued by the Federal Banking Regulators.

b) The appraiser must be:

i) Independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and

ii) Either State-licensed or State-certified, with the following exception: when the commercial property's estimated value is over $1,000,000, the appraiser must be State-certified.

c) 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 USPAP, except that federally-regulated Lenders may follow their primary regulator's FIRREA requirements to the extent they permit otherwise. The Lender may not use an appraisal prepared for the seller or the Applicant. The cost may be passed on to the Applicant.

d) The appraisal must be an "Appraisal Report" prepared in compliance with USPAP.

e) 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, general contractor, project architect, or construction management firm 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 Lender cannot obtain such a statement, then the Lender may not close the loan without SBA's prior written permission.

f) 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 Lender is unable to obtain 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 obtain 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.

g) 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.

h) 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.

i) An appraisal may be obtained 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.

j) 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.

k) If at time of closing the appraised value:

i) Is 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

ii) Is less than 90% of the estimated value, SBA Express Lenders are permitted to close the loan, 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 conducting lender oversight activities. 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.

ii. 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.

iii. Other Fixed Assets:

If the valuation of fixed assets is greater than their 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.

iv. Additional Appraisal Requirements for all 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 $500,000, 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.

v. Business Valuation Requirements – Change of Ownership:

a) Determining the value of a business (not including real estate which is separately valued through a real estate 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 potentially

the creation of intangible assets. A business valuation assists the buyer in making a determination that the seller's asking price is supported by an independent Qualified Source (See definition in Appendix 3).

b) 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 conclusion of value, the qualifications of the individual performing the business valuation and their signature certifying to the information contained in the business valuation. The Lender may not use a business valuation prepared for the Applicant or the seller. The cost of the business valuation may be passed on to the Applicant.

i) Non-Special Purpose Properties:

(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 existing owners or family members), the Lender must obtain an independent business valuation from a Qualified Source.

ii) Special Purpose Properties: A "Special Purpose Property" is a limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the specific use for which it was built.

(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 being financed is over $250,000 or if there is a close relationship between the buyer and seller (for example,

transactions between existing owners or family members) and the business operates from a Special Purpose Property, the Lender must obtain an independent business valuation performed by a Certified General Real Property Appraiser.

(c) The business valuation must allocate separate values to the individual components of the transaction including land, building, equipment, and intangible assets.

(d) The Certified General Real Property Appraiser must have completed no less than four going concern appraisals of equivalent special use property as the property being appraised, within the last 36 months, as identified in the qualifications portion of the Appraisal Report.

(e) Each business valuation assignment under this section must be undertaken with a specific instruction for the Certified General Real Property Appraiser to conduct the appraisal in compliance with current USPAP guidelines.

iii) The business valuation may be obtained and reviewed after the issuance of an SBA Loan Number and prior to closing. If the Lender 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.

iv) Any amount(s) of the loan proceeds that will be used to facilitate a change of ownership may not exceed the business valuation.

v) 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. SUBMISSION OF APPLICATION FOR GUARANTY FOR SBA EXPRESS

1. Contents of Lender's Application for Guaranty

Lenders must maintain in their loan files all application documents and any documentation and exhibits that support the guaranty request.

Lender must disclose 100% of the Applicant's ownership on SBA Form 1919 and in E-Tran or SBA One in order to submit a loan application. Each owner must be identified in E-Tran or SBA One.

SBA Form 1919 includes 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.

a. SBA Express Processing:

Program forms can be found at www.sba.gov/document.

All SBA Express loan files must include the forms and information the Lender requires in order to make an informed eligibility and credit decision. Any application form obtained by the Lender from the Applicant must be certified by the Applicant as true and complete.

b. SBA Express Lenders must obtain and retain the documentation listed below in their file.

i. Lender must complete and sign SBA Form 1920.

ii. Applicants and Associates must complete and sign SBA Form 1919, "Borrower Information Form." SBA Form 1919 must be signed by the following:

a) For a sole proprietorship, the sole proprietor;

b) For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm, or any partner that is involved in management of the Applicant;

c) For a corporation, all owners of 20% or more of the corporation and each officer and director;

d) For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;

e) Any Key Employee; and

f) Any Trustor (if the Small Business Applicant is owned by a trust).

g) When the combined ownership interest between spouses and minor children is 20% or more, both spouses must complete SBA Form 1919.

When 20% or more ownership interest is held by a corporation, partnership, or other form of legal entity in the Applicant or OC, the ownership interests of all individuals must be disclosed.

A separate Section I of SBA Form 1919 is required to be completed and signed for each co-applicant (e.g. Eligible Passive Company (EPC) and Operating Company (OC)).

All parties listed in subparagraph b.ii. above are considered "Associates" of the Small Business Applicant as defined in 13 CFR § 120.10. A separate Section II is required to be completed and signed by each principal of the Small Business Applicant.

iii. Lender's Credit Memo must address all requirements detailed in paragraph C, Credit Standards for SBA Express in this chapter.

iv. Character Determination (if applicable):

a) If questions 17, 18, and 19 of SBA Form 1919 are all answered "no," a Character Determination is not required.

b) If question 17 is answered "yes," the loan is not eligible.

c) If question 18 or 19 is answered "yes," the Subject Individual and Lender must follow the steps as outlined in Section A, Ch. 3, Para. B, Character Determinations, of this Part prior to submitting the request for a loan number.

v. If the Lender uses business financial statements and/or tax returns for purposes of credit underwriting, all financial statements, tax returns and schedules reviewed and required by Lender's policy for its similarly-sized, non-SBA guaranteed commercial loans must be maintained in the Lender's SBA Express loan file. All financial documents must comply with the Lender's policies on collection and review of financial information.

vi. If Lender does not use business financial information to determine creditworthiness, such as with some credit scoring models, Lender must obtain IRS tax transcripts in order to verify that the returns were filed and for the purpose of determining the Applicant's size (but reconciliation of the tax transcripts as set forth in Section A, Ch. 6, Para. B, IRS Tax Transcripts/Verification of Financial Information, of this Part is not required).

vii. Franchise:

a) If the Applicant's brand meets the FTC definition of a franchise, Lender must document in its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the request for loan number into E-Tran or SBA One. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. (Lender will need to submit the documentation showing that the Applicant's brand is on the Directory with any guaranty purchase request.)

b) If the Applicant's brand is not on the Directory and the SBA Express Lender determines the brand does not meet the FTC definition and proceeds with approving the loan under its delegated authority, the Lender must document its file and will be required to submit that documentation with any guaranty purchase request and the SBA Express Lender bears the risk of an incorrect determination;

c) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code (if applicable) for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran or SBA One. The Lender must document in its file that all of the Applicant's brands are eligible

for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory, and must document their file with the basis for their determination of which brands are critical to the Applicant's business operation (e.g., a breakdown of revenue by brand). SBA Express Lenders will be required to submit all of this supporting documentation to SBA with any guaranty purchase request. (See Section A, Ch 1, Para. D.6, Franchise, License, Dealer, Jobber, and Similar Agreements for further guidance.)

viii. Debt Refinancing. Lenders must maintain copies of all notes, security agreements, leases, or other documentation evidencing the debt to be refinanced in the loan file.

ix. Documentation of USCIS status verification - Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the request for loan number to SBA. Lender must retain a copy of the verification received from USCIS or SBA-SLPC in its loan file.

2. Where to Submit Applications for Guaranty

SBA Express Lenders must submit guaranty applications via E-Tran or SBA One, retaining all required documentation in the Lender's loan file.

3. See Chapter 5, Authorization through Disbursement, in this Section, for SBA requirements for the loan Authorization, post-approval and pre-disbursement requests for changes, transfer of guaranty between participating Lenders, and loan closing and disbursement.

CHAPTER 3: 7(A) CAPLINES

13 CFR § 120.390

Lines of credit under CAPLines finance the short-term operating capital needs (revolving and non-revolving) of eligible small businesses.

Lenders must always start by reviewing the contents of Section A, Core Requirements for all 7(a) and 504 Loans, in this Part.

A. ELIGIBILITY AND ELIGIBLE USES OF PROCEEDS FOR ALL CAPLINES

CAPLines proceeds can be used to finance the cyclical, recurring, or other identifiable short-term operating capital needs of small businesses. Proceeds can be used to create current assets or to provide financing against the current assets that already exist. CAPLines cannot be used to finance a change of ownership.

In order to be eligible for any of the CAPLines subprograms, the Applicant must be eligible under the requirements identified in Section A of this Part, AND what is listed below for each subprogram:

1. Working Capital CAPLines

a. **Eligibility**

To be eligible for a Working Capital CAPLine, the Applicant must generate accounts receivable (not notes receivable), and/or have inventory.

b. **Eligible Uses of Proceeds**

i. Borrowers may only use the loan proceeds for short-term working capital/ operating needs. Proceeds must not be used to pay delinquent withholding taxes or similar funds held in trust (e.g., state or local sales taxes), or for floor plan financing. 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.

ii. Debt Refinancing under Working Capital CAPLines

a) Loan proceeds may not be used to pay a creditor (including the same institution's debt) in a position to sustain a loss. This includes shifting all or part of a potential loss from the original Lender to the SBA. 13 CFR §§ 120.140(j)(1) and 120.201

b) Proceeds from a Working Capital CAPLine may refinance existing short-term revolving debt under the following conditions:

i) The short-term revolving debt must be terminated after it is paid off with the CAPLine;

ii) Depending on whether the CAPLine will be disbursed based on a Borrowing Base Certificate (BBC) 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;

iii) If the application includes the refinancing of same-institution short-term revolving debt:

(a) The application must be submitted to the LGPC for processing. Such applications may not be processed under PLP authority; and

(b) If the Applicant defaults on the SBA-guaranteed Working Capital 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 the guaranty;

c) If the application includes the refinancing of same-institution, SBA-guaranteed short-term revolving debt, in addition to the requirements of paragraphs 1.b.iii.b)i)-iii) above, the Lender's exposure to the Applicant will not be reduced;

d) Short-term revolving debt reflected on the Applicant's business balance sheet may be eligible for refinancing if it is reflected on the Applicant's business tax returns (Schedule C for sole proprietorships) showing the interest expense associated with the debt and:

i) The Lender documents and the Applicant certifies that the proceeds from the short-term revolving debt were used exclusively for the Applicant's business and were not used for any ineligible purpose as set forth in 13 CFR § 120.130; and

ii) If the debt to be refinanced was used in whole or in part to refinance a prior debt, the loan being refinanced, including the associated interest, is reflected on the Applicant's balance sheet and business tax returns (Schedule C for sole proprietorships) for two full tax cycles prior to application, and the Applicant certifies that the debt to be refinanced was used exclusively for the Applicant business and was not used for any ineligible purpose as set forth in 13 CFR § 120.130; and

e) The loan must be secured with at least the same collateral and lien priority as the debt that is being refinanced. However:

i) When the current balance of the debt being refinanced is considered over collateralized relative to SBA collateral requirements and the SBA loan will remain fully secured, the Lender is not required to take the excess collateral.

ii) Substitute collateral may be taken to secure the new loan if it is of comparable value and useful life and is determined to be acceptable by SBA or the Lender under its delegated authority.

iii. SBA-guaranteed Working Capital CAPLine loan proceeds may not be used to refinance debt that:

a) Was originally used to finance a loan purpose that would have been ineligible for SBA Working Capital CAPLine financing at the time it was originally made unless the condition that would have made the loan ineligible no longer exists;

b) Is already on reasonable terms;

c) Is short-term revolving debt that is not revolving in accordance with the terms of the note; or

d) Is Term debt.

iv. When refinancing short-term revolving debt with a Working Capital CAPLine, the loan application must include:

a) A written analysis that addresses the following issues:

i) The reason the debt was incurred;

ii) The factor(s) that support that the proposed refinancing will not pay a creditor in a position to sustain a loss;

iii) The reason for restructuring the debt (for example, over-obligated or imprudent borrowing);

iv) The factor(s) that support that the debt being refinanced is not currently on reasonable terms;

v) How the new loan will improve the financial condition of the Applicant, and is not refinancing debt owed to a creditor in a position to sustain a loss;

vi) The reason(s) the Lender believes the debt to be refinanced no longer meets the needs of the Applicant; and

b) Supporting documentation for each debt to be refinanced. Lenders are required to:

i) For loans processed on a non-delegated basis, submit the following with the application to the LGPC:

(a) A copy of the note(s), security agreements, leases, and other documentation evidencing the debt to be refinanced, and an explanation of the terms and conditions of any debt(s) being refinanced.

(b) A copy of the transcript of account 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.

(c) A written explanation of 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.)

(d) A BBC with Aging of Receivables and List of Inventory, as necessary.

ii) For loans processed under a Lender's PLP authority, retain copies of the items in subparagraphs i)(a)-(d) in the loan file.

v. The Authorization must include:

a) In the Use of Proceeds section, the refinancing must be specifically identified;

b) An itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid $10,000 or more; and

c) The loan number and dollar amount of any existing SBA-guaranteed short-term revolving debt being refinanced.

vi. The payment of trade payables is not considered to be debt refinancing.

2. Contract CAPLines

a. **Eligibility**

To be eligible for a Contract CAPLine, the Applicant must:

i. Be able to demonstrate the ability to operate profitably based upon the prior completion of similar contracts;

ii. Possess the overall ability to bid, accurately project costs, and perform the specific type of work required by the contract(s); and

iii. Have the financial capacity and technical expertise to complete the contract on time and at a profit.

b. **Eligible Uses of Proceeds**

i. 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).

ii. Contract CAPLine proceeds may not be used:

a) For permanent working capital;

b) To acquire fixed assets;

c) To pay delinquent taxes or similar funds held in trust (directly or indirectly);

d) To refinance existing debt;

e) To finance a contract in which significant performance has already begun;

f) To finance a change of ownership;

g) For floor plan financing; or

h) To cover any mark-up or profit.

c. 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.

d. 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.

e. A single Contract CAPLine may be used 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 Ch. 5, Para. B.5, For SBA loans that have been fully disbursed, in this Section 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 ensure the Borrower is aware that the next future advance or future advances, if necessary, will be at the decreased amount.

3. Seasonal CAPLines

a. **Eligibility**

To be eligible for a Seasonal CAPLine, the Applicant must:

i. Have been in operation for at least 12 calendar months; and

ii. Be able to demonstrate a definite pattern of seasonal activity.

b. **Eligible Uses of Proceeds**

i. 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).

ii. Funds must not be used to:

a) Maintain activity during the slow periods of the business's cycle; or

b) Refinance existing debt

4. Builders CAPLines

13 CFR §§ 120.391 – 120.397

Builders CAPLines provide financing to small general contractors to construct or rehabilitate residential or commercial property for resale. This program provides an

exception under specified conditions to the general rule against financing investment property. "Construct" and "rehabilitate" mean only work done on-site to the structure, utility connections, and landscaping.

a. **Eligibility**

To be eligible for a Builders CAPLine, the Applicant must:

i. Be a construction contractor or homebuilder under NAICS codes 236220, 236115, 236116, or 236118 with demonstrated managerial and technical ability in profitable construction or renovation;

ii. Must either perform the construction/renovation work or manage the job with at least one supervisory employee on the job site during the entire construction phase;

iii. Renovations must be "prompt and significant." Construction must begin within a reasonable time after loan approval and the cost of renovation must equal or exceed one-third (1/3) of the purchase price of the property. The cost of renovation of buildings already owned by the Applicant must equal or exceed one-third (1/3) of the fair market value at the time of loan application;

iv. Demonstrate a successful performance record in bidding and completing construction/renovation at a profit within the estimated construction period, 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); and

v. Be able to demonstrate prior prompt payments to suppliers and subcontractors.

b. **Eligible Uses of Proceeds**

13 CFR 120.394 and 120.397

i. 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.)

ii. Proceeds paid to a subcontractor can include the subcontractor's profit. The cost of land is eligible if the land cost does not exceed 33 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.

iii. Proceeds must not be used to:

a) Purchase vacant land for possible future construction;

b) Operate or hold rental property for future rehabilitation; or

c) Refinance existing debt.

c. A single line may be used 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.

d. 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.

e. The final sale of the property must be an arm's length transaction with legal transfer to an unaffiliated third party.

5. Restrictions that Apply to PLP Loans

The following types of loans are not eligible under PLP processing:

a. Loans to an ESOP (under 13 CFR §§ 120.350 through 120.354) or to an eligible small business owned or controlled by an ESOP (see Section A, Ch. 2, Para. B., Employee Stock Ownership Plans, of this Part for more information);

b. Loans to a cooperative or to an eligible small business owned or controlled by a cooperative (see Section A, Ch. 2, Para. C, Cooperatives, of this Part for more information);

c. Loans involving a Single Employer 401(k) plan, including a ROBS plan, unless the only investment held by the 401(k) trust is the equity in the Applicant business; and

d. Loans involving a Multiple-Employer 401(k) plan (i.e., a plan that holds in trust the assets of other businesses), including a ROBS plan (see Section A, Ch. 2, Para. D, 401(k) Plans Including Rollovers as Business Start-Ups (ROBS) Plans, of this Part for more information).

B. LOAN TERMS AND CONDITIONS FOR ALL CAPLINES

1. Maximum Loan Amount

a. The maximum loan amount is $5,000,000.

b. Maximum Loans to Businesses with Affiliates

Lenders must determine whether the Applicant has any affiliates and document the results in their credit analysis. If affiliation exists, SBA's loan maximums apply to the Applicant, including all affiliates, as if all were a single business.

c. Maximum Loan Amount for multiple loans approved within 90 days of each other – "90 Day Rule."

i. If two SBA-guaranteed loans to any one business (including affiliates) are approved within 90 days of each other, the maximum gross amount of all such loans in that time frame cannot exceed $5,000,000.

ii. Two SBA-guaranteed loans approved within 90 days of each other may impact the maximum guaranty percentage available to the Borrower and its affiliates as well as the guaranty fee.

d. Working Capital CAPLines

To determine the maximum line amount, the Lender must either:

i. Follow its established policies and procedures used on its similarly-sized, non-SBA guaranteed commercial lines of credit; or

ii. Use the following formula:

i) Divide Prior Year Net Sales by 365 to calculate the daily sales figure;

ii) Multiply Daily Sales figure by number of days to finance (whatever number is the business sales cycle)

The result will be the estimated working capital needs.

e. Contract CAPLines

i. 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.

ii. 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.

iii. 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).

f. Seasonal CAPLines

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.

g. Builders CAPLines

i. 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.

ii. 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 small business (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.

2. Maximum Guaranty Amounts and Percentages

The maximum dollar amount outstanding of SBA's guaranty to any one business (including affiliates) must not exceed $3,750,000, except when the loan is approved under a program which specifically permits higher amounts. When calculating the maximum guaranty percentage available to a Borrower and its affiliates, the Lender must include the approved loan amount for a revolving line of credit. The SBA's guaranty is also known as the "SBA share" or "guaranteed portion."

a. The maximum guaranty amount is $3,750,000.

b. The maximum guaranty percentage is:

   i. 85% for loans of $150,000 or less

   ii. 75% for loans over $150,000

c. Combination of 7(a) and 504 loans.

   i. 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 processed and approved first.

   ii. Lenders must advise the SBA processing centers that there is a companion 504 application to ensure the 7(a) loan is processed and approved prior to the 504 loan application being processed and approved.

   iii. 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. Maximum Guaranty Percentage for Multiple 7(a) Loans (13 CFR § 120.210).

   i. Excluding multiple 7(a) loans approved within 90 days of each other, the maximum guaranty percentage for 7(a) loans of $150,000 or less is 85 percent.

   ii. For loans approved within 90 days of each other, 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 must not be more than 75 percent (subject to the $3,750,000 limit).

   For example, if a business receives an 85 percent 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 to 47 percent so the combined guaranty is no more than $142,500, or 75 percent of the total amount of both loans ($190,000).

e. Zero Percent Guaranty Cannot be Provided for Ineligible Purposes:

   A 7(a) loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business and no part of an SBA 7(a) loan may be guaranteed at zero percent.

3. 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.

a. Working Capital, Contract, and Seasonal CAPLines

The maximum maturity on a Working Capital, Contract, or Seasonal 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 Section A, Ch. 5, Para. C.1.a.v., Additional Guaranty Fee for Extensions of Short-Term Loans, of this Part.

b. Builders CAPLines

13 CFR § 120.396 The loan must not exceed 60 months plus the estimated time to complete construction or rehabilitation.

c. 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.

d. Contract, Seasonal, and Builders CAPLines that finance a single transaction should have a maturity tied to the seasonal cycle, contract completion date, or project completion date.

e. Loan maturity must not exceed the period of the guaranty.

4. Interest Rates

SBA QUICK REFERENCE CHART: Maximum Interest Rates Allowed (See additional information below)

Product **7(a) CAPLines**	**Interest Rate** **The published maximum allowable fixed rate or if variable:**
Loans $25,000 or less (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 4.25%
Loans $25,000 or less (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 4.75%
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%
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%

Product 7(a) CAPLines	Interest Rate The published maximum allowable fixed rate or if variable:
Loans greater than $50,000 (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 2.25%
Loans greater than $50,000 (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 2.75%

a. General Policy on Interest Rates (13 CFR §§ 120.213; 120.214; 120.215):

i. 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 Applicant, subject to SBA's maximum allowable rates.

ii. SBA will periodically publish the maximum allowable fixed interest rate in the Federal Register. The maximum allowable fixed interest rate will be the Prime rate in effect on the first business day of the month, plus an allowable spread over Prime, as set forth in the most recent Federal Register Notice. For a listing of the current maximum allowable fixed interest rates, go to SBA's Capital Access Financial System homepage. 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.

iii. For variable interest rate loans, the basis for the SBA maximum interest rate is an acceptable base rate plus allowable spread. 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 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 "Policy on Variable Interest Rates" below.

iv. Default interest rates are not permitted.

v. For loans with a variable interest rate, the following terms must be defined:

a) Base Rate:

i) 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.

ii) 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 decimal places with .004 being rounded down to .00 and .005 being rounded up to .01.

NOTE: This SOP continues to include the LIBOR Base Rate as an option for the calculation of the maximum allowable variable interest rate for 7(a) loans in accordance with 13 CFR § 120.214(c). The U.K. Financial Conduct Authority announced that it would phase-out LIBOR by the end of 2021. SBA encourages Lenders to consider LIBOR's imminent phase-out when selecting a base rate. For existing 7(a) loans with LIBOR as the base rate, SBA encourages Lenders to examine their loan documents to determine whether LIBOR may be replaced with a fallback rate. If no such provision exists in individual loan documents, Lenders should consider amending the appropriate document(s) in anticipation of LIBOR's phase-out. It is important to note that any changes to the interest rate must be made in accordance with paragraph b.ii.b) below. The Federal Reserve Alternative Reference Rates Committee has drafted recommended fallback language for contracts tied to LIBOR: https://www.newyorkfed.org/arrc/fallbacks-contract-language.

b) Frequency of change;

c) Range of fluctuation; and

d) Ceiling and floor (if any).

vi. After approval and prior to final disbursement, Lender must either notify the LGPC of any changes to the Note terms related to the interest rate or make the change through E-Tran Servicing. After final disbursement, Lender must either notify the appropriate Commercial Loan Servicing Center of any changes to the Note terms related to the interest rate or make the change through E-Tran Servicing.

b. Policy on Variable Interest Rates

i. Standard Policy:

SBA's maximum allowable interest rate applies only to the initial Note rate on a variable rate loan. Subsequent changes 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.

ii. 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 changed 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 consent to the change in the interest rate (separate and apart from executing the loan documents) 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, the prime rate changed. The Borrower has asked the Lender if the loan can be switched to a fixed rate. If 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, the Lender may make this change per the Borrower's request.

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 SOP 50 57.

iii. 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.

i) This adjustment period as identified in the Note may not be changed without the written consent of the Borrower.

ii) 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.

iii) 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.

c) 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.

iv. Interest Rate Requirements for an SBA Note:

a) For fixed rate loans, the Lender must state the specific interest rate in the Note.

b) For variable rate loans, the Lender must include the following information in the Note:

i) Identification of the rate being used as the base rate;

ii) The publication in which the designated base rate appears regularly (e.g. Wall Street Journal or the Federal Register if using the SBA Optional Peg Rate);

iii) The permanent percentage spread to be added to the base rate;

iv) The initial interest rate of the loan (from disbursement to first adjustment);

v) The date or timing of the first rate adjustment; and

vi) The frequency of rate adjustment.

v. 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:

a) Both the floor and ceiling are stated in the Note; and

b) 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.

c) For example, if the Note rate is 10% and the ceiling is 12%, the floor must be 8% or lower.

vi. 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.

vii. Amortization: (13 CFR § 120.214(f)):

Lender should use an amortization schedule that is appropriate for the type of loan. SBA does not allow balloon payments. A fixed interest rate loan must use a payment that will fully amortize the loan by the maturity date. Typically, variable rate loans are re-amortized every time the interest rate is adjusted to ensure full amortization by the maturity date. The amortization schedule may also be adjusted to meet the cash flow needs of the business.

c. 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 neither rate exceeds 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. If the Lender uses a combination, the entire loan is considered to be a variable interest rate loan. The interest rate on both the guaranteed and unguaranteed portions must be based on the variable rate.

d. Interest Rate Swap Contracts:

i. 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. The Borrower could purchase an interest rate swap contract that would set the interest rate at 8%. When the Note rate is lower than the rate paid by the Borrower on the swap contract (8%), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 8%. 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 8% and the swap seller would pay the difference above 8% 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.

ii. 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 SBA 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.

C. CREDIT STANDARDS FOR ALL CAPLINES

The policies that make up SBA's credit standards begin with the requirements outlined in 13 CFR §§ 120.101 and 120.150. This section provides procedural guidance as to what the Lender should or must consider when analyzing any request for financial assistance that will be guaranteed by SBA.

A Lender must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. The cash flow of the Applicant is the primary source of repayment,

not any expected recovery from the liquidation of collateral. Thus, if the Lender's financial analysis demonstrates that the 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 repayment.

1. **Processing Methods**

   Once submitted to the LGPC, an application withdrawn by a Lender, screened-out, or declined by the LGPC may not be approved by any Lender under its PLP Authority. E-Tran will not permit the submission of such an application under any Lender's PLP authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application.

   a. Non-delegated – When a Lender submits a CAPLine loan guaranty request under the non-delegated processing method, the Lender submits the application and supporting documents to SBA. SBA will make the final determination as to the eligibility and creditworthiness of the Applicant, including approving the uses of proceeds, the adequacy of the collateral being pledged, the structure of the loan and any equity contribution to be required from the Applicant.

   b. Delegated – When a Lender submits a CAPLine loan guaranty request under the Lender's PLP authority, the Agency does not review the Lender's determination of eligibility, analysis of the credit, or structure of the loan or line of credit prior to issuing a loan number. The Lender must analyze eligibility and credit worthiness in accordance with SBA Loan Program Requirements and properly document its file. The PLP Lender's analysis is subject to SBA's review and determination of adequacy, when the Lender requests SBA to purchase its guaranty or when SBA is conducting lender oversight activities.

2. **Underwriting**

   a. Lender's Credit Analysis:

      The Lender's credit memorandum and analysis must address the Applicant's ability and likelihood to repay the loan from the cash flow of the business and past performance by documenting the following:

      i. A description and history of the business, including:

         a) Nature of the business;

         b) Length of time in business under current management;

         c) Depth of management experience in the industry or a related industry;

         d) Brief description of the business's management team including principal's involvement in the daily onsite management of the business or how the daily operations will be managed if the principals are not there on a daily basis; and

         e) If the daily operations will be handled under a management agreement,

            i) PLP Lenders processing an application under their delegated authority must obtain a copy of the management agreement, review it to

determine if it creates affiliation between the Applicant and the management company or results in a passive business, and retain in their loan file. SBA will review this determination at time of guaranty purchase or when conducting lender oversight activities. The PLP Lender bears the risk of an incorrect determination.

ii) Lenders processing an application on a non-delegated basis must submit a copy of the management agreement to the LGPC with their application.

iii) See Section A, Ch 1, Para. D.5, Affiliation based on Management for further guidance on management agreements. (13 CFR § 121.301(f)(3))

ii. Financial analysis of repayment ability:

a) For existing businesses based on the three most recent years of historical financial information (tax returns or balance sheet with debt schedule and income statement) plus an interim financial statement. (13 CFR § 120.191)

b) For new businesses, based on detailed projections, including the supporting assumptions which reflect positive cash flow within 2 years.

c) The financial analysis for all Applicants must address the following as applicable:

i) Historical cash flow for existing businesses, that demonstrates total debt service coverage after the SBA loan; if the historical cash flow does not show sufficient debt service coverage, Lender must obtain from the Applicant and analyze 2 years of detailed projections including the supporting assumptions justifying relying on projections instead of historical performance;

ii) Calculation of operating cash flow (OCF) defined as earnings before interest, taxes, depreciation, and amortization (EBITDA);

iii) Justification for 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) Global cash flow analysis that includes assessment of impact on cash flow to/from any affiliate business.

iv) The effect any affiliates may have on the ultimate repayment ability of the Applicant.

iii. Debt Service (DS) is defined as the future required principal and interest payments on all business debt inclusive of new SBA loan proceeds. The Applicant's debt service coverage ratio (OCF/DS) must be equal to or greater than 1.15 on a historical and/or projected cash flow basis and 1:1 on a global basis. To perform a complete analysis of debt service, it is important for a Lender to obtain a current debt schedule prepared by the Applicant, including any shareholder debt.

iv. For cash flow projections, the Lender must calculate the debt service coverage and provide the assumptions supporting the projected cash flow coverage, including as applicable:

a) Justification for revenue growth, i.e. new product lines, sales channels, and new production facilities;

b) Justification for any reduction in expenses; and

c) A comparison to current industry trends.

v. Spread of pro-forma Business Balance Sheet (current business balance sheet adjusted for all changes in assets and liabilities as a result of the SBA loan, other debt, any required equity injection and use of loan proceeds);

vi. 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 any other ratios the Lender considers significant for the business/ industry (e.g., inventory turnover, receivables turnover, and payables turnover, etc.) including discussion of Lender's comparison to industry trends;

vii. Analysis of working capital adequacy, at a minimum over the next 12 months;

viii. Insurance Requirements, including:

a) Life Insurance – on whom and how much. If Life Insurance will not be required, provide justification.

b) Business hazard & liability insurances.

c) Other Insurances, such as specialty insurance appropriate for the type of business, e.g. malpractice insurance or product liability insurance. (See Section A, Ch 6, Para. C, Insurance Requirements for further guidance.)

ix. Explanation of and justification for the refinancing of any debts as part of the loan request, along with supporting documentation, in accordance with the debt refinancing requirements in paragraph A, above in this chapter. In addition, Lender must include a written explanation for any late payments.

x. Lender's rationale for recommending approval, including a discussion and analysis of the following:

a) The factors demonstrating the Applicant does not have credit available elsewhere on reasonable commercial terms from non-Federal, non-State, non-local government sources, in accordance with Section A, Ch. 1, Para. E, Demonstrate the Need for Desired Credit, in this Part;

b) Competition;

c) Seller financing;

d) Stand-by agreements;

e) 90+ day delinquencies;

f) Trade disputes and/or;

g) Federal, State, or local citations which would preclude the Applicant from normal business operations;

h) Discussion of any liens, judgments, bankruptcy filings or pending litigation including divorce proceedings; and

i) Discussion of other relevant information (for example, if the application involves a franchise, Lender must review any credit information provided such as the number of failed franchisees and cash flow projections provided by the franchisor).

b. Equity requirements (13 CFR § 120.150(f)):

i. Depending on whether the loan is processed on a non-delegated or PLP basis, the Lender or SBA must determine that there is sufficient invested equity. To do this, the Lender (for PLP loans) or SBA (for non-delegated loans) must determine if the equity position, any required equity contribution, and the pro forma debt-to-worth are acceptable based on the factors related to the type of business, experience of management and the level of competition in the market area. The Lender must include in its credit memorandum a detailed discussion of the equity position (net worth) and any required equity injection. (See Ch. 5, Para. D., Loan Closing and Disbursement, of this Section for requirements concerning documenting and verifying equity injection.)

ii. Minimum equity injection requirements for certain Applicants or loans:

Start-Up Businesses – At a minimum, SBA considers an equity injection (Applicant contribution) of at least 10 percent of the total project costs (all costs required to become operational, regardless of the source of funds) to be necessary for a Start-Up Business to operate on a sound financial basis. SBA considers a business to be a "start-up" for the purpose of determining equity injection requirements if it has been in operation (i.e., generating revenue from intended operations) for 1 year or less;

iii. Source of Equity Injection:

a) The following may be considered as equity injection:

i) Cash that is not borrowed.

ii) Cash that is borrowed through a personal loan to the business owner with repayment demonstrated to come from a source other than the cash flow of the business (the salary paid to the owner by the business does not qualify). If the personal loan is made by the participating Lender, the Lender must submit the application through non-delegated 7(a) processing.

iii) Assets other than Cash – Lenders must carefully evaluate the value of assets other than cash that are injected by owners. An appraisal or other valuation by an independent third party is required if the valuation of the fixed assets is greater than the Net Book Value. A valuation of the fixed assets provided as part of a business valuation will not meet these requirements.

iv) Standby debt – Only debt that is on full standby (no payments of principal or interest for the term of the SBA-guaranteed loan) may be considered as equity for SBA's purposes. A copy of the note must be attached to the standby agreement.

b) The following may not be considered as Equity Injection:

i) Value or cost of education; and

ii) Funds that are borrowed and do not meet the exception noted in paragraph b.iii.a)ii) above.

c) Standby Agreements:

i) Lender may use SBA Form 155 or its own Standby Agreement form. A copy of the note must be attached to the standby agreement.

ii) 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.

3. Collateral

See Section A, Chapter 5, Paragraph A of this Part for guaranty requirements.

a. **General Collateral Requirements**

i. With respect to collateral, Lenders must use commercially reasonable and prudent practices to identify collateral, which conforms to procedures at least as thorough as those used for their similarly-sized, non-SBA guaranteed commercial loans. Decisions regarding what collateral must be taken to secure a loan are based on the circumstances of the individual loan, including size, and must meet the minimum requirements set forth in this section.

ii. When loan proceeds from a Working Capital CAPLine loan will be used to refinance existing debt, the loan must be secured with at least the same collateral and lien priority as the debt that is being refinanced. When the debt being refinanced is considered as being over collateralized based upon SBA collateral requirements and the SBA loan will remain fully secured, the Lender is not required to take excess collateral. Substitute collateral may be offered providing it is of comparable value and useful life and is determined to be acceptable by SBA or the Lender when processing the line under its PLP authority.

iii. 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 Applicants that demonstrate repayment ability but lack adequate collateral to repay the loan in full in the event of default. However, SBA does not permit its guaranty to be a substitute for available collateral.

b) When assessing the adequacy of collateral, the Lender must consider the impact that covenants and other restrictions recorded against the collateral may have on its value and marketability. The Lender must document this analysis in the file. Examples of items to review include:

i) Deed restrictions, covenants, easement provisions, reversionary interests, subordinations, leases and options, and other provisions that restrict the use of the property for the benefit of a third party (note: certain deed restrictions pertaining to the use of the property, which are intended to protect the health and safety of occupants, may be acceptable, e.g., deed restrictions based upon environmental concerns including restrictions on residential use, use as a day care center for children or seniors, use as a school, or use as a hospital); and

ii) Engineering Controls that require the Applicant 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.

b. **Working Capital CAPLines**

i. If the Lender will disburse the line based on a BBC, the Lender must obtain a first lien on the Applicant's working/trading assets (i.e., accounts receivable, inventory).

ii. If the Lender will not use a BBC 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 any owners of 20% or more of the Applicant and guarantors to ensure there is a 1:1 collateral ratio. See Paragraph D.3.d., Working Capital CAPLines, below for further guidance.

c. **Contract CAPLines**

i. 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. See Paragraph D.3.b.i.b), Exception to the Assignment of Contract Proceeds, in this Chapter below for guidance on exceptions to when an assignment is required.

ii. The Lender may take additional collateral in accordance with its policies and procedures governing its similarly-sized, non-SBA guaranteed commercial lines of credit.

iii. All liens must be perfected and the lien position verified prior to the initial disbursement of the line. For seasonal, contract or builder lines that 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.

d. **Builders CAPLines**

i. SBA will accept no less than a second lien position on the property being constructed or renovated if the purpose of the first lien was to acquire the property.

ii. If the property is part of a subdivision where the 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.

iii. Lenders must 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.

e. **Real Estate Appraisal Requirements**

The regulation governing real estate appraisal is set forth at 13 CFR § 120.160(b).

i. Commercial Real Estate:

a) For all loans greater than $500,000 secured by commercial real property, all Lenders must obtain an appraisal by a State licensed or certified appraiser. Appraisals must be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Additionally, SBA requires that completed appraisals be dated within 12 months of the application for guaranty. For federally-regulated Lenders, no

exemption is granted under the Interagency Appraisal and Evaluation Guidelines dated December 2, 2010 for Transactions Insured or Guaranteed by a U.S. Government Agency.

b) For all loans $500,000 or less secured by commercial real property:

i) If the loan finances a transaction involving parties with a close relationship (for example, transactions between existing owners or family members), or if SBA or the Lender otherwise concludes that an appraisal is necessary to appropriately evaluate creditworthiness, the Lender must obtain an appraisal as described in paragraph i.a) above.

ii) If an appraisal is not required under the preceding paragraph, all Lenders must obtain an appropriate evaluation of the commercial real estate securing the loan that is consistent with safe and sound banking practices. Evaluations are not required to be performed in accordance with USPAP or by State licensed or certified appraisers but should be consistent with the Interagency Appraisal and Evaluation Guidelines and the Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions, issued by the Federal Banking Regulators.

c) The appraiser must be:

i) Independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and

ii) Either State-licensed or State-certified, 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 USPAP, except that federally-regulated Lenders may follow their primary regulator's FIRREA requirements to the extent they permit otherwise. The Lender may not use an appraisal prepared for the seller or the Applicant. The cost may be passed on to the Applicant.

e) The appraisal must be an "Appraisal Report" prepared in compliance with USPAP.

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, general contractor, project architect, or construction management firm 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 Lender cannot obtain 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 Lender is unable to obtain 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 obtain 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) 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.

j) 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.

k) 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.

l) If at time of closing the appraised value:

   i) Is 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

   ii) Is 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.

iii) 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.

ii. 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.

D. SUBMISSION OF APPLICATION FOR GUARANTY FOR ALL CAPLINES

1. Contents of Lender's Application for Guaranty

The contents of the Lender's application for guaranty vary depending on the size of the loan and the method of processing chosen by the Lender. Based on the method of processing, the Lender may or may not be required to submit the documentation and exhibits to SBA, but in all cases must maintain those documents and any that support the guaranty request in their loan files.

Lender must disclose 100% of the Applicant's ownership on SBA Form 1919 and in E-Tran in order to submit a loan application. Each owner must be identified in E-Tran.

SBA Form 1919 includes 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.

a. CAPLine Non-Delegated and PLP Processing:

Program forms can be found at www.sba.gov/document.

i. Centralized 7(a) Loan Submission Instructions can be found at the 7(a) Loan Guaranty Processing Center ("LGPC") website along with other forms, telephone numbers and fax numbers: www.sba.gov/CitrusHeightsLGPC.

ii. All CAPLine loan files must include the forms and information the Lender requires in order to make an informed eligibility and credit decision. Any

application form obtained by the Lender from the applicant must be certified by the Applicant as true and complete.

b. PLP Lenders processing loans under their PLP authority must obtain and retain the documentation listed below in their file.

c. For all loans submitted using the non-delegated process through the LGPC (including loans from PLP Lenders using this processing method), Lender must obtain and retain in its file all documentation listed below. In addition, Lender must submit as part of the Application for guaranty those items below emphasized in **bold**.

   i. Lender must complete and sign SBA Form 1920.

   ii. Applicants and Associates must complete and sign SBA Form 1919, "Borrower Information Form." SBA Form 1919 must be signed by the following:

      a) For a sole proprietorship, the sole proprietor;

      b) For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm, or any partner that is involved in management of the Applicant;

      c) For a corporation, all owners of 20% or more of the corporation and each officer and director;

      d) For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;

      e) Any Key Employee; and

      f) Any Trustor (if the Small Business Applicant is owned by a trust).

      g) When the combined ownership interest between spouses and minor children is 20% or more, both spouses must complete SBA Form 1919.

      When 20% or more ownership interest is held by a corporation, partnership, or other form of legal entity in the Applicant or OC, the ownership interests of all individuals must be disclosed.

      A separate Section I of SBA Form 1919 is required to be completed and signed for each co-applicant (e.g. Eligible Passive Company (EPC) and Operating Company (OC)).

      All parties listed in subparagraph c.ii. above are considered "Associates" of the Small Business Applicant as defined in 13 CFR § 120.10. A separate Section II is required to be completed and signed by each principal of the Small Business Applicant.

   iii. **Lender's Credit Memo** must address all requirements detailed in paragraph C, Credit Standards in this chapter.

iv. Character Determination:

a) If questions 17, 18, and 19 of SBA Form 1919 are all answered "no," a Character Determination is not required.

b) If question 17 is answered "yes," the loan is not eligible.

c) If question 18 or 19 is answered "yes," the Subject Individual and Lender must follow the steps as outlined in Section A, Ch. 3, Para. B, Character Determinations, of this Part prior to submission of the application to the LGPC for a non-delegated loan and prior to submitting the request for a loan number for a PLP loan.

v. **Personal Financial Statement** dated within 90 days of submission to SBA, for all owners of 20% or more (including the assets of the owner's spouse and minor children), and proposed guarantors. Lenders may use SBA Form 413 or their own equivalent form.

vi. **Business financial statements** and/or tax returns dated within 120 days prior to submission to SBA, consisting of:

a) Year End Balance Sheet for the last 3 years, including detailed debt schedule;

b) Year End Profit & Loss Statements for the last 3 years;

c) Reconciliation of Net Worth;

d) Interim Balance Sheet; and

e) Interim Profit & Loss Statements;

vii. Affiliate/Subsidiary financial statement requirements same as above;

viii. Copy of Lease, if applicable;

ix. Detailed listing of machinery and equipment to be purchased with loan proceeds and cost quotes, if applicable;

x. Detailed listing of collateral (may be included in the Lender's credit memo);

xi. Provide the following if real estate is to be purchased with loan proceeds:

a) Appraisal (see appraisal requirements in paragraph C.3.e, Real Estate Appraisal Requirements in this Chapter);

b) **Copy of signed purchase agreement**;

c) **Lender's environmental questionnaire** (if applicable – see Section A, Ch. 6, Para. E, Environmental Policies and Procedures, of this Part); and

d) **Cost breakdown** where improvements to the real estate are included;

xii. Franchise:

a) For non-delegated loans:

i) If the Applicant's brand meets the FTC definition of a franchise, Lender must identify the name of the franchise and the SBA Franchise

Identifier Code when entering the application into E-Tran. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. The LGPC will confirm that the brand is listed on the SBA Franchise Directory;

ii) If the Lender determines that the Applicant's brand does not meet the FTC definition of a franchise, and it is not on the Directory, Lender must explain its determination in its credit memorandum when submitting the application to the LGPC and provide the agreement and any additional documentation required by the brand. Lender also must provide contact information for the franchisor/licensor (name and email address only). The LGPC will forward the documentation and contact information to the SBA Franchise Team for review and final determination;

iii) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran. The Lender must identify all other brands and SBA Franchise Identifier Codes (if applicable) in the Lender's credit memorandum, and must identify which of the Applicant's brands are critical to the Applicant's business operation, including an explanation of the basis for that determination (e.g., a breakdown of revenue by brand). The LGPC will confirm that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory. (See Section A, Ch 1, Para. D.6, Franchise, License, Dealer, Jobber, and Similar Agreements, of this Part for guidance.)

b) For PLP loans:

i) If the Applicant's brand meets the FTC definition of a franchise, Lender must document in its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the request for loan number into E-Tran. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. (Lender will need to submit the documentation showing that the Applicant's brand is on the Directory with any guaranty purchase request.)

ii) If the Applicant's brand is not on the Directory and the PLP Lender determines the brand does not meet the FTC definition and proceeds with approving the loan under its PLP authority, the Lender must document its file and will be required to submit that documentation

with any guaranty purchase request and the PLP Lender bears the risk of an incorrect determination;

iii) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code (if applicable) for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran. The Lender must document in its file that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory, and must document their file with the basis for their determination of which brands are critical to the Applicant's business operation (e.g., a breakdown of revenue by brand). PLP Lenders will be required to submit all of this supporting documentation to SBA with any guaranty purchase request. (See Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements, of this Part for further guidance.)

xiii. IRS Form 4506-T, Request for Transcript of Tax Return.

xiv. IRS Transcripts and complete verification.

xv. **Debt Refinancing**. Lenders must maintain copies of all notes, security agreements, leases, or other documentation evidencing the debt to be refinanced in the loan file. For non-delegated loans, Lender must submit copies of all supporting documentation for the debt to be refinanced to the LGPC with the application.

xvi. **Documentation of USCIS status verification** - Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application or request for loan number to SBA. Lender may submit a copy of the verification received from USCIS or SBA-SLPC or confirm in its credit memorandum that verification has been obtained.

d. CAPLine-Specific Application Requirements

For all CAPLines, Lender must obtain the information outlined in paragraph c. above. In addition, the Lender must obtain and provide the following as applicable for each type of CAPLine:

i. Working Capital CAPLine:

If the Working Capital CAPLine will be disbursed using a BBC, a sample Borrowing Base Calculation. If the Lender will not be using a BBC, Lender must provide a collateral basis calculation.

ii. Seasonal CAPLine:

a) Documentation of the seasonal nature of the business (i.e. month-by-month historical documentation of the needs); and

b) Applicant prepared month-to-month cash flow projection for the upcoming 12 months.

iii. Contract CAPLine:

a) 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;

b) 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

c) A copy of the contract(s) being financed by the Contract CAPLine.

iv. Builders CAPLine:

a) Month-to-month cash flow for all work to be performed by Applicant;

b) A letter from:

i) A mortgage lender indicating that permanent mortgage money is available to qualified purchasers to buy such properties;

ii) A real estate broker indicating that a market exists for the proposed building and that it will be compatible with its neighborhood; and

iii) An architect, appraiser or engineer agreeing to make inspections and certifications to support interim disbursements.

c) A letter from a Lender who has its own real estate lending department, staffed by personnel with appraisal and engineering experience may be substituted for one or more of the letters required in d)ii) above.

b. **Draft Loan** Authorization **- CAPLines** *(only required for PLP Lenders using the non-delegated processing method).*

i. Zero Balance Period Requirements: With the exception of Seasonal CAPLines, there is no requirement that a zero balance be maintained for any specific time period on any CAPLines. A "clean up" period may be included in the Authorization at the Lender's option.

ii. The latest version of the Authorization Boilerplate and Wizard is available at www.sba.gov/document/support-object-object-standard-7a-authorization-file-library. Note: The hyperlink directs the user to a page titled "Standard 7(a) Authorization File Library;" however, the 7(a) Wizard zip file will download the Authorization Wizard and the CAPLine Wizard.

iii. See Chapter 5, Authorization through Disbursement, in this Section below, for additional SBA requirements for the loan Authorization.

2. Where to Submit Applications for Guaranty

All 7(a) Lenders are permitted to submit applications for guaranty under non-delegated processing procedures. All CAPLines applications must be submitted through E-Tran. SBA One is not available for submission of CAPLines lines.

a. Non-delegated applications - Lenders submitting applications using non-delegated procedures (including loans from PLP Lenders) must submit applications for guaranty and all attachments via E-Tran to the LGPC. *Documents greater than 250MB must be separated into multiple documents. The system does not support uploads greater than 250MB.*

b. PLP applications – Lenders submitting applications using their PLP authority must submit guaranty applications via E-Tran, retaining all required documentation in the Lender's loan file.

c. Reconsideration of Declined CAPLine (non-delegated) Applications (13 CFR § 120.193):

i. If the Lender believes the reason(s) for decline have been overcome, a request for reconsideration may be submitted along with a detailed written explanation of how the Applicant has overcome the reason(s) for decline. Lender must submit a request for reconsideration to the LGPC within 6 months of the date of decline. Any request submitted more than 120 days after the date of decline must include current financial statements.

ii. If a request for reconsideration is declined by the LGPC, a second appeal may be requested from the D/FA, whose decision is final. The appeal to the D/FA 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 reason(s) identified for decline and how the Applicant has overcome those reason(s). The LGPC will forward the request to the D/FA for a final decision.

d. See Chapter 5, Authorization through Disbursement, in this Section below, for additional SBA requirements for the loan Authorization, post-approval and pre-disbursement requests for changes, transfer of guaranty between participating Lenders, and loan closing and disbursement.

3. CAPLines-Specific Loan Closing and Disbursement Requirements

See Chapter 5, Para. D of this Section below for additional requirements for loan closing and disbursement.

a. Seasonal CAPLines:

i. Disbursement and Repayment:

a) Disbursements from the loan are made continually during the seasonal build-up period when the cash requirement for labor, materials, and support of accounts receivables exceeds actual cash receipts. The final disbursement of any Seasonal loan should be made in time for the funds to be utilized in the business and converted to cash which can be used to

pay off the loan balance at the commencement of a 30 day clean up period or maturity.

b) Principal repayments on the loan must occur as soon as the cash from the seasonal sales has been received by the Borrower. Interest should be paid monthly.

ii. Borrowing Base Certificate (BBC):

Lender may use BBCs to monitor the Borrower's seasonal activity. If the Lender does so, the BBC must be submitted by the Borrower to the Lender no less frequently than monthly.

b. Contract CAPLines:

i. Assignment of Contract Proceeds:

a) Subject to the exception noted in b) 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.

b) 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:

i) The term of the contract being financed is 12 months or less;

ii) 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.);

iii) 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;

iv) 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

v) There is other available and worthwhile collateral pledged to secure the line by either the Borrower or any owner/guarantor.

ii. Prime and Subcontractor Contracts:

Subject to subparagraph 3.b.i., Assignment of Contract Proceeds, 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:

a) Both the Prime and the Subcontractor have favorable credit ratings based on an acceptable rating agency (e.g., Builders Industry Credit Association "BICA");

b) There is a successful track record between the Prime contractor and the Subcontractor (Borrower);

c) There is a successful track record between the Prime contractor and the contracting authority;

d) The Contract CAPLine amount is less than $300,000;

e) The term of the contract is 12 months or less;

f) 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

g) There is other available and worthwhile collateral pledged by either the Borrower or any owner/guarantor.

iii. Contracts with Performance Bonds:

Subject to subparagraph 3.b.i, Assignment of Contract Proceeds, 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:

a) The Lender's perfected UCC security interest in the contract proceeds will be subordinate to the cost reimbursement claim of the Surety; and

b) 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.

iv. Purchase Orders under a Master Agreement:

Purchase Orders (PO) may be substituted for a formal contract, provided the following conditions exist:

a) The PO is issued to the Borrower under a Master Agreement; and

b) The combination of the PO and the Master Agreement constitute a binding agreement.

v. 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.

vi. 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.

vii. 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.

c. Builders CAPLines:

i. Prior to disbursement for each individual project, the lien must be recorded and position verified. Interim disbursements shall be made as construction progresses at stages approved by Lender, but shall be advanced only on qualified architect, appraiser or engineer's certification and personal inspection by proper Lender officer(s). Amount of disbursement shall not exceed 100% of labor, material, and other eligible costs of construction certified to be complete and shall be supported by contractor's statements and lien waivers to date.

ii. Prior to final disbursement of construction funds, final lien waivers must be obtained from Borrower/contractor and all subcontractors, material men, and any independent workers involved in the construction. No disbursement can be made after maturity of the master note.

iii. The repayment of all funds disbursed for any individual project shall occur within 36 months after completion of each individual project or at the time of sale, whichever is less. A single principal payment is acceptable. Interest payments must be made at least semi-annually and from the applicant's own resources, not from loan proceeds.

d. Working Capital CAPLines:

i. For Working Capital CAPLines, Lenders have the option of disbursing the line proceeds based on a BBC, or 1:1 collateral ratio.

a) If a Lender will not use a BBC to determine the availability of funds for disbursement, the Lender must:

i) 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;

(a) Cash flow analysis to determine the adequacy, duration, and dependability of cash flow;

(b) Collateral analysis to establish an estimated value of collateral; and

(c) Owner/Guarantor analysis;

ii) 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;

(a) 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;

(b) If the line will be secured by fixed assets and the valuation of fixed assets is greater than their Net Book Value, an independent appraisal by a qualified individual must be obtained by the lender to support the higher valuation;

iii) 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;

iv) 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

v) 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.

vi) Proceeds from cash sales and receivable collections must pay down the line as collected consistent with Borrowers operating cash cycle.

vii) Lenders must report the initial disbursement on SBA Form 1050 in accordance with Ch. 5, Para. D.4.d., Authorization Section D Required Documents, in this Section.

b) If the Lender will use a BBC to determine the availability of funds for disbursement the lender must adhere to the following:

i) Loan proceeds may be disbursed to the Borrower's operating account. To calculate the maximum amount available for disbursement, use the following formula:

Eligible A/R		$
Multiplied by advance rate	(multiplied by)	%
Equals **A/R Borrowing Base** (BB)	=	$
Eligible inventory		$
Multiplied by advance rate	(multiplied by)	%
Equals **Inventory BB**	=	$
Total A/R & Inventory BB: (A/R BB + Inventory BB)		$
Face amount of Note		$
Borrowing base (Lesser of Total A/R & Inv BB or Note)		$
Subtract loan balance on books	minus	$
Equals **Amount available for disbursement**		$

ii) On a monthly basis, Lender should determine the amount of eligible assets for the borrowing base.

(a) When advancing against receivables, Lender should:

(i) Obtain an aging of accounts receivable and accounts payable;

(ii) Eliminate all ineligible receivables. The following types of accounts are not eligible to be included in the borrowing base:

(a) Any invoice more than 90 days past due. Exceptions are permitted over the 90 day with SBA's prior written concurrence.

(b) 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.

(c) 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.)

(d) 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.

(e) Offsetting receivables and payables between the Borrower and one of its creditors (contra accounts).

(f) Accounts due from affiliate companies.

(g) Accounts that require subordination to other parties, such as Governmental contracts where the bonding company requires assignment of the project's receivables.

(h) Accounts from any one customer that constitute more than 20% of the total outstanding receivables. Accounts above 20% are ineligible, unless the lender obtains SBA's prior written concurrence.

(b) When advancing against inventory, a Lender should:

(i) Obtain a description of inventory and its value; and

(ii) Limit advances to the following types of inventory:

(a) Finished Goods: Eligible if readily saleable and not obsolete.

(b) Work in Progress: Eligible if Lender obtains SBA's prior written concurrence.

(c) Commodities or Raw Materials: Eligible.

(c) 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.

(d) A 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. A sample BBC is provided in Appendix 9.

iii) 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 BBC.

iv) 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.

v) Lenders must report the initial disbursement on SBA Form 1050 in accordance with Ch. 5, Para. D.4.d., Authorization Section D Required Documents, in this Section.

vi) Advance Rate for Accounts Receivable:

(a) 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:

(i) Control and accounting systems of the Borrower;

(ii) Enhancements such as credit insurance;

(iii) Age of receivables;

(iv) Credit quality & Borrower's credit policy;

(v) Turnover history;

(vi) Industry orientation and condition; and

(vii) Net profit margin.

(b) 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.

vii) Inventory Advance Rate:

(a) 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:

(i) Material and labor costs in manufacturing or invoice costs (less discounts) of resale goods in wholesale distribution;

(ii) Nature of the product;

(iii) Product liability;

(iv) Manufacturer's buyback agreements; and

(v) Physical location of inventory (single locations are generally easier to control than multiple locations).

(b) 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.

viii) 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.

ix) Monitoring:

The minimum monitoring requirements for Working Capital CAPLines are as follows:

(a) Monthly - BBC; Aging of accounts receivable/payable; and Inventory listing (if advanced against);

(b) Quarterly – Borrower prepared financial statements; and

(c) Annually – Borrowers management information system; legal elements; loan agreements; NAICS review; review of cash flow

and related financials: and reassess exam, monitoring and control requirements.

(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 public company with at least an A rating, a Federal government account, the customer has a long-standing positive credit history with the Borrower, the customer is a prime or sub-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.

(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 public company with at least an A rating, a Federal government account, the customer has a long-standing positive credit history with the Borrower, the customer is a prime or sub-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.

ii. Level of Funds Control:

The level of funds control for a Working Capital CAPLine, whether a BBC is used or not, is determined by the banking relationship the lender has with the Borrower.

a) 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.

b) 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).

iii. 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:

a) Enforce final collection;

b) Renew the line without SBA's guaranty;

c) Renew the line, requesting SBA's guaranty (new application required if maturity has reached 10 years);

d) Term out any outstanding balance, with SBA's concurrence. SBA's guaranty would remain in place but there could be no new advances; and/or

e) Commence liquidation of supporting collateral.

CHAPTER 4: 7(A) EXPORT TRADE FINANCE

SBA has three core 7(a) international trade finance programs that support small business exporters and export transactions.

Export Express Loan Program: The Export Express Loan Program guarantees smaller dollar revolving lines of credit or term loans to support small business concerns wanting to develop the export side of their business. It offers many of the streamlined features of SBA Express while providing a higher guarantee to mitigate international credit risk.

Export Working Capital Program: (EWCP): Under the EWCP, SBA guarantees short-term working capital loans made by participating lenders to small business exporters.

International Trade Loan Program: Under the International Trade Loan Program, SBA guarantees term loans to improve the competitive position of small business concerns that are existing exporters or are developing new export markets. SBA also guarantees term loans to improve the competitive position of any small business concerns adversely affected by import competition.

An export transaction is the production and payment associated with a sale of goods or services to a foreign buyer.

A. EXPORT EXPRESS

The Export Express Program was designed to help SBA meet the export financing needs of small businesses too small to be effectively met by then existing SBA export loan guaranty programs.

Lenders must always start by reviewing the contents of Section A, Core Requirements for all 7(a) and 504 Loans, in this Part.

1. Eligibility and Eligible Uses of Proceeds for Export Express

In addition to the core requirements identified in Section A of this Part, eligibility for Export Express is limited to businesses 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:

i. The Applicant's key personnel have clearly demonstrated export expertise and substantial previous successful business experience; and

ii. 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.

a. Export Express loans must be used for an export development activity, which includes the following:

i. Obtaining a Standby Letter of Credit when required as a bid bond, performance bond, or advance payment guarantee;

ii. Participation in a trade show that takes place outside the United States;

iii. Translation of product brochures or catalogues for use in markets outside the United States;

iv. 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);

v. Performing a service contract from buyers located outside the United States;

vi. Obtaining transaction-specific financing associated with completing export orders;

vii. Purchasing real estate or equipment to be used in the production of goods or services for export;

viii. 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;

ix. Providing term loans and other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States;

x. Refinancing debt as outlined in paragraph 1.c. immediately below; and

xi. Financing indirect exports. 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 documentation 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.

xii. Change of ownership only under conditions outlined in paragraph 1.c. below.

b. Debt Refinancing:

Loan proceeds may not be used to pay a creditor in a position to sustain a loss (including the same institution's debt). This includes refinancing debt that will shift all or part of a potential loss from the original Lender to the SBA. 13 CFR §§ 120.140(j)(1) and 120.201

i. A Lender may refinance debt under Export Express as follows:

a) A Lender may refinance an existing non-SBA guaranteed loan or Borrower debt from another lender if:

i) The Lender determines the existing debt no longer meets the needs of the Applicant (for example, if the current loan is a term loan and a revolver is needed);

ii) The new loan meets the SBA 10 percent improvement to debt service coverage requirement in paragraph c.i.g) below; however, a new Export Express loan is not subject to SBA's 10 percent improvement to debt service coverage requirement if the debt to be refinanced is a revolving line of credit; and

iii) The Lender obtains documentation to verify that the new loan or line of credit will be used for export development activities.

b) A Lender may refinance an existing Export Express loan from another lender only if:

i) The original Export Express Lender is unable or unwilling to increase or make a second Export Express loan;

ii) The Lender maintains evidence in its file that the original lender is unable or unwilling to increase the original Export Express loan or make a second loan; and

iii) The Lender obtains documentation to verify that the new loan or line of credit will be used for export development activities.

c) A Lender may refinance its own non-SBA guaranteed debt to the Applicant if:

i) The Lender determines that 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);

ii) The new loan meets the SBA's 10 percent improvement to debt service coverage requirement in paragraph c.i.g) below; however, a new Export Express loan is not subject to SBA's 10 percent improvement to debt service coverage requirement if the debt to be refinanced is a revolving line of credit;

iii) The debt to be refinanced is, and has been, current for at least the last 36 months or the life of the loan, whichever is less. (SBA Form 1920 includes the relevant 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;

iv) The Lender's exposure to the Applicant will not be reduced; and

v) The Lender obtains documentation to verify that the new loan or line of credit will be used for export development activities.

d) A Lender may not refinance one of its own Export Express loans or one of its own SBA-guaranteed loans with a new Export Express loan.

e) Except for an existing Export Express loan that meets the requirements of paragraph c.i.b) above, a Lender may not refinance an existing SBA-guaranteed loan of another lender.

f) 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.)

g) SBA's 10 Percent Improvement to Debt Service Coverage Requirement. With the exception of debt (short-term or long-term) structured with a demand note or balloon payment, credit card obligations used for business-related purposes, and revolving lines of credit (short-term or long-term) where the original lender is unable or unwilling to renew the line or the Applicant is restructuring its financing in order to obtain a lower interest rate or longer term, 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 cash flow improvement calculation.

However, no debt(s) on reasonable terms may be refinanced. 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.

ii. The Export Express Authorization must include:

a) In the Use of Proceeds section, the refinancing must be specifically identified;

b) An itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid $10,000 or more; and/or

c) The loan number and dollar amount of any existing SBA debt being refinanced.

iii. Other conditions that apply to debt refinancing:

a) An Export Express loan may not be used to refinance a debt owed to an SBIC.

b) The payment of trade payables is not considered to be debt refinancing.

c. Change of Ownership (13 CFR § 120.202).

i. An Applicant may use Export Express loan proceeds for a change of ownership, whether the change of ownership is accomplished through a stock purchase or an asset purchase, only under the circumstances described in this paragraph. An asset purchase will be deemed a change of ownership and must comply with all of the requirements of this paragraph if the Applicant is purchasing all or substantially all of the assets of the seller's business. The following requirements apply:

a) The Applicant must purchase 100% of the ownership interest in another small business or acquire all or substantially all of the assets of another small business through an asset purchase.

b) Regardless of whether the change of ownership is a stock purchase or an asset purchase, the Applicant must acquire from the seller real estate, a production facility or equipment to be used in the United States in the production of goods or services for export.

i) The Applicant must be eligible under Para. A.1.a. of this Chapter.

ii) Either the Applicant or the business being acquired (i.e., the seller) must be currently engaged in exporting.

iii) The acquisition must enhance the export operations of the Applicant or the ability of the Applicant to export.

ii. The following changes of ownership are not eligible for financing as an Export Express loan:

a) A change of ownership between existing owners of the Applicant.

b) A change of ownership where the Applicant is purchasing less than 100% of the ownership of a business.

iii. The seller may not remain as an officer, director, stockholder, or Key Employee of the Applicant. (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.

iv. The Applicant may be the Borrower, or the Applicant and the small business being acquired may be Co-Borrowers.

v. The Lender must comply with the requirements for IRS verification identified in Section A, Ch. 6, Para. B, IRS Tax Transcript/Verification of Financial Information, of this Part.

vi. The Lender's loan documentation must include:

a) A current business valuation (not to include any real estate) that meets SBA requirements in paragraph 4.d., Real Estate Appraisal and Business Valuation Requirements, of this Chapter.

b) 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.

c) An analysis of the following:

i) The Applicant's eligibility under Para. A.1.of this Chapter;

ii) Whether the Applicant or business being acquired (i.e., the seller) is currently engaged in exporting;

iii) How the change of ownership will result in the acquisition of facilities or equipment to be used in the United States in the production of goods or services for export; and

iv) How the acquisition will enhance the export operations of the Applicant or the ability of the Applicant to export.

(a) Business, stock, and asset purchase agreements, as applicable.

(b) Evidence that all assets conveyed as a result of the purchase are properly secured as collateral by Lender.

vii. The "purchase price of the business" includes all assets being acquired, such as real estate, machinery and equipment, and intangible assets.

viii. Intangible Assets: An Export Express loan may be used to finance a change of ownership that includes intangible assets (including, but not limited to, goodwill, client/customer lists, patents, copyrights, trademarks, intellectual property, and agreements not to compete) as long as it is supported by an independent business valuation that complies with paragraph 4.d., Real Estate Appraisal and Business Valuation Requirements, of this Chapter.

a) 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.

b) 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 fixed assets being purchased.

c) While a change of ownership financed by an Export Express loan may include the acquisition of intangible assets, the change of ownership must also include the acquisition of real estate, a production facility or equipment to be used in the United States in the production of goods or services for export.

d. Loan proceeds may not be used to:

i. Finance operations outside of the United States, except for the marketing and/or distribution of products/services exported from the United States; or

ii. Refinance existing SBA-guaranteed loans except as permitted under Paragraph c.i.b) above.

e. When an Export Express loan finances specific export transactions (including indirect exports) under paragraph 1.b.i, v, vi, or xi above, the Lender must determine if U.S. companies are authorized to conduct business with the Parties and the country(ies) 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 www.exim.gov/tools-for-exporters/country-limitation-schedule or is available from SBA's Office of International Trade. The Lender also must check the Department of Treasury Office of Foreign Assets Control (OFAC) sanctions lists, which can be found at sanctionssearch.ofac.treas.gov/.

i. For federally-regulated Lenders, compliance with the procedures required by the Lender's Federal Financial Institution Regulator will constitute compliance with the above referenced OFAC requirement.

ii. For SBA Supervised Lenders, Lender must check the OFAC sanctions lists prior to first disbursement of funds on each specific export transaction. A loan may not be made to a business that directly or indirectly exports to a foreign country which is listed as a prohibited country (Note # 7 on the Country Limitation Schedule), or if the transaction would be prohibited under any of the sanctions programs administered by OFAC.

f. 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:

i. The Applicant must answer affirmatively on question 9 of SBA Form 1919 and provide an estimate of annual export sales; and

ii. 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):

a) A brief description of the business' product or service which will be exported;

b) An explanation of how the loan proceeds will enable the business to enter a new export market or expand in an existing export market;

c) The countries to which the business will export; and

d) An estimate of the Borrower's export sales for the 12 month period following the date of the loan application.

2. Other Restrictions that apply to Export Express Loans

a. For purposes of clarification, small businesses in the following NAICS Industry Subsector Codes cannot be financed using an Export Express Loan, but may be financed using other SBA 7(a) financial assistance:

i. NAICS Industry Subsector Code 721 (Accommodation)

ii. NAICS Industry Subsector Code 447 (Gasoline Stations).

b. The following types of loans are not eligible under Export Express processing:

i. Loans to an ESOP (under 13 CFR §§ 120.350 through 120.354) or to an eligible small business owned or controlled by an ESOP (see Section A, Ch. 2, Para. B., Employee Stock Ownership Plans, of this Part for more information);

ii. Loans to a cooperative or to an eligible small business owned or controlled by a cooperative (see Section A, Ch. 2, Para. C, Cooperatives, of this Part for more information);

iii. Loans involving a Single Employer 401(k) plan, including a ROBS plan, unless the only investment held by the 401(k) plan is the equity in the Applicant business; and

iv. Loans involving a Multiple-Employer 401(k) plan (i.e., a plan that holds in trust the assets of other businesses), including a ROBS plan (see Section A, Ch. 2, Para. D, 401(k) Plans Including Rollovers as Business Start-Ups (ROBS) Plans, of this Part for more information).

3. Loan Terms and Conditions for Export Express

a. Maximum Loan Amount

i. The maximum loan amount is $500,000 (gross).

ii. Maximum Loans to Businesses with Affiliates

Lenders must determine whether the Applicant has any affiliates and document the results in their credit analysis. If affiliation exists, SBA's loan maximums apply to the Applicant, including all affiliates, as if all were a single business.

iii. Maximum Loan Amount for multiple loans approved within 90 days of each other – "90 Day Rule."

a) If two SBA-guaranteed loans to any one business (including affiliates) are approved within 90 days of each other, the maximum gross amount of all such loans in that time frame cannot exceed $5,000,000.

b) Two SBA-guaranteed loans approved within 90 days of each other may impact the maximum guaranty percentage available to the Borrower and its affiliates as well as the guaranty fee.

b. Maximum Guaranty Amounts and Percentages

The maximum dollar amount outstanding of SBA's guaranty to any one business (including affiliates) must not exceed $3,750,000. When calculating the maximum guaranty percentage available to a Borrower and its affiliates, the Lender must include the approved loan amount for a revolving line of credit. The SBA's guaranty is also known as the "SBA share" or "guaranteed portion."

i. Multiple loans are allowed up to the program maximum loan amount ($500,000 gross for Export Express). The guaranteed amount of all Export Express loans counts toward the $3,750,000 maximum SBA exposure that may be outstanding for all SBA loans to a Borrower and its affiliates at any one time.

ii. If multiple 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 on the second loan must be reduced accordingly so the combined guaranty is no more than 75% (subject to the $3,750,000 guaranty amount limit).

iii. The maximum guaranty percentage is:

a) 90% for loans of $350,000 or less; and

b) 75% for loans over $350,000 up to $500,000.

iv. Combination of 7(a) and 504 loans

a) 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 processed and approved first.

b) Lenders must advise the SBA processing centers that there is a companion 504 application to ensure the 7(a) loan is processed and approved prior to the 504 loan application being processed and approved.

c) 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.

v. Zero Percent Guaranty Cannot be Provided for Ineligible Purposes:

A 7(a) loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business and no part of an SBA 7(a) loan may be guaranteed at zero percent.

c. Loan Maturities

i. Export Express loans must have a stated maturity. The loan term must be the shortest appropriate term based on the use of proceeds and the Borrower's ability to repay.

a) Lines of credit must not exceed 7 years.

i) Transactional lines of credit: No disbursement can be made for an export transaction where payment by the foreign buyer will occur after the maturity date of the loan.

ii) Revolving loans:

(a) Maximum maturity includes any “term-out” period;

(b) May be established as renewable each year provided they do not exceed the maximum maturity.

(c) Lender may not charge a renewal fee. If the original maturity was for 12 months or less, and the new maturity exceeds 12 months, an additional guaranty fee will be due.

b) Working capital or inventory loans and the financing of intangible assets (including goodwill) must not exceed 10 years.

c) Generally, equipment, fixtures, or furniture loans should not exceed 10 years. However, the term may be up to 15 years if the IRS asset class useful life supports the term. The Lender must document in their credit memorandum justification of any term that exceeds 10 years.

d) Real estate loans (including acquisition, rehabilitation, renovation, or construction) must not exceed 25 years unless a portion of the loan is used for construction or renovation of the real estate. If the use of proceeds on a real estate loan includes construction or renovation, the construction or renovation period may be added to the 25 year maximum maturity.

e) Loans for leasehold improvements may not exceed 10 years, plus an additional period reasonably necessary to complete the leasehold improvements, as determined based on the specific nature of the leasehold improvements, but in no case more than 12 months.

f) Mixed purpose loans (including change of ownership): When loan proceeds are used for multiple purposes (land and building, working capital, machinery & equipment, or the refinancing of any of these purposes), the maturity may be a blended maturity; or, if 51% or more

of the use of proceeds are for real estate, the maximum maturity may be up to 25 years.

g) The term of a loan may not exceed the period of the SBA guaranty commitment.

ii. Establishing the Repayment Period (13 CFR § 120.212):

When Lenders establish a repayment schedule and loan maturity, they must consider the following:

a) The Borrower's ability to repay,

b) Use of loan proceeds,

c) Useful life of the assets being financed, and

d) The appropriate maturity for mixed purpose loans (including change of ownership). The Lender may use a blended maturity or the maturity up to the maximum for the asset class comprising 51% or more of the use of proceeds. Lenders must include the calculation used to determine the maturity in the credit memorandum.

e) For loans to farm enterprises:

i) Where land and structures (including poultry houses) comprise 51% or more of the use of proceeds, the maximum maturity is 20 years.

ii) Where machinery and equipment comprise 51% or more of the use of proceeds, the maximum maturity is the useful life of the machinery and equipment, not to exceed 15 years, plus an additional period reasonably necessary for installation, which may not exceed 12 months.

f) SBA has instructed the fiscal and transfer agent to stop the sale into the secondary market of a loan when the maturity exceeds these requirements.

iii. Establishing the Maturity Date:

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

b) 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.

iv. Maturity When Refinancing Existing Assets or a Business Acquisition:

a) The maximum maturity for a loan used to refinance a real estate or fixed asset loan must 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.

b) The maximum maturity for a loan used to refinance a business acquisition shall be 10 years, unless 51% or more of the use of proceeds consist of real estate which would permit a maturity up to 25 years.

v. Export Express Non-Financial Default Provisions:

Non-financial default provisions are allowed under Export Express under the following conditions:

i) 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.

ii) Non-financial default provisions must be substantive and must be agreed to by the Borrower in writing at loan closing;

iii) The provisions must be consistent with those used by the Lender on its similarly-sized non-SBA guaranteed commercial loans;

iv) 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

v) 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.

d. Interest Rates

SBA QUICK REFERENCE CHART: Maximum Interest Rates Allowed (See additional information below)

Product Export Express Loans	Interest Rate The published maximum allowable fixed rate or if variable:
$50,000 or less (All maturities)	Cannot exceed Prime + 6.5%
More than $50,000 (All maturities)	Cannot exceed Prime + 4.5%

i. General Policy on Interest Rates (13 CFR §§ 120.213; 120.214; 120.215):

a) 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 Applicant, subject to SBA's maximum allowable rates.

b) SBA will periodically publish the maximum allowable fixed interest rate in the Federal Register. The maximum allowable fixed interest rate will be the Prime rate in effect on the first business day of the month, plus an allowable spread over Prime, as set forth in the most recent Federal Register Notice. For a listing of the current maximum allowable fixed interest rates, go to SBA's Capital Access Financial System homepage. 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.

c) For variable interest rate loans, the basis for the SBA maximum allowable interest rate is an acceptable base rate plus allowable spread. 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 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.

d) For loans with a variable interest rate, the following terms must be defined:

i) Base Rate:

(a) There are three acceptable base rates:

(i) The Prime Rate;

(ii) One Month London Interbank Offered Rate (LIBOR) plus 3 percentage points (LIBOR Base Rate); or

(iii) The SBA Optional Peg Rate.

(b) 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 decimal places with .004 being rounded down to .00 and .005 being rounded up to .01.

NOTE: This SOP continues to include the LIBOR Base Rate as an option for the calculation of the maximum allowable variable interest rate for 7(a) loans in accordance with 13 CFR § 120.214(c). The U.K. Financial Conduct Authority announced that it would phase-out LIBOR by the end of 2021. SBA encourages Lenders to consider LIBOR's imminent phase-out when selecting a base rate. For existing 7(a) loans with LIBOR as the base rate, SBA encourages Lenders to examine their loan documents to determine whether LIBOR may be replaced with a fallback rate. If no such provision exists in individual loan documents, Lenders should consider amending the appropriate document(s) in anticipation of LIBOR's phase-out. It is important to note that any changes to the interest rate must be made in accordance with

paragraph ii.b) below. The Federal Reserve Alternative Reference Rates Committee has drafted recommended fallback language for contracts tied to LIBOR: https://www.newyorkfed.org/arrc/fallbacks-contract-language.

(c) For variable rate Export Express loans, the Lender is not required to use the base rate identified above in this paragraph and in 13 CFR § 120.214(c). The Lender 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. A Lender may charge up to 4.5% over the Prime rate on loans over $50,000 and up to $500,000 and up to 6.5% over the Prime rate for loans of $50,000 or less, regardless of the maturity of the loan. However, the interest rate throughout the term of the loan may not exceed the maximum allowable Export Express interest rate and the loan may be sold on the Secondary Market only if the base rate is one of the base rates allowed in 13 CFR § 120.214(c).

ii) Frequency of change;

iii) Range of fluctuation; and

iv) Ceiling and floor (if any).

e) Default Interest Rates:

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.

i) 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 maximum interest rate permitted for Export Express loans.

ii) The amount of interest SBA will pay to a Lender following default of an Export Express loan is capped at the maximum interest rates for the Standard 7(a) loan program.

ii. Policy on Variable Interest Rates

a) Standard Policy:

SBA's maximum allowable interest rate applies only to the initial Note rate on a variable rate loan. Subsequent changes 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.

b) Post-Approval Changes to the Interest Rate:

After approval, the Lender may change the initial Note rate, including changing the base rate, the spread over the base rate, or change 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 consent to the change in the interest rate (if prior to disbursement, Borrower's consent to the change in interest rate must be separate and apart from executing the loan documents) and must make the change through E-Tran servicing.

For example, an SBA-guaranteed loan was approved with a variable rate. Since the loan was approved, the prime rate changed. The Borrower has asked the Lender if the loan can be switched to a fixed rate. If 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, the Lender may make this change per the Borrower's request.

For further guidance see SOP 50 57.

c) Frequency of Interest Rate Adjustment:

i) Export Express Lenders are permitted to use the same change intervals used on their similarly-sized, non-SBA guaranteed commercial loans. Export Express 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.

ii) The Lender must specify in the Note the frequency at which the interest rate adjustment will occur.

(a) This adjustment period as identified in the Note may not be changed without the written consent of the Borrower.

(b) 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.

(c) 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.

d) Interest Rate Requirements for an SBA Note:

i) For fixed rate loans, the Lender must state the specific interest rate in the Note.

ii) For 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 or timing of the first rate adjustment; and

(f) The frequency of rate adjustment.

e) 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 both the floor and ceiling are stated in the Note.

f) 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.

iii. Amortization: (13 CFR § 120.214(f)):

Lender should use an amortization schedule that is appropriate for the type of loan. SBA does not allow balloon payments. A fixed interest rate loan must use a payment that will fully amortize the loan by the maturity date. Typically, variable rate loans are re-amortized every time the interest rate is adjusted to ensure full amortization by the maturity date. The amortization schedule may also be adjusted to meet the cash flow needs of the business.

iv. 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 neither rate exceeds 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. If the Lender uses a combination, the entire loan is considered to be a variable interest rate loan. The interest rate on both the guaranteed and unguaranteed portions must be based on the variable rate.

v. 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 7(a) variable rate guaranteed loan. The Borrower could purchase an interest rate swap contract that would set the interest rate at 8%. When the Note rate is lower than the rate paid by the Borrower on the swap contract (8%), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 8%. 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 8% and the swap seller would pay the difference above 8% 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) In order to use an interest rate swap in the 7(a) program, the interest rate swap contract must meet the following conditions:

i) 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.

ii) 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.

iii) 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.

iv) 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.

v) The full amount of the principal and interest required under the Note must be reported by the lender on the SBA Form 1502.

vi) 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.

vii) The Borrower must sign a statement acknowledging that interest will be calculated at the Note rate if the swap contract is terminated.

viii) 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."

ix) Swap contracts may be used on new or existing loans.

x) The swap contract does not have to last for the entire length of the loan agreement.

xi) SBA does not have a standard form for an interest rate swap contract.

xii) Any fees owed the swap counterparty as a result of the default by the Borrower will be subordinated to the SBA 7(a) loan.

4. Credit Standards for Export Express

The policies that make up SBA's credit standards begin with the requirements outlined in 13 CFR §§ 120.101 and 120.150. This section provides procedural guidance as to what the Lender should or must consider when analyzing any request for financial assistance that will be guaranteed by SBA.

A Lender must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. The cash flow of the Applicant is the primary source of repayment, not any expected recovery from the liquidation of collateral. Thus, if the Lender's financial analysis demonstrates that the 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 repayment.

To the maximum extent practicable, Export Express Lenders may use their own forms, internal credit memoranda, notes, collateral documents, and 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.

a. Processing Method

Once submitted to the LGPC, an application withdrawn by a Lender, screened-out, or declined by the LGPC may not be approved by any Lender under its Export Express Authority. E-Tran will not permit the submission of such an application under any Lender's Export Express authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application.

Export Express loans are only processed via an Export Express Lender's delegated authority. When a Lender submits an SBA 7(a) loan guaranty request under the Lender's Export Express authority, the Agency does not review the Lender's determination of eligibility, analysis of the credit, or structure of the loan or line of credit prior to issuing a loan number. The Lender must analyze eligibility and credit worthiness in accordance with SBA Loan Program Requirements and properly document its file. The Export Express Lender's

analysis is subject to SBA's review and determination of adequacy, when the Lender requests SBA to purchase its guaranty or when SBA is conducting lender oversight activities.

b. Underwriting

i. SBA has authorized Export Express Lenders to make the credit decision without prior SBA review. Lenders must not make an Export Express loan that would be available on reasonable commercial terms from either the Lender itself or another source without an SBA guaranty.

ii. The credit analysis must demonstrate there is a reasonable assurance of repayment.

iii. The credit analysis must include the factors demonstrating the Applicant does not have credit available elsewhere on reasonable commercial terms from non-Federal, non-State, non-local government sources, in accordance with Section A, Ch. 1, Para. E, Demonstrate the Need for Desired Credit in this Part;

iv. 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 the Lender's similarly-sized non-SBA guaranteed commercial loans..

v. In addition to using the Lender's appropriate, prudent and generally accepted industry credit analysis and procedures, Export Express Lenders may use a business credit scoring model (such a model cannot rely solely on consumer credit scores) to assess character, reputation, and credit history of the applicant and/or repayment ability if they do so for their similarly-sized, non-SBA guaranteed commercial loans.

a) The business credit scoring model may only be used in addition to the Lender's appropriate, prudent, and generally accepted industry credit analysis and procedures.

b) If used, the business credit scoring results must be documented in each loan file and available for SBA review.

c) Lenders must validate (and document) with appropriate and accepted statistical methodologies that their business credit scoring model is predictive of loan performance and they must provide that documentation to SBA upon request.

d) Although SBLCs do not make non-SBA guaranteed loans, SBA has determined they may use credit scoring. SBLCs are required to provide credit scoring model validation to SBA on an annual basis.

vi. The credit decision on Export 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 similarly-sized, non-SBA guaranteed loans verifies the equity injection, it must do so for Export

Express loans. 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.

vii. Lender must also address other specifics, such as:

a) Franchise, license, dealer, or similar agreements (see Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements, of this Part for further guidance.); and

b) Management agreements (see Section A, Ch. 1, Para. D.5, Affiliation based on Management, of this Part for further guidance).

c. Collateral

See Section A, Ch. 6, Para. A of this Part for guaranty requirements.

i. With respect to collateral, Lenders must use commercially reasonable and prudent practices to identify collateral, which conforms to procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans. Decisions regarding what collateral must be taken to secure a loan are based on the circumstances of the individual loan, including size, and must meet the minimum requirements set forth in this section.

a) For loans of $25,000 or less, Lenders are not required to take collateral.

b) For loans over $25,000, the Lender must, to the maximum extent practicable, follow the written 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.

ii. Adequacy of Collateral:

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 Applicants that demonstrate repayment ability but lack adequate collateral to repay the loan in full in the event of default. However, SBA does not permit its guaranty to be a substitute for available collateral.

d. Real Estate Appraisal and Business Valuation Requirements

The regulation governing real estate appraisals is set forth at 13 CFR § 120.160(b).

i. Commercial Real Estate:

a) For all loans $500,000 or less secured by commercial real property:

i) If the loan finances a transaction involving parties with a close relationship (for example, transactions between existing owners or

family members), or if the Lender otherwise concludes that an appraisal is necessary to appropriately evaluate creditworthiness, the Lender must obtain an appraisal.

ii) Appraisals must be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Additionally, SBA requires that completed appraisals be dated within 12 months of the application for guaranty.

iii) If an appraisal is not required under the preceding paragraph, all Lenders must obtain an appropriate evaluation of the commercial real estate securing the loan that is consistent with safe and sound banking practices. Evaluations are not required to be performed in accordance with USPAP or by State licensed or certified appraisers but should be consistent with the Interagency Appraisal and Evaluation Guidelines and the Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions, issued by the Federal Banking Regulators.

b) The appraiser must be:

i) Independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and

ii) Either State-licensed or State-certified, with the following exception: when the commercial property's estimated value is over $1,000,000, the appraiser must be State-certified.

c) 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 USPAP, except that federally-regulated Lenders may follow their primary regulator's FIRREA requirements to the extent they permit otherwise. The Lender may not use an appraisal prepared for the seller or the Applicant. The cost may be passed on to the Applicant.

d) The appraisal must be an "Appraisal Report" prepared in compliance with USPAP.

e) 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, general contractor, project architect, or construction management firm 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 Lender cannot obtain such a

statement, then the Lender may not close the loan without SBA's prior written permission.

f) 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 Lender is unable to obtain 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 obtain 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.

g) 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.

h) 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.

i) An appraisal may be obtained 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.

j) 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.

k) If at time of closing the appraised value:

   i) Is 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.

   ii) Is less than 90% of the estimated value, Export Express Lenders are permitted to close the loan, 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 conducting lender oversight activities. 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.

ii. 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.

iii. Other Fixed Assets:

If the valuation of fixed assets is greater than their 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.

iv. Business Valuation Requirements – Change of Ownership:

a) Determining the value of a business (not including real estate which is separately valued through a real estate 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 potentially the creation of intangible assets. A business valuation assists the buyer in making a determination that the seller's asking price is supported by an independent Qualified Source (See definition in Appendix 3).

b) 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 conclusion of value, the qualifications of the individual performing the business valuation and their signature certifying to the information contained in the business valuation. The Lender may not use a business valuation prepared for the Applicant or the seller. The cost of the business valuation may be passed on to the Applicant.

i) Non-Special Purpose Properties:

(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 existing owners or family members), the Lender must obtain an independent business valuation from a Qualified Source.

ii) Special Purpose Properties: A "Special Purpose Property" is a limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the specific use for which it was built.

(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 being financed is over $250,000 or if there is a close relationship between the buyer and seller (for example, transactions between existing owners or family members) and the business operates from a Special Purpose Property, the Lender must obtain an independent business valuation performed by a Certified General Real Property Appraiser.

(c) The business valuation must allocate separate values to the individual components of the transaction including land, building, equipment, and intangible assets.

(d) The Certified General Real Property Appraiser must have completed no less than four going concern appraisals of equivalent special use property as the property being appraised, within the last 36 months, as identified in the qualifications portion of the Appraisal Report.

(e) Each business valuation assignment under this section must be undertaken with a specific instruction for the Certified General Real Property Appraiser to conduct the appraisal in compliance with current USPAP guidelines.

iii) The business valuation may be obtained and reviewed after the issuance of an SBA Loan Number and prior to closing. If the Lender 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.

iv) Any amount(s) of the loan proceeds that will be used to facilitate a change of ownership may not exceed the business valuation.

v) 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.

5. Submission of Application for Guaranty for Export Express

a. Contents of Lender's Application for Guaranty

Lenders must maintain in their loan files all application documents and any documentation and exhibits that support the guaranty request.

Lender must disclose 100% of the Applicant's ownership on SBA Form 1919 and in E-Tran in order to submit a loan application. Each owner must be identified in E-Tran.

SBA Form 1919 includes 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. Export Express Processing:

a) Program forms can be found at www.sba.gov/document.

b) All Export Express loan files must include the forms and information the Lender requires in order to make an informed eligibility and credit decision. Any application form obtained by the Lender from the applicant must be certified by the Applicant as true and complete.

ii. Export Express Lenders must obtain and retain all documentation in their file.

a) Lender must complete and sign SBA Form 1920.

b) Applicants and Associates must complete and sign SBA Form 1919, "Borrower Information Form." SBA Form 1919 must be signed by the following:

i) For a sole proprietorship, the sole proprietor;

ii) For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm, or any partner that is involved in management of the Applicant;

iii) For a corporation, all owners of 20% or more of the corporation and each officer and director;

iv) For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;

v) Any Key Employee; and

vi) Any Trustor (if the Small Business Applicant is owned by a trust).

vii) When the combined ownership interest between spouses and minor children is 20% or more, both spouses must complete SBA Form 1919.

When 20% or more ownership interest is held by a corporation, partnership, or other form of legal entity in the Applicant or OC, the ownership interests of all individuals must be disclosed.

A separate Section I of SBA Form 1919 is required to be completed and signed for each co-applicant (e.g. Eligible Passive Company (EPC) and Operating Company (OC)).

All parties listed in subparagraph a.ii.b) above are considered "Associates" of the Small Business Applicant as defined in 13 CFR § 120.10. A separate Section II is required to be completed and signed by each principal of the Small Business Applicant.

c) Lender's Credit Memo must address all requirements detailed in paragraph 4, Credit Standards, above.

d) Character Determination:

i) If questions 17, 18, and 19 of SBA Form 1919 are all answered "no," a Character Determination is not required.

ii) If question 17 is answered "yes," the loan is not eligible.

iii) If question 18 or 19 is answered "yes," the Subject Individual and Lender must follow the steps as outlined in Section A, Ch. 3, Para. B, Character Determinations, of this Part prior to submitting the request for a loan number.

iv) If the Lender uses business financial statements and/or tax returns for purposes of credit underwriting, all financial statements, tax returns and schedules reviewed and required by Lender's policy for its similarly -sized, non-SBA guaranteed commercial loans must be maintained in the Lender's Export Express loan file. All financial documents must comply with the Lender's policies on collection and review of financial information.

v) If Lender does not use business financial information to determine creditworthiness, such as with some credit scoring models, Lender must obtain IRS tax transcripts in order to verify that the returns were filed and for the purpose of determining the Applicant's size (but

reconciliation of the tax transcripts as set forth in Section A, Ch. 6, Para. B, IRS Tax Transcripts/Verification of Financial Information, of this Part is not required).

e) Franchise:

i) If the Applicant's brand meets the FTC definition of a franchise, Lender must document in its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the request for loan number into E-Tran. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. (Lender will need to submit the documentation showing that the Applicant's brand is on the Directory with any guaranty purchase request.)

ii) If the Applicant's brand is not on the Directory and the delegated Lender determines the brand does not meet the FTC definition and proceeds with approving the loan under its delegated authority, the Lender must document its file and will be required to submit that documentation with any guaranty purchase request and the Export Express Lender bears responsibility for any erroneous determination;

iii) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code (if applicable) for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran. The Lender must document in its file that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory, and must document their file with the basis for their determination of which brands are critical to the Applicant's business operation (e.g., a breakdown of revenue by brand). Delegated Lenders will be required to submit all of this supporting documentation to SBA with any guaranty purchase request. (See Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements, of this Part for further guidance.)

f) Debt Refinancing. Lenders must maintain copies of all notes, security agreements, leases, or other documentation evidencing the debt to be refinanced in the loan file.

g) Documentation of USCIS status verification - Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the request for loan number to SBA. Lender must retain a copy of the verification received from USCIS or SBA-SLPC in its loan file.

b. Where to Submit Applications for Guaranty

Export Express Lenders must submit guaranty applications via E-Tran, retaining all required documentation in the Lender's loan file.

c. See Chapter 5, Authorization through Disbursement, in this Section, for SBA requirements for the loan Authorization, post-approval and pre-disbursement requests for changes, transfer of guaranty between participating Lenders, and loan closing and disbursement.

B. EXPORT WORKING CAPITAL PROGRAM (EWCP)

13 CFR 120.340 - 120.344

Under the EWCP, SBA guarantees short-term working capital loans made by participating lenders to small business exporters.

Lenders must always start by reviewing the contents of Section A, Core Requirements for all 7(a) and 504 Loans, of this Part.

1. **Eligibility for EWCP**

   In addition to the Core Requirements identified in Section A of this Part, the following EWCP-specific eligibility requirements apply:

   a. Eligibility for EWCP will be limited to businesses that have a history of at least 12 full months of operations prior to filing an application.

   b. The SBA Approving Official may waive the 12-month requirement, based upon demonstrated export expertise and previous business experience.

   c. 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.

2. **Eligible Uses of Proceeds for EWCP**

   a. Proceeds can be used only to finance export transactions. Loans can be for single or multiple export transactions. An export transaction is the production and payment associated with a sale of goods or services to a foreign buyer.

      i. Loan proceeds may be used for:

         a) Acquiring inventory for export or to be used to manufacture goods for export;

         b) Paying the manufacturing costs of goods for export;

         c) Purchasing goods or services for export;

         d) Supporting 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

         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 documentation 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.

h) Pre-shipment working capital;

i) Post-shipment foreign accounts receivable financing; and

j) Lender fees and charges and any packaging fees paid

k) For refinancing existing short-term export lines of credit with the transfer of collateral in accordance with paragraph 2.b. below.

ii. 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 export;

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.

b. Debt Refinancing with Export Working Capital Program (EWCP) Loans.

EWCP loan proceeds may not be used to pay a creditor in a position to sustain a loss (including the same institution's debt). This includes refinancing debt that will shift all or part of a potential loss from the original Lender to the SBA. 13 CFR §§ 120.140(j)(1) and 120.201

EWCP loan proceeds may be used to refinance an existing EWCP loan or export line of credit. All refinanced debts must be supported by active export sales or pending export orders, and the EWCP loan Authorization must specify additional eligible uses of loan proceeds for subsequent draws.

The following conditions apply to debt refinancing under EWCP:

i. The loan being refinanced must be paid off with the EWCP loan, and the refinanced loan must be terminated after the pay-off.

ii. EWCP loan proceeds may not be used to refinance debt that is already on reasonable terms.

iii. An existing EWCP loan or other short-term export line of credit reflected on the Applicant's business balance sheet may be eligible for refinancing if it is reflected on the Applicant's business tax returns (Schedule C for sole proprietorships) showing the interest expense associated with the debt.

a) If the debt to be refinanced was the first extension of credit, the Lender must document and the Applicant must certify that the proceeds from the debt were used exclusively for the Applicant's business, for an eligible purpose under 13 CFR § 120.342, and were not used for any ineligible purpose as set forth in 13 CFR § 120.130; and

b) Except as stated in the next sentence, if the debt to be refinanced was used in whole or in part to refinance a prior debt, the loan being

refinanced, including the associated interest, must be reflected on the Applicant's balance sheet and business tax returns (Schedule C for sole proprietorships) for two full tax cycles prior to application. If the term of the debt to be refinanced is less than the period of two full tax cycles prior to application, the loan being refinanced, including the associated interest, must be reflected on the Applicant's balance sheet and business tax returns for the full tax cycle(s) that occurred between the date of disbursement of the loan being refinanced and the date of application for the EWCP loan.

iv. When refinancing debt, the loan application must include:

a) A written analysis that addresses the following issues:

i) The reason the debt was incurred;

ii) The factor(s) that support that the proposed refinancing will not pay a creditor in a position to sustain a loss;

iii) The reason for restructuring the debt (for example, over-obligated or imprudent borrowing);

iv) The factor(s) that support that the debt being refinanced is not currently on reasonable terms;

v) How the new loan will improve the financial condition of the Applicant;

vi) The reason(s) the Lender believes the debt to be refinanced no longer meets the needs of the Applicant; and

b) Supporting documentation for each debt to be refinanced: Lenders are required to:

i) Retain copies of notes, security agreements, leases, and other documentation evidencing the debt to be refinanced; and

ii) Submit with the application to LGPC for non-delegated loans, copies of all supporting documentation for the debt to be refinanced.

v. The Authorization must include:

a) In the Use of Proceeds section, the refinancing must be specifically identified;

b) An itemization of all debts being repaid by loan proceeds; and/or

c) The loan number and dollar amount of any existing SBA debt being refinanced.

vi. Other conditions that apply to debt refinancing:

a) An EWCP loan may not be used to refinance a debt owed to an SBIC.

b) The payment of trade payables is not considered to be debt refinancing.

c) Initial disbursement must be made in accordance with the Authorization;

d) Prior to first disbursement, the Lender must ensure:

i) Collateral for the loan being refinanced is transferred to secure the EWCP loan.

ii) Any outstanding receivable that would have been applied to pay down the refinanced loan will be applied to pay down the EWCP loan in the same percentage.

c. Change of Ownership (13 CFR § 120.202).

EWCP loan proceeds may not be used for a change of ownership.

3. Ineligible NAICS Codes

For purposes of clarification, small businesses in the following NAICS Industry Subsector Codes cannot be financed using an EWCP loan, but may be financed using other SBA 7(a) financial assistance:

a. NAICS Industry Subsector Code 721 (Accommodation)

b. NAICS Industry Subsector Code 447 (Gasoline Stations).

4. Other Restrictions that Apply to PLP-EWCP Loans

The following types of loans are not eligible for PLP-EWCP processing:

a. Loans to an ESOP (under 13 CFR §§ 120.350 through 120.354) or to an eligible small business owned or controlled by an ESOP (see Section A, Ch. 2, Para. B., Employee Stock Ownership Plans, of this Part for more information);

b. Loans to a cooperative or to an eligible small business owned or controlled by a cooperative (see Section A, Ch. 2, Para. C, Cooperatives, of this Part for more information);

c. Loans involving a Single Employer 401(k) plan, including a ROBS plan, unless the only investment held by the 401(k) plan is the equity in the Applicant business; and

d. Loans involving a Multiple-Employer 401(k) plan (i.e., a plan that holds in trust the assets of other businesses), including a ROBS plan (see Section A, Ch. 2, Para. D, 401(k) Plans Including Rollovers as Business Start-Ups (ROBS) Plans, of this Part for more information).

5. Loan Terms and Conditions for EWCP

a. Maximum Loan Amount

i. The maximum loan amount is $5,000,000.

ii. Maximum Loans to Businesses with Affiliates

Lenders must determine whether the Applicant has any affiliates and document the results in their credit analysis. If affiliation exists, SBA's loan

maximums apply to the Applicant, including all affiliates, as if all were a single business.

iii. Maximum Loan Amount for multiple loans approved within 90 days of each other – "90 Day Rule."

a) If two SBA-guaranteed loans to any one business (including affiliates) are approved within 90 days of each other, the maximum gross amount of all such loans in that time frame cannot exceed $5,000,000.

b) Two SBA-guaranteed loans approved within 90 days of each other may impact the maximum guaranty percentage available to the Borrower and its affiliates as well as the guaranty fee.

b. Maximum Guaranty Amounts and Percentages

Except for EWCP and International Trade loans, the maximum dollar amount outstanding of SBA's guaranty to any one business (including affiliates) must not exceed $3,750,000. However, both EWCP and International Trade loans permit a maximum dollar amount outstanding of SBA's guaranty of $4,500,000. When calculating the maximum guaranty percentage available to a Borrower and its affiliates, the Lender must include the approved loan amount for a revolving line of credit. The SBA's guaranty is also known as the "SBA share" or "guaranteed portion."

i. The maximum guaranty amount is $4,500,000.

ii. For EWCP, the guaranty percentage is 90 percent.

iii. Zero Percent Guaranty Cannot be Provided for Ineligible Purposes:

A 7(a) loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business and no part of an SBA 7(a) loan may be guaranteed at zero percent.

iv. Combination of 7(a) and 504 loans.

a) 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 processed and approved first.

b) Lenders must advise the SBA processing centers that there is a companion 504 application to ensure the 7(a) loan is processed and approved prior to the 504 loan application being processed and approved.

c) 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.

c. Loan Maturities

i. The loan term must be the shortest appropriate term based on the use of proceeds and the Borrower's ability to repay.

ii. General: The maximum maturity of an EWCP loan is 36 months. The maturity date 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. 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 draw against a Standby 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.

c) Loan maturity must not exceed the period of the guaranty.

iii. Specific Types of EWCP loans:

a) Single Transaction-Specific Loan: A non-revolving loan or revolving line of credit that supports a specifically identified, single export transaction. The LGPC (if processed non-delegated) or PLP-EWCP Lender (if processed via PLP-EWCP authority) may approve a term up to 36 months to correspond with the length of the transaction cycle. When the term exceeds 12 months, justification and recommendation for a longer maturity must be included in the Lender's credit memorandum (if processed via PLP-EWCP) or in the SBA Export Finance Manager's credit memorandum (if processed non-delegated). (Export Finance Managers are assigned to United States Export Assistance Centers (USEACs).)

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 12 months, LGPC or PLP-EWCP Lender 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 BBC 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. 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.

d. Interest Rates

i. SBA does not prescribe the interest rates for the EWCP but will monitor these rates for reasonableness. 13 CFR § 120.344(c)

a) A loan may have a fixed or variable interest rate. The Lender negotiates the interest rate with the Applicant.

b) 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 d.ii, "Policy on Variable Interest Rates" below.

c) Default interest rates are not permitted.

d) For loans with a variable interest rate, the following terms must be defined:

i) Base Rate and applicable spread:

ii) Frequency of change;

iii) Range of fluctuation; and

iv) Ceiling and floor (if any).

e) After approval and prior to final disbursement, Lender must either notify the LGPC of any changes to the Note terms related to the interest rate or make the change through E-Tran Servicing. After final disbursement, Lender must either notify the appropriate Commercial Loan Servicing Center of any changes to the Note terms related to the interest rate or make the change through E-Tran Servicing.

ii. Policy on Variable Interest Rates

a) Post-Approval Changes to the Interest Rate:

i) 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 changed from a fixed rate to a variable rate, or from a variable rate to a fixed rate, provided the new interest rate is reasonable. SBA will monitor these rates for reasonableness. 13 CFR § 120.344(c) The Lender must obtain the Borrower's written consent to the change in the interest rate (separate and apart from executing the loan documents) 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, the prime rate changed. The Borrower has asked the Lender if the loan can be switched to a fixed rate. If the loan has not been disbursed and the fixed rate selected is reasonable, the Lender may make this change per the Borrower's request.

ii) 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, provided the new base rate or spread is reasonable. SBA will monitor these rates for reasonableness. 13 CFR § 120.344(c) 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 SOP 50 57.

b) Interest Rate Requirements for an SBA Note:

i) For fixed rate loans, the Lender must state the specific interest rate in the Note.

ii) For 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 or timing of the first rate adjustment; and

(f) The frequency of rate adjustment.

c) Accrual Method:

SBA does not require a specific accrual method for EWCP loans.

iii. 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 neither rate exceeds 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. If the Lender uses a combination, the entire loan is considered to be a variable interest rate loan. The interest rate on both the guaranteed and unguaranteed portions must be based on the variable rate.

iv. 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 7(a) variable rate guaranteed loan. The Borrower could purchase an interest rate swap contract that would set the interest rate at 8%. When the Note rate is lower than the rate paid by the Borrower on the swap contract (8%), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 8%. 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 8% and the swap seller would pay the difference above 8% 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) In order to use an interest rate swap in the 7(a) program, the interest rate swap contract must meet the following conditions:

i) 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.

ii) 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.

iii) 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.

iv) 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.

v) The full amount of the principal and interest required under the Note must be reported by the lender on the SBA Form 1502.

vi) 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.

vii) The Borrower must sign a statement acknowledging that interest will be calculated at the Note rate if the swap contract is terminated.

viii) 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."

ix) Swap contracts may be used on new or existing loans.

x) The swap contract does not have to last for the entire length of the loan agreement.

xi) SBA does not have a standard form for an interest rate swap contract.

xii) Any fees owed the swap counterparty as a result of the default by the Borrower will be subordinated to the SBA 7(a) loan.

e. Payment Options for EWCP Ongoing Guaranty Fee

i. 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 SBA Form 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 the Fiscal Transfer Agent with the required SBA Form 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 SBA Form 1502 Reports for the EWCP loan will allow Denver Finance Center (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 an 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 an 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.

Fiscal Transfer Agent 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:

i) Whether the Lender is submitting SBA Form 1502 Reports on EWCP loans as required;

ii) When annual invoices are to be sent; and

iii) The accrued amount to be billed for the EWCP Ongoing Fee for each EWCP loan.

ii. 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 Export Finance Manager) for monitoring Lenders in regards to submitting the required SBA Form 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.

6. Credit Standards for EWCP

The policies that make up SBA's credit standards begin with the requirements outlined in 13 CFR §§ 120.101 and 120.150. This section provides procedural guidance as to what the Lender should or must consider when analyzing any request for financial assistance that will be guaranteed by SBA.

A Lender must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. EWCP loans are self-liquidating loans, and the conversion of the export-related trading assets to cash is the primary source of repayment. Thus, if the Lender's financial analysis demonstrates that the Applicant lacks reasonable assurance of repayment in a timely manner from the conversion of foreign sales into cash, the loan request must be declined, regardless of the collateral available or outside sources of repayment.

a. Processing Methods

Once submitted to the LGPC, an application withdrawn by a Lender, screened-out, or declined by the LGPC may not be approved by any Lender under its PLP-EWCP Authority. E-Tran will not permit the submission of such an application under any Lender's PLP-EWCP authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application.

i. Non-delegated – When a Lender submits an EWCP loan guaranty request under the non-delegated processing method, the Lender submits the application and supporting documents to SBA. SBA will make the final determination as to the eligibility and creditworthiness of the Applicant, including approving the uses of proceeds, the adequacy of the collateral being pledged, the structure of the loan and any equity injection to be required from the Applicant.

ii. Delegated – When a Lender submits an EWCP loan guaranty request under the Lender's PLP-EWCP Authority, the Agency does not review the Lender's determination of eligibility, analysis of the credit, or structure of the loan or line of credit prior to issuing a loan number. The Lender must analyze eligibility and credit worthiness in accordance with SBA Loan Program Requirements and properly document its file. The PLP-EWCP Lender's analysis is subject to SBA's review and determination of adequacy, when the Lender requests SBA to purchase its guaranty or when SBA is conducting lender oversight activities.

b. Underwriting

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-related 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, a transaction-based revolving line of credit (single or multiple transactions), or an asset-based loan.

c. Credit Analysis

Lender's credit analysis must include the following:

i. 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;

ii. The factors demonstrating the Applicant does not have credit available elsewhere on reasonable commercial terms from non-Federal, non-State, non-local government sources, in accordance with Section A, Ch. 1, Para. E Demonstrate the Need for Desired Credit, in this Part;

iii. A description of the nature of the business, length of time in business under current management and, if applicable, the depth of management experience in the industry or a related industry. Such analysis should include a brief description of the business's management team;

iv. A discussion of the Applicant's export experience and export business plan, which may include the following:

a) Dollar amount of revenues that are or will be generated by export sales, and the percentage of total revenue

b) Principal or proposed export markets;

c) Proposed or established export customer relationships;

d) Largest export sales contract to date;

e) Export contract backlog discussion; and

f) Documentation of the Applicant's performance history and ability to successfully complete obligations required by standby letter(s) of credit, which serve as bid, advanced payment, performance, supplier, and warranty guarantees and/or bonds.

v. A discussion of financing relationships to include a summary of all short and long term debt relationships, such as:

a) Domestic revolving lines of credit or other term debt credit facilities, which includes a description of the purpose of the debt, payment structure and collateral;

b) Standby debt. Address whether or not the standby debt will permit interest payments to be made and, if so, amounts and frequency, and under what conditions such payments can be halted; and

c) Identify any SBA or other government-guaranteed financing.

vi. A financial analysis of the Applicant's historical and year-to-date- financial statements. The Lender should also provide an analysis of the Applicant's financial projections. The analysis shall include:

a) Analysis of historical cash flow and total debt service for the existing business;

b) Calculation of operating cash flow (OCF) defined as earnings before interest, taxes, depreciation, and amortization (EBITDA);

c) Analysis must document additions and subtractions to cash flow such as the following:

i) Unfunded capital expenditures;

ii) Non-recurring income;

iii) Expenses and distributions;

iv) Distributions for S-Corp taxes;

v) Rent payments;

vi) Owner's Draw; and/or

vii) Global cash flow analysis that includes assessment of impact on cash flow to/from any significant affiliate businesses.

vii. Debt service (DS) is defined as the future required principal and/or interest payments on all business debt inclusive of new SBA loan proceeds.

viii. 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:

a) Reason for reduced expense structure,

b) Reason for revenue growth, i.e., new product lines, sales channels, and new production facilities; and

c) Industry analysis.

ix. A financial analysis of SBA EWCP loan repayment ability based on the Applicant's cash cycle;

x. Ratio calculations for the following financial ratio benchmarks: Current Ratio, Debt/Tangible Net Worth, Debt Service Coverage, inventory turnover, receivables turnover, and payables turnover and any other ratios the Lender considers significant for the business/industry;

xi. An analysis of the collateral that may include a discussion of:

a) Buyer(s) and export destination market(s) risk, which may include economic, political, compliance, currency, or logistics;

b) Anticipated "terms of sale" on the exports to be financed through the EWCP loan. Terms of sale may include:

i) Cash before Shipment/Cash at Shipment;

ii) Irrevocable Letters of Credit

iii) Export Credit Insurance (for comprehensive commercial and political risk);

iv) Collections (Cash against Documents); and

v) Open Account;

c) Credit insurance experience;

d) The composition and quality of the collateral in the proposed borrowing base that may include:

i) Quality of the Borrower's customer base;

ii) The presence of concentrations risks;

iii) Delinquency volumes and trends; and

iv) Dilution.

xii. A discussion of Lender's credit experience with the Applicant and a review of business and personal credit reports.

d. Collateral

See Section A, Ch. 6, Para. A of this Part for guaranty requirements.

i. EWCP loans must be secured by no less than a first security interest in 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. Collateral must be located in the United States, its territories, or possessions. An assignment of contract proceeds for an EWCP Asset Based Line of Credit may be required at the discretion of the LGPC for non-delegated loans, or the PLP-EWCP Lender for EWCP loans processed under delegated authority.

In general, the export-related inventory produced and the foreign accounts receivables generated by the export sales financed will be considered to provide adequate collateral coverage. SBA, for non-delegated loans, or the PLP-EWCP Lender, may require additional collateral by requiring a lien on other business assets.

When EWCP loan proceeds are used for debt refinancing, collateral for the loan being refinanced must be transferred to secure the EWCP loan.

ii. Standby Letters of Credit: SBA requires additional collateral if EWCP loan proceeds are used to support the issuance of a standby letter of credit. In such situations, the Applicant 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 term of the standby letter of credit. SBA, for non-delegated loans, or the PLP-EWCP Lender may allow export inventory and/or foreign accounts receivable or other acceptable collateral to replace the cash deposit requirement. However, if using an asset-based loan (ABL) facility, the Lender must determine that the borrowing base for the ABL will support at least 25% of the total of all standby letters of credit supported by the loan. In addition, EWCP Authorization Boilerplate contains specific provisions related to standby letters of credit. All Lenders must document the justification in their file.

iii. Receivables generated from sales to foreign purchasers are not considered a foreign asset and may be taken as collateral.

iv. Personal guaranties of all 20% or more owners is generally required, but may be waived by the Director, International Trade Finance (D/ITF).

7. Submission of Application for Guaranty for EWCP

SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)," was updated as of July 1, 2019. Lenders that executed an earlier version of SBA Form 750, and that also have an executed SBA Form 750EX, are permitted to submit applications for an EWCP guaranty under non-delegated processing procedures. If a Lender has an earlier version of

the SBA Form 750, but no executed SBA Form 750EX, the Lender must execute a July 1, 2019 version of the SBA Form 750 in order to submit an EWCP application. All Lenders with an executed July 1, 2019, version of SBA Form 750 are eligible to submit EWCP applications for guaranty under non-delegated processing procedures. Lenders with an executed SBA Form 2310, "Supplemental Guaranty Agreement Preferred Lenders Program (PLP) for Export Working Capital Program (EWCP) Loans," may process EWCP applications under delegated authority. See Part 1, Section A, Ch 1. Para. A.4, Process to Become an EWCP Participating Lender, of this SOP for more information.

a. Contents of Lender's Application for Guaranty

The contents of the Lender's application for guaranty vary depending on the method of processing chosen by the Lender. Based on the method of processing, the Lender may or may not be required to submit the documentation and exhibits to SBA, but in all cases must maintain those documents and any that support the guaranty request in their loan files.

Lender must disclose 100% of the Applicant's ownership on SBA Form 1919 and in E-Tran in order to submit a loan application. Each owner must be identified in the E-Tran system.

SBA Form 1919 includes 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. Program forms can be found at www.sba.gov/document.

   a) Centralized 7(a) Loan Submission Instructions can be found at the 7(a) Loan Guaranty Processing Center ("LGPC") website along with other forms, telephone numbers and fax numbers: www.sba.gov/CitrusHeightsLGPC.

   b) All EWCP loan files must include the forms and information the Lender requires in order to make an informed eligibility and credit decision. Any application form obtained by the Lender from the applicant must be certified by the Applicant as true and complete.

ii. For applications to reissue an existing EWCP line of credit that is maturing, the Lender must obtain and submit (if processed through non-delegated procedures) new SBA Forms 1919 and 1920, and all documentation listed below in paragraph iv.

iii. PLP-EWCP Lenders processing loans under their PLP-EWCP authority must obtain and retain the documentation listed below in paragraph iv. in their file.

iv. Non-Delegated EWCP requirements:

For all EWCP loans submitted using the non-delgated process through the LGPC (including PLP-EWCP lenders processing the loan through non-

delegated procedures), Lender must obtain and retain in its file all documentation listed below. In addition, Lender must submit as part of the application for guaranty those items below emphasized in **bold**:

a) Lender must complete and sign SBA Form 1920.

b) Applicants and Associates must complete and sign SBA Form 1919, "Borrower Information Form." SBA Form 1919 must be signed by the following:

i) For a sole proprietorship, the sole proprietor;

ii) For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm, or any partner that is involved in management of the Applicant;

iii) For a corporation, all owners of 20% or more of the corporation and each officer and director;

iv) For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;

v) Any Key Employee; and

vi) Any Trustor (if the Small Business Applicant is owned by a trust).

vii) When the combined ownership interest between spouses and minor children is 20% or more, both spouses must complete SBA Form 1919.

When 20% or more ownership interest is held by a corporation, partnership, or other form of legal entity in the Applicant or OC, the ownership interests of all individuals must be disclosed.

A separate Section I of SBA Form 1919 is required to be completed and signed for each co-applicant (e.g. Eligible Passive Company (EPC) and Operating Company (OC)).

All parties listed in subparagraph iv.b) above are considered "Associates" of the Small Business Applicant as defined in 13 CFR 120.10. A separate Section II is required to be completed and signed by each principal of the Small Business Applicant.

v. **Lender's Credit Memo**, which must address all requirements in paragraph 6, Credit Standards for EWCP, above.

vi. Character Determination:

a) If questions 17, 18, and 19 of SBA Form 1919 are all answered "no," a Character Determination is not required.

b) If question 17 is answered "yes," the loan is not eligible.

c) If question 18 or 19 is answered "yes," the Subject Individual and Lender must follow the steps as outlined in Section A,

Ch. 3, Para. B, Character Determinations, of this Part prior to submission of the application to the LGPC for a non-delegated loan and prior to submitting the request for a loan number for a PLP-EWCP loan.

vii. **Personal financial statements** dated within 90 days of submission to SBA, for all owners of 20% or more (including the assets of the owner's spouse and minor children), and proposed guarantors. Lenders may use SBA Form 413 or their own equivalent form.

viii. **Business financial statements** and/or tax returns dated within 120 days prior to submission to SBA, consisting of:

a) Year End Balance Sheet for the last 3 years, including detailed debt schedule;

b) Year End Profit & Loss Statements for the last 3 years;

c) Reconciliation of Net Worth;

d) Interim Balance Sheet; and

e) Interim Profit & Loss Statements;

ix. Affiliate/Subsidiary financial statement requirements same as above;

x. Documentation specific to the EWCP financing request:

a) Copy of letter of credit and/or copy of buyer's order/contract, if applicable.

b) Export credit insurance-related material (policy, application, buyer credit limit), if applicable.

c) Copy of export license(s), if required.

d) Aging of accounts receivable and accounts payable, and inventory reports (dated within 180 days of application).

e) Cash flow projection statement with monthly (may be quarterly for asset-based loans) sales projections for the lesser of 12 months or the term of the loan, highlighting the proposed export transaction(s) to be financed. The cash flow may be limited to proposed export transaction(s) and/or based on anticipated export cash cycle, showing ability to complete projected export transaction(s) and repay the EWCP loan.

f) If indirect exporting is being financed, a letter, invoice, order, contract, or other documentation from the Borrower's customer certifying that they will sell the goods/services purchased from the Borrower to a foreign buyer.

xi. Copy of Lease, if applicable;

xii. Detailed listing of collateral (may be included in the Lender's credit memo);

xiii. Franchise:

a) For non-delegated loans:

i) If the Applicant's brand meets the FTC definition of a franchise, Lender must identify the name of the franchise and the SBA Franchise Identifier Code when entering the application into E-Tran. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. The LGPC will confirm that the brand is listed on the SBA Franchise Directory;

ii) If the Lender determines that the Applicant's brand does not meet the FTC definition of a franchise, and it is not on the Directory, Lender must explain its determination in its credit memorandum when submitting the application to the LGPC and provide the agreement and any additional documentation required by the brand. Lender also must provide contact information for the franchisor/licensor (name and email address only). The LGPC will forward the documentation and contact information to the SBA Franchise Team for review and final determination.

iii) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran. The Lender must identify all other brands and SBA Franchise Identifier Codes (if applicable) in the Lender's credit memorandum, and must identify which of the Applicant's brands are critical to the Applicant's business operation, including an explanation of the basis for that determination (e.g., a breakdown of revenue by brand). The LGPC will confirm that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory. (See Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements for further guidance.)

b) For PLP-EWCP loans:

i) If the Applicant's brand meets the FTC definition of a franchise, Lender must document in its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the request for loan number into E-Tran. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. (Lender will need to submit the documentation showing that the Applicant's brand is on the Directory with any guaranty purchase request.)

ii) If the Applicant's brand is not on the Directory and the PLP-EWCP Lender determines the brand does not meet the FTC definition and proceeds with approving the loan under its PLP-EWCP authority, the Lender must document its file and will be required to submit that documentation with any guaranty purchase request, and the PLP-EWCP Lender bears the risk of an incorrect determination;

iii) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code (if applicable) for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran. The Lender must document in its file that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory, and must document their file with the basis for their determination of which brands are critical to the Applicant's business operation (e.g., a breakdown of revenue by brand). PLP-EWCP Lenders will be required to submit all of this supporting documentation to SBA with any guaranty purchase request. (See Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements, of this Part for further guidance.)

xiv. IRS Form 4506-T, Request for Transcript of Tax Return:

xv. IRS Transcripts and complete verification.

xvi. **Debt Refinancing**. Lenders must maintain copies of all notes, security agreements, leases, or other documentation evidencing the debt to be refinanced in the loan file. For non-delegated loans, Lender must submit copies of all supporting documentation for the debt to be refinanced to the LGPC with the application.

xvii. **Documentation of USCIS status verification** - In accordance with Section A, Chapter 3, Para. C., Businesses Owned by Non-US Citizens of this Part, Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application or request for loan number to SBA. Lender may submit a copy of the verification received from USCIS or SBA-SLPC or confirm in its credit memorandum that verification has been obtained.

xviii. **Draft Loan Authorization** *(only required for PLP-EWCP Lenders using the non-delegated processing method).* The latest version of the Authorization Boilerplate and Wizard is available at https://www.sba.gov/document/support-export-working-capital-authorization-file-library.

b. Where to Submit Applications for Guaranty

Regardless of the dollar amount or the processing procedure by which the Lender seeks to have the application processed, every application for guaranty must be submitted using E-Tran.

i. Non-Delegated EWCP:

a) Lender must submit applications via E-Tran (attachments too large for E-Tran may be submitted by Send This File) and notify the appropriate Export Finance Manager (as assigned to a USEAC) of the submission via email. A complete listing of Export Finance Manager locations and staff contact information may be found at https://www.sba.gov/article/2017/nov/01/list-useacs-sba-staff.

b) The Export Finance Manager will conduct a full eligibility and credit review, prepare the loan Authorization, and submit a recommendation to the LGPC. The LGPC will review the loan Authorization, Export Finance Manager's credit review, and the SBA Forms 1919 and 1920 for final approval.

c) If the LGPC concurs with the Export Finance Manager's approval recommendation, a final Authorization will be sent directly to the Lender.

d) If the LGPC declines the loan, the Lender may request reconsideration within 6 months of the date of decline by submitting a request to the LGPC. LGPC will forward the request for reconsideration for a final decision by the Director, International Trade Finance (D/ITF) or designee.

ii. PLP-EWCP applications – Lenders submitting applications using their delegated authority must submit guaranty applications via E-Tran, retaining all required documentation in the Lender's loan file.

iii. See Chapter 5, Authorization through Disbursement, in this Section, for SBA requirements for the loan Authorization, post-approval and pre-disbursement requests for changes, transfer of guaranty between participating Lenders, and loan closing and disbursement.

8. EWCP-Specific Post-Approval/Pre-Disbursement Requests for Changes

a. For all EWCP loans, submit requests for changes to the appropriate Export Finance Manager unless the change is within the Lender's delegated PLP-EWCP authority.

b. See Chapter 5, Para. B, Post-Approval/Pre-Disbursement Requests for Changes, of this Section below for additional guidance.

9. EWCP-Specific Loan Closing and Disbursement Requirements

See Chapter 5, Para. D of this Section below for additional requirements for loan closing and disbursement.

a. Note Terms

i. Under EWCP, there are three options for repayment:

a) All proceeds applied against the balance plus interest only payments on outstanding balances;

b) Principal plus interest; and

c) Interest-Only payments on outstanding balances.

ii. EWCP with Master Notes, Sub-Notes, and Sub-Limits: EWCP loans may be structured with 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 specific purchase-orders, contract(s), or transactions. The conditions of the sub-notes must not conflict with the conditions of the Master Note, except for variances in repayment schedules. EWCP Asset Based Loans may be structured as a sublimit of a Master Note provided the sublimit conforms to the requirements of this paragraph.

iii. See Chapter 5, Para. D.2 of this Section below for additional requirements for Note terms.

b. Advances and Receivables

i. On Single Transaction-Specific Loans and Transaction-Based Revolving Lines of Credit where draws are made against foreign purchase orders or contracts, the maximum advance rate is 90% of the purchase order/contract or the Borrower's costs (including overhead), whichever is less. Foreign accounts receivable will be captured by the Lender through the use of a control account and applied against the outstanding loan balance.

ii. On an asset-based revolving line of credit where advances are made against a borrowing base of foreign receivables and/or export-related inventory, the maximum advance rates are 90% on eligible foreign receivables and 75% on eligible export-related inventory located within the United States. Control accounts may be required at the discretion of the LGPC for non-delegated loans, or PLP-EWCP Lender for loans processed under delegated authority. At a minimum, the Borrower must submit a Borrowing Base Certificate (BBC) to the Lender at least monthly, or as frequently as the Lender customarily requires from its Borrowers on similarly-sized, non-SBA guaranteed loans if more often than monthly, along with an aging of foreign accounts receivable and listing of export-related 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.

iii. Advance rates on foreign purchase orders/contracts or foreign accounts receivable when sold on open account (no credit insurance or letter of credit to mitigate the foreign risk) shall not exceed 80%. The LGPC may approve a maximum advance rate up to 90% when the Lender submits written justification that meets one of the following conditions:

a) The foreign accounts receivable are from credit-worthy buyers (e.g., financially sound corporations; multinational or publicly-traded companies), located in countries with acceptable commercial or political risk; or

b) The foreign accounts receivable are from credit-worthy government entities in countries with acceptable commercial or political risk; or

c) The exporter can provide favorable ledger experience with specific buyers over a significant period of time (at a minimum, 24 months) in countries with acceptable commercial or political risk.

If the Lender is a PLP-EWCP Lender, the Lender may advance up to 90% and must document its loan file with the above analysis and justification to allow for the higher advance rate.

iv. Foreign Accounts Receivable:

a) Terms of Sale:

i) Payment terms must be in compliance with the loan Authorization. The Ex-Im Bank Country Limitation Schedule must be reviewed for prohibited countries (such countries are identified by Note # 7 on the Ex-Im Schedule) and the Department of Treasury OFAC sanctions lists must also be reviewed at sanctionssearch.ofac.treas.gov/.

(a) For federally-regulated Lenders, compliance with the procedures required by the Lender's Federal Financial Institution Regulator will constitute compliance with the above referenced OFAC requirement.

(b) For SBA Supervised Lenders, Lender must check the OFAC sanctions lists prior to first disbursement of funds on each specific export transaction.

ii) Payment terms must be in line with prudent lending practices. Typical terms of sale include but are not limited to:

(a) Confirmed irrevocable letter(s) of credit (SBA or the PLP-EWCP Lender may require for some or all of the Borrower's foreign accounts). Foreign accounts receivable supported by acceptable letters of credit must not exceed 364 days from the invoice date;

(b) Irrevocable letter(s) of credit (SBA or the PLP-EWCP Lender may require for some or all of the Borrower's foreign accounts). Foreign accounts receivable supported by acceptable letters of credit must not exceed 364 days from the invoice date;

(c) Open account insured through Ex-Im Bank or private sector 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 foreign accounts receivable. If export credit insurance is obtained, the Lender must

be named as Loss Payee on the export credit insurance policy.) Foreign accounts receivable supported by credit insurance must not exceed 180 days from the invoice date;

(d) Cash payment received prior to shipment;

(e) Open account uninsured, with SBA's prior written consent or documented by the PLP-EWCP Lender. Open account uninsured foreign accounts receivable must not exceed 180 days from the invoice date; and

(f) Sight draft documents against payment, with SBA's prior written consent.

b) Jurisdiction and Currency of Foreign Accounts Receivable: Foreign accounts receivable held as collateral should be payable to the Borrower in the United States and in United States dollars. Foreign 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 or authorized by the PLP-EWCP Lender. 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:

i) 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 accounts receivable 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.

ii) For asset-based loans, LGPC for non-delegated loans, or the PLP-EWCP Lender for delegated loans, will determine if a control account is required based on the credit analysis. Normally, Lenders must have 100% of the foreign accounts receivable proceeds applied against the loan balance and have the Borrower request additional advances as needed based on a BBC. Another available option is to allow for the Borrower to maintain a balance within the Borrowing Base limits and to retain foreign accounts receivable proceeds (not applied to the loan balance upon collection). At a minimum, the Borrower must submit a BBC to the Lender at least monthly, or as frequently as the Lender customarily requires from its Borrowers on similarly-sized, non-SBA guaranteed loans if more than monthly, along with an aging of foreign

accounts receivable and listing of export-related inventory, as appropriate. The Lender will review the Borrowing Base to assure the Borrower is not over-advanced according to the available collateral detailed on the BBC. 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 small business with an asset-based loan to be allowed to retain the foreign accounts receivable proceeds, the small business must:

(a) Be in business for at least 2 years (no start-ups); and

(b) Have financial records satisfactory to SBA for non-delegated loans, or the PLP-EWCP Lender for delegated loans, and the ability to provide a current aging of foreign accounts receivable.

In deciding whether to permit a small business to retain the foreign accounts receivable proceeds, the PLP-EWCP Lender must comply with its policies and procedures for similarly-sized, non-SBA guaranteed credit facilities.

iii) Foreign Accounts Receivable 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) A foreign 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) A foreign account receivable that is still outstanding more than 60 calendar days from its original due date;

(g) A foreign 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) A foreign account receivable that does not comply with the terms of sale as set forth in the loan Authorization;

(i) A foreign 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) A foreign 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) A foreign account receivable for which any of the items giving rise to such account receivable have been returned, rejected, or repossessed;

(l) A foreign account receivable due from an affiliated company; and

(m) When 50% or more of the total foreign accounts receivable for a specific buyer are over 60 calendar days past the original due date, then the total foreign accounts receivable for that buyer are excluded.

iv) In addition, the Lender shall apply the same policies in reference to foreign accounts receivable 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.

v) The Lender may verify that no ineligible foreign accounts receivable (as described above) are included in the borrowing base by obtaining a Borrower certification to this extent at the bottom of the BBC or on a separate certification form.

v. Export-Related Inventory:

a) General Guidelines:

i) Export-related inventory taken as collateral must be located within the United States, until shipped to the foreign buyer.

ii) 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).

iii) Export-related inventory may include raw materials, work-in-process, and finished goods.

iv) Advance rates against eligible export-related inventory may vary depending on inventory quality.

b) Export-Related Inventory 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:

i) Export-related inventory that is not subject to a valid, perfected, and enforceable first priority lien in favor of the Lender;

ii) Export-related inventory located at an address that has not been disclosed to the Lender in writing;

iii) Export-related inventory that is not located in the United States, unless being shipped to the foreign buyer;

iv) Export-related inventory that is placed by the Borrower on consignment or held by the Borrower on consignment;

v) Export-related inventory that is demonstration inventory;

vi) Export-related inventory that consists of proprietary software (i.e., software designed solely for the Borrower's internal use and not intended for resale);

vii) Export-related inventory that is damaged, obsolete, returned, defective, recalled, or unfit for further processing;

viii) Export-related 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

ix) Export-related inventory that is to be incorporated into items whose sale would result in an account receivable that would not be an eligible foreign account receivable.

c) In addition, Lender shall apply the same policies in reference to export-related inventory eligible to be included in the borrowing base as the Lender applies to its own similarly-sized, asset-based loans which are not guaranteed by SBA or any other government entity.

d) The Lender may verify that no ineligible export-related inventory (as described above) is included in the borrowing base by obtaining a Borrower certification to this extent at the bottom of the BBC or on a separate certification form.

vi. Certifications:

a) The Borrower must certify that appropriate withholding tax deposits on advances for payroll have been made and that no loan proceeds will be used to pay delinquent withholding taxes or other similar trust funds (state sales tax, etc.). The Lender may include this certification as part of its Borrowing Base Certification reporting package.

b) The Borrower must provide a copy of valid export license(s) for each different product and each different country or a letter from the Borrower stating a valid export license(s) is not required, citing the authority for this statement. The Borrower may provide these items with a Borrowing Base Certification reporting package.

C. **INTERNATIONAL TRADE (IT)**

13 CFR 120.345 -120.349

Lenders must always start by reviewing the contents of section A, Core Requirements for all 7(a) and 504 Loans, of this Part.

1. **Eligibility for International Trade Loans**

   a. In addition to the core requirements identified in Section A of this Part, the Applicant must demonstrate either b **and** d, or c **and** d below in order to be eligible:

   b. The loan proceeds will expand existing export markets or develop new export markets. To establish this, the 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.

      i. The plan should identify the amount of expected export sales.

      ii. Indirect exports are considered exports for purposes of determining eligibility. The term "indirect export" applies to situations where, although the Applicant's direct customer is located in the United States, that customer will be exporting the items/services it purchased from the Applicant to a foreign Buyer.

      iii. In such cases, the Applicant must provide documentation to the Lender from the Applicant's domestic customer (typically in the form of a letter, invoice, order, or contract) that the goods or services are in fact being exported.

      iv. For all of the Applicant's exports (including indirect exports), the Lender must determine if U.S. 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 directly or indirectly exports to a foreign country which is listed as a prohibited country (Note #7) on the Country Limitation Schedule; **OR**

   c. That the Applicant is adversely affected by import competition.

      i. The Applicant must demonstrate injury attributable to increased competition with foreign firms in the relevant market.

      ii. A narrative explanation and financial statements showing that imported products or services which are directly competitive with those produced by the Applicant have contributed significantly to a decline in competitive position are required.

      iii. Alternatively, the 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**

d. In addition to either paragraphs a or b above, the Applicant must demonstrate the loan will allow the Applicant to improve its competitive position. The Lender must include evidence in its credit memorandum to support the fact that the loan will allow the Applicant to improve its competitive position.

e. For purposes of clarification, small businesses in the following NAICS Industry Subsector Codes cannot be financed using an International Trade Loan, but may be financed using other SBA 7(a) financial assistance:

i. NAICS Industry Subsector Code 721 (Accommodation)

ii. NAICS Industry Subsector Code 447 (Gasoline Stations).

2. Eligible Uses of Proceeds for International Trade Loans

a. Proceeds of an IT loan may only be used for the following eligible purposes (proceeds of an IT loan may not be used for any other purpose):

i. 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;

ii. Working Capital;

iii. Debt Refinancing with an International Trade (IT) loan.

IT 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 7(a) Loan Program Requirements. IT loans may not be used to pay a creditor (including the same institution's debt) in a position to sustain a loss. This includes shifting all or part of a potential loss from the original Lender to the SBA. 13 CFR §§ 120.140(j)(1) and 13 CFR § 120.201

a) SBA-guaranteed loan proceeds may not be used to refinance debt:

i) Originally used to finance a loan purpose that would have been ineligible for SBA financing at the time it was originally made unless the condition that would have made the loan ineligible no longer exists; or

ii) That is already on reasonable terms.

b) Debt reflected on the Applicant's business balance sheet may be eligible if it is reflected on the Applicant's business tax returns (Schedule C for sole proprietorships) showing the interest expense associated with the debt.

i) The Lender must document and the Applicant must certify that the proceeds from the debt were used exclusively for the Applicant's business and were not used for any ineligible purpose as set forth in 13 CFR § 120.130;

ii) If the debt to be refinanced was used in whole or in part to refinance a prior debt, the loan being refinanced, including the associated interest,

must be reflected on the Applicant's balance sheet and business tax returns (Schedule C for sole proprietorships) for two full tax cycles prior to application;

iii) Except for interim debt in accordance with subparagraph k)ii), Interim Advances below, if the debt to be refinanced was used in whole or in part to refinance a prior debt, the Lender must document that the debt to be refinanced is not a short-term obligation that was created with the intent of refinancing it with a 7(a) loan.

c) Loan proceeds may be used to refinance the following types of business debt (see below for additional requirements if refinancing same institution debt).

i) Any debt structured with a demand note or balloon payment scheduled;

ii) Debt with an interest rate that exceeds the SBA maximum interest rate based on size or term;

iii) Business Credit Card Debt - Loan proceeds must not be used to refinance any personal expenses. The Lender may refinance credit card debt if the credit card is in the name of the business and the Applicant certifies in writing that any credit card debt being refinanced was incurred exclusively for business related purposes. If the business credit card was also used for personal purposes, the Lender must ensure that those charges are deducted from the credit card balance proposed to be refinanced;

iv) Debt that is over-collateralized. See paragraph 4.c., Collateral below, which describes SBA's collateral requirements used to determine if a loan is "fully secured;"

v) 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;

vi) 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);

vii) Debt used to finance a change of ownership of a going concern business (complete change of ownership, or an eligible partner buyout);

(a) Refinancing debt owed to a financial institution or any third party (other than the seller) within 12 months of the change of ownership may not be processed under a Lender's delegated authority.

(b) To be eligible for refinancing, any seller financed note must have been in place and current (not on standby) for at least 24 months following the change of ownership. The refinancing request must meet the requirements set forth in paragraphs 2.a.iii.d) (ten percent

payment improvement) and 2.a.iii.e) (loan application must include) below; and

(c) 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.

(d) If the existing debt is SBA-guaranteed and with the same Lender (SID), the application cannot be processed under delegated authority.

(e) Paying off debt as part of a change of ownership is not a refinance of debt. In a complete change of ownership situation, the option to assume the existing SBA debt should be offered to the buyer.

viii) Debt that is not identified above but the Lender believes no longer meets the needs of the Applicant (e.g., current loan is a term loan and a revolver is needed) must be processed through non-delegated procedures and the Lender:

(a) Must cite in the credit memorandum the specific reasons why the existing debt no longer meets the needs of the Applicant; and

(b) May not cite "improving the lien position" as the sole reason for the refinancing.

ix) Personal Debt.

(a) Home Equity Line of Credit (HELOC): The Lender must document and the Applicant must certify that the amount being refinanced was used exclusively for business purposes. For example, a sole proprietor would demonstrate that the debt was used for business purposes by providing documentation that shows the interest deduction is reported on the Schedule "C" of the proprietor's tax return. If the interest deduction reported on the Schedule C includes multiple debts, then the Lender must obtain from the Applicant a copy of the appropriate IRS Form 1098 related to the debt being refinanced.

(b) Personal Credit Card: If the debt is in the form of an outstanding balance on a credit card issued to an individual personally, the Lender must confirm which of the credit card obligations were used for business purposes. The Lender must document the specific business purpose of the credit card debt and ensure that the Applicant certifies and documents that the loan proceeds are being used exclusively to refinance business expenses. Documentation required for refinancing personal credit card debt includes a copy of the credit card statements and individual receipts for any business expenses in excess of $500.

d) Ten Percent Payment Improvement. With the exception of debt under paragraph 2.a.iii.c)i) (debt with a demand note/balloon payment), 2.a.iii.c)iii) (business credit card debt), 2.a.iii.c)v) (revolving lines of credit with Lender unwilling to renew), and 2.a.iii.c)ix)(b) (personal credit card debt) above, when refinancing debt, the new installment amount must be at least 10 percent less than the existing installment amount(s) in the aggregate.

i) 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.

ii) If other debt is being refinanced at the same time, such debt may be included in the cash flow improvement calculation.

e) When refinancing debt, the loan application must include:

i) A written analysis that addresses the following issues:

(a) The reason the debt was incurred;

(b) The factor(s) that support that the proposed refinancing will not pay a creditor in a position to sustain a loss;

(c) The reason for restructuring the debt (for example, over-obligated or imprudent borrowing);

(d) The factor(s) that support that the debt being refinanced is not currently on reasonable terms;

(e) How the new loan will improve the financial condition of the Applicant;

(f) The reason(s) the Lender believes the debt to be refinanced no longer meets the needs of the Applicant (see paragraph 2.c.iii.c)viii) above); and

ii) Supporting documentation for each debt to be refinanced: Lenders are required to:

(a) For loans processed on a delegated basis, retain copies of notes, security agreements, leases, and other documentation evidencing the debt(s) to be refinanced;

(b) For loans processed on a non-delegated basis, submit with the application to the LGPC, copies of all supporting documentation for the debt(s) to be refinanced; and

(c) Include, when applicable, a copy of the most recent credit card statement evidencing the holder of the account and the current balance. (See also paragraph 2.a.iii.c)iii)(business credit card debt) and 2.a.iii.c)ix)(b)(personal credit card debt) above.)

f) The Authorization must include:

i) In the Use of Proceeds section, the refinancing must be specifically identified;

ii) An itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid $10,000 or more; and/or

iii) The loan number and dollar amount of any existing SBA being debt refinanced.

g) Refinancing Same Institution Debt (SID). Refinancing of SID may not be processed using PLP procedures.

i) 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)

ii) A Lender must submit to LGPC for non-delegated processing any application that reduces its existing credit exposure.

iii) The Lender must:

(a) 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; and

(b) 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.)

iv) For PLP loans, SBA does not consider the following to be refinancing of same institution debt:

(a) 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

(b) The debt is a construction loan that has not been disbursed at the time the PLP loan number is issued.

h) Refinancing a same institution SBA 7(a) guaranteed loan. A Lender may refinance its own SBA 7(a) guaranteed loans only through the LGPC under non-delegated authority and only if:

i) It is unable to modify the terms of the existing loan because a secondary market investor will not agree to modified terms, or

ii) An increase in the amount of an existing SBA-guaranteed loan is not possible.

i) Refinancing an SBA-Guaranteed Loan of another Lender. Proceeds of an International Trade loan may be used to refinance existing SBA-guaranteed loans from other Lenders provided the conditions of paragraphs 2.a.iii.c)(loan proceeds may be used to refinance…), e)(ten

percent payment improvement) and f)(loan application must include) above are satisfied and:

i) The Lender provides 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 is either unwilling or unable to modify the current payment schedule; and

ii) The Lender must retain this evidence in the loan file.

j) Refinancing of an SBA 504 loan. Refinancing an existing 504 loan must be processed in the LGPC under non-delegated authority and may be approved only if:

i) The loan meets the requirements of paragraphs 2.a.iii.c)(loan proceeds may be used to refinance…), e)(ten percent payment improvement) and f)(loan application must include) 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.

ii) Any applicable 504 prepayment penalties will apply.

iii) The 7(a) Lender may not solely refinance the Third Party Lender's loan for an existing 504 project. (13 CFR § 120.920(b)).

k) Other conditions that apply to debt refinancing:

i) A 7(a) loan may not be used to refinance a debt owed to an SBIC.

ii) Interim Advances: For loans processed on a non-delegated basis, after an SBA Authorization has been issued, but prior to disbursement, 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 risk. Lender notification to SBA of such advances is not required. See paragraph g)iv)(a) above for information on an interim loan processed on a PLP basis.

iii) The payment of trade payables is not considered to be debt refinancing.

iv. Change of Ownership (13 CFR § 120.202).

a) An Applicant may use International Trade loan proceeds for a change of ownership, whether the change of ownership is accomplished through a stock purchase or an asset purchase, only under the circumstances

described in this paragraph. An asset purchase will be deemed a change of ownership and must comply with all of the requirements of this paragraph if the Applicant is purchasing all or substantially all of the assets of the seller's business. The following requirements apply:

i) The Applicant must purchase 100% of the ownership interest in another small business or acquire all or substantially all of the assets of another small business through an asset purchase.

ii) Regardless of whether the change of ownership is a stock purchase or an asset purchase, the Applicant must acquire from the seller facilities or equipment to be used in the United States in the production of goods or services involved in international trade and to develop and penetrate foreign markets.

iii) The Applicant must be eligible under paragraph C. 1. above.

b) The following changes of ownership are not eligible for financing as an International Trade loan:

i) A change of ownership between existing owners of the Applicant.

ii) A change of ownership where the Applicant is purchasing less than 100% of the ownership of a business.

c) The seller may not remain as an officer, director, stockholder, or Key Employee of the Applicant. (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.

d) The Applicant may be the Borrower, or the Applicant and the small business being acquired may be Co-Borrowers.

e) The Lender must comply with the requirements for IRS verification identified in Section A, Ch. 6, Para. B, IRS Tax Transcript/Verification of Financial Information, of this Part.

f) The Lender's loan documentation must include:

i) A current business valuation (not to include any real estate) that meets SBA requirements in paragraph 4.d., Real Estate Appraisal and Business Valuation Requirements, below.

ii) 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.

iii) An analysis of the following:

(a) The Applicant's eligibility under paragraph C.1. above; and

(b) How the change of ownership will result in the acquisition of facilities or equipment to be used in the United States in the production of goods or services involved in international trade and to develop and penetrate foreign markets.

iv) Business stock and asset purchase agreements as applicable.

v) Evidence that all assets conveyed as a result of the purchase are properly secured as collateral by the Lender.

g) The "purchase price of the business" includes all assets being acquired, such as real estate, machinery and equipment, and intangible assets.

h) Intangible Assets: An International Trade loan may be used to finance a change of ownership that includes intangible assets (including, but not limited to, goodwill, client/customer lists, patents, copyrights, trademarks, intellectual property, and agreements not to compete) as long as it is supported by an independent business valuation that complies with paragraph 4.d., Real Estate Appraisal and Business Valuation Requirements below.

i) 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.

ii) 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 fixed assets being purchased.

iii) While a change of ownership financed by an International Trade loan may include the acquisition of intangible assets, the change of ownership must also include the acquisition of facilities or equipment to be used in the United States in the production of goods or services involved in international trade and to develop and penetrate foreign markets.

b. Other Restrictions that Apply to IT Loans Processed PLP

The following types of loans are not eligible for IT loans processed PLP:

i. Loans to an ESOP (under 13 CFR §§ 120.350 through 120.354) or to an eligible small business owned or controlled by an ESOP (see Section A, Ch. 2, Para. B., Employee Stock Ownership Plans, of this Part for more information);

ii. Loans to a cooperative or to an eligible small business owned or controlled by a cooperative (see Section A, Ch. 2, Para. C, Cooperatives, of this Part for more information);

iii. Loans involving a Single Employer 401(k) plan, including a ROBS plan, unless the only investment held by the 401(k) plan is the equity in the Applicant business;

iv. Loans involving a Multiple-Employer 401(k) plan (i.e., a plan that holds in trust the assets of other businesses), including a ROBS plan (see Section A,

Ch. 2, Para. D, 401(k) Plans Including Rollovers as Business Start-Ups (ROBS) Plans, of this Part for more information); and

v. Pollution Control Program Loans.

3. Loan Terms and Conditions for International Trade

a. Maximum Loan Amount

i. The maximum loan amount is $5,000,000.

ii. Maximum Loans to Businesses with Affiliates

Lenders must determine whether the Applicant has any affiliates and document the results in their credit analysis. If affiliation exists, SBA's loan maximums apply to the Applicant, including all affiliates, as if all were a single business.

iii. Maximum Loan Amount for multiple loans approved within 90 days of each other – "90 Day Rule."

a) If two SBA-guaranteed loans to any one business (including affiliates) are approved within 90 days of each other, the maximum gross amount of all such loans in that time frame cannot exceed $5,000,000.

b) Two SBA-guaranteed loans approved within 90 days of each other may impact the maximum guaranty percentage available to the Borrower and its affiliates as well as the guaranty fee.

b. Maximum Guaranty Amounts and Percentages

Except for International Trade and EWCP loans, the maximum dollar amount outstanding of SBA's guaranty to any one business (including affiliates) must not exceed $3,750,000. However, both International Trade and EWCP loans permit a maximum dollar amount outstanding of SBA's guaranty of $4,500,000. When calculating the maximum guaranty percentage available to a Borrower and its affiliates, the Lender must include the approved loan amount for a revolving line of credit. The SBA's guaranty is also known as the "SBA share" or "guaranteed portion."

i. The maximum guaranty amount is $4,500,000.

ii. Maximum guaranty percentage:

a) IT loans may receive a maximum guaranty of 90 percent or $4,500,000, except:

b) 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));

iii. Combination of 7(a) and 504 loans.

a) 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 processed and approved first.

b) Lenders must advise the SBA processing centers that there is a companion 504 application to ensure the 7(a) loan is processed and approved prior to the 504 loan application being processed and approved.

c) 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.

iv. Zero Percent Guaranty Cannot be Provided for Ineligible Purposes:

A 7(a) loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business and no part of an SBA 7(a) loan may be guaranteed at zero percent.

c. Loan Maturities

i. The loan term must be the shortest appropriate term based on the use of proceeds and the Borrower's ability to repay.

a) Working capital or inventory loans and the financing of intangible assets (including goodwill) must not exceed 10 years.

b) Generally, equipment, fixtures, or furniture loans should not exceed 10 years. However, the term may be up to 15 years if the IRS asset class useful life supports the term. The Lender must document in its credit memorandum justification of any term that exceeds 10 years.

c) Real estate loans (including acquisition, rehabilitation, renovation, or construction) must not exceed 25 years unless a portion of the loan is used for construction or renovation of the real estate. If the use of proceeds on a real estate loan includes construction or renovation, an additional period reasonably necessary for the construction or renovation period may be added to the 25 year maximum maturity.

d) Loans for leasehold improvements may not exceed 10 years, plus an additional period reasonably necessary to complete the leasehold improvements, as determined based on the specific nature of the leasehold improvements, but in no case more than 12 months.

e) Mixed purpose loans (including change of ownership): When loan proceeds are used for multiple purposes (land and building, working capital, machinery & equipment, or the refinancing of any of these purposes), the maturity may be a blended maturity or, if 51% or more of the use of proceeds are for real estate, the maximum maturity may be up to 25 years.

ii. Establishing the Repayment Period (13 CFR § 120.212):

When Lenders establish a repayment schedule and loan maturity, they must consider the following:

a) The Borrower's ability to repay,

b) Use of loan proceeds,

c) Useful life of the assets being financed, and

d) The appropriate maturity for mixed purpose loans (including change of ownership). The Lender may use a blended maturity or the maturity up to the maximum for the asset class comprising 51% or more of the use of proceeds. Lenders must include the calculation used to determine the maturity in the credit memorandum.

e) For loans to farm enterprises:

i) Where land and structures (including poultry houses) comprise 51% or more of the use of proceeds, the maximum maturity is 20 years.

ii) Where machinery and equipment comprise 51% or more of the use of proceeds, the maximum maturity is the useful life of the machinery and equipment, not to exceed 15 years, plus an additional period reasonably necessary for installation, which may not exceed 12 months.

f) SBA has instructed the fiscal and transfer agent to stop the sale into the secondary market of a loan when the maturity exceeds these requirements.

iii. Establishing the Maturity Date:

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

b) 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.

iv. Maturity When Refinancing Existing Assets or a Business Acquisition:

a) The maximum maturity for a loan used to refinance a real estate or fixed asset loan must 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.

b) The maximum maturity for a loan used to refinance a business acquisition shall be 10 years, unless 51% or more of the use of proceeds consist of real estate which would permit a maturity up to 25 years.

d. Interest Rates

SBA QUICK REFERENCE CHART: Maximum Interest Rates Allowed (See additional information below)

Product International Trade Loans	Interest Rate The published maximum allowable fixed rate or if variable:
Loans $25,000 or less (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 4.25%
Loans $25,000 or less (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 4.75%
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%
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%
Loans greater than $50,000 (Maturity less than 7 years)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 2.25%
Loans greater than $50,000 (Maturity 7 years or more)	Cannot exceed Prime, LIBOR Base Rate, or SBA Optional Peg Rate + 2.75%

i. General Policy on Interest Rates (13 CFR §§ 120.213; 120.214; 120.215):

a) A loan may have a fixed or variable interest rate. The maximum interest rate that may be established for any IT 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 Applicant, subject to SBA's maximum allowable rates.

b) SBA will periodically publish the maximum allowable fixed interest rate in the Federal Register. The maximum allowable fixed interest rate will be the Prime rate in effect on the first business day of the month, plus an allowable spread over Prime, as set forth in the most recent Federal Register Notice. For a listing of the current maximum allowable fixed interest rates, go to SBA's Capital Access Financial System homepage. 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.

c) For variable interest rate loans, the basis for the SBA maximum interest rate is an acceptable base rate plus allowable spread. 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 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 "Policy on Variable Interest Rates" below.

d) Default interest rates are not permitted.

e) For loans with a variable interest rate, the following terms must be defined:

i) Base Rate:

(a) There are three acceptable base rates:

(i) The Prime Rate;

(ii) One Month London Interbank Offered Rate (LIBOR) plus 3 percentage points (LIBOR Base Rate); or

(iii) The SBA Optional Peg Rate.

(b) 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 decimal places with .004 being rounded down to .00 and .005 being rounded up to .01.

NOTE: This SOP continues to include the LIBOR Base Rate as an option for the calculation of the maximum allowable variable interest rate for 7(a) loans in accordance with 13 CFR § 120.214(c). The U.K. Financial Conduct Authority announced that it would phase-out LIBOR by the end of 2021. SBA encourages Lenders to consider LIBOR's imminent phase-out when selecting a base rate. For existing 7(a) loans with LIBOR as the base rate, SBA encourages Lenders to examine their loan documents to determine whether LIBOR may be replaced with a fallback rate. If no such provision exists in individual loan documents, Lenders should consider amending the appropriate document(s) in anticipation of LIBOR's phase-out. It is important to note that any changes to the interest rate must be made in accordance with paragraph d.ii.b) below. The Federal Reserve Alternative Reference Rates Committee has drafted recommended fallback language for contracts tied to LIBOR: https://www.newyorkfed.org/arrc/fallbacks-contract-language.

ii) Frequency of change;

iii) Range of fluctuation; and

iv) Ceiling and floor (if any).

ii. Policy on Variable Interest Rates

a) Standard Policy:

SBA's maximum allowable interest rate applies only to the initial Note rate on a variable rate loan. Subsequent changes 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.

b) Post-Approval Changes to the Interest Rate:

i) 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 changed 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 consent to the change in the interest rate (separate and apart from executing the loan documents) and must either 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, the prime rate changed. The Borrower has asked the Lender if the loan can be switched to a fixed rate. If 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, the Lender may make this change per the Borrower's request.

ii) 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 either notify the appropriate SBA CLSC of the change or make the change through E-Tran servicing. For further guidance see SOP 50 57.

c) Frequency of Interest Rate Adjustment:

i) The first adjustment may occur on the first calendar day of the month following initial disbursement, using the base rate in effect on the first business day of the month. Lenders may delay the initial adjustment period. For example, Lenders have used periods as long as 5 years in order to provide the Borrower with 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.

ii) The Lender must specify in the Note the frequency at which the interest rate adjustment will occur.

(a) This adjustment period as identified in the Note may not be changed without the written consent of the Borrower.

(b) 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.

(c) 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.

d) Interest Rate Requirements for an SBA Note:

i) For fixed rate loans, the Lender must state the specific interest rate in the Note.

ii) For 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 or timing of the first rate adjustment; and

(f) The frequency of rate adjustment.

e) 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:

i) Both the floor and ceiling are stated in the Note; and

ii) 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.

f) 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.

iii. Amortization: (13 CFR § 120.214(f)):

Lender should use an amortization schedule that is appropriate for the type of loan. SBA does not allow balloon payments. A fixed interest rate loan must use a payment that will fully amortize the loan by the maturity date. Typically, variable rate loans are re-amortized every time the interest rate is adjusted to ensure full amortization by the maturity date. The amortization schedule may also be adjusted to meet the cash flow needs of the business.

iv. 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 neither rate exceeds 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. If the Lender uses a combination, the entire loan is considered to be a variable interest rate loan. The interest rate on both the guaranteed and unguaranteed portions must be based on the variable rate.

v. 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 7(a) variable rate guaranteed loan. The Borrower could purchase an interest rate swap contract that would set the interest rate at 8%. When the Note rate is lower than the rate paid by the Borrower on the swap contract (8%), the swap seller keeps the extra amount as compensation for the

risk that rates will at some point exceed 8%. 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 8% and the swap seller would pay the difference above 8% 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) In order to use an interest rate swap in the 7(a) program, the interest rate swap contract must meet the following conditions:

i) 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.

ii) 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.

iii) 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.

iv) 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.

v) The full amount of the principal and interest required under the Note must be reported by the lender on the SBA Form 1502.

vi) 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.

vii) The Borrower must sign a statement acknowledging that interest will be calculated at the Note rate if the swap contract is terminated.

viii) 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."

ix) Swap contracts may be used on new or existing loans.

x) The swap contract does not have to last for the entire length of the loan agreement.

xi) SBA does not have a standard form for an interest rate swap contract.

xii) Any fees owed the swap counterparty as a result of the default by the Borrower will be subordinated to the SBA 7(a) loan.

4. Credit Standards for International Trade

The policies that make up SBA's credit standards begin with the requirements outlined in 13 CFR §§ 120.101 and 120.150. This section provides procedural guidance as to what the Lender should or must consider when analyzing any request for financial assistance that will be guaranteed by SBA.

A Lender must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. The cash flow of the Applicant is the primary source of repayment, not any expected recovery from the liquidation of collateral. Thus, if the Lender's financial analysis demonstrates that the 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 repayment.

a. Processing Methods

Once submitted to the LGPC, an application withdrawn by a Lender, screened-out, or declined by the LGPC may not be approved by any Lender under its PLP Authority. E-Tran will not permit the submission of such an application under any Lender's PLP authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application.

i. Non-delegated – When a Lender submits an IT loan guaranty request under the non-delegated processing method, the Lender submits the application and supporting documents to SBA. SBA will make the final determination as to the eligibility and creditworthiness of the Applicant, including approving the uses of proceeds, the adequacy of the collateral being pledged, the structure of the loan and any equity injection to be required from the Applicant.

ii. Delegated – When a Lender submits an IT loan guaranty request under the Lender's PLP authority, the Agency does not review the Lender's determination of eligibility, analysis of the credit, or structure of the loan prior to issuing a loan number. The Lender must analyze eligibility and credit worthiness in accordance with SBA Loan Program Requirements and properly document its file. The PLP Lender's analysis is subject to SBA's review and determination of adequacy, when the Lender requests SBA to purchase its guaranty or when SBA is conducting lender oversight activities.

b. Underwriting

i. Lender's Credit Analysis:

The Lender's credit memorandum and analysis must address the Applicant's ability and likelihood to repay the loan from the cash flow of the business and past performance by documenting the following:

a) A description and history of the business, including:

i) Nature of the business, including a description as to how the Applicant meets the specific eligibility requirements for an International Trade loan in paragraph C.1. above;

ii) Length of time in business under current management;

iii) Depth of management experience in the industry or a related industry;

iv) Brief description of the business's management team including principal's involvement in the daily onsite management of the business or how the daily operations will be managed if the principals are not there on a daily basis; and

v) If the daily operations will be handled under a management agreement,

(a) PLP Lenders processing under their PLP authority must obtain a copy of the management agreement, review it to determine if it creates affiliation between the Applicant and the management company or results in a passive business, and retain it in their loan file. SBA will review this determination at time of guaranty purchase or when conducting lender oversight activities. The PLP Lender bears the risk of an incorrect determination.

(b) Lenders processing on a non-delegated basis must submit a copy of the management agreement to the LGPC with their application.

(c) See Section A, Ch. 1, Para. D.5, Affiliation based on Management of this Part for further guidance on management agreements. (13 CFR § 121.301(f)(3))

b) Financial analysis of repayment ability:

i) For existing businesses based on the three most recent years of historical financial information (tax returns or balance sheet with debt schedule and income statement) plus an interim financial statement. (13 CFR § 120.191)

ii) For new businesses, based on detailed projections, including the supporting assumptions which reflect positive cash flow within 2 years.

iii) The financial analysis for all Applicants must address the following as applicable:

(a) Historical cash flow for existing businesses that demonstrates total debt service coverage after the SBA loan; if the historical cash flow does not show sufficient debt service coverage, Lender must obtain from the Applicant and analyze 2 years of detailed projections including the supporting assumptions justifying relying on projections instead of historical performance;

(b) Calculation of operating cash flow (OCF) defined as earnings before interest, taxes, depreciation, and amortization (EBITDA);

(c) Justification for additions and subtractions to cash flow such as the following:

(i) Unfunded capital expenditures;

(ii) Non-recurring income;

(iii) Expenses and distributions;

(iv) Distributions for S-Corp taxes;

(v) Rent payments;

(vi) Owner's Draw; and/or

(vii) Global cash flow analysis that includes assessment of impact on cash flow to/from any affiliate business.

(d) The effect any affiliates may have on the ultimate repayment ability of the Applicant.

c) Debt Service (DS) is defined as the future required principal and interest payments on all business debt inclusive of new SBA loan proceeds. The Applicant's debt service coverage ratio (OCF/DS) must be equal to or greater than 1.15 on a historical and/or projected cash flow basis and 1:1 on a global basis. To perform a complete analysis of debt service, it is important for a Lender to obtain a current debt schedule prepared by the Applicant, including any shareholder debt.

d) For cash flow projections, the Lender must calculate the debt service coverage and provide the assumptions supporting the projected cash flow coverage, including as applicable:

i) Justification for revenue growth, i.e. new product lines, sales channels, and new production facilities;

ii) Justification for any reduction in expenses; and

iii) A comparison to current industry trends.

e) Spread of pro-forma Business Balance Sheet (current business balance sheet adjusted for all changes in assets and liabilities as a result of the SBA loan, other debt, any required equity injection and use of loan proceeds);

f) 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 any other ratios the Lender considers significant for the business/ industry (e.g., inventory turnover, receivables turnover, and payables turnover, etc.) including discussion of Lender's comparison to industry trends;

g) Analysis of working capital adequacy, at a minimum over the next 12 months;

h) Assessment of collateral adequacy in accordance with Paragraph 4.c. below;

i) Insurance Requirements, including:

i) Life Insurance - on whom and how much. If life insurance will not be required, provide justification.

ii) Business hazard & liability insurances.

iii) Other Insurances, such as specialty insurance appropriate for the type of business, e.g. malpractice insurance or product liability insurance. (See Section A, Ch. 6, Para. C, Insurance Requirements of this Part for further guidance.)

j) Explanation of and justification for the refinancing of any debts as part of the loan request, in accordance with the written analysis required in the debt refinancing requirements above. In addition, Lender must include a written explanation for any late payments.

k) Lender's rationale for recommending approval, including a discussion and analysis of the following:

i) The factors demonstrating the Applicant does not have credit available elsewhere on reasonable commercial terms from non-Federal, non-State, non-local government sources, in accordance with Section A, Ch. 1, Para. E, Demonstrate the Need for Desired Credit of this Part;

ii) When 50 percent or more of the loan proceeds will be used for working capital, Lender must explain in its credit memorandum why this level of working capital is necessary and appropriate for the subject business;

iii) Competition;

iv) Seller financing;

v) Stand-by agreements;

vi) 90+ day delinquencies;

vii) Trade disputes and/or;

viii) Federal, State, or local citations which would preclude the Applicant from normal business operations;

ix) For a change of ownership, discussion/analysis of the business valuation used to support the purchase price (see paragraph 4.d., Real Estate Appraisal and Business Valuation Requirements below);

x) Discussion of any liens, judgments, bankruptcy filings or pending litigation including divorce proceedings; and

xi) Discussion of other relevant information (for example, if the application involves a franchise, Lender must review any credit information provided such as the number of failed franchisees and cash flow projections provided by the franchisor).

ii. Equity requirements (13 CFR § 120.150(f)):

a) For all loans, depending on whether the loan is processed on a non-delegated or PLP basis, the Lender or SBA must determine that there is sufficient invested equity. To do this, the Lender (for PLP loans) or SBA (for non-delegated loans) must determine if the equity position, any required equity contribution, and the pro forma debt-to-worth are acceptable based on the factors related to the type of business, experience of management and the level of competition in the market area. The Lender must include a detailed discussion of the equity position (net worth) and any required equity injection. (See Ch. 5, Para. D., Loan Closing and Disbursement, of this Section for requirements concerning documenting and verifying equity injection.)

b) Minimum equity injection requirements for certain Applicants or loans:

i) At a minimum, SBA considers an equity injection (Applicant contribution) of at least 10 percent of the total project costs (all costs required to become operational, regardless of the source of funds) to be necessary for a Start-Up Business to operate on a sound financial basis. SBA considers a business to be a "start-up" for the purpose of determining equity injection requirements if it has been in operation (i.e., generating revenue from intended operations) for 1 year or less;

ii) Changes of Ownership – For changes of ownership under paragraph 2.a.iv. above, at a minimum, SBA considers an equity injection of at least 10 percent of the total project costs (all costs required to complete the change of ownership, regardless of the source of funds) to be necessary for such transactions. Seller debt may not be considered as part of the equity injection unless it is on full standby for the life of the SBA loan and it does not exceed half of the required equity injection.

c) Source of Equity Injection:

i) The following may be considered as equity injection:

(a) Cash that is not borrowed.

(b) Cash that is borrowed through a personal loan to the business owner with repayment demonstrated to come from a source other than the cash flow of the business (the salary paid to the owner by the business does not qualify). If the personal loan is made by the participating Lender, the Lender must submit the application through non-delegated 7(a) processing.

(c) Assets other than Cash - Lenders must carefully evaluate the value of assets other than cash that are injected by owners. An appraisal

or other valuation by an independent third party is required if the valuation of the fixed assets is greater than the Net Book Value. A valuation of the fixed assets provided as part of a business valuation will not meet these requirements.

(d) Standby debt - Only debt that is on full standby (no payments of principal or interest for the term of the SBA-guaranteed loan) may be considered as equity for SBA's purposes. A copy of the note must be attached to the standby agreement.

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

(a) Value or cost of education; and

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

iii) Standby Agreements:

(a) Lender may use SBA Form 155 or its own equivalent Standby Agreement form. 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. Collateral

See Section A, Ch. 6, Para. A of this Part for guaranty requirements.

i. Required Lien Position and Adequacy of Collateral:

a) When assessing the adequacy of collateral, the Lender must consider the impact that covenants and other restrictions recorded against the collateral may have on its value and marketability. The Lender must document this analysis in the file. Examples of items to review include:

i) Deed restrictions, covenants, easement provisions, reversionary interests, subordinations, leases and options, and other provisions that restrict the use of the property for the benefit of a third party (note: certain deed restrictions pertaining to the use of the property, which are intended to protect the health and safety of occupants, may be acceptable, e.g., deed restrictions based upon environmental concerns including restrictions on residential use, use as a day care center for children or seniors, use as a school, or use as a hospital); and

ii) Engineering Controls that require the Applicant 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. Each IT loan must be secured either by a first lien position or first mortgage on the property or equipment financed by the IT loan or on other assets of the Borrower,

except that an IT loan may be secured by a second lien position on the property or equipment financed by the IT loan or on other assets of the Borrower, if the SBA determines the second lien position provides adequate assurance of the payment of the IT loan.

ii. The Lender is required to take a first lien on the assets financed with IT loan proceeds or other assets of the Applicant. 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 Applicant, 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:

a) The loan in the first lien position was not made at or about the same time as the IT loan ("piggyback financing" - see Part 1, Section A, Ch. 1, Para. C.2.b.vi, of this SOP above regarding "piggyback financing," which is not eligible). SBA considers "at or about the same time" to mean loans approved within 90 days of each other.

b) 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.

c) 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.

iii. 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.

iv. For all loans that are collateralized by commercial real estate, Lenders must comply with the requirements for real estate appraisals or evaluations below.

d. Real Estate Appraisal and Business Valuation Requirements

The regulation governing real estate appraisal is set forth at 13 CFR § 120.160(b).

i. Commercial Real Estate:

a) For all loans greater than $500,000 secured by commercial real property, all Lenders must obtain an appraisal by a State licensed or certified appraiser. Appraisals must be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Additionally, SBA requires that completed appraisals be dated within 12 months of the application for guaranty. For federally-regulated Lenders, no exemption is granted under the Interagency Appraisal and Evaluation

Guidelines dated December 2, 2010 for Transactions Insured or Guaranteed by a U.S. Government Agency.

b) For all loans $500,000 or less secured by commercial real property:

i) If the loan finances a transaction involving parties with a close relationship (for example, transactions between existing owners or family members), or if SBA or the Lender otherwise concludes that an appraisal is necessary to appropriately evaluate creditworthiness, the Lender must obtain an appraisal as described in paragraph i.a) above.

ii) If an appraisal is not required under the preceding paragraph, all Lenders must obtain an appropriate evaluation of the commercial real estate securing the loan that is consistent with safe and sound banking practices. Evaluations are not required to be performed in accordance with USPAP or by State licensed or certified appraisers but should be consistent with the Interagency Appraisal and Evaluation Guidelines and the Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions, issued by the Federal Banking Regulators.

c) The appraiser must be:

i) Independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and

ii) Either State-licensed or State-certified, 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 USPAP, except that federally-regulated Lenders may follow their primary regulator's FIRREA requirements to the extent they permit otherwise. The Lender may not use an appraisal prepared for the seller or the Applicant. The cost may be passed on to the Applicant.

e) The appraisal must be an "Appraisal Report" prepared in compliance with USPAP.

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, general contractor, project architect, or construction management firm 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 Lender cannot obtain 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 Lender is unable to obtain 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 obtain 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) 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.

j) 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.

k) 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.

l) If at time of closing the appraised value:

   i) Is 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

   ii) Is 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.

iii) 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.

ii. 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.

iii. Other Fixed Assets:

If the valuation of fixed assets is greater than their 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.

iv. Additional Appraisal Requirements for all 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 $500,000, 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.

v. Business Valuation Requirements – Change of Ownership:

a) Determining the value of a business (not including real estate which is separately valued through a real estate 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 and potentially the creation of intangible assets. A business valuation assists the buyer in making a determination that

the seller's asking price is supported by an independent Qualified Source (see definition in Appendix 3).

b) 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 conclusion of value, the qualifications of the individual performing the business valuation and their signature certifying to the information contained in the business valuation. The Lender may not use a business valuation prepared for the Applicant or the seller. The cost of the business valuation may be passed on to the Applicant.

i) Non-Special Purpose Properties:

(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 existing owners or family members), the Lender must obtain an independent business valuation from a Qualified Source.

ii) Special Purpose Properties: (A "Special Purpose Property" is a limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the specific use for which it was built.)

(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 being financed is over $250,000 or if there is a close relationship between the buyer and seller (for example, transactions between existing owners or family members) and the

business operates from a Special Purpose Property, the Lender must obtain an independent appraisal performed by a Certified General Real Property Appraiser.

(c) The appraisal must allocate separate values to the individual components of the transaction including land, building, equipment, and intangible assets.

(d) The Certified General Real Property Appraiser must have completed no less than four going concern appraisals of equivalent special use property as the property being appraised, within the last 36 months, as identified in the qualifications portion of the Appraisal Report.

(e) Each appraisal assignment under this section must be undertaken with a specific instruction for the Certified General Real Property Appraiser to conduct the appraisal in compliance with current USPAP guidelines.

iii) If the application will be submitted to the LGPC, the business valuation must be submitted as part of the loan application. (See paragraph 5 below.)

iv) 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.

v) Any amount(s) of the loan proceeds that will be used to facilitate a change of ownership may not exceed the business valuation.

vi) 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.

5. Submission of Application for Guaranty for International Trade

a. Contents of Lender's Application for Guaranty

The contents of the Lender's application for guaranty vary depending on the method of processing chosen by the Lender. Based on the method of processing, the Lender may or may not be required to submit the documentation and exhibits to SBA, but in all cases must maintain those documents and any that support the guaranty request in their loan files.

Lender must disclose 100% of the Applicant's ownership on SBA Form 1919 and in E-Tran in order to submit a loan application. Each owner must be identified in E-Tran.

SBA Form 1919 includes 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. IT Non-Delegated and PLP Processing:

Program forms can be found at www.sba.gov/document.

a) Centralized 7(a) Loan Submission Instructions can be found at the 7(a) Loan Guaranty Processing Center ("LGPC") website along with other forms, telephone numbers and fax numbers: www.sba.gov/CitrusHeightsLGPC.

b) All IT loan files must include the forms and information the Lender requires in order to make an informed eligibility and credit decision. Any application form obtained by the Lender from the applicant must be certified by the Applicant as true and complete.

ii. PLP Lenders processing IT loans under their PLP authority must obtain and retain the documentation listed below in their file.

iii. For all IT loans submitted using the non-delegated process through the LGPC (including IT loans from PLP Lenders using this processing method), Lender must obtain and retain in its file all documentation listed below. In addition, Lender must submit as part of the Application for guaranty those items below emphasized in **bold**.

a) Lender must complete and sign SBA Form 1920.

b) Applicants and Associates must complete and sign SBA Form 1919, "Borrower Information Form." SBA Form 1919 must be signed by the following:

i) For a sole proprietorship, the sole proprietor;

ii) For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm, or any partner that is involved in management of the Applicant;

iii) For a corporation, all owners of 20% or more of the corporation and each officer and director;

iv) For limited liability companies (LLCs), all members owning 20% or more of the company and each officer, director, and managing member;

v) Any Key Employee; and

vi) Any Trustor (if the Small Business Applicant is owned by a trust).

vii) When the combined ownership interest between spouses and minor children is 20% or more, both spouses must complete SBA Form 1919.

When 20% or more ownership interest is held by a corporation, partnership, or other form of legal entity in the Applicant or OC, the ownership interests of all individuals must be disclosed.

A separate Section I of SBA Form 1919 is required to be completed and signed for each co-applicant (e.g. Eligible Passive Company (EPC) and Operating Company (OC)).

All parties listed in subparagraph iii.b) above are considered "Associates" of the Small Business Applicant as defined in 13 CFR § 120.10. A separate Section II is required to be completed and signed by each principal of the Small Business Applicant.

c) **Lender's Credit Memo** must address all requirements detailed in paragraph 4, Credit Standards above.

d) Character Determination:

i) If questions 17, 18, and 19 of SBA Form 1919 are all answered "no," a Character Determination is not required.

ii) If question 17 is answered "yes," the loan is not eligible.

iii) If question 18 or 19 is answered "yes," the Subject Individual and Lender must follow the steps as outlined in Section A, Ch. 3, Para. B, Character Determinations, of this Part prior to submission of the application to the LGPC for a non-delegated loan and prior to submitting the request for a loan number for a PLP loan.

e) **Personal Financial Statement** dated within 90 days of submission to SBA, for all owners of 20% or more (including the assets of the owner's spouse and minor children), and proposed guarantors. Lenders may use SBA Form 413 or their own equivalent form.

f) **Business financial statements** and/or tax returns dated within 120 days prior to submission to SBA, consisting of:

i) Year End Balance Sheet for the last 3 years, including detailed debt schedule;

ii) Year End Profit & Loss Statements for the last 3 years;

iii) Reconciliation of Net Worth;

iv) Interim Balance Sheet; and

v) Interim Profit & Loss Statements;

g) Affiliate/Subsidiary financial statement requirements same as above;

h) Copy of Lease, if applicable;

i) Detailed listing of machinery and equipment to be purchased with loan proceeds and cost quotes, if applicable;

j) Detailed listing of collateral (may be included in the Lender's credit memo);

k) Provide the following if real estate is to be purchased with loan proceeds:

i) Appraisal (see paragraph 4.d, Real Estate Appraisal and Business Valuation Requirements above);

ii) **Copy of signed purchase agreement**;

iii) **Lender's environmental questionnaire** (if applicable - see Section A, Ch. 6, Para. E, Environmental Policies and Procedures of this Part); and

iv) **Cost breakdown** where improvements to the real estate are included;

l) Provide the following if purchasing an existing business with loan proceeds:

i) Copy of buy-sell agreement;

ii) Copy of business valuation that meets the requirements of paragraph 4.d., Real Estate Appraisal and Business Valuation Requirements, above;

iii) Pro forma balance sheet for the business being purchased as of the date of transfer;

iv) **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

v) Seller's interim financial statements no older than 120 days from the date of submission to SBA. If the seller's financial statements are not available, the seller must provide an alternate source of verifying revenues and the Lender must discuss in its credit analysis:

(a) Why financial statements are not available; and

(b) How the Lender verified business revenue.

m) Franchise:

i) For non-delegated loans:

(a) If the Applicant's brand meets the FTC definition of a franchise, Lender must identify the name of the franchise and the SBA Franchise Identifier Code when entering the application into E-Tran. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. The LGPC will confirm that the brand is listed on the SBA Franchise Directory.;

(b) If the Lender determines that the Applicant's brand does not meet the FTC definition of a franchise, and it is not on the Directory, Lender must explain its determination in its credit memorandum when submitting the application to the LGPC and provide the agreement and any additional documentation required by the brand. Lender also must provide contact information for the franchisor/licensor (name and email address only). The LGPC will forward the documentation and contact information to the SBA Franchise Team for review and final determination.;

(c) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran. The Lender must identify all other brands and SBA Franchise Identifier Codes (if applicable) in the Lender's credit memorandum, and must identify which of the Applicant's brands are critical to the Applicant's business operation, including an explanation of the basis for that determination (e.g., a breakdown of revenue by brand). The LGPC will confirm that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory. (See Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements for further guidance.)

ii) For delegated loans:

(a) If the Applicant's brand meets the FTC definition of a franchise, Lender must document in its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the request for loan number into E-Tran. Lender must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. (Lender will need to submit the documentation showing that the Applicant's brand is on the Directory with any guaranty purchase request.)

(b) If the Applicant's brand is not on the Directory and the PLP Lender determines the brand does not meet the FTC definition and proceeds with approving the loan under its PLP authority, the Lender must document its file and will be required to submit that documentation with any guaranty purchase request and the PLP Lender bears the risk of an incorrect determination;

(c) If the Applicant operates under multiple brands, the Lender must enter the brand name and SBA Franchise Identifier Code (if applicable) for the brand that generates the largest amount of the

Applicant's revenue when entering the application into E-Tran. The Lender must document in its file that all of the Applicant's brands are eligible for SBA financial assistance and those that meet the FTC definition of a franchise that are critical to the Applicant's business operation are on the Directory, and must document their file with the basis for their determination of which brands are critical to the Applicant's business operation (e.g., a breakdown of revenue by brand). PLP Lenders will be required to submit all of this supporting documentation to SBA with any guaranty purchase request. (See Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements for further guidance.)

n) IRS Form 4506-T, Request for Transcript of Tax Return.

o) IRS Transcripts and complete verification.

p) **Debt Refinancing**. Lenders must maintain copies of all notes, security agreements, leases, or other documentation evidencing the debt to be refinanced in the loan file. For non-delegated loans, Lender must submit copies of all supporting documentation for the debt to be refinanced to the LGPC with the application.

q) **Documentation of USCIS status verification** - Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application or request for loan number to SBA. Lender may submit a copy of the verification received from USCIS or SBA-SLPC or confirm in its credit memorandum that verification has been obtained.

iv. **Draft Loan Authorization** (only required for PLP Lenders using the non-delegated processing method). The latest version of the Authorization Boilerplate and Wizard is available at www.sba.gov/document/support-object-object-standard-7a-authorization-file-library.

b. Where to Submit Applications for Guaranty

All Lenders are permitted to submit applications for guaranty under non-delegated processing procedures.

i. Non-delegated applications - Lenders submitting applications using non-delegated procedures (including loans from PLP Lenders) must submit applications for guaranty and all attachments via E-Tran to the LGPC. *Documents greater than 250MB must be separated into multiple documents. The system does not support uploads greater than 250MB.*

ii. PLP applications – Lenders submitting applications using their PLP authority must submit guaranty applications via E-Tran, retaining all required documentation in the Lender's loan file.

iii. Reconsideration of declined non-delegated IT applications (13 CFR § 120.193):

a) If the Lender believes the reason(s) for decline have been overcome, a request for reconsideration may be submitted along with a detailed written explanation of how the Applicant has overcome the reason(s) for decline. Lender must submit a request for reconsideration to the LGPC within 6 months of the date of decline. Any request submitted more than 120 days after the date of decline must include current financial statements.

b) If a request for reconsideration is declined by the LGPC, a second reconsideration may be requested from the D/FA, whose decision is final. The request to the D/FA 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 reason(s) identified for decline and how the Applicant has overcome those reason(s). The LGPC will forward the request to the D/FA for a final decision.

c. See Chapter 5, Authorization through Disbursement, in this Section, for SBA requirements for the loan Authorization, post-approval and pre-disbursement requests for changes, transfer of guaranty between participating Lenders, and loan closing and disbursement.

CHAPTER 5: AUTHORIZATION THROUGH DISBURSEMENT FOR ALL 7(A) LOANS

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 B, Post-Approval/Pre-Disbursement Requests for Changes, 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. Guidance referring to Lender Servicing and Liquidation is available in SOP 50 57 and the most current version of "Servicing and Liquidation Actions 7 (a) Lender Matrix" tool, which can be viewed at www.sba.gov/document/support-object-object-servicing-liquidation-actions-7a-lender-matrix.

A. LOAN AUTHORIZATION

The Authorization is the written agreement between the SBA and the Lender providing the terms and conditions under which SBA will guarantee a business loan. Regardless of processing method, within 15 business days after final disbursement, the Lender must submit to SBA through E-Tran a copy of the final executed Authorization, along with any amendments or modifications, and retain all other documents in the Lender's loan file. The Lender should not send SBA any other loan closing documentation, including disbursement information, except through the required periodic loan status reports using SBA Form 1502.

1. Basic Loan Conditions

    a. SBA establishes the wording for all 7(a) delegated and non-delegated 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.

        i. The Boilerplate contains the mandatory national standard language for all SBA authorizations.

        ii. There are separate Boilerplates for the Export Working Capital Program (EWCP) and CAPLines.

        iii. SBA Express and Export Express Lenders may use the Boilerplate or the abbreviated version created for those programs.

        iv. 7(a) Small Loans approved by PLP Lenders under their PLP authority may use the Boilerplate or the alternative Authorization created for what was formerly "Small Loan Advantage."

        v. The Wizard is a technical tool intended to make it easier for lenders to create Authorizations based on the Boilerplate.

        vi. The Authorization for 7(a) loans must use the pre-approved conditions that are found in the Boilerplate. If the Lender chooses to use the abbreviated

Authorizations for 7(a) Small Loans (loans approved under a Lender's PLP authority only), SBA Express and Export Express, the Authorization must contain at least the paragraphs included in the form for that particular program.

b. The latest edition of each Boilerplate can be found at:

   i. For Standard 7(a), 7(a) Small, and CAPLines:www.sba.gov/document/support-object-object-standard-7a-authorization-file-library.

   ii. For all others:

   https://www.sba.gov/document?sortBy=Effective%20Date&search=authorization&documentType=All&program=All&documentActivity=All&page=1&office=All

c. The party responsible for drafting the Authorization is determined by how the loan was processed.

   i. For loans processed using a Lender's delegated authority (PLP, PLP-EWCP, SBA Express, or Export Express), the Lender prepares and signs the Authorization on behalf of SBA.

   ii. For non-delegated loans processed through the LGPC, SBA prepares and signs the Authorization and sends it to the Lender for execution.

d. The LGPC must review and approve any Authorization that proposes to deviate from the Boilerplate language with the following exception:

   i. Delegated lenders may develop Authorization conditions that are not pre-approved in the Boilerplates and use them without prior SBA approval, provided that the conditions are specific to the loan and used only one time.

   ii. Whenever a delegated Lender develops and uses a non-standard condition, an explanation for its development must be in the loan file.

e. Contents of an Authorization must include:

   i. 7(a) Lender fees payable to SBA:

      a) Statement of the guaranty fee: The guaranty fee must be paid within the time frame stated within the Authorization;

      b) Ongoing Servicing Fee;

      c) 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.

   ii. Repayment terms;

iii. Use of Proceeds: If any of the loan proceeds will be used to:

a) Refinance debt:

i) In the Use of Proceeds section, the refinancing must be specifically identified;

ii) An itemization of all debts being repaid by loan proceeds when the individual creditor is to be paid $10,000 or more; and/or

iii) The loan number and dollar amount of any existing SBA being debt refinanced.

b) Finance intangible assets, a description of the intangible assets and the amount(s) must be specifically identified in the Use of Proceeds section of the application and the Authorization;

iv. Collateral conditions;

v. Guaranties; and

vi. Additional Conditions, such as:

a) Required insurance;

b) Standby agreements; and

c) Lease assignment and landlord waiver.

2. Construction Loan Provisions

13 CFR § 120.174

a. In the construction of a new building or an addition to an existing building, regardless of whether the project is one that uses an independent licensed contractor or is a “Do-it-yourself” project, Lender must obtain:

i. Evidence of compliance with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings" (NEHRP), or a building code that has substantially equivalent provisions.

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 leasehold improvements are only

temporary, they do not need to comply with the NEHRP. Accordingly, if the Applicant 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 B., Post-Approval/Pre-Disbursement Requests for Changes, of this Chapter.

ii. 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:

i. Prior to the commencement of any construction, Lender must obtain from Borrower:

a) Evidence that the licensed contractor has furnished a l00% performance bond and labor and materials payment bond;

i) Only a corporate surety approved by the Treasury Department using an American Institute of Architect's form or comparable coverage may issue these bonds.

ii) 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:

i) An acceptable licensed contractor at a specified price; and

ii) 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.

ii. Lender must also:

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.

iii. SBA has granted a blanket waiver on the Lender's requirement of a performance bond and the labor and materials payment bond when:

a) The Lender has retained the services of a third party construction management firm. The Lender must ensure that the third party provides commercially reasonable and prudent monitoring including funds control for all disbursements; or

b) The Lender has an existing internal construction management department that routinely manages construction for its similarly-sized, non-SBA guaranteed commercial loans. The Lender must ensure that the monitoring services provided by its construction management department are commercially reasonable and prudent and include funds control for all disbursements.

Lender must document in the applicable loan 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. If any mechanics' or other liens are filed or take priority over the Lender's lien on the collateral, the Lender may be subject to a repair or denial of the guaranty. (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 the Lender and/or SBA. "Do-it-yourself" construction including renovations and/or installation of machinery and equipment, or situations where the Borrower acts as its own contractor may be permitted, if the Lender can justify and document in the loan file that:

i. The Borrower/contractor is experienced in the type of construction and has all appropriate licenses;

ii. The cost is the same as, or less than, what an unaffiliated contractor would charge as evidenced by 2 bids on the work; and

iii. The Borrower/contractor will not earn a profit on the construction.

3. Insurance Requirements
    a. Lender must ensure all appropriate insurance requirements are included in the Authorization. See Section A, Ch. 6, Para. C, Insurance Requirements, of this Part for requirements concerning hazard, marine, flood, and life insurance.
    b. Lender must include any other insurance appropriate to the loan, including but not limited to:
        i. Liability Insurance;
        ii. Product Liability Insurance;
        iii. Dram Shop/Host Liquor Liability Insurance;
        iv. Malpractice Insurance;
        v. Disability Insurance;
        vi. Workers' Compensation Insurance; and
        vii. Any State specific insurance requirements.
4. The IRS Tax Transcript/Verification of Financial Information process must be included in the Authorization and completed in accordance with Section A, Ch. 6, Para. B, IRS Tax Transcript/Verification of Financial Information, of this Part.
5. Special Provision for Franchise

    The following language must be manually inserted into the Authorization Boilerplate or any streamlined or abbreviated Authorization used by a delegated Lender:

    "Lender must obtain the executed Franchise Agreement, the SBA Addendum to Franchise Agreement (SBA Form 2462), or the SBA Negotiated Addendum (if applicable), and all other documents the franchisor requires the franchisee to sign prior to any disbursement of Loan proceeds and retain in the loan file. Failure to obtain the executed documents may result in a denial of liability on the guaranty."

    This language will be manually inserted into the Authorization Boilerplate by the LGPC for non-delegated loans. For delegated loans, this language must be manually inserted into the Authorization Boilerplate by the Lender. The language can be manually inserted into the "prior to closing" section of the 7(a) or 504 Authorization Boilerplate by clicking "Edit" and adding the language above.

B. POST-APPROVAL/PRE-DISBURSEMENT REQUESTS FOR CHANGES

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 below.

The actions below are for approved loans prior to final disbursement:

1. Loans submitted under non-delegated authority:

    For SBA loans approved under non-delegated procedures that have not been fully disbursed, Lenders must submit requests for LGPC approval of the following actions:

    a. An increase or decrease in the loan amount;

b. An increase or decrease in the guaranty percentage;

c. Any adjustments to or changes in the ownership of the Borrower, including percentage of ownership;

d. Changes to the Loan Authorization within program guidelines; or

e. Reinstatement of the guaranty.

Lenders must request SBA approval of these actions by following the procedures set forth in paragraph B.5, "For SBA loans that have not been closed or fully disbursed" below.

2. Loans submitted under a Lender's delegated authority:

For SBA loans approved under a Lender's delegated authority, Lenders must:

a. Obtain the prior written consent of the LGPC for any proposed adjustments to or changes in ownership of the Borrower, including percentage of ownership. The Lender may not unilaterally approve such adjustments or changes. The LGPC will approve the proposed modification and enter it into E-Tran after:

i. Verification that the proposed changes to the ownership of the Borrower comply with limitations on the aggregate amount of SBA portions of all loans to a Borrower, including affiliates; and

ii. Verification that there has been no prior loss to the Government caused by the new owner(s) or any business owned, operated, or controlled by the new owner(s).

The LGPC review will be limited to these specific issues and the delegated Lender remains responsible for all loan decisions regarding eligibility (including size) and creditworthiness. The delegated Lender also is responsible for confirming that all loan closing decisions are correct, and that it has complied with all SBA Loan Program Requirements.

b. Obtain approval for increases or decreases in the loan amount directly in E-Tran. Approval of the requested increase or decrease in E-Tran will constitute SBA's prior written consent.

c. Submit requests for an increase or decrease in guaranty percentage for approval by following the procedures set forth in paragraph B.4 below.

3. Lenders must inform SBA of certain actions by making the appropriate change using E-Tran servicing. When the Lender makes the change using E-Tran servicing, a separate notification to the appropriate SBA center is not necessary (SBA approval of these items is not necessary, and SBA will not respond in writing). These actions include the following:

a. Cancellation of the entire loan;

b. Partial cancellation of loan (Lenders, via E-Tran, should change the "Approval Amount" box to reflect the revised loan amount. Do not change the "Original Approval Amount.");

c. Change in the loan maturity date;

d. Change in the legal name or trade name of the business;

e. Change in the Borrower/obligor's business address;

f. Change in interest rate prior to initial disbursement;

g. Cancel SBA Guaranty prior to initial disbursement; or

h. Cancel SBA Guaranty after initial disbursement.

4. For SBA loans that have not been closed or fully disbursed:

   a. 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, email address, name of the Borrower, SBA Loan Number, and the following information:

      i. How the loan is currently approved;

      ii. The proposed change; and

      iii. Why the change is being requested, along with justification for the change and any supporting documentation.

   b. Post-approval modifications should be submitted to 7aLoanMod@sba.gov.

5. For SBA loans that have been fully disbursed:

   Lenders must refer to SOP 50 57, 7(a) Loan Servicing and Liquidation to determine if notification or prior approval from SBA is required**.**

6. Loan Increases:

   a. 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.

   b. Standard 7(a) (including International Trade), EWCP, PLP, PLP-EWCP, SBA Express, and Export Express term loans: If any requested increase to a 7(a) Small Loan results in a total loan(s) in excess of $350,000 (including loans made within 90 days of another), the Lender must follow the underwriting procedures for Standard 7(a) Loans as outlined in Chapter 1, Para. C.2.a., Credit Underwriting requirements for Standard 7(a) Loans of this Section. In addition, 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. For delegated loans, the Lender must document the same analysis and retain it in Lender's loan file.

   c. Revolving lines of credit increases may be requested:

      i. If made under SBA Express and Export Express:

         a) At any time during the life of the loan, but must be within 5 years for SBA Express and 7 years for Export Express of the date of loan

approval and be in compliance with the maximum maturities on SBA Express and Export Express loans;

b) 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.

ii. If made under CAPLines:

a) 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 maximum maturities on CAPLines;

b) 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.

iii. 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, Community Express and Patriot Express); and

d. SBA Express and Export Express Increases: Subject to paragraph 6.b. above, Lenders must follow their established and proven internal credit review and analysis procedures used for their similarly-sized, non-SBA guaranteed commercial loans to determine whether the increase is appropriate and must retain all supporting documentation in Lender's loan file.. Approval of the requested increase in E-Tran will constitute SBA's prior written consent. SBA may review the documentation supporting the increase when conducting lender oversight activities and at time of guaranty purchase.

C. TRANSFER OF GUARANTY BETWEEN PARTICIPATING LENDERS

1. To transfer the guaranty between participating Lenders prior to final disbursement, Lender must submit a written explanation to the LGPC along with any supporting documentation. (Transfers after final disbursement must be sent to the appropriate CLSC in accordance with SOP 50 57.)

2. To transfer the guaranty on more than one loan prior to final disbursement, Lender must submit a written explanation to the LGPC along with any supporting documentation. The LGPC will forward the request to the D/FA for a decision. Transfers of fully disbursed loan portfolios are discussed in Part 1, Section A, Ch. 3, Para. C., Loan Transfers.

D. LOAN CLOSING AND DISBURSEMENT

The following instructions for loan closing and disbursement pertain to all 7(a) loans.

1. Disbursement Period:
    a. 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.
    b. 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.
    c. A loan is considered to be fully disbursed and then may be sold on the secondary market when the Borrower has access to all of the loan proceeds and is able to use them in accordance with the Authorization.
2. Note Terms:

    Note terms must comply with the Authorization and guidance provided in this Section, including:

    a. All interest rate requirements,
    b. The date of initial adjustment;
    c. Maturity date;
    d. Repayment terms:
        i. Lenders using the SBA Note are required to insert the repayment terms from the authorization into the Note without modification.
        ii. Lenders using their own Note form are required to comply with SBA repayment terms but are not required to use the specific language set forth in the authorization.
        iii. If there is a need for specific repayment terms that are not in the Authorization for a loan, the Lender must obtain written approval from the LGPC to add the repayment terms to the Authorization.
        iv. Repayment Terms for CAPLine Loans:
            a) 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.
            b) 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 paragraph E.4, Required SBA Forms, below.

e. State-specific language: Lender must ensure that any necessary state-specific provisions/language is contained in the Authorization and appropriate loan documents.

f. Prepayment Terms: Every Authorization contains prepayment language that must be inserted into the Repayment Terms section of the Note.

g. Escrow Policy for Commercial Real Estate Taxes and Insurance:

i. The Borrower and Lender may agree to establish an escrow account for the purpose of collecting and paying real estate taxes, hazard insurance, and/or flood and earthquake insurance, when applicable;

ii. 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;

iii. 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;

iv. Except for those items covered in subparagraphs g.ii and iii immediately 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 (SBLCs must be consistent with the practices followed by federally-regulated Financial Institutions);

v. Lender must remit to the Borrower all accrued interest on the account and provide annual statements, unless otherwise required by state or Federal law; and

vi. Upon termination of the account, the remaining funds must be returned to the Borrower within 15 business days.

3. Closing Documentation:

a. Documentation of Disbursement:

i. Lender must disburse the loan proceeds in accordance with the Authorization. Failure to do so may be a cause for SBA to deny liability under its guaranty.

ii. All Lenders must document each disbursement on an SBA-guaranteed loan. Except under SBA Express, Export Express, and 7(a) Small Loans, Lender and Borrower must use and 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:

a) The recipient of each disbursement;

b) The date and amount of each disbursement; and

c) The purpose of each disbursement.

iii. The Lender must obtain evidence to support disbursements, such as cancelled checks or paid receipts, to ensure that the Borrower used loan proceeds for purposes stated in the Authorization. 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.

iv. The following documentation is acceptable to verify disbursement in accordance with the Authorization:

a) Joint payee checks;

b) Copies of receipts, invoices or other supporting documentation marked paid by the seller or vendor; or

c) Evidence of an electronic funds transfer to a vendor along with a copy of the invoice.

v. The Lender must retain in its loan file the signed SBA Form 1050 as well as all supporting documents.

b. Documentation of Equity Injection:

i. With the exception of SBA Express and Export Express loans, Lenders must verify the injection prior to disbursing any 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:

a) 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;

b) A copy of the two most recent statements from the account where the funds are being withdrawn (showing that funds were available); and

c) A statement from the Borrower's account documenting the funds were deposited or a copy of a settlement statement or HUD-1 showing the use of the cash.

ii. A promissory note, "gift letter," or financial statement is not sufficient evidence of cash injection without corroborating evidence consistent with subparagraph b.i. immediately above.

iii. If the equity injection will come from any form of borrowed funds, such as a HELOC or seller financing in excess of the minimum Borrower injection requirements outlined above, Lender must address the proposed repayment terms as well as any Standby or Subordination terms that will be in place.

iv. For SBA Express and Export Express loans, if a Lender requires an equity injection and, as part of its standard processes for similarly-sized, non-SBA guaranteed commercial loans verifies the equity injection, it must do so for its SBA Express and Export Express loans.

4. Required SBA Forms:

a. Lenders must use the SBA forms listed in Section D of the Authorization with the exception of 7(a) Small Loans, SBA Express, and Export Express.

b. For all 7(a) loans, including 7(a) Small Loans, SBA Express, and Export Express, whether processed under non-delegated or delegated authority, Lenders have the option of using their own Note and guaranty agreements or the SBA versions (SBA Forms 147, 148 and 148L).

i. 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, regardless of delivery method, when 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."

ii. Lenders that intend to sell the loan guarantee into the SBA Secondary Market are strongly encouraged to use the SBA Form 147. If a Lender uses its own form of a note, all terms and conditions in the SBA Form 147 must be included in the document. The Fiscal Transfer Agent reviews notes other than the SBA Form 147 to ensure that all required terms and conditions for sale are satisfied, which may increase processing time for loan sales settlement.

iii. Regardless of the delivery method, when 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."

c. The following language must appear in all lien instruments, including mortgages, deeds of trust, and security agreements:

"The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

i. When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with Federal law.

ii. Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any Federal immunity from local or state control, penalty, tax, or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower or defeat any claim of SBA with respect to this Loan.

iii. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument."

d. Authorization Section D Required Documents: SBA loan documents and instructions can be found at www.sba.gov/document. The required documents, per Section D of the Authorization, include:

i. Loan Authorization - After closing a loan, the Lender should maintain the final executed copy of the Authorization, along with any amendments or modifications, in the file;

ii. Settlement Sheet, SBA Form 1050 (see paragraph D.3.a., Documentation of Disbursement, above);

iii. Fee Disclosure and Compensation Agreement, SBA Form 159;

iv. Agreement of Compliance, SBA Form 601 (for construction over $10,000);

v. Equal Employment Opportunity Poster, SBA Form 722; and

vi. IRS Form 4506-T, Request for Transcript of Tax Return.

5. Collateral:

The Lender must obtain all required collateral and must meet all other required conditions before or at the time of loan disbursement, including obtaining valid and enforceable security interests in any loan collateral. These conditions include

requirements identified in the credit memorandum, such as cash/equity injections, standby agreements, appraisals or evaluations, and business licenses.

6. Required Lender Action:

   In accordance with the Debt Collection Improvement Act of 1996, Lenders are required to report information to the appropriate credit reporting agencies whenever they extend credit via an SBA loan. Thereafter, the Lender should continue to routinely report information concerning servicing, liquidation, and charge off activities throughout the life cycle of the loan, as specified in SOP 50 57 or a successor procedural guide.

7. Borrower Certifications:

   a. As part of the terms and conditions of the Authorization, the Lender must obtain certain certifications and agreements from the Borrower(s) (OC and EPC) prior to disbursement of loan proceeds. Borrower and OC must certify that:

      i. They received a copy of the Authorization;

      ii. There has been no adverse change in Borrower's (and OC's) financial condition, organization, operations, or fixed assets since the date the Loan Application was signed;

      iii. No principal who holds at least 50 percent of the ownership or voting interest of the Borrower or OC is delinquent more than 60 days under the terms of any administrative order; court order; or repayment agreement requiring payment of child support;

      iv. Borrower and OC are current on all federal, state, and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes and sales taxes; and

      v. If applicable, the Borrower(s) and the 401(k) plan are in compliance with all applicable IRS, Treasury, and Department of Labor requirements and will comply with all relevant operating and reporting requirements.

      vi. Environmental - For any real estate pledged as collateral for the loan or where the Borrower or OC is conducting business operations, the Borrower or OC 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.

   b. Prior to disbursement, Lender must require Borrower and OC to certify that:

      i. The Borrower and/or OC will reimburse lender for expenses incurred in the making and administration of the loan;

      ii. The Borrower and/or OC 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;

iii. The Borrower and/ or OC will post SBA Form 722, Equal Opportunity Poster, where it is clearly visible to employees, applicants for employment and the general public;

iv. To the extent practicable, they will purchase only American-made equipment and products with the proceeds of the loan;

v. They will pay all Federal, state, and local taxes, including income, payroll, real estate, and sales taxes of the business when they come due;

vi. Any credit card debt being refinanced was incurred exclusively for business purposes; and

vii. During the life of the loan, the real estate pledged as Collateral for the Loan or where the Borrower or Operating Company conducts its business operations will not be leased to or occupied by any business that Borrower or Operating Company knows is engaged in any activity that is illegal under Federal, state or local law or any activity that can reasonably be determined to support, promote, or facilitate any activity that is illegal under Federal, state, or local law.

c. Borrower and OC must certify that they will not, without the Lender's prior written consent:

i. Make any distribution of company assets that will adversely affect the financial condition of the Borrower and/or OC;

ii. Change the ownership structure or interests in the business during the term of the loan; or

iii. Sell, lease, pledge, encumber (except by purchase money liens on property acquired after the date of the Note), or otherwise dispose of any of the Borrower's property or assets, except in the ordinary course of business.

d. Additional certifications from Borrower and OC. The Authorization provides for additional certifications from the Borrower and OC regarding:

i. Limitations on acquiring additional fixed assets;

ii. Limitations on acquiring additional business location(s);

iii. Salary limitations; and

iv. Occupancy requirements.

e. 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.

f. 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.

8. PLP Program:
    a. SBA closing requirements are the same for loans guaranteed through PLP processing as for non-delegated loans. The same forms are required.
    b. Within 15 business days after final disbursement, the PLP Lender must submit to SBA through E-Tran a copy of the final executed Authorization, along with any amendments or modifications, and retain all other documents in the PLP Lender's loan file. The Lender should not send SBA any other closing documentation, including disbursement information, except through the required periodic loan status reports using SBA Form 1502.
9. SBA Express, Export Express, and 7(a) Small Loans:
    a. A Lender must use the same written closing and disbursement procedures and documentation as it uses for its similarly-sized non-SBA guaranteed commercial loans in addition to meeting the requirements of paragraph D.4, Required SBA Forms above. 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.
    b. 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 or evaluations, business licenses, and cash/equity injections.
    c. Before disbursing an SBA Express, Export Express or 7(a) Small Loan, the Lender must:
        i. Use IRS tax transcripts to verify financial information used to support the loan credit analysis. For 7(a) Small Loans, the Lender is required to confirm in its credit memo, collection of business tax returns and verification and reconciliation of the applicant's financial data against income tax data (received in response to IRS Form 4506-T, Request for Transcript of Tax Return.)
        ii. 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.
        iii. Obtain required hazard insurance on all assets taken as collateral per Section A, Ch. 6, Para. C, Insurance Requirements, of this Part, and the Authorization.
        iv. Make the required flood hazard determination and require flood insurance on collateral pursuant to Section A, Ch. 6, Para. C.4, Flood Insurance, of this Part, and the Authorization.

v. In the construction of a new building or an addition to a building, obtain the Borrower's agreement that the construction will conform to the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings" per Section A, Ch. 6, Para. C, Insurance Requirements, of this Part, and the Authorization.

vi. Obtain the Borrower's agreement that it will, to the extent feasible, purchase only American-made equipment and products with the proceeds of the loan. This certification is included on the SBA Form 1919.

vii. For any loan involving construction of more than $10,000, as indicated on SBA Form 1920, require Borrower and contractor to execute SBA Form 601, Applicant's Agreement of Compliance.

viii. Obtain Borrower's certification that any 50 percent or more owner of the Applicant on SBA Form 1919 is not more than 60 days delinquent on any obligation to pay child support.

ix. Require appropriate environmental reviews and compliance. For loans under SBA Express, Export Express, and 7(a) Small Loans, Lenders must follow the environmental requirements in Section A, Ch. 6, Para. E, Environmental Policies and Procedures, of this Part. For loans under SBA Express, Export Express and 7(a) Small Loans, 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.

d. Regardless of processing method, within 15 business days after final disbursement, the Lender must submit to SBA through E-Tran a copy of the final executed Authorization, along with any amendments or modifications, and retain all other documents in the Lender's loan file. The Lender should not send any closing documentation to SBA after closing an SBA Express, Export Express or 7(a) Small Loan.

e. Access to Funds: SBA Express, Export Express, and 7(a) Small Loan 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, and 7(a) Small Loans. 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.

SECTION C. 504 LOAN PROGRAM SPECIFIC REQUIREMENTS

This section, along with section A, Core Requirements for all 7(a) and 504 Loans, contains the policies and procedures governing SBA's 504 Loan Program.

CDCs must always start by reviewing the contents of Section A, Core Requirements for all 7(a) and 504 Loans, in this Part.

CHAPTER 1: ELIGIBILITY THROUGH SUBMISSION OF APPLICATION

Purpose of the 504 Loan Program

The 504 loan program is an economic development program to create and preserve job opportunities and stimulate growth, expansion, and modernization of small businesses. This program can be used to finance fixed assets for eligible small businesses. 13 CFR § 120.800

A. PRIMARY PROGRAM ELIGIBILITY FACTORS

A 504 Project must achieve at least one of the following Economic Development Objectives: 13 CFR §§ 120.860, 120.861, and 120.862

1. Job Creation or Retention (Dollars per Job)

   At least 1 Job Opportunity must be created or retained per every $75,000 of project debenture ($120,000 for Small Manufacturers (defined as a Small business with its primary NAICS Code in Sectors 31, 32, and 33 with all its production facilities located in the United States).

   a. Job Opportunity is defined in Appendix 3, Definitions.

   b. 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.

   c. 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.

   d. CDCs must list estimated jobs created or retained at the time of application and in its Annual Report. 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); or

2. Other Economic Development Objectives and Public Policy Goals

   A Project that achieves one of the Community Development or Public Policy Goals listed in 13 CFR § 120.862 or one of the Energy Public Policy goals authorized by paragraphs (I), (J), or (K) of § 501(d)(3) of the Small Business Investment Act (15 USC § 695(d)(3)) and listed in paragraphs a.i. through a.iii. below is eligible if the CDC's portfolio of 504 loans, including the subject loan, meets or exceeds the CDC's required job opportunity average as described in paragraph b. below. Loan applications must indicate how the Project will meet the specified economic development objective. 13 CFR § 120.862

   a. Additional guidance for the Energy Public Policy Goals authorized by paragraphs (I), (J), and (K) of § 501(d)(3) of the Small Business Investment Act (15 USC § 695(d)(3)):

      Energy Public Policy Projects: Projects meeting the requirements in **i., ii., or iii. below** are Energy Public Policy Projects.

The Energy Public Policy Projects described in subparagraphs i. and ii. below are eligible for the loan amounts described in paragraph D.1., Debenture Limits, below (hereafter referred to as "Eligible Energy Public Policy Projects").

Note: The terms in subparagraphs ii. and iii. below 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 https://new.usgbc.org/leed.

i. Projects for the reduction of existing energy consumption by at least 10%. This category may not be used for Projects involving new businesses. In addition, if this project involves:

   a) The construction or acquisition of a facility:

      i) The new facility must replace an existing facility.

      ii) The energy consumption at the existing facility must be compared with the new facility, and the Applicant must be able to demonstrate that the new facility will use 10% less energy than the existing facility. The energy consumption between the two facilities must be compared for energy consumption on a square footage basis.

      iii) 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).

   b) The retrofit of an Applicant's existing facility, the retrofit must reduce the energy consumption of that facility by at least 10%, regardless of the energy usage of any other facilities that the Applicant may operate; or

ii. Renewable energy sources that generate more than 15% of energy used at Project Facility.

   a) This category includes 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.

   b) Each Project must generate more than 15% of the energy used by the Applicant at the Project facility. In addition, all improvements or equipment required to generate the renewable energy or renewable fuels must be included in the 504 Project costs; **or**

iii. Increased use of sustainable designs. 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.

iv. With respect to paragraphs ii. and iii. above, the Applicant must document the Energy Public Policy Project's compliance 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:

a) A description of the facility or facilities;

b) The current energy usage;

c) 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

d) 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).

b. A CDC's portfolio must maintain a job opportunity average of one Job Opportunity created or retained for every:

i. $75,000 guaranteed by SBA; or

ii. $85,000 guaranteed by SBA for Projects located in Special Geographic Areas (Alaska, Hawaii, State-designated enterprise zones, empowerment zones, enterprise communities, Opportunity Zones [1], 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.

iii. Loans to Small Manufacturers are excluded from this average.

3. If the 504 Project cannot satisfy any of these Economic Development Objectives and guidelines described above, then the amount of the debenture must be reduced to meet the job creation or retention requirement.

B. THIRD PARTY LENDER PARTICIPATION

Typical 504 Structures			
	Standard Financing Structure	New Business OR Limited or Special Purpose Property	Both New AND Limited or Special Purpose Property
Third Party Lender	50	50	50
CDC/SBA	40	35	30

[1] An "Opportunity Zone" is an economically distressed community that has been nominated by the State and certified by the Secretary of the U.S. Treasury as a community in which new investments, under certain conditions, may be eligible for preferential tax treatment. More information and a list of Opportunity Zones for all States are available at https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.

Typical 504 Structures			
	Standard Financing Structure	New Business OR Limited or Special Purpose Property	Both New AND Limited or Special Purpose Property
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)).

1. **Third Party Loan** 13 CFR § 120.920
    a. 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.
    b. The terms of the Third Party Loan are defined in 13 CFR § 120.921.
    c. The Third Party Loan must be at least as much as the net debenture proceeds. However, the Third Party Loan must total at least 50% of the Project costs if the Borrower (or Operating Company if the Borrower is an Eligible Passive Company) has operated for 2 years or less or the Project is for the acquisition, construction, conversion or expansion of a limited or single purpose asset.
    d. 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.
    e. 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.
    f. The 504 loan is usually collateralized by a second lien on Project Property. The Third Party Lender may obtain additional collateral or other security for the Third Party Loan in addition to its lien on the Project Property ("Additional Collateral") only if in the event of liquidation and unless otherwise approved in writing by the D/OFPO:
        i. The Third Party Lender liquidates or otherwise exhausts all reasonable avenues of collection with respect to the Additional Collateral no later than the disposition of the Project Property, and
        ii. The Third Party Lender applies any proceeds received as a result of the Additional Collateral to the balance outstanding on the Third Party Loan prior to the application of proceeds from the disposition of the Project Property to the Third Party Loan.

g. Interest Rate Swap Contracts:

i. 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.

ii. 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:

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) 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.

c) Swap contracts may be used on new or existing Third Party Loans.

d) The swap contract does not have to last for the entire length of the Third Party Loan.

e) SBA does not have a standard form for an interest rate swap contract.

f) Any fees owed the swap counterparty as a result of the default by the Borrower will be subordinated to the SBA 504 loan.

h. CDCs must not enter into any Intercreditor agreement with the Third Party Lender other than SBA Form 2287, "Third Party Lender Agreement," without the prior written consent of SBA.

2. Interim Financing

Loans under the 504 program provide permanent or take-out financing (see Chapter 2, Para. C.2. Escrow Closing, below in this Section, for the requirements of an escrow closing with no interim loan). 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.

a. 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.

b. If the Third Party Lender provides the interim loan, it may do so using:

   i. An interim note which will be paid in full with the net debenture proceeds and a permanent note; or

   ii. 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		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. 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.

3. 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:

a. When the bond proceeds are used to fund the Third Party Loan:

   i. 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;

   ii. 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;

   iii. If subparagraphs a.i. and a.ii. are met, then the Third Party Loan may remain in a senior lien position.

   iv. 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.

b. When the bond proceeds are used to fund the Borrower's Contribution:

   i. 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;

   ii. SBA's lien position must not be subordinate to the bond issuer's lien; and

   iii. 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;

c. In no case may a default in payment of the tax-exempt obligation result in a tax lien on the property; and

d. 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.

4. Financing Involving Historic Rehabilitation Tax Credits

   Under IRS regulations (Internal Revenue Code § 50), the owner of property eligible for historic rehabilitation tax credits may lease the property, and transfer the historic rehabilitation tax credits, to another party (the "Tax Credit Investor"). SBA may participate in Projects involving such tax credits under the following conditions:

   a. In such situations where the Borrower is the owner of the property eligible for the historic rehabilitation tax credits, the Project Property may be leased by the Borrower to the Tax Credit Investor and then must be simultaneously subleased back from the Tax Credit Investor to the Borrower. The term of the sublease must be equal to the term of the lease.

b. The transfer of the rehabilitation tax credits from the Borrower to the Tax Credit Investor must comply with all applicable IRS requirements.

c. Copies of the lease and the sublease that will be executed by the Borrower and the Tax Credit Investor must be submitted with the 504 application. The executed copies of both leases must be submitted for review (including legal review by SBA counsel) prior to closing. This review will be limited to ensuring that the terms of the two leases are equal.

   SBA's lien on the Project Property must not be subordinate to the lease between the Borrower and the Tax Credit Investor.

d. The loan may not be structured as an EPC/OC loan.

e. The structure of these transactions may vary case-by-case, and CDCs and the SLPC should consult with SBA Counsel and OCA for additional guidance. SBA may also participate in projects where the Borrower transfers State rehabilitation tax credits if such projects satisfy all applicable State requirements and the other requirements set forth above.

C. ELIGIBLE USES OF PROCEEDS

13 CFR §§ 120.882 – 120.884

CDCs must always start by reviewing the contents of Section A, **Core Requirements for all 7(a) and 504 Loans**.

When a 504 Borrower is an exporter engaging in export transactions (including indirect exports) or when the Borrower has or will have foreign accounts receivable, the CDC must determine if U.S. companies are authorized to conduct business with the Parties and the country(ies) to which the goods or services will be shipped. CDCs must check Ex-Im Bank's Country Limitation Schedule, which can be found on Ex-Im Bank's website at www.exim.gov/tools-for-exporters/country-limitation-schedule or is available from SBA's Office of International Trade. The CDC also must check the Department of Treasury Office of Foreign Assets Control (OFAC) sanctions lists, which can be found at sanctionssearch.ofac.treas.gov/. A 504 loan may not be made to a business that directly or indirectly exports to a foreign country which is listed as a prohibited country (Note # 7 on the Country Limitation Schedule), or if the transaction would be prohibited under any of the sanctions programs administered by OFAC.

1. Land and Necessary Land Improvements

(For example, grading, new streets including curbs and gutters, parking lots, utilities, and landscaping.) No matter how long the land has been owned, the value of the land:

a. Will be based on cost only if it was purchased less than 2 years prior to the date of the application; and

b. Will be based on the fair market value of the land as determined by an independent real estate appraisal that meets the requirements in paragraph E.2.b, Appraisals, below if the land has been held for 2 years or more;

c. May include the costs of building and building improvements such as facade expenditures, heating, electrical, plumbing and roofing costs.

d. The value of the land also may include the costs of solar panels and associated equipment and installation costs unless:

   i. The primary purpose of the solar panels is to produce electricity for sale (i.e., solar farms), in which case the panels are treated as machinery and equipment; or

   ii. The solar panels are part of a system that is leased to the Borrower and owned by a third party, and ownership of these assets will not transfer to the Borrower at the end of the lease.

2. Machinery and Equipment

a. All costs associated with the purchase, transportation, dismantling or installation of machinery and equipment;

b. The machinery and equipment must 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;

3. 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));

4. Professional Fees

If 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;

5. Other Applicant Expenditures

For any of the costs listed in subparagraphs 1 through 4 above incurred by the Applicant (with its own funds or from a Short-Term Debt) prior to the date of application that are directly attributable to the Project, provided such expenditures (net of Applicant's contribution) are reimbursed by the Interim Lender;

6. Short-Term Debt

Short-Term Debt (aka "Bridge Financing") the purpose of which was to provide financing until longer term financing could be obtained for any of the costs listed in subparagraphs 1 through 5 above that are directly attributable to the Project, provided that the financing is for a term of 3 years or less;

7. Interim Financing

Repayment of interim financing including points, fees, and interest;

8. 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.

9. "Do-it-yourself" Construction

"Do-it-yourself" construction, including renovations, and/or installation of machinery and equipment, or situations where the Applicant 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 lenders and/or SBA.

"Do-it-yourself" construction, including renovations, (e.g. installation of carpeting or painting) and/or installation of machinery and equipment 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 two bids on the work; and

c. The Borrower/contractor will not earn a profit on the construction.

10. Permissible Debt Refinance without Expansion

13 CFR § 120.882(g)

SBA may approve a Refinancing Project of a Qualified Debt that does not involve an expansion as follows:

a. A Refinancing Project that does not involve an expansion may be financed only in a fiscal year in which the subsidy cost to the Federal government on making guarantees under the 504 Debt Refinancing Program and under the 504 Loan Program is zero.

b. Each CDC's new financings under this paragraph 10 during any fiscal year cannot exceed 50% of the dollars the CDC loaned under the 504 Loan Program during the previous fiscal year. SBA may waive this limitation for good cause. SBA will consider the following factors in determining whether there is good cause for the Borrower to obtain the refinancing through the CDC that exceeds the 50% requirement:

   i. Whether the Borrower has access to other sources of financing, including other CDCs that have not exceeded their 50% cap; and

   ii. Whether the CDC has an existing 504 loan with the Borrower that is in current status.

c. Eligibility and Other Requirements:

   i. The Applicant must have been in operation for all of the 2-year period ending on the date of application, as evidenced by the financial statements submitted at the time of application. If the ownership of the Applicant has changed

during this 2-year period, the CDC must follow the New Business guidance found in this Section to determine whether the Applicant is considered a New Business and document the justification for its determination in its credit memorandum.

ii. The Refinancing Project must include Qualified Debt, as defined below. In addition, the Refinancing Project may include Eligible Business Expenses, as defined below. In addition, the amount of the Refinancing Project is subject to the Loan-to-Value Limitations in paragraph C.10.d., below.

iii. "Qualified Debt" means a commercial loan that:

a) Either:

i) Substantially all (85% or more) of the proceeds of the existing debt was used to acquire an Eligible Fixed Asset(s) and the remaining amount (15% or less) was incurred for the benefit of the small business seeking refinancing; or

ii) If the Eligible Fixed Asset(s) was originally financed through a commercial loan (hereafter the "original loan") that was subsequently refinanced one or more times:

(a) Substantially all (85% or more) of the proceeds of the original loan was used to acquire an Eligible Fixed Asset(s) and the remaining amount (15% or less) was incurred for the benefit of the small business seeking the refinancing; and

(b) The existing debt is the most recent refinancing of the original loan;

b) Was incurred not less than 2 years prior to the date of application. A commercial loan that was refinanced within the two years prior to the date of application (the most recent loan) may be deemed eligible if its purpose was to extend the maturity date without advancing any additional proceeds (except to cover closing costs) and the collateral is, at a minimum, the same as for the original eligible loan. The CDC must submit to SLPC the loan documents and lien instruments for both the most recent loan and the loan it refinanced;

c) Was for the benefit of the small business seeking the refinancing;

d) Has been secured by the Eligible Fixed Asset for at least 2 years;

e) Has been "current on all payments due" for not less than 1 year preceding the date of application. Any delinquency in payment on the loan to be refinanced after approval and before debenture funding must be reported to SBA as an adverse change. "Current on all payments due" means that no payment was more than 30 days past due from either:

i) The original payment terms; or

ii) Modified payment terms (whether through a modification to an existing Note or through a refinancing that results in a new Note). Such modification (or refinancing) must have been agreed to in writing by the Borrower and the Lender of the existing debt no less than one year preceding the date of application, except that a modified or refinanced loan may be allowed if the purpose of the modification or refinancing was to extend the maturity date of the loan, including any balloon payment, and during the 1-year period prior to the date of application (i.e., in the months prior to and after the modification or refinancing):

(a) The Borrower was considered current on all payments due,

(b) There have been no deferments of any payments, and

(c) No additional proceeds were advanced through the modification or refinancing (except to cover closing costs);

f) Is not subject to a guarantee by a Federal agency or department (Please note that this is one of the statutory requirements for a debt to be eligible for this debt refinancing program for which an exception to policy cannot be granted);

g) Is not a Third Party Loan which is part of an existing 504 Project; and

h) May consist of a combination of two or more loans, provided that each of the loans satisfies the Qualified Debt requirements.

iv. "Eligible Fixed Assets" are one or more long-term fixed assets, such as land, buildings, machinery, and equipment, acquired, constructed, or improved by a small business for use in its business operations.

v. "Refinancing Project" means the fair market value of the Eligible Fixed Asset(s) securing the Qualified Debt and any other fixed assets acceptable to SBA. (Additional fixed assets may be added only when needed to comply with the 90% Loan-to-Value Limitation described in C.10.d., below).

vi. When the Refinancing Project involves a Limited or Special Purpose Property (see the Limited or Special Purpose Property List at paragraph E, 1.c.i.c) below), the Borrower must comply with the Borrower contribution requirements in paragraph E.1.c, below.

vii. "Eligible Business Expenses (EBE)":

a) Are limited to the operating expenses of the business that were incurred but not paid prior to the date of application or that will become due for payment within 18 months after the date of application. This includes accrued expenses such as salaries, rent, utilities, inventory, and other expenses of the business that are not capital expenditures.

b) May not include any other debt of the business, except that business lines of credit and business credit card debt may be included so long as:

i) Loan proceeds are not used to cover any personal expenses;

ii) If the line of credit and/or credit card was used for personal expenses, the Applicant must identify which purchases were for personal expenses and deduct that amount from the amount to be refinanced as an EBE;

iii) The line of credit and/or credit card are in the name of the small business; and

iv) The Applicant and the CDC certify in the loan application that the debt being refinanced was incurred exclusively for EBE.

c) If the Borrower is requesting that the refinancing include EBE, the application must include a specific description and an itemization of the amount of each expense.

d) The CDC must retain in its file the following EBE documentation:

i) EBE must be itemized (a gross figure is not acceptable).

ii) The CDC's credit memorandum must:

(a) Document the nature of the EBE;

(b) Provide the itemization of EBE; and

(c) Include the CDC's certification that the EBE are eligible.

viii. In accordance with 13 CFR §120.882(g)(5), the funding for the Refinancing Project must come from three sources based on the current fair market value of the fixed assets serving as collateral for the Refinancing Project, including an amount from the Third Party Lender that is at least as much as the 504 loan (net debenture proceeds), not more than 40% from the 504 loan, and not less than either a 10% or 15% contribution from the Borrower as determined under 13 CFR §120.882(g)(5).

ix. If the Qualified Debt is not fully satisfied by the funding provided by the Refinancing Project, the lender of the Qualified Debt must take one of the following actions, or some combination thereof, to address the deficiency:

a) Forgiveness of all or part of the deficiency;

b) Acceptance of payment by the Borrower; or

c) Require the Borrower to execute a note for the balance or any portion of the balance. This note must be subordinate to the 504 loan if secured by any of the same collateral.

x. If the Qualified Debt (including the original loan as defined in paragraph 10.c.iii.a)(2) above) was for the construction of a new building, or the acquisition, renovation, or reconstruction of an existing building, and such loan would not have satisfied the leasing policies set forth in 13 CFR §§ 120.131 and 120,870(b), Borrower must be able to demonstrate compliance with 13 CFR 120.131(b) for existing buildings as of the date of application for assistance.

d. Loan-to-Value Limitations.

i. For projects that refinance only Qualified Debt, the maximum loan to value of the Refinancing Project allowed is 90%.

ii. For projects when the amount of Qualified Debt being refinanced is more than 90 percent of the value of the Eligible Fixed Asset(s) securing the Qualified Debt, the Borrower must provide additional cash or other fixed asset collateral acceptable to SBA so as not to exceed a 90% loan to value of the Refinancing Project.

iii. For any projects that include the financing of Eligible Business Expenses, a maximum 85% loan to value of the Refinancing Project will apply and the Eligible Business Expenses portion of the Project may not exceed 20% of the value of the Eligible Fixed Asset(s) securing the Qualified Debt. The value of the Refinancing Project may not be increased by adding additional collateral.

e. Fees.

i. In addition to the annual guarantee fee assessed under 13 CFR § 120.971(d)(2), Borrower must pay SBA a supplemental annual guarantee fee to cover any additional cost attributable to the refinancing in an amount established by SBA each fiscal year. The CDC should follow the instructions on the Authorization for Debenture Guaranty to ensure the fee is correct.

ii. SBA will review the fee annually to determine whether it needs to be changed and, if so, will issue a notice of any change.

f. Other Implementation Guidelines.

i. Borrower must meet all current 504 Loan Program occupancy requirements at time of application.

ii. Loan applications for Debt Refinance without Expansion must be processed by SBA and may not be approved by CDCs under PCLP authority.

iii. Loans for Debt Refinance without Expansion must be disbursed within 9 months after loan approval. The D/FA or designee, may approve a request for extension of the disbursement period for an additional 6 months for good cause.

g. Documentation Requirements.

i. Credit memorandum. The CDC must provide an analysis in its credit memorandum that the proposed debt refinancing satisfies each of the requirements of this debt refinancing program, including the requirements described in paragraphs 10.c.i, 10.c.iii.a) – h), 10.c.vii.a) – d), 10.c.viii, 10.c.ix, 10.c.x, and 10.d. above.

ii. In its commitment letter (Exhibit 15 of SBA Form 1244), the Third Party Lender must certify that it has no reason to believe that the following statements in paragraphs a) and b) below are not true:

a) Either:

i) Substantially all (85% or more) of the proceeds of the indebtedness being refinanced were used to acquire an Eligible Fixed Asset (*e.g.,* land, including a building situated thereon, to construct a building thereon, or to purchase equipment) and the remaining amount (15% or less) was incurred for the benefit of the small business seeking the refinancing; or

ii) If the Eligible Fixed Asset(s) was originally financed through a commercial loan (the "original loan") that was subsequently refinanced one or more times:

(a) Substantially all (85% or more) of the proceeds of the original loan was used to acquire an Eligible Fixed Asset (*e.g.,* land, including a building situated thereon, to construct a building thereon, or to purchase equipment) and the remaining (15% or less) was incurred for benefit of the small business seeking the refinancing; and

(b) The existing debt is the most recent refinancing of the original loan.

b) All of the proceeds of the indebtedness being refinanced were used for the benefit of the small business.

c) In addition, if the indebtedness being refinanced is debt of the Third Party Lender, or any of its affiliates (Same Institution Debt), the Third Party Lender must certify in its commitment letter that it is not in a position to sustain a loss on the Refinancing Project causing a shift to SBA of all or part of a potential loss from the existing debt.

iii. Transcripts. The CDC must submit a transcript of the previous 12-month payment history on the Qualified Debt being refinanced which confirms that the Borrower is "current on all payments due" for not less than 1 year preceding the date of application (Exhibit 21 of SBA Form 1244).

iv. Appraisal. Appraisals are not required at time of application. Appraisals dated within 12 months of the date the application was approved are required prior to closing, and appraisals must otherwise comply with the requirements for appraisals in paragraph E.2.b, below.

v. Documentation to Verify Lien(s) at Application. In considering the Borrower's application, the CDC must obtain evidence that lien(s) are securing the Qualified Debt with Eligible Fixed Asset(s), and state in its credit memorandum that it has verified that the lien(s) has been in place for at least 2 years prior to the date of application. The CDC must retain the

evidence of the liens in its records (e.g., Preliminary Title Report, Mortgage Deed of Trust, or UCC-1 filing).

vi. Interim Lender Documentation. The Interim Lender must execute SBA Form 2288R, Interim Lender Certification for Refinancing Program, similar to what is required in all 504 closings.

h. Same Institution Debt.

i. When the loan being refinanced is Same Institution Debt (as defined in 13 CFR § 120.882(g)(15)), the Third Party Lender may modify its existing loan documents (Note, Deed of Trust/Mortgage, etc.) instead of requiring the Borrower to execute and record new loan documents for the Third Party Loan.

ii. All modified loan documents must meet SBA's regulatory requirements for a Third Party Loan (see 13 CFR §§ 120.920 and 120.921).

iii. When the loan being refinanced is Same Institution Debt, either an Interim Loan or an escrow account may be used, and:

a) The Third Party Lender (who, in this case, is also the Lender of the debt being refinanced) must execute SBA Form 2416, "Lender Certification for Refinanced Loan."

b) The CDC may create an escrow account ("account") at the time of closing of the 504 loan for the purpose of holding the Borrower's cash contribution, if any, and the net debenture proceeds.

c) The account will be established in accordance with an Escrow Agreement, which must be executed by the Borrower, the Third Party Lender, the Escrow Agent, and the CDC. The account may be held by the CDC attorney, Title Company or other party approved by SBA District Counsel.

d) The Borrower's cash contribution, if any, must be deposited into the account at the time of closing of the 504 loan.

e) A copy of the Escrow Agreement must be provided to the SBA's District Counsel with evidence of funding by Borrower's cash contribution, if any, at the time of closing of the 504 loan.

f) The net debenture proceeds must be wired to the account, and all funds may be released only upon written approval by the CDC and SBA, provided that CDC/SBA have the required lien positions on the collateral as set forth in the Authorization and Debenture Guaranty.

g) The debt to be refinanced will be satisfied by payment of the escrowed funds to the Third Party Lender.

i. A 504 Project cannot be approved to refinance debt owed:

i. To an Associate, which is prohibited by 13 CFR § 120.130(a);

ii. To an SBIC or a New Markets Venture Capital Company (NMVCC), which is prohibited by 13 CFR § 120.130(b); or

iii. 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).

11. Permissible Debt Refinancing with Expansion

13 CFR § 120.882(e)

504 Projects may include a limited amount of debt refinancing with expansion, as follows:

a. If the Project involves expansion of an 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. A "Project involves Expansion" if it involves the acquisition, construction, or improvement of land, building or equipment for use by the Applicant.

b. The CDC must provide an analysis in its credit memorandum that the proposed debt refinancing satisfies each of the requirements below:

i. Either:

a) Substantially all (85% or more) of the proceeds of the existing debt was used to acquire a fixed asset(s) that was eligible for financing under the 504 loan program and the remaining amount (15% or less) was incurred for the benefit of the small business seeking refinancing; or

b) If the fixed asset(s) was originally financed through a commercial loan (hereafter the "original loan") that was subsequently refinanced one or more times:

i) Substantially all (85% or more) of the proceeds of the original loan was used to acquire the fixed asset(s) and the remaining amount (15% or less) was incurred for the benefit of the small business seeking the refinancing; and

ii) The existing debt is the most recent refinancing of the original loan.

ii. The existing indebtedness is collateralized by fixed assets.

iii. 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 (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.

iv. The existing indebtedness was incurred for the benefit of the small business concern.

a) The small business for which the debt is being 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 this paragraph and either: both the Third Party Loan and the 504 loan are being refinanced; or 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))

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 § 120.820 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.

v. 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.

vi. 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.

vii. 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 1 year (or for the time the debt has been open if less than 1 year). Any unremedied delinquency after approval must be reported to SBA as an adverse change.

viii. 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.

c. 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)

d. Whether the new project is within the CDC's area of operation is based on the assets newly acquired for the business and not on 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.

e. Instruments resulting in transfer of ownership of the property to the Applicant may be eligible for refinancing, including, but not limited to, land sales contracts, contracts for deed or capital leases.

f. The purchase of property under an operating lease is eligible for 504 financing, but the operating lease itself is not eligible for debt refinancing.

g. In order to be eligible for debt refinancing, a copy of the corresponding debt and lien instruments must be submitted with the application.

h. Equity in land and/or building that is being refinanced may be included as Borrower's equity as set forth under present policy.

i. In its commitment letter (Exhibit 15 of SBA Form 1244), the Third Party Lender must certify that it has no reason to believe that the statements in paragraphs i. and ii. below are not true:

   i. Either:

      a) Substantially all (85% or more) of the proceeds of the indebtedness being refinanced were used to acquire an Eligible Fixed Asset (*e.g.,* land, including a building situated thereon, to construct a building thereon, or to purchase equipment) and the remaining amount (15% or less) was incurred for the benefit of the small business seeking the refinancing; or

      b) If the Eligible Fixed Asset(s) was originally financed through a commercial loan (the "original loan") that was subsequently refinanced one or more times:

         i) Substantially all (85% or more) of the proceeds of the original loan was used to acquired an Eligible Fixed Asset (e.g., land, including a building situated thereon, to construct a building thereon, or to purchase equipment) and the remaining amount (15% or less) was incurred for the small business seeking the refinancing; and

         ii) The existing debt is the most recent refinancing of the original loan.

   ii. All of the proceeds of the indebtedness being refinanced were used for the benefit of the small business.

   iii. In addition, if the indebtedness being refinanced is debt of the Third Party Lender, or any of its affiliates (Same Institution Debt), the Third Party Lender must certify in its commitment letter that it is not in a position to sustain a loss causing a shift to SBA of all or part of a potential loss from the existing debt.

j. A 504 Project cannot be approved to refinance debt owed:

   i. To an Associate, which is prohibited by 13 CFR § 120.130(a);

   ii. To an SBIC or a New Markets Venture Capital Company (NMVCC), which is prohibited by 13 CFR § 120.130(b); or

   iii. 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)

12. Eligible Administrative Costs

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. For more information on fees, see Section A, Ch. 5, Para. E, 504 Loan Program Fees and Use of Agents, in this Part. Examples of Borrower's out-of-pocket costs include:

a. Settlement agent's fees;

b. Overnight delivery, postage, and messenger services;

c. Certifications required by SBA (such as earthquake, flood, IRS, Certificate of Occupancy, and certificate of completion); and

d. Copying costs attributable to the above.

13. 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 acquisition of any other assets such as receivables or goodwill is not an eligible use of 504 loan proceeds or Third Party Loan proceeds and must be financed by other means, which may include a 7(a) loan;

ii. The application documents that jobs will be created or retained because of the change of ownership. The application must demonstrate that there is a reasonable basis upon which to conclude that the retained jobs would be lost without the change of ownership. This can be in the form of a statement from the seller to that effect with supporting facts or other certification acceptable to the SLPC.

iii. Loan proceeds may be used to finance a change of ownership in an EPC when the asset(s) of the EPC are limited to real estate and/or other eligible long-term fixed assets that the EPC leases to one or more Operating Companies ("OC") for conducting the OC's business. SBA recognizes that an EPC's balance sheet may include limited assets in addition to the real estate or other eligible long-term fixed assets, such as capital replacement reserves or escrow accounts for taxes and/or insurance (such assets are ineligible assets). In such case, 504 loan proceeds may be used to finance a change of ownership between existing owners of the EPC as long as:

a) The ineligible assets are directly related to the real estate or other eligible long-term fixed assets;

b) The amount attributable to such ineligible assets is de minimis; and

c) The ineligible assets are excluded from the Project financing.

See Section A, Ch. 2, Para. A, Eligible Passive Companies of this Part for more information on EPC/OC requirements.

b. The 504 loan proceeds must not be used to purchase stock or any other ownership interest in a business unless, by purchasing the stock or other ownership interest, the Applicant is purchasing the real estate where the Applicant is located and/or other eligible long-term fixed assets used in the Applicant's business operation. To the extent the value of the stock or other ownership interest exceeds the value of the real estate and/or other eligible long-term fixed assets ("excess value"):

   i. The excess value cannot be financed by the Project financing; it must be financed separately; and

   ii. The excess value must be de minimis compared to the value of the real estate and/or other eligible long-term fixed asset(s).

c. The change of ownership must result in the Applicant owning 100% of the business.

d. The seller may not remain as an officer, director, stockholder or Key Employee of the business.

e. All other 504 Loan Program Requirements must be met.

14. Pre-Existing Debt on the Project Property

13 CFR § 120.922

In addition to its share of Project cost, a 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.

15. Ineligible Costs

13 CFR § 120.884

Any costs not directly attributable to or necessary for the Project may not be paid with proceeds of the 504 loan.

16. Ineligible 504 Projects

13 CFR § 120.881

a. Relocation out of a Community – A Project cannot be approved under the 504 Loan 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 13 CFR §§ 120.881(a)(1) and (2); and

b. Projects in foreign countries.

D. 504 LOAN AND DEBENTURE TERMS AND CONDITIONS

The terms of the Third Party Loan are defined in 13 CFR § 120.921. Also see Paragraph B.1, Third Party Lender Participation of this Chapter.

1. Debenture Limits (Minimum and Maximum)

13 CFR § § 120.930 and 120.931

Net Debenture Proceeds is defined in 13 CFR 120.802 as the portion of Debenture proceeds that finance eligible Project costs (excluding administrative costs). The Gross Debenture is the Net Debenture Proceeds plus the eligible administrative costs. The Gross Debenture is subject to the following dollar limits and conditions:

a. The minimum dollar amount for a debenture is $25,000. 13 CFR § 120.930(b)

b. For all 504 Projects except for Eligible Energy Public Policy Projects and Projects for Small Manufacturers, the gross debenture is limited to an outstanding balance of $5,000,000 maximum in the aggregate for each small business concern, including its affiliates.

   This limit applies to all 504 Projects except for the Projects identified in c. and d. below. In addition, in calculating this limit, SBA loan guaranties, committed or outstanding, that the Applicant and its affiliates have received through the 504 or 7(a) (including Community Advantage) loan programs must be included.

c. Eligible Energy Public Policy Projects

   $5,500,000 maximum for each eligible project (see Paragraph A.2.a.i. of this Chapter, Projects for the reduction of existing energy consumption by at least 10%, and Paragraph A.2.a.ii of this Chapter, Renewable energy sources that generate more than 15% of energy used at Project Facility, for more information on Projects that are eligible for the $5,500,000 debenture limit).

   i. The outstanding Gross Debentures issued for a small business concern, including affiliates, for Eligible Energy Public Policy Projects must not exceed $16,500,000 in the aggregate.

   ii. The $5,500,000 limit for each Project is not reduced by any other outstanding SBA loan guaranties that the Borrower and its affiliates have received through other SBA loan programs.

   iii. Loans made for Eligible Energy Public Policy Projects do not reduce the $5,000,000 limit for each small business concern for other 504 Projects.

d. Projects for Small Manufacturers

   $5,500,000 maximum for each eligible project, 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.

   The $5,500,000 limit for each Project is not reduced by any other outstanding SBA loan guaranties that the Borrower and its affiliates have received through other SBA loan programs.

2. Loan Maturities

13 CFR § 120.933

a. Maturity of the 504 loan is 10, 20, or 25 years based upon the remaining useful life of the property being financed as follows:

i. A maximum of 25 years for real estate;

ii. A minimum of 10 years for machinery and equipment; and

b. When the Project includes both real estate and machinery and equipment, the maturity will be based on the asset category that constitutes the majority of loan proceeds.

c. A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 or 25 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization. (13 CFR § 120.921(a))

3. Interest Rates

The interest rate for 10, 20, and 25 year 504 debentures is based on market conditions for long-term government debt at the time of sale. Most commonly, the 10-year Treasury Rate is used as a benchmark for the 20-year and 25-year debenture rates, and the 5-year Treasury Rate is used as a benchmark for the 10-year debenture rate. (13 CFR § 120.932)

Interest rates for the Third Party Loan must be reasonable. SBA will publish in the Federal Register and on the Agency's website a maximum interest rate (or "Peg" rate) for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed. (13 CFR § 120.921(b))

E. CREDIT STANDARDS

The policies that make up SBA's credit standards begin with the requirements outlined in 13 CFR §§ 120.101 and 120.150. This section provides procedural guidance as to what the Lender should or must consider when analyzing any request for financial assistance that will be guaranteed by SBA.

Certified Development Companies (CDCs) must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. The analysis must be acceptable to SLPC. On 504 loans, the cash flow of the Applicant is the primary source of repayment, not any expected recovery from the liquidation of collateral. Thus, if the CDC's financial analysis demonstrates that the 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. The credit strengths and weaknesses of the proposed project must be identified and discussed by the CDC along with any mitigating factors.

1. CDC Credit Memorandum

The CDC's credit memorandum must address the following:

a. Pro-Forma Balance Sheet Analysis

i. A pro-forma balance sheet is created from a current business balance sheet that has been adjusted for all changes in assets and liabilities as a result of the Project, including the Third Party Loan, 504 loan, other new debt, any

required equity injection, the use of loan proceeds, and the costs of getting the loan(s) (such as fees and closing costs).

ii. The pro-forma balance sheet analysis must include a complete debt schedule and discussion on the types and terms of the existing loans, debt, or credit facilities.

iii. The CDC must identify and discuss issues resulting from any anomalies or variances on the balance sheet.

b. Repayment Ability Analysis

The analysis must address the following:

i. If the Applicant is meeting SBA Size Standards under the:

a) Alternative Size Standards – Include balance sheets, income statements, and Federal income tax returns for the previous 2 years, or the number of years the Applicant has generated revenue, whichever is less,

b) Industry Size Standard - Include balance sheets, income statements, and Federal income tax returns for the previous 3 years, or the number of years the Applicant has generated revenue, whichever is less.

ii. The repayment ability analysis must address debt service coverage. Debt Service is defined as the future required principal and interest payments on all business debt inclusive of new SBA loan proceeds. The Applicant's debt service coverage ratio (operating cash flow divided by debt service) must be equal to or greater than 1:1 based on calculations acceptable to SLPC.

iii. If the historical cash flow does not show sufficient debt service coverage after the effects of the SBA loan, the CDC must analyze projections in accordance with subparagraph v., "Projection-based projects," below.

iv. Balance sheet and income statement dated within 120 days prior to submission to SBA, including analysis of debt service coverage, aging of accounts receivable and accounts payable.

v. Projection-based projects:

a) For projection-based projects, the analysis must include a minimum of 2 years of projections.

b) The CDC must calculate the projected debt service coverage and provide the assumptions supporting the projected cash flow coverage.

c) The analysis must support and justify the reasonableness and attainability of the assumptions, including as applicable:

i) Justification for anticipated sales volume and/or revenue growth as a result of new product lines, sales channels, and new production facilities;

ii) Justification for any reduction in expenses; and

iii) Comparison to current industry trends.

d) If the projections show repayment in Year 2 but not in Year 1, sufficient liquidity must be shown to cover the shortfall in Year 1.

e) If applicable, the CDC must describe how the Applicant will make interest payments and pay for operations during construction.

c. Borrower's Contribution

i. The Borrower must contribute cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property) to the Project, in an amount equal to the following, excluding administrative costs:

a) All Borrowers must contribute at least 10%;

b) New businesses must contribute at least 15%. The Debenture will finance no more than 35% of the Project and at least 50% of the Project financing will be from state or local government, banks or other financial institutions, or foundations or other non-profit institutions;

c) Businesses with a Limited or Special Purpose Property:

i. Must contribute at least 15%, in which case the Debenture will finance no more than 35% of the Project and at least 50% of the Project financing will be from state or local government, banks or other financial institutions, or foundations or other non-profit institutions.

ii. For any business (including affiliates) that has an outstanding debenture for a Project involving a Limited or Special Purpose Property, for each subsequent Project involving a Limited or Special Purpose Property, the Borrower must contribute at least 20%, unless the project is a debt refinance with expansion in accordance with 13 CFR 120.882(e) of the original 504 project at the same location. (See Chapter 7 of this Section for Gross Debenture limits (13 CFR § 120.151).)

iii. If the Borrower contributes at least 20% under this paragraph c), the Debenture will finance no more than 30% of the Project and at least 50% of the Project financing will be from state or local government, banks or other financial institutions, or foundations or other non-profit institutions.

iv. **CDCs must address whether the Project Property is Limited or Special Purpose in their credit memorandum and include an explanation of their conclusion**.

v. Below is a list that contains examples of properties that SBA considers to be a Limited or Special Purpose Property. This list is not intended to be all-inclusive and SBA may determine that other properties meet the Limited or Special Purpose Property definition.

a) Amusement parks;

b) Bowling alleys;

c) Car wash businesses;

d) Cemeteries;

e) Cold storage facilities where more than 50% of total square footage is equipped for refrigeration;

f) Dormitories;

g) Farms, including livestock and dairy facilities;

h) Funeral homes with crematoriums;

i) Gas stations;

j) Golf courses;

k) Hospitals, surgery centers, urgent care centers, and other health or medical facilities;

l) Hotels, motels, and other lodging facilities;

m) Marinas;

n) Mines;

o) Nursing homes, including assisted living facilities;

p) Oil wells;

q) Quarries, including gravel pits;

r) Railroads;

s) Sanitary landfills;

t) Service centers (e.g., oil and lube, brake, or transmission centers) with pits and in-ground lifts;

u) Sports arenas;

v) Swimming pools;

w) Tennis clubs;

x) Theaters and auditoriums; and

y) Wineries.

d) If a Project will finance both a New Business and a Limited or Special Purpose Property, the Applicant is required to contribute at least 20% of the Project cost. The Debenture will finance no more than 30% of the Project and at least 50% of the Project financing will be from state or local government, banks or other financial institutions, foundations or other non-profit institutions.

ii. The additional Borrower's contribution will reduce the SBA's portion of the financing.

iii. The Borrower's equity in land and/or buildings previously acquired may be counted toward the Borrower's contribution if the land and/or buildings are part of the Project.

iv. If the Borrower's contribution is borrowed:

a) Any lien position on the Project Property must be subordinate to the 504 loan;

b) Only in situations where the borrowed contribution is collateralized by the Project Property, 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 in writing 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. Additional Borrower's Contribution and/or Collateral

The required Borrower's contribution, as set forth in paragraph 1.c. immediately above, and collateral, as set forth in paragraph 2.a. of this Chapter below, on SBA 504 loans are the minimums required by policy. However, in some cases it may be appropriate to consider additional Borrower contribution and/or collateral to mitigate the credit weaknesses of a proposed project. Examples of such credit weaknesses include:

i. Marginal historical or projected cash flow;

ii. Limited working capital;

iii. Recent significant increase in debt;

iv. Restricted or limited customer base;

v. Limited or no net worth.

This list is not intended to be all-inclusive and SBA may determine that other circumstances necessitate additional Borrower contribution and/or collateral.

e. Global Cash Flow Analysis

The following may be included in the global cash flow analysis. Note: Repayment ability is determined based on the operating company cash flow analysis.

i. Personal discretionary income analysis with outside income:

a) Any income not generated from the Applicant, such as spousal income, affiliate income, or interest income is considered outside income.

b) Outside income can be used to offset personal obligations and living expenses. However, outside income may not be added to the business cash flow because repayment ability analysis must be based on the cash flow of the business.

ii. Rental Income

Anticipated cash flow from rental income from the Project Property may be included in the global cash flow analysis. However, it must not be included in the repayment ability analysis.

f. Independent Studies or Reports

Reports prepared independently of the small business may be beneficial in mitigating any weaknesses identified in the credit analysis. Examples of these independent studies/reports may include:

i. Feasibility studies;

ii. Hospitality facility assessment reports;

iii. Energy audits; and

iv. Franchise assessment reports.

g. Feasibility Studies

SBA has the regulatory authority to request a feasibility study when it is needed to further understand the small business type and market conditions at the project location. The SLPC Director will request a feasibility when appropriate. The following may cause SBA to request a feasibility study:

i. Market saturation by industry type and location;

ii. Unique market concept;

iii. Highly specialized Project property;

iv. Project size disproportionate to size of community it will serve; or

v. Significant rapid growth of the Applicant and/or affiliate group with a corresponding increase in undisbursed and/or unseasoned debt.

h. Ratio Analysis

A ratio analysis of the Federal tax returns and interim financial statements including comments on any trends and a comparison with industry averages. The analysis must include a review of calculations (based on the pro-forma Balance Sheet and historical and projected Income Statements) for the following financial ratio benchmarks:

i. Current Ratio;

ii. Debt/Tangible Net Worth;

iii. Debt Service Coverage;

iv. Any other ratios that are relevant for the business/industry (e.g., inventory turnover, receivables turnover, and payables turnover, etc.) including discussion of the CDC's comparison to industry trends.

i. Owners or Manager's Experience

A discussion of the owners' and managers' relevant experience in the type of business, as well as their personal credit histories. A description and history of the business including:

i. Nature of the business;

ii. Length of time in business under current management;

iii. Depth of management experience in the industry or a related industry;

iv. Brief description of the business's management team including principal's involvement in the daily onsite management of the business or how the daily operations will be managed if the principals are not there on a daily basis.

j. Collateral Analysis

The CDC must discuss the collateral and lien position.

k. Life Insurance Analysis

The CDC must include a discussion of its analysis whether life insurance is required in accordance with Section A, Ch. 6 Para. C.5, Life Insurance. If life insurance is required, include the calculation of the amount required. If the CDC determines the viability of the business is not tied to an individual, include an explanation of this determination.

l. Credit Reports

CDCs are required to obtain and review credit reports for the small business concern applying for the loan, all owners who are guarantors and affiliates who are guarantors. The analysis must include a discussion of the Applicant's credit history, including a review of business credit reports and any experience the CDC may have with the Applicant. Credit reports are not required on non-guarantor affiliates.

m. Current on Taxes

The CDC must verify the Applicant is current on all Federal, State, and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes and sales taxes. For more information, see Section A, Ch. 4, Para. B.7, Payment of Delinquent Taxes, in this Part.

n. No Prior Loss to the Government or Delinquent Federal Debt

SBA may not approve a 504 loan to an Applicant who has a Prior Loss to the government or Delinquent Federal Debt. For more information, see Section A, Chapter 3, Para. A.15, Prior Loss to the Government, and Para. A.16, Delinquent Federal Debt, in this Part.

o. Payment Delinquencies, Liens and Bankruptcies

The CDC's credit memorandum must include discussion on payment delinquencies, judgements, liens, bankruptcy filings, pending litigation, Federal or state tax filings or other relevant information from the credit reports.

p. Affiliate Financial Statements

The last 2 fiscal year-end financial statements and/or Federal income tax returns of affiliates (or 3 years, if the Industry Size Standard is used to qualify for SBA Size Standard) should be included in the CDC's submission to SLPC. The CDC must also provide an analysis of these returns and statements including a complete debt schedule and discussion on the types and terms of the existing loans, debt, or credit facilities.

q. Franchise, License, Dealer, Jobber and Similar Agreements

If the Applicant's brand meets the FTC definition of a franchise, the CDC must identify the name of the franchise and the SBA Franchise Identifier Code when entering the application into E-Tran.

If the CDC determines that the Applicant's brand does not meet the FTC definition of a franchise and it is not on the SBA Franchise Directory, the CDC needs to explain its determination and provide the agreement and any additional documentation required by the brand. The CDC also must provide contact information for the franchisor/licensor (name and email address only).

For CDCs processing the loan under PCLP CDC authority, if the business is or will be operating under a franchise/license/dealer/jobber or similar agreement that meets the FTC definition of "franchise," the PCLP CDC must document its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the application in to E-Tran. (If the Applicant operates under multiple brands, CDC must enter into E-Tran the name and SBA Franchise Identifier Code, if applicable, in the credit memorandum.) of the brand that generates the largest amount of the Applicant's revenue and identify all other brands and their SBA Franchise Identifier Codes, if applicable. If the Applicant's brand is not on the Directory and the PCLP CDC determines the brand does not meet the FTC definition, the CDC must submit the documents to franchise@sba.gov for a final determination by SBA. The CDC must provide contact information for the franchisor/licensor (name and email address only). After receiving SBA's final determination, the PCLP CDC may proceed with approving the loan under its PCLP authority.

See Section A, Ch. 1, Para. D.6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements, of this Part for more information.

r. Miscellaneous Matters that the CDC Must Address in the Credit Memorandum

i. Applicant is eligible for SBA financial assistance under SBA Loan Program Requirements.

ii. The Interim Loan (if any):

a) Does not cover the Applicant's contribution;

b) Source has the experience and qualifications to monitor properly all Project construction and program payments

c) Source is not:

i) From any SBA Program, directly or indirectly; or

ii) The Applicant or an Associate of the Applicant; and

d) Terms and conditions of the financing are acceptable.

iii. The Third Party Loan:

a) Is at least as much as the 504 Loan (net debenture proceeds);

b) Has a term of at least 7 years for a 10-year debenture and at least 10 years for a 20-year or 25-year debenture;

c) Interest rate is reasonable.

iv. Any financing provided by the seller of the Project Property is subordinate to the 504 loan and may not be prepaid without SBA consent.

v. None of the 504 loan proceeds are being used to provide or refinance funds used for payments, distributions, or loans to Associates of the Applicant.

vi. The Debenture Pricing.

vii. If Applicant is an Eligible Passive Company:

a) The EPC and OC are both eligible for SBA financial assistance under SBA Loan Program Requirements;

b) The EPC will use the 504 loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases 100% to the OC;

c) The lease between the EPC and the OC will:

i) Be in writing;

ii) Have a remaining term at least equal to the term of the loan (including options to renew exercisable solely by the OC);

iii) Be subordinated to SBA's lien on the property; and

iv) Have rents that will be assigned as collateral for the loan.

viii. The Gross Debenture amount does not exceed the amounts established by SBA Loan Program Requirements.

ix. The Applicant's use of proceeds complies with SBA Loan Program Requirements.

x. Whether the loan is for the following special purpose or the Applicant is or does one of the following: Disabled Assistance Loan Program (DAL), Energy Conservation, Qualified Employee Trusts (ESOP), or Pollution Control Program. If so, PCLP CDCs may not approve the loan under their delegated PCLP authority.

2. Collateral and Appraisals

Note: Environmental Policies and Procedures are located in Section A, Ch. 6, Para. E of this Part.

a. Collateral

i. SBA's 504 Collateral Policy 13 CFR §120.934

When assessing the adequacy of collateral, the CDC must consider the impact that covenants and other restrictions recorded against the collateral may have on its value and marketability. The CDC must document this analysis in the file. Examples of items to review include:

a) Deed restrictions, covenants, easement provisions, reversionary interests, subordinations, leases and options and other provisions that restrict the use of the property for the benefit of a third party (note: certain deed restrictions pertaining to the use of the property, which are intended to protect the health and safety of occupants, may be acceptable, e.g., deed restrictions based upon environmental concerns including restrictions on residential use, use as a day care center for children or seniors, use as a school, or use as a hospital); and

b) 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.

SBA usually takes a second lien position on Project Property but may have a shared lien (pari passu) with the Third Party Lender.

ii. Adequacy of Collateral:

a) SBA's second lien position will generally be considered adequate. SBA may consider other factors in determining the adequacy of SBA's collateral including but not limited to the following:

i) Strong, consistent cash flow that is sufficient to cover the debt;

ii) Demonstrated, proven management;

iii) The Applicant has been in operation for more than 2 years; and

iv) The proposed Project is a logical extension of the applicant's current operations.

b) Because leasehold improvements provide minimal collateral value, the CDC must consider requiring additional collateral. 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) If the loan is not fully collateralized by business assets, available personal assets must be pledged to secure the guaranty. See Section A, Ch. 6, Para. A, Guaranties, of this Part for more information.

d) Lien position on real estate is generally evidenced by a title insurance policy. If the title insurance policy contains a clause requiring arbitration or a clause allowing either party to demand arbitration in the case of a dispute, an endorsement to the policy must be obtained deleting that condition. If the policy requires that both parties agree to arbitration, no endorsement is necessary.

iii. Third Party Loan:

a) The Third Party Lender usually has a 1st lien on the Project Property, and SBA cannot guarantee these loans. (13 CFR § 120.920)

b) 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):

i) The Borrower assumes an existing note as part of the total financing;

ii) The FDIC has carry-back financing; or

iii) 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. For more information on eligibility of OREO property, see Section A, Ch. 3, Para. A.1.g. of this Part.

c) SBA's lien position must not be subordinate to loans made from the proceeds of a tax-exempt obligation.

iv. 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:

a) Taking, along with the Third Party Lender, lien positions based upon proportional shares in the financing of the Project;

b) 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;

c) Requiring additional equity or collateral; or

d) Removing the shorter term assets from the Project and have them financed by another source.

b. Appraisals

13 CFR § 120.160(b)

i. Commercial Real Estate:

a) Appraisals and Evaluations:

i) SBA requires a real estate appraisal if the estimated value of the Project Property is greater than $500,000.

ii) If the estimated value of the Project Property is $500,000 or less:

(a) The CDC must obtain an appraisal under the following circumstances:

(i) Equity in land owned for 2 years or more is being contributed as part of Borrower's contribution;

(ii) The real estate is Third Party Lender's OREO property (see Section A, Ch. 3, Para. A.1.g. of this Part for more information);

(iii) If the loan finances a transaction involving parties with a close relationship (for example, transactions between existing owners or family members);

(iv) The seller of the property is carrying back a loan that is part of the Borrower's contribution; or

(v) If SBA or the CDC otherwise concludes that an appraisal is necessary to appropriately evaluate creditworthiness.

(b) If an appraisal is not required under the preceding paragraphs, the CDC must obtain an appropriate evaluation of the Project Property being acquired with the loan proceeds that is consistent with safe and sound banking practices. Evaluations are not required to be performed in accordance with USPAP or by a State licensed or certified appraiser but should be consistent with the Interagency Appraisal and Evaluation Guidelines and the Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions, issued by the Federal Banking Regulators.

b) The appraiser must be:

i) Independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and

ii) Either State-licensed or State-certified with the following exception: when the Project Property's estimated value is over $1,000,000, the appraiser must be State-certified.

c) The "Appraisal Report" must be prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and dated no more than twelve months prior to the date of application.

d) 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 intended user. The CDC may not use an appraisal prepared for the applicant. The cost may be passed on to the Borrower.

e) 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, general contractor, project architect, or construction management firm 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 CDC cannot obtain such a statement, then the CDC cannot close the loan without the Sacramento Loan Processing Center's (SLPC) prior written permission.

f) 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.

g) 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).

h) When the collateral is a Special Purpose Property, the appraiser must be experienced in the particular industry.

i) An appraisal must be submitted and approved by the SLPC (except on Delegated loans) prior to closing. If the appraisal comes in at less than 95% of the 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.

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

i) Equity in land owned for 2 years or more is being contributed as part of Borrower's contribution;

ii) The real estate is Third Party Lender's OREO; or

iii) The Project will finance a transaction involving parties with a close relationship (for example, transactions between existing owners or family members).

iv) The seller of the property is carrying back a loan that is part of the Borrower's contribution.

ii. Equipment Appraisal:

SBA requires that an equipment appraisal be obtained when used equipment is part of the Project and is either being purchased from someone other than an equipment dealer or being refinanced. The equipment appraisal needs to be a written document from a person that is qualified to provide a valuation, is independent of the transaction, and has performed an on-site inspection of the equipment. The appraisal must be dated no more than twelve months prior to the date of the application.

iii. 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.

F. SUBMISSION OF LOAN APPLICATION

1. Processing Methods

All 504 loans are processed in the SLPC.

a. Non-delegated (without the use of the Abridged Submission Method): When a CDC submits an SBA 504 application under the non-delegated processing method, the CDC submits the application and supporting documents to SBA through E-Tran. SBA will make the final determination as to the eligibility of the Applicant, use of proceeds, the credit decision, including adequacy of collateral pledged, structure of the loan, and the Borrower's contribution of the Applicant.

b. Abridged Submission Method (ASM): ASM is a streamlined loan application processing procedure, which does not involve the exercise of any delegated authority.

c. Accredited Lenders Program (ALP): SBA delegates to ALP CDCs increased authority to process, close and service 504 loans. (13 CFR § 120.840) CDCs processing loans under their ALP authority will use one of the processing methods as described in this paragraph 1.a. or b.

d. PCLP CDC: Under the Premier Certified Lenders Program (PCLP), SBA delegates to PCLP CDCs increased authority to process, close, service and

liquidate 504 loans, and may also give PCLP CDCs increased authority to litigate 504 loans (13 CFR § 120.845). Loans processed under PCLP CDC authority 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 certain eligibility issues. The SOP indicates where PCLP CDCs are required to process 504 loans using non-delegated processing. The PCLP CDC makes the initial eligibility determination; however, eligibility is reviewed by SBA at loan closing and when conducting CDC oversight activities.

2. Contents of a 504 Loan Application

The CDC must maintain the following documents and any that support the CDC's credit decision in the CDC's loan files. CDC files must be available for review by SBA at any time.

a. The CDC completes or obtains the following:

i. SBA Form 1244, "Application for Section 504 Loan." One hundred percent of the Applicant's ownership and each owner's percentage of ownership must be disclosed on SBA Form 1244 (additional sheets may be attached to the Form 1244 if necessary).

a) If Section Two, question 2 is answered "yes," the loan is not eligible.

b) If question 3 or 4 is answered "yes," the CDC must follow the steps as outlined in Section A, Ch. 3, Para. B, Character Determinations, of this Part prior to submission of the application to the SLPC. The CDC must submit into E-Tran with the application the Character Determination Package and the written clearance received from OFA and must retain these documents in the loan file.

ii. CDC credit memorandum, in accordance with Paragraph E.1, CDC Credit Memorandum, of this Chapter.

iii. Non-PCLP CDC loans: If the business is or will be operating under a franchise/license/dealer/jobber or similar agreement that meets the FTC definition of "franchise," CDC must identify the name of the franchise and the SBA Franchise Identifier Code when entering the application into E-Tran in accordance with Section A, Ch. 1, Para. D.6.g., Procedure to Submit Franchise Loan Applications, of this Part.

The CDC must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. If the CDC determines that the Applicant's brand does not meet the FTC definition of a franchise, and it is not on the Directory, then the CDC needs to explain its determination in its credit memorandum when submitting the application to the SBA loan processing center and provide the agreement and any additional documentation required by the brand. The CDC also must provide contact information for the franchisor/licensor (name and email address only). For PCLP CDCs, see subparagraph xxiii. below.

iv. Copies of key cost documents such as contractor costs, estimates, vendor quotes for machinery and equipment, etc., as well as an itemized listing of estimated professional fees (e.g., appraiser, architect, legal, etc.). Full or partially executed purchase/sale agreements must be included.

v. Independent appraisal for project real estate as required by paragraph 2.b. of this Chapter.

vi. Environmental analysis in accordance with Section A, Ch. 6, Para. E, Environmental Policies and Procedures, of this Part, if applicable.

vii. SBA Form 2481, "Historic Property Borrower Certification," if applicable, in accordance with Section A, Ch. 6, Para. D., Historic Properties.

viii. Letter of intent/term sheet from the Third Party Lender stating the terms and conditions and the reason why it will not finance the entire project.

ix. USCIS verification of the USCIS status of any individual who is not a U.S. citizen and is located in the U.S., and is required to complete SBA Form 1244. See Section A, Ch. 3, Para. C, Businesses Owned by Non-U.S. Citizens, of this Part, for more information.

x. Completed SBA Form(s) 159, "Fee Disclosure Form and Compensation Agreement," if applicable, in accordance with Section A, Ch. 5, Para. E.6, Disclosure of Fees – SBA Form 159, of this Part.

xi. For "Debt Refinance With Expansion" projects:

a) Copies of the most current debt and lien instruments;

b) Transcript of account or equivalent for any debts being refinanced; and

c) Certifications required for refinancing.

xii. For "Debt Refinance Without Expansion" projects:

a) Copies of the transcript(s) of account or equivalent for any debts being refinanced;

b) Certifications required for refinancing; and

c) If the debt was previously refinanced within 2 years of the date of application:

i) Copies of the most current debt and lien instruments;

ii) Copies of the debt and lien instruments for the debt that was replaced by the most current debt.

xiii. Credit Alert Verification Reporting System (CAIVRS) report to document:

a) Prior Loss to the Government by the Applicant or any other business owned, operated, or controlled by the Applicant, or an Associate of the Applicant;

b) Delinquent Federal Debt by the Applicant or any guarantor.

xiv. SBA Form 413, Personal Financial Statement (or CDC's equivalent form), signed and dated within 90 days, as well as copies of Federal income tax returns for the last 1 year, for each:

a) Proprietor, partner, or stockholder with 20% or more ownership of the Applicant or the OC, if the Applicant is an EPC; and

b) If different than a) immediately above, each owner with 20% or more ownership of the EPC.

xv. Credit reports for:

a) Applicant;

b) Proprietor, partner, or stockholder with 20% or more ownership of the Applicant, and, if requested by SLPC, Key Employee;

c) Affiliates; and

d) Guarantors.

xvi. If the Applicant is meeting SBA Size Standards under the:

a) Alternative Size Standard – Include balance sheets, income statements, and tax returns for the previous 2 years or the number of years the Applicant has generated revenue, whichever is less;

b) Industry Size Standard - Include balance sheets, income statements, and tax returns for the previous 3 years, or the number of years the Applicant has generated revenue, whichever is less.

xvii. A balance sheet and income statement dated within 120 days prior to submission to SBA and an aging of the accounts receivable and accounts payable. If the Applicant is a new business, provide a proforma balance sheet with a description of assumptions attached.

xviii. Where appropriate, projected annualized income statements for the first 2 years after loan closing including a description of assumptions.

xix. For a new business, a monthly cashflow analysis for the first 12 months of operations or for 3 months beyond the breakeven point (whichever is longer) together with a description of assumptions.

xx. Schedule of debts including the original date and amount, monthly payment, status of the loan (current, delinquent, paid in full, or charged off), interest rate, present balance owed, maturity, to whom payable, and collateral securing the loan for each short-term and long-term loan that the business currently has outstanding or has planned for the next 12 months (other than the 504 loan).

xxi. Schedule of any previous government financing received by the Applicant or any affiliated company of the Applicant as well as any Associate (as defined by 12 CFR 120.10) or principal of the Applicant. Include the name of the Agency, the original date and amount, the outstanding balance, status of the

loan (current, delinquent, paid in full, or charged off), and collateral securing the loan.

xxii. Names of affiliated or subsidiary businesses as well as the last 2 fiscal year-end financial statements and/or Federal income tax returns for the last 2 years (or 3 years, if the Industry Size Standard is used to qualify for SBA Size Standard).

xxiii. Loans processed under PCLP CDC authority: If the business is or will be operating under a franchise/license/dealer/jobber or similar agreement that meets the FTC definition of "franchise," the PCLP CDC must document its file that the Applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code when entering the application into E-Tran.

The PCLP CDC must ensure that the brand name (and, where applicable, the type of agreement) the Applicant will be operating under matches the brand name (and, where applicable, the type of agreement) listed on the Directory. If the Applicant's brand is not on the Directory and the PCLP CDC determines the brand does not meet the FTC definition, the PCLP CDC must submit the documents to franchise@sba.gov for a final determination by SBA. The PCLP CDC must provide contact information for the franchisor/licensor (name and email address only). After receiving SBA's final determination, the PCLP CDC may proceed with approving the loan under its delegated authority. See Section A, Ch. 1, Para. D.6.g., Procedure to Submit Franchise Loan Applications, of this Part for more information.

b. Due to the certification on SBA Form 1244, original signatures from the Applicant are not required on the following:

i. Balance sheet, income statement, and Federal income tax returns;

ii. Aging of the accounts receivable and accounts payable listed;

iii. Financial statements and/or Federal income tax returns for affiliated entities and subsidiary businesses; and

iv. SBA Form 413, Personal Financial Statement or equivalent.

3. Submission of Application

a. Detailed guidance on the E-Tran submission process can be found in the 504 E-Tran User Guide for Submitting Loan Applications, posted on SBA's website. CDCs may choose to either use a vendor solution that integrates with the Capital Access Financial System (CAFS) loan platform or manually use the E-Tran web screens. Documents greater than 250MB must be separated into multiple documents. The system does not support uploads greater than 250MB.

b. Regardless of the processing method used:

i. CDCs must retain the full application in its file.

ii. One hundred percent of the Applicant's ownership and percentage of ownership must be disclosed in the E-Tran system.

c. Non-delegated and not using ASM

CDCs processing a loan under non-delegated authority and not using ASM must submit all items in paragraph 2.a. above into E-Tran for loan approval by SLPC.

d. ASM

i. Submit items in 2.a.i. through 2.a.xiv above into E-Tran for loan approval by SLPC.

ii. Applications for projects that result in change of ownership or transactions between close family members cannot be processed under ASM.

e. Premier Certified Lenders Program (PCLP) Loans

The PCLP CDC must complete and upload the following documents into E-Tran within 15 business days after debenture funding:

i. The final executed Authorization (updated to reflect the final terms of the loan);

ii. SBA Form 1244, "Application for Section 504 Loan." One hundred percent of the Applicant's ownership and each owner's percentage of ownership must be disclosed on SBA Form 1244 (additional sheets may be attached to the Form 1244 if necessary).

CHAPTER 2: AUTHORIZATION THROUGH DISBURSEMENT

A. AUTHORIZATION

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.

1. Loan Conditions (13 CFR § 120.160):
    a. 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 supersedes the Boilerplate.
        i. The **Boilerplate** contains the mandatory national standard language for all SBA authorizations.
        ii. The **Wizard** is a technical tool intended to make it easier for CDCs to create Authorizations based on the Boilerplate.
    b. The **Authorization** for 504 loans must use the pre-approved conditions that are found in the Boilerplate. Prior to closing, the CDC must submit to SBA through E-Tran a copy of the executed Authorization.
    c. The party responsible for drafting the SBA Authorization is determined by the program the loan is processed under:
        i. Regular and ALP: The CDC drafts the Authorization and the SBA finalizes and executes and sends to the CDC for execution
        ii. PCLP: CDC drafts and executes on SBA's behalf
    d. SBA counsel must review and approve any Authorization that proposes to deviate from the Boilerplate language with the following exception. When processing a loan under PCLP lending authority, 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.
2. Disbursement Period, Interest Rates and Loan Maturity:
    a. Disbursement Period: The loan must be disbursed within 48 months from the date of approval. SBA will automatically cancel undisbursed dollars. For Debt Refinance without Expansion, the loan must be disbursed within 9 months from the date of approval. 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.

b. Interest Rate: The interest rate for 10, 20, and 25 year 504 debentures is based on market conditions for long-term government debt at the time of sale. 13 CFR § 120.932

c. Maturity is 10, 20, or 25 years based upon the remaining useful life of the property being financed, in accordance with Ch. 1, Para. D.2., Loan Maturities, of this Part.

3. 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.

4. Insurance Requirements:

   a. Lender must ensure all appropriate insurance requirements are included in the Authorization. See Section A, Ch 6, Para. C, Insurance Requirements, of this Part for requirements concerning hazard, marine, flood, and life insurance.

   b. Lender must include any other insurance appropriate to the loan, including but not limited to:

      i. Liability Insurance;

      ii. Product Liability Insurance;

      iii. Dram Shop/Host Liquor Liability Insurance;

      iv. Malpractice Insurance;

      v. Disability Insurance;

      vi. Workers' Compensation Insurance; and

      vii. Any State specific insurance requirements.

5. IRS Tax Transcript/Verification of Financial Information:

   The IRS Tax Transcript/Verification of Financial Information process must be completed in accordance with Section A, Ch. 6, Para. B, IRS Tax Transcript/Verification of Financial Information, of this Part.

6. Standby Agreements:

   a. SBA Form 155,"Standby Agreement." CDC may use SBA Form 155 or its own equivalent standby agreement form. 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 CDC's rights in the collateral and take no action against Applicant or any collateral securing the Standby Debt without CDC's consent.

7. Assignment of Lease and Landlord's Waiver:

   If applicable, the Authorization must include conditions for assignment of lease and landlord's waiver (for more information, see Section A, Ch. 4, Para. C.2, Responsibilities When Leasing Space, of this Part).

8. Construction Loan Provisions:

   a. In the construction of a new building or an addition to an existing building, the CDC must obtain:

      i. Evidence of compliance with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings" (NEHRP), or a building code that has substantially equivalent provisions. (13 CFR § 120.174)

         a) The NEHRP provisions may be found in the American Society of Civil Engineers (ASCE) Standard 7 and the International Building Code.

         b) Examples of evidence include a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that an occupancy permit is required and that the local building codes upon which the permit is based include the Seismic standards.

      ii. The 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 leasehold improvements are only temporary, they do not need to comply with the NEHRP. Accordingly, if the Applicant 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 B., Modifying the Authorization, 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)

   b. If the interim financing comes from a CDC, the following additional conditions must be required in the Authorization:

      i. Mortgages must be recorded prior to beginning construction.

      ii. Inspections must be made by a qualified engineer, appraiser, or other party satisfactory to SBA prior to all progress disbursements.

      iii. The Applicant must furnish a firm construction contract to the CDC from an acceptable contractor at a specified price, including a provision that no material changes are to be made without the prior written consent of the CDC;

iv. The contractor must furnish builder's risk and workers' compensation insurance;

v. One complete set of plans and specifications of the proposed construction must be submitted to the CDC;

vi. Where the CDC or the Applicant is to inject funds into the construction project, these funds must be used prior to the disbursement of the interim financing;

vii. The CDC must make and document periodic inspections of construction; and

viii. When loan funds will be used to improve buildings on leased land, assignment of the lease must be obtained.

9. Special Provisions for Franchises:

   The following language must be manually inserted into the Authorization Boilerplate:

   "**Franchise** – Prior to closing, the CDC must obtain the executed Franchise Agreement, SBA Form 2462, "Addendum to Franchise Agreement," or the SBA Negotiated Addendum (if applicable), and all other documents the franchisor requires the franchisee to sign."

   This language will be manually inserted into the Authorization by the SLPC for non-PCLP loans. For PCLP loans, this language must be manually inserted into the Authorization Boilerplate by the PCLP CDC. The language can be manually inserted into the "prior to closing" section of the 504 Authorization Boilerplate by clicking "Edit" and adding the language above.

10. Certifications of the CDC:

    The certifications required of the CDC are listed on SBA Form 2101, "CDC Certification."

11. Certifications of the Borrower:

    The certifications required of the Borrower are listed on SBA Form 2289, "Borrower and Operating Company Certification."

12. Certifications of the Interim Lender:

    The certifications required of the Interim Lender are listed on SBA Form 2288, "Interim Lender Certification."

B. MODIFYING THE AUTHORIZATION

1. The CDC must request in writing SBA's approval of modifications to the terms and conditions of the Authorization at any time after approval but before funding:

   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 Applicant's injection, including a revised use of funds.

b. Any adjustments to or changes in ownership of the Borrower, including percentage of ownership. CDCs may not unilaterally approve such adjustments or changes.

2. CDCs may use their unilateral authority to submit the following 327 actions using the 504 E-Tran system:
   a. 504 Loan Cancellation (prior to closing);
   b. Borrower, EPC or OC mailing address. Note: CDCs must not exercise unilateral authority to change the address of the Project Property;
   c. Borrower, EPC or OC phone numbers and email addresses; and
   d. Principal or guarantor mailing address, phone number, and email address.
3. For loans approved under PCLP authority:
   a. Generally, PCLP CDCs may modify and extend the loan authorization using their unilateral authority. PCLP CDCs must upload the final modified executed authorization to E-Tran within 15 business days after debenture funding.
   b. PCLP CDCs must obtain prior written consent from the SLPC for any adjustments to or changes in ownership of the Borrower, including percentage of ownership, after loan approval. The SLPC will approve the proposed modification and enter it into E-Tran after:
      i. Verification that the proposed changes to the ownership of the Borrower comply with limitations on the aggregate amount of SBA portions of all loans to a Borrower, including affiliates; and
      ii. Verification that there has been no prior loss to the Government caused by the new owner(s) or any business owned, operated, or controlled by the new owner(s).
   c. PCLP CDCs must obtain approval for increases or decreases in the loan amount directly in E-Tran. Approval of the requested increase or decrease in E-Tran will constitute SBA's prior written consent.
4. Post-approval modifications (327 actions) must be submitted to the SLPC through the 504 E-Tran system. Detailed guidance on the 504 E-Tran submission process is available on the SBA website in the 504 E-Tran User Guide for Submitting Loan Applications.
5. Neither the amount nor the maturity of a loan can be modified after the debenture closing has been completed.

C. CLOSING, DISBURSEMENT, AND POST-CLOSING

1. Interim Financing

a. A construction escrow account may be used with SBA's prior approval if acquisition of machinery and equipment or other portions of a project (such as a parking lot, landscaping, etc.) represents 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 Paragraph A.8, Construction Loan Provisions, of this Chapter):

i. 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;

ii. All required lien positions and collateral are obtained prior to closing;

iii. 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

iv. Funds not disbursed after 1 year will be applied to pay down the Third Party Lender's loan.

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 (see 13 CFR § 120.961).

b. The Interim Lender must make a number of certifications at the time of the debenture closing. The certifications are stated in SBA Form 2289 and 13 CFR §§ 120.891 and 120.892. If the Interim Lender cannot certify as required, then the debenture cannot be funded.

2. Escrow Closing

Escrow Closing (No Interim Financing) [1]

When a Project is to acquire an existing facility that the Borrower will immediately occupy, SBA may allow an Escrow Closing instead of requiring Interim Financing. The requirements for an Escrow Closing are as follows:

a. Escrow Account:

i. SBA counsel must approve the Escrow Agreement, which will be signed by the CDC, SBA, the Borrower, and the Escrow Agent. The Escrow Agent must be approved by the CDC and SBA counsel, and the Escrow Agent must follow the escrow instructions provided by the CDC and SBA counsel. The CDC counsel, Title Company or other party approved by SBA counsel may act as the Escrow Agent and hold the Escrow Account.

ii. The Borrower must deposit an additional 10% of the Total Project Costs into the Escrow Account. This deposit must be in cash or an irrevocable Letter of Credit. The CDC must provide SBA counsel with evidence of the Borrower's deposit at the time of closing of the 504 Loan.

[1] This subparagraph "Escrow Closing (No Interim Financing)" will not be available for use until SBA has announced that the necessary forms have been created and/or revised, as appropriate.

iii. The net Debenture sale proceeds must be wired directly into the Escrow Account.

iv. The funds in the Escrow Account may not be distributed and the Escrow Account may not be dissolved until the CDC and CDC counsel provide a certification to SBA that:

a) A post-Debenture funding updated title commitment has been issued and reviewed showing the title and lien positions required by the Authorization for Debenture Guarantee (SBA 504 Loan);

b) As a result of the review, the CDC and CDC counsel have determined that upon release of the funds in the Escrow Account at the scheduled Project Property real estate closing and subsequent recordation, title to the Project Property will transfer to the Borrower, all collateral documents will be properly filed, and all lien positions will be properly perfected;

c) CDC counsel will ensure that all title and lien positions required by the Authorization are properly recorded and that a final title policy is issued; and

d) The CDC has determined that since the date of the CDC Certification submitted to SBA at the 504 Loan closing, there has been no unremedied substantial adverse change in the financial condition of the Borrower or Operating Company.

After receipt of the foregoing certification, SBA counsel will determine if all of the requirements for dissolution of the Escrow Account have been met, and if so, will provide the Escrow Agent and the CDC with written approval for the distribution of the funds in the Escrow Account.

v. All of the requirements for dissolution of the Escrow Account must be met to SBA counsel's satisfaction no later than 5 months from the date of the Debenture sale. If not, SBA counsel will direct the Escrow Agent and the CDC to use the funds in the Escrow Account to pre-pay the Debenture in full. Any leftover funds in the Escrow Account after the Debenture is pre-paid in full will be returned to the Borrower.

vi. CDC counsel must provide SBA with a post-Project Property real estate closing legal opinion stating that:

a) All title and lien positions required by the Authorization have been properly recorded; and

b) A final title policy reflecting the same has been delivered to SBA.

b. Borrower must agree in the Escrow Agreement that:

i. The required Borrower's deposit will be used to make up the difference between the amount of the net Debenture sale proceeds and the amount required to pre-pay the Debenture in full. This difference includes the following:

a) Debenture sale costs paid from the Gross Debenture sale proceeds such as the CDC processing fee, CSA fee, CDC attorney's fees/closing costs, SBA Guarantee Fee, Funding Fee and Underwriter's Fee; and

b) The costs of pre-paying the Debenture including the prepayment premium and 6 months' worth of interest on the original Debenture amount.

ii. If all of the requirements for dissolution of the Escrow Account are not met to SBA counsel's satisfaction within 5 months of the date of the Debenture sale, the Debenture shall be pre-paid using the funds in the Escrow Account.

iii. The Borrower must make all regularly scheduled 504 Loan payments after the Debenture sale.

3. 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)

c. All CDC Counsel (including Designated Attorneys and those without Designated status) who submit 504 Loan closing packages to SBA must use the form Opinion of CDC Counsel (Appendix D to the 504 Authorization Boilerplate). The Opinion of CDC Counsel requires the CDC Counsel to acknowledge that SBA will rely upon the Opinion in guaranteeing the Debenture. Additionally, the Opinion requires the CDC Counsel to certify that the CDC Counsel is a licensed, active member, in good standing, of the Bar of the applicable state. If closing deficiencies that cause a loss on the 504 loan occur, SBA may pursue a claim against the CDC Counsel for the closing deficiencies. SBA will also expect the CDC to timely pursue any claims the CDC may have against the CDC Counsel as a result of closing deficiencies. Additionally, all CDC Counsel are considered to be Agents who conduct business with SBA under 13 CFR 103.1(a). The regulation at 13 CFR 103.4 provides that SBA may suspend or revoke an Agent's privilege to conduct business with SBA for good cause, including violations of ethical guidelines which govern the profession or business of the Agent or which are published at any time by SBA. Finally, as set forth in paragraph C, 5.h., Withdrawal of Designated Attorney Status below, good cause for withdrawal of Designated Attorney status includes, among other things, submission of unsatisfactory 504 closing packages.

4. The Closing Package

a. Types of Loan Closing Packages:

i. Regular closing package submitted by either non-Priority CDCs or Priority CDCs who are not using a Designated Attorney; and

ii. Expedited closing package submitted by a Priority CDC using a Designated Attorney under the expedited closing process.

b. The Closing Package:

i. CDCs and SBA must use SBA Form 2286, "504 Debenture Closing Checklist," (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.

ii. SBA requires that the CDC submit to SBA counsel for review a completed SBA Form 2286 along with the required items on the Checklist. In rare circumstances if an additional document is necessary, the CDC may submit it along with an explanation of the significance.

c. 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.

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. The lien instruments on real estate must contain a due-on-sale clause.

5. Designated Attorney

13 CFR § 120.802

A Designated Attorney is the CDC closing attorney that SBA has approved to close loans under an expedited closing process for a Priority CDC.

a. To become a Designated Attorney, an attorney must submit evidence of:

i. A degree from a recognized law school;

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

iii. Professional malpractice insurance coverage:

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

b) A deductible not to exceed $20,000 for individuals and firms with 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.

c) Applicants may request from the General Counsel, or designee, an increase in the deductible or a hardship exemption with respect to the policy limits. Policy limit reductions to $500,000/$1,000,000 will only be granted to sole practitioners and small firms of three or fewer attorneys, while deductible requirement waivers will only be granted to larger firms with a demonstrated, strong financial history. The General Counsel, or designee, will consider a number of factors when deciding whether to grant or renew a hardship waiver, including, but not limited to, the documentation provided in support of the waiver request, the number of 504 loan closings by the Designated Attorney in the prior 12 months, the total dollar amount of the 504 loans closed by the Designated Attorney in the prior 12 months, and the overall quality of the loan closing packages received from the Designated Attorney. If approved, a hardship waiver will have a duration of 1 year. If an attorney obtains designated status, renewals of hardship waivers may be sought annually for as long as the hardship exists. Approval and renewal of hardship waivers are within the discretion of the General Counsel (or designee).

d) Sole practitioners seeking a hardship waiver must state what their present annual premium is and what it would cost to get $1,000,000/$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.

iv. Attendance at an SBA-approved 504 loan closing training course. Attorneys may fulfill this requirement up to 1 year prior to designation or within 6 months after designation; and

v. Adequate expertise in 504 loan closings.

b. Process to request Designated Attorney status:

i. The CDC nominates the attorney by submitting an application to Lead District Office in which the attorney's practice is primarily located. An application must include:

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

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

i) Amount of coverage and deductible;

ii) Premium; and

iii) Name of the attorney insured.

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

i) The amount of their policy limits or deductible; and

ii) The current premium;

iii) The quote obtained for the increased premium to meet SBA's minimum professional malpractice insurance requirements (absent a hardship waiver);

iv) The size of the firm;

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

vi) Evidence of the firm's history and financial strength; and

vii) For sole practitioners or law firms with fewer than three attorneys, personal financial statements for each attorney seeking Designated Attorney status.

c. Other Restrictions/Requirements:

i. A designated attorney cannot be:

a) An employee of the CDC or of an Associate of the CDC; or

b) On the board of the CDC, participate in its lending decisions, or otherwise be too closely associated with the CDC, as determined by SBA counsel.

ii. 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.

d. The Lead District Office forwards the application to the Office of General Counsel (OGC) with the recommendations of the District Director, District Counsel and other SBA District Offices, if applicable.

e. OGC will notify the attorney in writing that he/she has been accepted as a designated 504 closing attorney.

f. The Lead 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.

g. To maintain Designated Attorney status, an attorney must:

i. Deliver annually to the 504 Loan Program Division on or before the renewal of the current policy:

a) A certificate from its insurance carrier confirming the existence of professional malpractice insurance in the amount identified in paragraph 4 above. If seeking a hardship waiver or a renewal of an existing hardship waiver, the Designated Attorney must provide:

i) The current amount of their policy limits or deductible;

ii) The current premium;

iii) The quote obtained for the increased premium to meet SBA's minimum professional malpractice insurance requirements (absent a hardship waiver);

iv) The size of the firm;

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

vi) Evidence of the firm's history and financial strength; and

vii) For sole practitioners or law firms with fewer than three attorneys, personal financial statements for each attorney seeking designated status.

b) Evidence of continued membership and good standing in the bar(s) of all states in which the attorney is approved to serve as designated counsel.

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

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

h. Withdrawal of Designated Attorney status:

The General Counsel, or designee, may withdraw an attorney's Designated status for good cause, including, but not limited to: unprofessional or unethical conduct; failure to maintain the required insurance coverage; failure to attend the required training; submission of unsatisfactory 504 closing packages (based upon reviews or other evidence); failure to maintain a good working relationship and good communication with SBA; failure to maintain membership and good standing in the bar(s) of all states in which the attorney is approved to serve as designated counsel; and/or failure to comply materially with an SBA Loan Program Requirement.

6. Closing and Post-Closing Activities

a. CDC's Responsibilities

The CDC must:

i. Certify that the Project costs were paid in full and that the Project proceeds were used in accordance with the requirements of the Authorization, and that each party to the Project contributed the required amount to the costs. To support this certification, the CDC must have evidence of the use of proceeds and the contributions by each party (Third Party Lender, Interim Lender, and Borrower). Sufficient evidence is:

a) For the purchase of land and or building, a Settlement Statement, or its equivalent, showing the amounts paid and whether paid by the Borrower or from the Third Party Lender or Interim Lender's loan proceeds.

b) For construction or renovations,

i) Copy of construction contract and all change orders;

ii) Evidence of each progress payment and final payment of project reflecting cumulative costs and source of payment (Third Party Lender, Interim Lender, or Borrower);

iii) If a construction escrow account is used as set forth in this SOP, copies of paid invoices and a copy of the cancelled check made payable to the Borrower and the designated contractor; and

iv) Copy of Mechanic's Lien Releases, if applicable.

c) For debt refinancing, a copy of the transcript of account and settlement statement.

d) For all other costs, a settlement statement or copies of the paid invoices and cancelled checks or evidence of wire transfers.

e) No funds should be paid directly to the Borrower unless the CDC obtains evidence of the Borrower's payments (cancelled checks and paid invoices).

ii. Notify SBA counsel in writing of planned debenture closings at least 30 days before the SBA District 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.

iii. 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 SBA District Office.

iv. Each CDC must issue a written opinion based upon financial statements current within 120 calendar days from the published Central Servicing Agent (CSA) Cut-Off Date for the applicable Debenture Funding Date that to the best of its knowledge there has been no unremedied substantial adverse

change in the Applicant's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA. This CDC opinion must be made within 14 business days prior to its submission of its opinion to SLPC and supported by financial statements that are dated no earlier than 120 calendar days from the published CSA Cut-Off Date for the applicable Debenture Funding Date.

v. For all 504 loans except ALP and PCLP, CDCs must provide its finding to the SLPC along with copies of the financial statements. The SLPC either will notify the CDC of its approval or, if SBA disagrees with the CDC's determination of no unremedied substantial adverse change, the debenture will not close until SBA has been satisfied that any adverse change has been remedied. ALP and PCLP CDCs must submit the closing package to SBA counsel and retain the finding and copies of the financial statements on which they relied in their files.

vi. If the debenture closing is not consummated in the month following the CDC's opinion of no unremedied substantial adverse change, the CDC must prepare a new opinion and follow the same process described above if the financial statement supporting the opinion will be more than 120 days old when the CDC requests the file from the SLPC for closing. For example, if a CDC's opinion of no unremedied substantial adverse change is made and approved in April, the debenture may be funded in May or June if the financial statements supporting the opinion remain no more than 120 days old at the time the request for the file is made. Otherwise, the CDC must submit a new opinion to the SLPC in the same manner noted above.

vii. Request that access to each Authorization and all modifications be granted by the SLPC to the SBA counsel for closing in time to meet the SBA District Office's deadline for submission of loan closing packages. CDCs must not request access to the Authorization and modifications unless the debenture is ready for closing and sale during the month following the request. If access has not been granted to SBA counsel by its loan closing package submission deadline, SBA counsel may hold over the package for the next month's debenture sale.

viii. Electronically submit closing packages by the deadline established by SBA counsel. SBA counsel may hold late packages over for the next month's debenture sale.

ix. 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.

x. 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.

xi. 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) SBA Form 1506, "Servicing Agent Agreement" (original);

b) SBA Form 1504, "Development Company 504 Debenture" (original);

c) SBA Form 1505, "Note (CDC/504 Loans)" (copy);

d) Authorization Agreement for Preauthorized Payment (Debit) and voided check (original);

e) IRS Form W-9, "Request for Taxpayer ID Number and Certification" (original); and

f) Third Party Lender participation fee check (if not being deducted from the CDC processing fee) (original).

xii. Forward the original of all documents listed on SBA Form 2286, "504 Debenture Closing Checklist," (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.

xiii. Ensure that all recorded interim lender documents are canceled of record (officially canceled at the place of recordation, as required by law) within 90 days after funding.

xiv. If a 504 loan is canceled after closing but before funding. Ensure that all recorded documents are canceled of record.

b. SBA Counsel's Responsibilities

SBA Counsel Must:

i. Issue an annual 504 debenture closing schedule with SBA District Office deadlines for receiving closing packages. SBA counsel responsible for debenture closing in each SBA 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.

ii. Review closing packages. SBA counsel must use the standard Checklist to review the 8 documents submitted for an expedited closing and 13 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.

iii. 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.

iv. If SBA counsel discovers an issue in reviewing the closing package that impacts eligibility or closing of the loan, SBA counsel will advise the CDC and CDC Counsel. If the issue cannot be resolved, then SBA counsel will notify the Area Counsel of the issue, who will make a recommendation to OGC and OCA for a final decision.

v. 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 CFR § 120.960(c) stating that the debenture may be closed, SBA may execute its guarantee, and the debenture may be sold. The SBA counsel's Opinions should be sent to the SLPC.

vi. 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 SBA District Office approves for funding in that month's sale.

vii. 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 SBA Form 2303, Checklist for Complete File Review." The number and frequency of CFRs are at the discretion of SBA counsel, but no less than one package per 10 closing packages submitted by each CDC will be reviewed.

SBA counsel will notify the CDC when a loan has been selected for a CFR, and the CDC must promptly submit to SBA counsel the applicable items on SBA Form 2303 for that loan. SBA counsel will prepare a written report documenting the CFR and its results, and send a copy of that report to:

a) The CDC;

b) The CDC's 504 closing attorney that closed the loan;

c) The SBA counsel that reviewed and opined upon the loan closing package; and

d) The CLSC loan file.

If the CFR reveals closing deficiencies that could result in a loss to SBA, the CDC and/or its closing attorney must promptly correct the deficiencies, if possible. SBA may take other action, including an action against the CDC closing attorney as described in Para. I. above. In the event of a loss, SBA may pursue an action against the CDC under 13 CFR 120.938(b).

c. Central Servicing Agent's (CSA) Responsibilities

The CSA must:

i. 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.

ii. 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.

iii. Distribute post-closing documents. The CSA will provide the following documents online:

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. 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.

7. 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)

8. Post-Disbursement Issues

a. A CDC may request changes on disbursed 504 loans by contacting the appropriate SBA CLSC.

   i. Guidance on loan servicing is outlined in SOP 50 55, "504 Loan Servicing and Liquidation." CDCs may not unilaterally approve any adjustment to or change in the ownership of a Borrower, including a change in percentage of ownership, for 12 months after final disbursement on any loan.

   ii. 13 CFR Part 120, subpart E outlines requirements under SBA loan servicing, liquidation, and debt collection litigation.

b. Prepayment:

   The Borrower may prepay its 504 loan. The repurchase price of the Debenture shall be an amount equal to the outstanding principal balance of the Debenture, plus interest accrued and unpaid thereon to the repurchase date, plus a prepayment fee, known as a repurchase premium ("RP"). More information may be found at:

   i. 13 CFR § 120.940 addresses prepayment of the 504 loan or debenture.

   ii. SBA's SOP 50 55, contains information on prepayment or purchase of a development company loan or debenture.

   iii. SBA Form 1504, "Development Company 504 Debenture," outlines the calculation of the prepayment fee.

   iv. PricewaterhouseCoopers Public Sector LLP is the current Central Servicing Agent (CSA) for closed SBA 504 loans.

CHAPTER 3: DEBENTURE PRICING AND FUNDING

13 CFR § 120.931

A. 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 for a new business or for a Limited or Special Purpose Property 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 or 25 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	$150,000
100%	Total Project Costs	$1,000,000

B. 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.

For more information, see Section C, Ch 1. Para. C.12, Eligible Administrative Costs, of this Part. Also see Section A, Ch. 5, Para. E., 504 Loan Program Fees and Use of Agents, of this Part.

1	Net Debenture	Determine the Net Debenture:	$350,000
2	SBA Guaranty Fee (.5%)	multiply $350,000 by 0.005 =	$1,750
3	Funding Fee (.25%)	multiply $350,000 by .0025 =	$875
4	CDC Processing Fee (1.5%)	multiply $350,000 by .015 =	$5,250
5	Eligible Closing Costs*	=	$2,500
6	Gross Debenture Amount	To calculate the Gross Debenture, add items 1 through 5 above and divide the total by 0.996 for 20 or 25-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
		SBA Guaranty Fee	$1,750
		Funding Fee	$875

		CDC Processing Fee Closing Costs	$5,250 $2,500
		Total	$360,375
		Divide by 0.99600 (0.99625 for 10-Year Debenture)	$360,065
		Round up to the next even thousand	$362,000
	The Gross Debenture in this example is $ 362,000.		
	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 or 25-year Gross Debenture by .004 (for 10-year debentures, this number would be .00375).	
		Multiply $362,000 by .004 =	$1,448
8	Balance to Borrower. The difference between the Gross Debenture amount ($362,000.00) and the sum of Net Debenture proceeds ($350,000.00), processing and closing fees ($8,625.00), and Underwriter's fee ($1,448.00) goes to the Borrower.		
	In this example, the Balance to Borrower is: $362,000 – ($350,000 + $10,375 + $1,448) = $931.		

C. 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.

D. 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))

E. 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.

F. 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.

APPENDICES

APPENDIX 1: FORMS AND RELATED SOPS

FBI Form FD-258 Applicant Fingerprint Form (FD-258)

FBI Form FD-258 Filing Instructions

FEMA Form 086-0-32 Standard Flood Hazard Determination Form

IRS Form 1098 Mortgage Interest Statement

IRS Form 4506-T Request for Transcript of Tax Return (use March 2019 version for IVES)

IRS Form W-9 Request for Taxpayer Identification Number and Certification

SBA Form 147 Note 7(a) Loans

SBA Form 148 Unconditional Guarantee

SBA Form 148 & 148L Instructions

SBA Form 148L Limited Guarantee

SBA Form 155 Standby Creditor's Agreement

SBA Form 159 Fee Disclosure and Compensation Agreement

SBA Form 413 Personal Financial Statement

SBA Form 601 Agreement of Compliance

SBA Form 722 Equal Employment Opportunity Statement

SBA Form 750 Lender's Loan Guaranty Agreement (Deferred Participation)

SBA Form 1050 Settlement Sheet (Use of Proceeds Certification)

SBA Form 1081 Statement of Personal History for Non-bank Lenders, CDCs, and Micro-Lenders

SBA Form 1086 Secondary Participation Guaranty Agreement

SBA Form 1088 Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate

SBA Form 1244 Application for Section 504 Loan

SBA Form 1246 Application for Certification as a Certified Development Company

SBA Form 1253 Certified Development Company (CDC) Annual Report Guide

SBA Form 1347 Supplemental Guaranty Agreement, Preferred Lenders Program

SBA Form 1502 Guaranty Loan Status and Remittance Form

SBA Form 1504 Development Company 504 Debenture

SBA Form 1505 Note – CDC/504 Loans

SBA Form 1506 Service Agent Agreement

SBA Form 1919 Borrower Information Form

SBA Form 1920 Lender's Application for Guaranty
SBA Form 1971 Religious Eligibility Worksheet
SBA Form 2006 Loan Guaranty Agreement – Premier Certified Lenders Program (PCLP)
SBA Form 2101 CDC Certification
SBA Form 2229 Premier Certified Lenders Program Security Agreement
SBA Form 2230 Premier Certified Lenders Program Control Agreement
SBA Form 2233 Premier Certified Lenders Program (PCLP) Quarterly Loan Loss Reserve Report
SBA Form 2286 504 Debenture Closing Checklist
SBA Form 2287 Third Party Lender Agreement
SBA Form 2288 Interim Lender Certification
SBA Form 2288R Interim Lender Certification for Refinanced Loan
SBA Form 2289 Borrower and Operating Company Certification
SBA Form 2303 504 Debenture Closing Checklist for Complete File Review
SBA Form 2310 Supplemental Guaranty Agreement – Preferred Lenders Program for EWCP
SBA Form 2416 Lender Certification for Refinanced Loan
SBA Form 2424 Supplemental Loan Agreement SBA Express Program
SBA Form 2426 Supplemental Loan Agreement Export Express Program
SBA Form 2462 Addendum to Franchise Agreement
SBA Form 2464 Annual Franchisor Certification
SBA Form 2481 Historic Property Borrower Certification
SOP 50 53 Lender Supervision and Enforcement
SOP 50 55 504 Loan Servicing and Liquidation
SOP 50 57 7(a) Loan Servicing and Liquidation
SOP 51 00 On-Site Lender Reviews/Examinations
USCIS Form G-845 Verification Request
USCIS Form I-94 Form I-94, Arrival/Departure Record
USCIS Form I-327 Re-entry permit document
USCIS Form I-551 Alien Registration Card (aka Green Card)
USCIS Form I-751 Petition to Remove Conditions on Residence
USCIS Form I-765 Application for Employment Authorization
USCIS Form I-797 Types and Functions
USCIS Form I-797C Notice of Action

APPENDIX 2: ACRONYMS

AAI	All Appropriate Inquiries
A/P	Accounts Payable
A/R	Accounts Receivable
ABA	American Bankers Association
ABL	Asset-Based Loan
ABV	Accredited in Business Valuation
ACH	Automated Clearing House
ALLR	Alternate Loan Loss Reserve Pilot Program
ALP	Accredited Lenders Program
AVA	Accredited Valuation Analyst
BBC	Borrowing Base Certificate
CAFS	Capital Access Financial System
CAIVRS	Credit Alert Verification Reporting System
CBP	Customs and Border Protection
CDC	Certified Development Company
CDFI	Community Development Financial Institution
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980
CFO	Chief Financial Officer
CFR	1. Code of Federal Regulations; or 2. Complete File Review
CLCS	Centralized Loan Chron System
CLP	Certified Lenders Program
CLS	Country Limitation Schedule
CLSC	Commercial Loan Servicing Center
CPA	Certified Public Accountant
CRA	Community Reinvestment Act
CSA	Central Servicing Agent
CSP	Credential Service Provider
CUSO	Credit Union Service Organization

CVA	Certified Valuation Analyst
D&B	Dun and Bradstreet
D&O	Directors and Officers
DCIA	Debt Collection Improvement Act of 1996
D/FA	Director of Financial Assistance
DFC	Denver Finance Center
D/ITF	Director, International Trade Finance
D/OCRM	Director of the Office of Credit Risk Management
DOD/DVA	Department of Defense/Department of Veterans Affairs
DOI	Department of the Interior
DS	Debt Service
DSC	Debt Service Coverage
DUNS	Data Universal Numbering System
EAD	Employment Authorization Document
EBITDA	Earnings Before Interest, Taxes, Depreciation, and Amortization
ECOA	Equal Credit Opportunity Act
EIN	Employer Identification Number
EMC	Export Management Companies
E&O	Errors and Omissions
EPA	Environmental Protection Agency
EPC	Eligible Passive Company
EQ	Environmental Questionnaire
ESA	Environmental Site Assessment
ESIGN	Electronic Signatures in Global and National Commerce
ESOP	Employee Stock Ownership Plan
ETC	Export Trading Companies
E-Tran	Electronic Transmission
EWCP	Export Working Capital Program
EX-IM	Export-Import Bank
FBI	Federal Bureau of Investigations
FCC	Federal Communications Commission
FDD	Franchise Disclosure Document
FDIC	Federal Deposit Insurance Corporation

FEMA	Federal Emergency Management Agency
FFIR	Federal Financial Institution Regulator
FIRREA	Financial Institution Reform Recovery Enforcement Act
FIRS	Financial Institution Rating System
FTA	Fiscal Transfer Agency
GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
GPEA	Government Paperwork Elimination Act
GSA	General Services Administration
HELOC	Home Equity Line of Credit
IRA	Individual Retirement Account
IRCA	Immigration Reform and Control Act of 1986
IRS	Internal Revenue Service
IT	International Trade
ITIN	Individual Tax Identification Number
IVES	Income Verification Express Service
L/LMS	Loan and Lender Monitoring System
LEA	Local Economic Area
LEED	Leadership in Energy and Environmental Design
LGPC	Loan Guaranty Processing Center
LLC	Limited Liability Company
LLRF	Loan Loss Reserve Fund
LOC	Line of Credit
LPA	Lender Profile Assessment
LPR	Lawful Permanent Resident
LPS	Loan Package Score
LRS	Lender Relations Specialist
LSP	Lender Service Provider
MOU	Memorandum of Understanding
MPA	Multi-Party Agreement
NAICS	North American Industry Classification System
NCUA	National Credit Union Administration
NEHRP	National Earthquake Hazards Reduction Program Recommended Provisions

NFIP	National Flood Insurance Program
NFRL	Non-Federally Regulated Lender
NMVCC	New Markets Venture Capital Company
OC	Operating Company
OCA	Office of Capital Access
OCC	Office of the Comptroller of the Currency
OCF	Operating Cash Flow defined as EBITDA
OCF/DS	Operating Cash Flow defined as EBITDA/Debt Service
OCRM	Office of Credit Risk Management
OFA	Office of Financial Assistance
OFPO	Office of Financial Program Operations
OGC	Office of General Counsel
OIG	Office of Inspector General
OIT	Office of International Trade
OMB	Office of Management and Budget
OPSM	Office of Performance and Systems Management
OREO	Other Real Estate Owned
PARRiS	PARRiS is an acronym for the specific risk areas or components that SBA reviews in the 7(a) program: Portfolio Performance; Asset Management; Regulatory Compliance; Risk Management; and Special Items
PCLP	Premier Certified Lenders Program
PFS	Personal Financial Statement
PII	Personally Identifiable Information
PIMS	Partner Information Management Systems
PLP	Preferred Lenders Program
POC	Point of Contact
ROFR	Right of First Refusal
SAM	System for Awards Management
SBA	Small Business Administration
SBDC	Small Business Development Center
SBIC	Small Business Investment Company
SBLC	Small Business Lending Company
SBPS	Small Business Predictive Score

SBSS	Small Business Scoring Service^{SM} Score
SCORE	Service Corp of Retired Executives
SFTP	Secure File Transfer Protocol
SHPO	State Historic Preservation Officer
SID	Same Institution Debt
SLPC	Sacramento Loan Processing Center
SMART	SMART is an acronym for the specific risk areas or components that SBA reviews in the 504 program: Solvency and Financial Condition; Management and Board Governance; Asset Quality and Service; Regulatory Compliance; Technical Issues and Mission
SOP	Standard Operating Procedures
SSN	Social Security Number
TIN	Tax Identification Number
TPL	Third Party Loan
TOP	Treasury Offset Program
UCC	Uniform Commercial Code
USCIS	United States Customs and Immigration Services
USDA	United States Department of Agriculture
USEAC	United States Export Assistance Center
USPAP	Uniform Standards of Professional Appraisal Practice

APPENDIX 3: DEFINITIONS

7(a) Loans: (13 CFR 120.420 7(a)) All references to 7(a) loans under this section include loans made under section 7(a) of the Small Business Act (15 U.S.C. 631 et seq.) under delegated or non-delegated authority.

7(a) Small Loans: Are 7(a) Loans that are loans of $350,000 or less that meet the minimum acceptable credit score set by SBA and are eligible for abbreviated credit underwriting.

- 7(a) Small Loans may be processed under Preferred Lender Program (PLP) authority or non-delegated through the Loan Guaranty Processing Center (LGPC).
- 7(a) Small Loans **exclude:** SBA Express, Export Express, CAPLines, Export Working Capital Program (EWCP), International Trade loans, and Community Advantage Pilot Program loans.

Acceptable Risk Rating: (13 CFR 120.10 7(a) and 504) An SBA-assigned Risk Rating, currently defined by SBA as "1", "2" or "3" on a scale of 1 to 5, which represents an acceptable level of risk as determined by SBA, and which may be revised by SBA from time to time as published in the Federal Register through notice and comment.

Agent: (13 CFR 103.1(a) 7(a) and 504) 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.

Applicant: (13 CFR 103.1 7(a) and 504) Any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying for any type of assistance from SBA.

Area of Operations: (13 CFR 120.802 504) The geographic area where SBA has approved a CDC's request to provide 504 Loan Program services to small businesses on a permanent basis. The minimum Area of Operations is the State in which the CDC is incorporated.

Associate: (13 CFR 120.10 7(a) and 504)

1. An Associate of a Lender or CDC is:
    a. An officer, director, Key Employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an Agent (as defined above) involved in the loan process;
    b. Any entity in which one or more individuals referred to in paragraphs (1)(a) of this definition or a Close Relative of any such individual owns or controls at least 20 percent;
2. An Associate of a small business is:
    a. An officer, director, owner of more than 20 percent of the equity, or Key Employee of the small business;
    b. Any entity in which one or more individuals referred to in paragraphs (2)(a) of this definition owns or controls at least 20 percent; and

c. Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company ("SBIC") licensed by SBA).

3. For purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the certification, participation agreement, or loan is outstanding:

   a. For a CDC, the date of certification by SBA;

   b. For a Lender, the date of application for a loan guarantee on behalf of an applicant; or

   c. For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

Authorization: (13 CFR 120.10 7(a) and 504) SBA's written agreement providing the terms and conditions under which SBA will make or guarantee business loans. It is not a contract to make a loan.

Benchmark Number: (13 CFR 120.420 7(a)) The maximum number of percentage points that a securitizer's Currency Rate can decrease without triggering the PLP suspension provision set forth in §120.425. SBA will publish the Benchmark Number in the Federal Register.

Borrower: (13 CFR 120.10 7(a) and 504) The obligor of an SBA business loan.

Central Servicing Agent (CSA): (13 CFR 120.802 504) An entity that receives and disburses funds among the various parties involved in 504 financing under a master servicing agent agreement with SBA.

Certificate:

1. (13 CFR 120.600 **7(a) Loan Program Only**) The document the FTA issues representing either a beneficial fractional undivided interest in a Pool (Pool Certificate), or a fractional undivided interest in some or all of the guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

2. (13 CFR 120.802 **504 Loan Program Only**) A document issued by SBA or its agent representing ownership of all or part of a Debenture Pool.

Certified Development Company ("CDC"): (13 CFR 120.10 7(a) and 504) An entity authorized by SBA to deliver 504 financing to small businesses.

Character Determination Package: When an Applicant has a history of certain misdemeanors or felonies, this is the documentation required to be submitted by the Applicant to the SBA Lender for the SBA Lender or SBA to determine eligibility based on character.

Close Relative: (13 CFR 120.10 7(a) and 504) A spouse; a parent; or a child or sibling, or the spouse of any such person.

Conduct Business with SBA (13 CFR 103.2(a)) means:

1. Preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

2. Preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for Federal financial assistance;
3. Participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf;
4. Acting as a Lender Service Provider; and
5. Such other activity as SBA reasonably shall determine.

Currency Rate: (13 CFR 120.420 7(a)) A securitizer's "Currency Rate" is the dollar balance of its 7(a) guaranteed loans that are less than 30 days past due divided by the dollar balance of its portfolio of 7(a) guaranteed loans outstanding, as calculated quarterly by SBA, excluding loans approved in SBA's current fiscal year.

Currency Rate Percentage: (13 CFR 120.420 7(a)) The relationship between the securitizer's Currency Rate and the SBA 7(a) loan portfolio Currency Rate as calculated by dividing the securitizer's Currency Rate by the SBA 7(a) loan portfolio Currency Rate.

Current: (13 CFR 120.600 7(a)) No repayment from a Borrower to a Lender is over 29 days late measured from the due date of the payment on the records of the FTA's central registry (Pools) or the entity servicing the loan (individual guaranteed portion).

Debenture: (13 CFR 120.802 504) An obligation issued by a CDC and guaranteed 100 percent by SBA, the proceeds of which are used to fund a 504 loan.

Debenture Pool: (13 CFR 120.802 504) An aggregation of Debentures.

Designated Attorney: (13 CFR 120.802 504) The CDC closing attorney that SBA has approved to close loans under an expedited closing process for a Priority CDC.

Dollar-Weighted Average Net Rate: (13 CFR 120.600 7(a)) of a Pool is calculated by multiplying the interest rate of each loan in the Pool by the ratio of that loan's current outstanding guaranteed principal to the current outstanding guaranteed principal of all loans in the Pool, and adding the sum of the resulting products. The Dollar-Weighted Average Net Rate of a Pool will fluctuate over the life of the Pool as loan defaults, prepayments and normal loan repayments occur.

Electronic Fingerprint Submission:

Fingerprints taken and reproduced in a machine-readable format by a fingerprint capture system that complies with the FBI's Electronic Biometric Transmission Specifications. An electronic fingerprint submission must be compatible with the FBI's Automated Fingerprint Identifications System, or any successor system in place for biometric identification.

Eligible Passive Company: (13 CFR 120.10 7(a) and 504) A small entity or trust which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business, and which complies with the conditions set forth in §120.111.

Export Finance Manager: (7(a)) This is the current term for the SBA employee who works at the United States Export Assistance Center.

Federal Financial Institution Regulator (13 CFR 120.10 7(a) and 504) The Federal banking regulator of a 7(a) Lender and may include the Federal Deposit Insurance Corporation, the

Federal Reserve Board, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration.

FTA: (13 CFR 120.600 7(a)) SBA's fiscal and transfer agent.

Good Standing: (13 CFR 120.420 7(a)) In general, a Lender is in "good standing" with SBA if it:

1. Is in compliance with all applicable:
    a. Laws and regulations;
    b. Policies; and
    c. Procedures;
2. Is in good financial condition as determined by SBA;
3. Is not under investigation or indictment for, or has not been convicted of, or had a judgment entered against it for felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, unless the Lender Oversight Committee has determined that good standing exists despite the existence of such factors.
4. Does not have any officer or employee who has been under investigation or indictment for, or has been convicted of or had a judgment entered against him for, a felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, unless the Lender Oversight Committee has determined that good standing exists despite the existence of such person.

Gross Debenture: (504) Net Debenture Proceeds plus the eligible administrative costs.

Household member: (13 CFR 105.201 7(a) and 504) Spouse and minor children of an employee, all blood relations of the employee and any spouse who resides in the same place of abode with the employee.

Initial Currency Rate: (13 CFR 120.420 7(a)) The Initial Currency Rate Percentage (ICRP) measures the relationship between a securitizer's Initial Currency Rate and the SBA 7(a) loan portfolio Currency Rate at the time of the first securitization after April 12, 1999. The ICRP is calculated by dividing the securitizer's Currency Rate by the SBA 7(a) loan portfolio Currency Rate. SBA will calculate the securitizer's ICRP as of the end of the calendar quarter immediately prior to the first securitization completed after April 12, 1999.

Interim Financing: (504) 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.

Investor: (13 CFR 120.802 504) An owner of a beneficial interest in a Debenture pool.

Job Created: (504) A full-time equivalent (8 productive hours per day/40 productive hours per week) permanent or contracted employment created within 2 years of financing.

The Government Accountability Office's (GAO) methodology for calculating full-time equivalent employees demonstrates how to convert part-time or temporary jobs into "full-time equivalent" (FTE) jobs:

Cumulative Hours Worked / Cumulative Hours Worked in a Full-Time Schedule = FTE

For example: Assume that a full-time schedule for the 52-week work-year is 2,080 hours/year. An employee that works part-time 15 hours per week would qualify as 0.375 FTEs.

(15 hours X 52 weeks) / 2080 hours = 0.375

Job Opportunity: (13 CFR 120.802 504) A full time (or equivalent) permanent job created within two years of receipt of 504 funds, or retained in the community because of a 504 loan.

Job Retained: (504) A job that otherwise would be lost to the community if the project was not done. An existing job should not be counted as a "Job Retained" unless the job is at risk of being lost if the project is not done. The CDC must be able to reasonably show that the job would be lost to the community if the project was not done.

Key Employee (of a loan applicant/Borrower): Any person hired by the business to manage day-to-day operations.

Key Employee (of a lender): Senior Managers, members of loan committees, and any Person (as defined in 13 CFR 120.10) hired by the lender who has a meaningful participation in the direction of the operations, policies, or financial decisions of the lender.

Lead District Office:

1. For the 7(a) Loan Program: The SBA district office or branch office serving the geographic area where the Lender's principal office is located; and
2. For the 504 Loan Program: The Lead SBA Office as defined in 13 CFR 120.802: "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."

   Search SBA District Offices here

Lender or 7(a) Lender: (13 CFR 120.10 7(a)) An institution that has executed a participation agreement with SBA under the guaranteed loan program.

Lender Oversight Committee (LOC): (13 CFR 120.10 7(a) and 504) A committee established within SBA by legislation, which meets at least quarterly, and which has the membership and duties set forth in § 48 of the Small Business Act as further outlined in delegations of authority published in the Federal Register. The LOC's duties include, but are not limited to, reviewing (in an advisory capacity) any lender oversight, portfolio risk management, or program integrity matters brought by the D/OCRM, and voting on formal enforcement act recommendations.

Lender Service Provider: (13 CFR 103.1(d)) An Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a "Lender Service Provider" on a loan-by-loan basis.

Less Than Acceptable Risk Rating: (13 CFR 120.10 7(a) and 504) An SBA-assigned Risk Rating, currently defined by SBA as "4" or "5" on a scale of 1 to 5, which represents a higher level of risk as determined by SBA, and which may be revised by SBA from time to time as published in the Federal Register through notice and comment.

Limited or Special Purpose Property: (504) A limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built.

Loan Instruments: (13 CFR 120.10 7(a) and 504) The Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

Loan Program Requirements: (13 CFR 120.10 7(a) and 504) Requirements imposed upon Lenders, CDCs, or Intermediaries by statute; SBA and applicable government-wide regulations; any agreement the Lender, CDC, or Intermediary has executed with SBA; SBA SOPs; Federal Register notices; official SBA notices and forms applicable to the 7(a) Loan Program, 504 Loan Program, or Microloan Program; and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in §120.802. For Intermediaries, this term also includes requirements imposed by promissory notes, collateral documents, and grant agreements.

Local Economic Area: (13 CFR 120.802 504) 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.

Loss Rate: (13 CFR 120.420 7(a)) A securitizer's "loss rate," as calculated by SBA, is the aggregate principal amount of the securitizer's 7(a) loans determined uncollectible by SBA for the most recent 10-year period, excluding SBA's current fiscal year activity, divided by the aggregate original principal amount of 7(a) loans disbursed by the securitizer during that period.

Management Official: (13 CFR 120.10 7(a) and 504) An officer, director, general partner, manager, employee participating in management, agent or other participant in the management of the affairs of the SBA Supervised Lender's activities under the 7(a) program.

Multi-State CDC: (13 CFR 120.802 504) 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.

Net Book Value: (7(a) and 504) An asset's original price minus depreciation and amortization.

Net Debenture Proceeds: (13 CFR 120.802 504) The portion of Debenture proceeds that finance eligible Project costs (excluding administrative costs).

Net Rate: (13 CFR 120.600 7(a)) The interest rate on an individual guaranteed portion of a loan in a Pool.

New Business: (7(a) and 504) A business that has been in operations for 2 years or less at the time the loan is approved. A business that has been in operation for more than 2 years 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. Operations are deemed to begin when the business begins generating revenue from its intended operations.

Nondepository Institution: (13 CFR 120.420 7(a)) A "nondepository institution" is a Small Business Lending Company ("SBLC") regulated by SBA or a Business and Industrial Development Company ("BIDCO") or other nondepository institution participating in SBA's 7(a) program.

Non-Federally Regulated Lender (NFRL): (13 CFR 120.10 7(a)) A business concern that is authorized by the SBA to make loans under section 7(a) and is subject to regulation by a state but whose lending activities are not regulated by a Federal Financial Institution Regulator.

Note Rate: (13 CFR 120.600 7(a)) The interest rate on the Borrower's note.

Operating Company: (13 CFR 120.10 7(a) and 504) An eligible small business actively involved in conducting business operations now or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations personal property owned by an Eligible Passive Company.

Other Regulated SBLC: (13 CFR 120.10 7(a)) A Small Business Lending Company whose SBA operations receive regular safety and soundness examinations by a state banking regulator or a Federal Financial Institution Regulator, and which meets the requirements set forth in §120.1511.

Packager: (13 CFR 103.1(e)) An Agent who is employed and compensated by an Applicant or lender to prepare the Applicant's application for financial assistance from SBA. SBA determines whether or not one is a "Packager" on a loan-by-loan basis.

Participant: (13 CFR 103.1 7(a) and 504) A person or entity that is participating in any of the financial, investment, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

Person:

1. (13 CFR 120.10 applicable for 7(a) and 504 business loans) Any individual, corporation, partnership, association, unit of government, or legal entity, however organized.
2. (13 CFR 105.201 applicable for 7(a) and 504 Standards of Conduct and Employee Restrictions and Responsibilities) An individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

Pool: (13 CFR 120.600 7(a)) An aggregation of SBA-guaranteed portions of loans made by Lenders.

Pool Assembler: (13 CFR 120.600 7(a)) A financial institution that:

1. Organizes and packages a Pool by acquiring the SBA-guaranteed portions of loans from Lenders;
2. Resells fractional interests in the Pool to Registered Holders; and
3. Directs the FTA to issue Certificates.

Pool Rate: (13 CFR 120.600 7(a)) The interest rate on a Pool Certificate.

Preference: (13 CFR 120.10 7(a) and 504) Any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making, servicing, or liquidation of a business loan with respect to such things as repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a Certificate of deposit or acceptance of a separate or companion loan, without SBA's consent.

Priority CDC: (13 CFR 120.802 504) A CDC certified to participate on a permanent basis in the 504 Loan Program (see §120.812) that SBA has approved to participate in an expedited 504 loan and Debenture closing process.

Project: (13 CFR 120.802 504) 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. Note: This SOP uses the term Project for 7(a) also.

Project Property: (13 CFR 120.802 504) 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.

Qualified Source: (With respect to business valuations) 7(a):

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. Business Certified Appraiser (BCA) accredited through the International Society of Business Appraisers.

Referral Agent: (13 CFR 103.1(f)) A person or entity who 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.

Registered Holder: (13 CFR 120.600 7(a)) The Certificate owner listed in FTA's records.

Rentable Property: (13 CFR 120.10 7(a) and 504) The total square footage of all buildings or facilities used for business operations.

Risk Rating: (13 CFR 120.10 7(a) and 504) An SBA internal composite rating assigned to individual SBA Lenders or Intermediaries that reflects the risk associated with the SBA Lender's or Intermediary's portfolio of SBA Loans. Risk Ratings currently range from one to five, with one representing the least risk and five representing the most risk and may be revised by SBA from time to time as published in the Federal Register through notice and comment.

Rural Area: 7(a) and 504: An area located in a county that the US Census Bureau has defined as at least 30 percent rural. The Census Bureau's urban-rural classification and the Census Bureau's

County Classification Lookup Table can be found here: www.census.gov/geo/reference/urban-rural.html and here: www2.census.gov/geo/docs/reference/ua/County_Rural_Lookup.xlsx.

SBA Assistance: (13 CFR 105.201 7(a) and 504) Financial, contractual, grant, managerial or other aid, including size determinations, section 8(a) participation, licensing, certification, and other eligibility determinations made by SBA. The term also includes an express decision to compromise or defer possible litigation or other adverse action.

SBA Lender: (13 CFR 120.10 7(a) and 504) A 7(a) Lender or a CDC. This term includes SBA Supervised Lenders.

SBA Loan: The full amount of the 7(a) loan or the Gross Debenture amount of the 504 loan.

SBA Region: SBA divides the United States and its territories into 10 regions numbered 1-10. SBA Regional Offices support SBA District Offices and promote economic development growth and competitiveness within their geographic areas.

SBA Supervised Lender: (13 CFR 120.10 7(a)) A 7(a) Lender that is either a Small Business Lending Company or a NFRL.

SBA's Secondary Market Program Guide: (13 CFR 120.600 7(a)) An issuance from SBA which describes the characteristics of Secondary Market transactions.

Securitization: (13 CFR 120.420 7(a)) A "securitization" is the pooling and sale of the unguaranteed portion of SBA-guaranteed loans to a trust, special purpose vehicle, or other mechanism, and the issuance of securities backed by those loans to investors in either a private placement or public offering.

Service Provider: (13 CFR 120.10 7(a) and 504) An entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

Small Business Lending Company (SBLC): (13 CFR 120.10 7(a)) 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. SBA has imposed a moratorium on licensing new SBLCs since January 1982.

SOP: (13 CFR 120.10 7(a) and 504) SBA Standard Operating Procedures, as issued and revised by SBA from time to time. SOPs are publicly available on SBA's Web site at www.sba.gov/document/.

Special Geographic Areas: (504) include Alaska, Hawaii, State-designated Enterprise Zones, Empowerment Zones, Enterprise Communities, Opportunity Zones, and Labor Surplus Areas. (An "Opportunity Zone" is an economically distressed community that has been nominated by the State and certified by the Secretary of the U.S. Treasury as a community in which new investments, under certain conditions, may be eligible for preferential tax treatment.)

Special Government Employee: (13 CFR 105.201 7(a) and 504) means an officer or employee of SBA, who is retained, appointed or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

Standard 7(a) Loans: Are 7(a) Loans that are:

- Greater than $350,000;
- $350,000 or less that do not meet SBA's minimum acceptable credit score requirement for 7(a) Small Loans.

Standard 7(a) Loans may be processed under Preferred Lender Program (PLP) authority or non-delegated through the Loan Guaranty Processing Center (LGPC).

Standard 7(a) Loans **exclude:** SBA Express, Export Express, CAPLines, Export Working Capital Program (EWCP), International Trade loans, and Community Advantage Pilot Program loans.

Start-Up Business: (7(a)) For the purpose of determining equity injection requirements for 7(a) loans, a business is a Start-Up Business if it has been in operation (i.e., generating revenue from intended operations) for 1 year or less;

Third Party Lender: (504) 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.

Third Party Loan: (13 CFR 120.802 504) 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.

Underwriter: (13 CFR 120.802 504) An entity approved by SBA to form Debenture Pools and arrange for the sale of Certificates

Weighted Average Coupon Pool: (13 CFR 120.600 7(a)) A Pool where the interest rate payable to the investor is equal to the Dollar-Weighted Average Net Rate of the Pool.

APPENDIX 4: DEFINITIONS – ENVIRONMENTAL

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 (as defined in this appendix) 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.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6. See 40 CFR § 745.83.

"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 (as defined in this appendix) 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 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 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 5 years of full-time relevant experience; or

4. Have the equivalent of 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 1 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.

An acceptable Environmental Questionnaire must include, in addition to the required areas of inquiry listed below, the following language with respect to false statements: "The undersigned owner(s) and/or operator(s) acknowledge(s) and agree(s) that intentionally falsifying or concealing any material fact with regard to the subject matter of this Environmental Questionnaire may, in addition to other penalties, result in prosecution under applicable law including 18 U.S.C. section 1001."

Prudent lending practices dictate that an Environmental Questionnaire must include the address of the property and, 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[1] 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;

[1] Sources of Contamination may include, but are not limited to, the following: (1) damaged or discarded automotive or industrial batteries; (2) pesticides, paints or other chemicals stored in individual containers greater than 5 gallons in volume or 50 gallons in the aggregate; (3) chemicals in industrial drums or sacks; (4) pits, ponds or lagoons used for waste disposal or storage; (5) fill dirt from a contaminated or unknown source; (6); underground or above-ground storage tanks; (7) vent pipes, fill pipes or access ways indicating a fill pipe protruding from the ground; (8) flooring drains or walls within a facility that are stained by substances other than water and/or are emitting noxious odors; (9) clarifiers, pits or sumps; (10) dry wells

- 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 E1528-14) 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.

"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 E1527-13. (See also 40 CFR § 312.20.)

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 Recognized Environmental Conditions (RECs), Controlled Recognized Environmental Conditions (CRECs), Historical Recognized Environmental Conditions (HRECs) and/or Environmental Issues 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.

The Environmental Protection Agency (EPA) sets forth time frames for the viability of Phase I ESAs (See 40 CFR § 312.20.) For SBA's purposes, and notwithstanding the EPA's regulations on updating Phase I ESAs after 180 days, SBA will accept for review an otherwise AAI compliant Phase I ESA if it was completed within 1 year of the date upon which it was submitted to an SBA loan processing center as part of an Environmental Investigation. Lenders or CDCs using their delegated authority may accept for review an otherwise AAI compliant Phase I ESA if it was performed within 1 year of the date of approval of its Environmental Investigation. ***Parties may still wish to strictly comply with EPA's regulatory timeframes to avoid jeopardizing legal and regulatory protections.***

Note: The immediately preceding paragraph does not apply to liquidation situations under SOP 50 55 or SOP 50 57.

"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 for an AAI compliant Phase I as well as a search of historical use sources (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. While the choice of standard historical sources to be reviewed on any particular site is at the discretion of the Environmental Professional in his or her professional judgment, the historical sources should identify property uses back to the property's first developed use, or back to 1940, whichever is earlier. The Environmental Professional need only review as many of the standard historical sources as are necessary, reasonably ascertainable, and likely to be useful. The

Environmental Professional should comment upon any data failure or data gap encountered. The report must identify by name the Environmental Professional who performed the risk assessment and must include all of the database reports and historical sources relied upon. (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 5. The language in SBA's standard reliance letter may not be modified. Additionally, Lenders and CDCs should not enter into any agreement that alters the terms of SBA's standard reliance letter.

"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 8. The language in SBA's standard environmental indemnification agreement may not be modified.

"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 E1528-14. 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 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 1 year prior to submission.

APPENDIX 5: RELIANCE LETTER

[Letterhead of Environmental Professional or Environmental Professional's Firm]

RELIANCE LETTER

[Date]

To: [Insert name and address of SBA Lender here] ("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 or supervised the performance of the following "Environmental Investigation(s)" (check all that apply):

____A Transaction Screen of the Property dated _____, 20____, and any addendum(s) thereto, conducted in accordance with ASTM International's most recent standard (currently ASTM E1528-14);

____A Phase I (or an Updated Phase I) Environmental Site Assessment of the Property dated _____, 20____, and any addendum(s) thereto, conducted in accordance with ASTM International's most recent standard (currently ASTM E1527-13). 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____, and any addendum(s) thereto, 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 was covered as of the date of the Environmental Investigation 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 as well as any time limitations on liability, other than state or Federal statutes of limitation.

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.

_____

Signature of 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 6: NAICS CODES OF ENVIRONMENTALLY SENSITIVE INDUSTRIES

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 *(except breweries, 31212)*

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 *(not required if assembly only)*

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 *(not required if assembly only)*

327 NONMETALLIC MINERAL PRODUCTS MANUFACTURING

331 PRIMARY METAL MANUFACTURING

332 FABRICATED METAL PRODUCT MANUFACTURING *(not required if assembly only)*

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 WHOLESALERS

42393 RECYCLABLE MATERIAL MERCHANT WHOLESALERS

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

484 TRUCKING *(if service bays, truck washing, or fuel tanks present)*

486 PIPELINE TRANSPORTATION

488 Support Activities for Transportation (*if fuel tanks are present or if repairs or maintenance is performed on site*)

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 SERVICES

562 WASTE MANAGEMENT & REMEDIATION SERVICES

6221 GENERAL MEDICAL & SURGICAL HOSPITALS *(if fuel tanks are present)*

713990 OTHER RECREATIONAL INDUSTRIES *(indoor and outdoor shooting ranges only)*

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 *(unless no embalming or cremation at the Property)*

8123 LAUNDRY & DRY CLEANING SERVICES *(if dry cleaning operations have ever existed on site)*

812921 PHOTOFINISHING 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 www.census.gov/eos/www/naics/

APPENDIX 7: REQUIREMENTS PERTAINING TO GAS STATION LOANS

Environmental Investigation Requirements for Gas Station Loans

NOTE: SBA 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 SBA 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 documentation supporting the Environmental Professional's determination of compliance with all regulatory requirements, if any, pertaining to tank and equipment testing (see paragraph B. below) (even if the loan is secured by real property);
   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 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 the gas station is in compliance with all regulatory 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 SBA Lender (except on PLP, SBA Express, Export 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, the SBA Lender can either:

   a. Decline the loan; or

   b. Follow the requirements in Part 2,Section A, Ch. 6, Para. E.6, Property Contamination or Remediation," *provided that at a minimum, in change of ownership situations, the SBA Indemnification Agreement as described in Section A, Chapter 6, E.6.d.i, Indemnification, 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, and Export 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 an SBA 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/SBA Lender Required. If any oil company or other Person (as defined in Appendix 4) has a right to indemnification from subsequent owners of the Property (e.g., SBA/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 SBA 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 and Export 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 processing center for review and approval prior to a request that SBA fund the loan.

APPENDIX 8: 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

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.

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 (as defined in Appendix 4) 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 E1527-13 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. Borrower and Third Party Indemnitor Covenants

1. Record Retention. Until the Mortgage Release Date, Indemnitors shall retain and make available to SBA and SBA 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 3 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").

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 9: SAMPLE BORROWING BASE CERTIFICATE AND REPORT TO LENDER

FOR THE PERIOD ENDING _____, 20 EFFECTIVE DATE OF LAST REPORT:

TO BE 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:	$

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)	$

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.

SAMPLE BORROWING BASE CERTIFICATE & REPORT TO LENDER

For the period ending: _____ 20

Date of last report: _____ 20

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 its 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 + j)	$

The above is certified to be in accordance with the revolving line of credit Authorization.

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.

SAMPLE 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)	$

SAMPLE 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	$

APPENDIX 10: ELECTRONIC SIGNATURES

SBA Lenders may use electronic signatures on SBA forms and other documents requiring signatures provided they comply with the performance standards outlined in this Appendix. Electronic signatures meeting the requirements of this Appendix will be treated as equivalent to handwritten signatures. Nothing in this Appendix affects existing SBA requirements as to who is required to sign any specific document or which documents the SBA Lender is required to retain in the loan file.

SBA's policy is consistent with and requires SBA Lenders to comply with the current version of the National Institute of Standards and Technology (NIST) Digital Identity Guidelines. SBA requires compliance with Identity Assurance Level 2 (IAL2), as described in the NIST Digital Identity Guidelines.

A. ELECTRONIC FORM OF SIGNATURE:

For the SBA-approved forms of signature, the vendor must comply with "Use of Electronic Signatures in Federal Organization Transactions," Version 1.0, January 25, 2013, section D: "Requirements for Legally Binding Electronic Signatures."

The Electronic Records and Signatures in Global and National Commerce Act (ESIGN) defines electronic signature as "any electronic sound, symbol, or process attached to or logically associated with a contract or record and executed or adopted by a person with the intent to sign the record." Signatories should follow this definition of electronic signature with the exception that SBA will not accept an electronic signature that is solely voice or audio. Electronic signatures include digital signatures.

B. ELECTRONIC SIGNATURE ELIGIBLE DOCUMENTS:

1. Unless otherwise prohibited by law, SBA Lenders may use electronic signatures on the documents referenced below (collectively referred to as "Eligible Documents"), provided that the signatories comply with the standards outlined in this Notice. Electronic signatures cannot be used on any document identified below if the recording office requires wet ink signatures.

    a. Application Documents: Electronic signatures may be accepted on all documents requiring signatures.

    b. Loan Closing Documents: Electronic signatures may be accepted on all documents requiring signatures.

    c. Secondary Market Sale Documents: With the exception of the Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate (SBA Form 1088), electronic signatures may be accepted on all documents requiring signatures.

    d. Servicing Action – Pre-Disbursement Documents: Electronic signatures may be accepted on all documents requiring signatures, including but not limited to change requests and supporting documentation.

e. Servicing Action – Post-Disbursement Documents: Electronic signatures may be accepted on all documents requiring signatures.

f. Liquidation Documents: Electronic signatures may be accepted on all documents requiring signatures.

g. Litigation Documents: Electronic signatures may be accepted on all documents requiring signatures, unless otherwise specified by a court order.

h. Post Default Action Documents: Electronic signatures may be accepted on all documents requiring signatures.

i. Lender On-Boarding Documents: Electronic signatures may be accepted on all documents requiring signatures, including but not limited to lender participation applications and agreements.

j. Delegated Authority Documentation: Electronic Signatures may be accepted on all documents requiring signatures, including but not limited to supplemental guaranty agreements.

k. Targeted and Full SBA Lender Review Documentation: Electronic Signatures may be accepted on all documents requiring signatures.

2. The use of electronic signatures is voluntary; however, SBA Lenders who choose to use electronic signatures must fully comply with the standards outlined in this Appendix and may be held liable for failure to adhere to these standards. Electronic signatures may not be used for transactions that require filing of security or other documents with a jurisdiction that does not have electronic filing capabilities. SBA Lenders must comply with Uniform Commercial Code (UCC) Article 9-105, which outlines the requirements for electronic chattel paper, and article 3 of the UCC, which outlines the electronic equivalent of a paper promissory note, known as a "Transferrable Record".

C. VENDOR/TECHNOLOGY SELECTION REQUIREMENTS:

An SBA Lender must ensure that any electronic signature technology vendor it uses:

1. Complies with Section 101 of the ESIGN Act;
2. Has the experience, capabilities, and expected longevity to meet all SBA electronic signature requirements;
3. Includes vendor agreements that contain express provisions that vendors will comply with all applicable SBA requirements pertaining to this Appendix;
4. Includes vendor agreements language that would ensure that vendor representatives will be available to provide testimony to support the United States government in litigation regarding electronic signature data that will be introduced in court;
5. Meets disaster recovery and archiving requirements; and
6. Has adequate quality control processes.

D. LENDER LIABILITY FOR FAILURE TO ADHERE TO PRESCRIBED STANDARDS:

The Office of Credit Risk Management (OCRM) will review compliance with the ESIGN Act as well as standards outlined in this Appendix as components of its oversight of SBA Lenders.

As with all Loan Program Requirements, SBA Lenders may be held accountable for not complying with the electronic signature standards and requirements set forth in this Appendix.

E. QUALITY CONTROL:

SBA Lenders must ensure their electronic signature policies and procedures meet all requirements including their own oversight of the electronic signature process.

F. RECORD RETENTION:

SBA's record retention requirements are the same for both wet ink and electronic signatures (see Appendix 11, Record Retention Requirements). For records signed electronically, the audit trail as well as any computer systems (including hardware and software), controls, and documentation must be readily available for, and subject to, SBA inspection for the same periods as records signed in wet ink.

An SBA Lender's system must be able to reproduce electronic records as accurately as if they were paper when printed or viewed. These records must be made available to SBA on request.

APPENDIX 11: RECORD RETENTION REQUIREMENTS

SBA's record retention requirements are the same for both wet ink and electronic signatures.

A. **7(a) Lenders:**

1. Lenders must retain the original Note; Guaranty(ies); Security/Collateral documents such as mortgages, deeds of trust, security agreements; SBA application (SBA Form 1919 and SBA Form 1920); any SBA Form(s) 159; and any SBA Environmental Indemnification Agreement. Hard-copy records of those documents requiring original signatures must be retained unless the original signature was made electronically in accordance with applicable standards governing electronic signatures. (See Appendix 10, Electronic Signatures, for guidance on electronic signature standards.)
2. Lenders must retain a copy of the Agency's Character Determination in their loan file for the life of the loan.
3. Federally-regulated Lenders must comply with the requirements of their FFIR's requirements governing how long to retain documentation.
4. SBA Supervised Lenders must comply with 13 CFR § 120.461.

B. **CDCs:**

1. CDCs may retain scanned copies of documents unless this paragraph specifies that the original document(s) must be retained by the CDC. CDCs must retain the original:
   a. SBA Form 1244, Application for Section 504 Loan;
   b. SBA Form(s) 159; and
   c. Any SBA Environmental Indemnification Agreement.

   Hard-copy records of those documents requiring original signatures must be retained unless the original signature was made in accordance with applicable standards governing electronic signatures. (See Appendix 10 for guidance on electronic signature standards.)
2. CDCs must retain a copy of the Agency's Character Determination in their loan file for the life of the loan.
3. 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.
4. General correspondence must be kept for 1 year. Case-specific correspondence should be filed in the case file.
5. Paid off loan files (including the original application file, servicing file, and closing file), must be kept for 6 years after the loan was paid in full.
6. Files from liquidated loans (including the original application file, closing, and servicing files), must be kept for 6 years after the loan was charged off.

APPENDIX 12: SBA EMAIL ADDRESSES

For the 7(a) and 504 Loan Programs:

CLS@sba.gov CAFS/CLS account set up, passwords, changing institutions

EnvironmentalAppeals@sba.gov Submission of an environmental appeal or a request for an exception to SBA's environmental policies and procedures

Franchise@sba.gov Review of franchise, license, jobber, dealer or similar agreements and other documents, including agreements or relationships (no matter the title of the agreement) that meet the Federal Trade Commission definition of "franchise," for inclusion on the SBA Franchise Directory; questions or appeals related to franchise review requests

Form1971Review@sba.gov Submission for review of SBA Form 1971 for evaluating the eligibility of an applicant connected, associated, or affiliated with a religious organization or engaged in promoting religion

OCA912@sba.gov Notification to SBA that the fingerprint submission process has been completed and the complete Character Determination Package has been uploaded into E-Tran. Request for reconsideration of character determinations. Questions related to the character determination process (other than status requests).

OFASubscribe@sba.gov Subscribe or unsubscribe to communication from the Office of Financial Assistance on the 7(a), 504, or both loan programs. Communication includes invitations to trainings, quarterly 7(a) Connect Calls and 504 Connect Calls, and important updates

PSMReview@sba.gov Submission of SBA Lender analysis and supporting documentation for an applicant that may have a business aspect of a prurient sexual nature

Sacramento504Register@sba.gov Registration of personnel in order to request Document Verification regarding alien status

SacramentoAlienVerification@sba.gov USCIS documentation for verification of alien legal status prior to loan submission

SBAConnect@sba.gov If you are subscribed to receive communication from the Office of Financial Assistance on the 7(a), 504, or both loan programs, this is the email address from which emails will originate. You may need to whitelist or add this email account and noreply@event-services.com as contacts in order for emails to get through your spam filter. The SBAConnect@sba.gov account and noreply@event-services.com account are unmonitored. See OFASubscribe@sba.gov above to subscribe/unsubscribe.

SNOMemos@sba.gov Submission of Statement of No Objection - The SBA Lender must submit the Applicant's statement of no objection signed by the appropriate ethics official of the pertinent department or military service if its sole proprietor, general partner, managing member, 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) in a grade of at least GS-13 (or its equivalent).

7(a) Loan Program (Only):

7aLoanMod@sba.gov Used for loan modification requests (327 actions) prior to final disbursement

7aLoanProgram@sba.gov General inquiries regarding the status of loans being processed by the Loan Guarantee Processing Center

7aPortfolioTransfers@sba.gov Submission of requests for consent for transfers involving more than one SBA 7(a) loan

7aQuestions@sba.gov For questions about 7(a) Loan Program Requirements

DelegatedAuthority@sba.gov All communication for requests for Lender delegated authority including initial requests for delegated authority and requests for renewals or reinstatement of existing delegated authority

DFCActionDesk@sba.gov Loan Transfers: When a transfer involves more than one SBA 7(a) loan, prior to conducting a review for approval, Lenders must pay all outstanding SBA receivables that are more than 30 days in arrears. Lenders must contact this email address in advance of their consent request for information on any SBA receivables outstanding.

LSPAgreements@sba.gov Submission of LSP agreements to the LGPC for review

504 Loan Program (Only):

504Questions@sba.gov For questions about eligibility, loan structure, loan status, processing, servicing, appraisals, pre-application clearance items, environmental reviews, expedited requests. To withdraw a loan after it has been accepted into processing, notify SLPC at this email. Do not mark the loan as withdrawn in E-Tran without notifying SLPC of this change.

504Requests@sba.gov Submission of: Request for permanent CDC status or a single 1-year extension of CDC's probationary status (also cc the Lead District Office); Request for CDC Mergers; Application for Priority CDC Status; CDC name change requests; CDC's Uncompensated Officers or CDC's Board of Directors, or Executive Committees; Changes to Loan Committees; Pre-approval of professional service contracts in accordance with 13 CFR § 120.824 (see Part 2, Section A, Ch. 5, Para E.6.a., Professional Services Contractors, in this SOP for more information); Changes in CDC Governing Documents; Changes of CDC Contact Information; Litigation or other Legal Proceedings

CDCAnnualReports@sba.gov Submission of: Annual Report (also cc the Lead District Office); Renewal of ALP CDC designation; Renewal request of PCLP CDC designation

OCA1081@sba.gov Electronic submission of Form 1081 in lieu of hard copy

PCLPQuarterlyReport@sba.gov Submit to OCRM the SBA Form 2233, Quarterly PCLP Summary of LLRF Balances; report and reconcile any discrepancies between the Quarterly PCLP List of Required LLRF Deposits and its records. PCLP CDCs also have the option of submitting these reports through the Corporate Governance Repository located on the Capital Access Financial System (CAFS) under the CDC Online function. Use of the Corporate Governance Repository will avoid email size limitation.

SLPC.e504Help@sba.gov Questions regarding E-Tran web screens for 504 loan application