



# SBA Information Notice

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**TO:** All SBA Employees and 7(a) Lenders, and Certified Development Companies, Applicants and Borrowers of the 7(a) and 504 Loan Programs

**CONTROL NO.:** 5000-848663

**SUBJECT:** Issuance of SOP 50 10 7.1

**EFFECTIVE:** October 25, 2023

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The purpose of this Notice is to inform 7(a) Lenders, Certified Development Companies (CDCs), together known as “SBA Lenders,” SBA employees, and Applicants and Borrowers of the 7(a) and 504 Loan Programs of the issuance of Standard Operating Procedure (SOP) 50 10 7.1, Lender and Development Company Loan Programs.

SOP 50 10 7.1 will become effective Nov. 15, 2023, and will apply to all applications received by SBA on or after that date. SBA Lenders and SBA employees must continue to use SOP 50 10 7 for 7(a) and 504 applications submitted through Nov. 14, 2023.

The revised language includes but is not limited to:

## **SECTION A: CORE REQUIREMENTS FOR ALL 7(A) AND 504 LOANS**

The chapters listed below have received updated titles.

**Chapter 1:** Primary Applicant Eligibility Requirements Validated by SBA’s Risk Mitigation Framework

**Chapter 2:** Credit Not Available Elsewhere, Special Transaction Structures, & Other Primary Applicant Eligibility Requirements

### **Chapter 1: Primary Applicant Eligibility Requirements Validated by SBA’s Risk Mitigation Framework**

#### **SBA determination of whether the Applicant meets primary eligibility requirements:**

Clarified that SBA will make the final determination as to the eligibility of the Applicant for all eligibility requirements stated in Section A, Chapter 1, using SBA’s Risk Mitigation Framework. Added language that SBA Lenders must not submit an application that the SBA Lender knows is not eligible, regardless of the Applicant’s certification. SBA Lenders have the ability to conduct

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**EXPIRES: 10/1/24**

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

Must be accompanied by SBA Form 58

a pre-check in E-Tran before submitting a loan application to determine whether SBA's Risk Mitigation Framework will flag any eligibility issues for the Applicant. Prior to receiving an SBA loan number, all SBA Lenders must digitally submit a completed loan application and the loan terms and conditions to SBA.

**Paragraph A. Applicant Certification:** Edited the certification made by the applicant.

**Paragraph D. Located in the United States:** Added text stating that if an Applicant has international operations, the loan proceeds must be used exclusively for the benefit of the domestic operations.

**Paragraph E.:**

**1.d.** Clarified that for loans structured with an EPC and OC, only the OC is examined for size and affiliation. However, in accordance with 13 CFR § 120.151, the amount of any loan received by an EPC applies to the loan limit of both the EPC and the OC.

**4.a.vi., Affiliation based on ownership:** Clarified that when spouses and minor children jointly own a business, their ownership interests must be combined when determining the amount of ownership interest. Ownership interests are not combined when spouses and minor children have individual ownership interests in different businesses.

**Paragraph F., Types of Ineligible Businesses:** Added explanatory text regarding passive businesses.

## **Chapter 2: Credit Not Available Elsewhere, Special Transaction Structures, & Other Primary Applicant Eligibility Requirements**

**Paragraph A, Credit Not Available Elsewhere:** Added clarifying text that there is no requirement for written justification in the SBA Lender's credit memorandum beyond simply indicating one or more reasons from a list of the acceptable factors that support the SBA Lender's certification.

**Paragraph C, Primary Applicant Eligibility Requirements Verified by the SBA Lender:** Added text clarifying the types of ineligible businesses that the SBA Lender is responsible for determining with respect to the Applicant's eligibility.

## **Chapter 3: Uses of Proceeds**

**Paragraph B., Restrictions on uses of proceeds:** Added the regulatory language from 13 CFR § 120.881, for the 504 Loan Program only, that loan proceeds may not be used to finance the relocation of the Applicant out of a community, if there will be a net reduction of one-third of its jobs for an Applicant or a substantial increase in unemployment in any area of the country (with exceptions).

**Paragraph C: Occupancy and Leasing Requirements:** Added clarifying language.

## **Chapter 4: Ethics, Fees, and Agents**

**Paragraph C.2., Fees and expenses the Lender may collect from the Applicant or Borrower:** Edited the requirements for content and clarity and consistent with 13 CFR § 120.221.

**Paragraph C.2.a.iii:** Clarified that, as part of its service and packaging fee, Lenders may charge fees associated with technology services (whether developed internally or purchased from a third party) on a pro rata basis for software or technology used in connection with preparing SBA loan documents, underwriting, or closing the SBA-guaranteed loan. These fees may not be charged as an out of pocket expense.

## **Chapter 5: Other Core Requirements**

### **Paragraph A: Guaranties:**

**Formerly 4., “Reducing Ownership Interest”:** Deleted this paragraph because it was causing confusion regarding partial changes of ownership. It is SBA’s intention that for an SBA loan being used to finance a complete change of ownership, the seller, who no longer has any ownership in the business, is not required to provide a guaranty. Additionally, for 7(a) loans for partial changes of ownership, SBA will measure percentage of ownership post-sale for the purpose of determining who is required to provide a guaranty.

**New 4., Substitution of Personal and/or Corporate Guaranty Liability:** Added language that permits substitution of personal and/or corporate guaranty liability. SBA allows third-party individuals or entities to assume the liability of a personal or corporate guaranty, as applicable, for the guaranty of the individuals and/or entities that would otherwise be required to make a personal or corporate guaranty for an SBA loan. If the personal or corporate guaranty liability is assumed by a separate entity or individual, the substitute guarantor must have a similar or greater value, and the personal/corporate guaranty liability agreement or transfer agreement must be submitted to the SBA Lender as part of the complete loan package. If a substitute guarantor will be used, SBA Lender must identify in the E-Tran terms and conditions both the substituted guarantor and the individual or corporate entity being substituted, and if applicable, the personal/corporate guaranty liability agreement or transfer agreement must be submitted to the SBA Lender as part of the complete loan package.

**Paragraph B., IRS tax transcript/verification of financial information:** Edited this section for content and clarity.

**Paragraph C.1.a., Insurance requirements:** Clarified that for 504 loans of all sizes, SBA requires hazard insurance on what is being acquired, refinanced, or improved by the 504 loan.

### **Paragraph C.3., Flood insurance:**

**C.3.a.:** Clarified that SBA flood insurance requirements are based on the Standard Flood Hazard Determination (FEMA Form 086-0-32 or its successor). The mandatory purchase of flood insurance will be required as set forth by the provisions of the National Flood Insurance Program

(NFIP) and the Interagency Questions and Answers Regarding Flood Insurance at 12 CFR §22, 12 CFR §208, 12 CFR §339, 12 CFR §614 and 12 CFR §760.

**C.3.c.:** Clarified that if an SBA Lender is taking the business real estate as collateral, and if the loan proceeds are being used to refinance, acquire, install, improve, construct, or renovate real estate and/or machinery and equipment, the loan recipient must obtain flood insurance on the collateral and its contents if it is located in a special flood hazard area.

**Paragraph F, Special-Purpose Credit Programs:** Added text stating that 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, SBA and/or 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.

## **SECTION B: 7(A) LOAN PROGRAM SPECIFIC REQUIREMENTS**

**For all 7(a) loan delivery methods:** Revised guidance to state that Lenders must list in E-Tran all Beneficial Owners of at least 20 percent of the Applicant and at least 51 percent of the total Beneficial Owners of the Applicant. Additionally, Lenders must submit the required information from SBA Form 1919 into E-Tran, but Lenders are not required to upload the form itself into E-Tran. Lenders must retain the signed SBA Form 1919 in the loan file.

### **Loan maturities – For all 7(a) loan delivery methods, clarified:**

For loans to acquire equipment, fixtures, or furniture, maturity may be up to 15 years if the IRS asset class useful life supports the term.

Loans for leasehold improvements (except for leasehold interests in land) may be up to 10 years, plus an additional period reasonably necessary to complete the leasehold improvements.

For mixed-purpose loans, 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.

**Collateral – For all 7(a) loan delivery methods:** Included the regulatory prohibition at 13 CFR § 120.411 that prohibits Lenders from taking any action in connection with an SBA-guaranteed loan that establishes a preference in favor of the Lender, and further prohibits the Lender from having a 7(a) loan in a piggyback structure.

### **Debt refinance - For all 7(a) loan delivery methods:**

Added the regulatory prohibition at 13 CFR § 120.130(b) that states a 7(a) loan may not be used to refinance a debt owed to a Small Business Investment Company (SBIC) or a New Markets Venture Capital Company. Added language clarifying when a Lender may refinance its own

same institution non-SBA guaranteed debt or its own or another SBA Lender's SBA-guaranteed loan.

Clarified that in accordance with 13 CFR § 120.452, a Lender may not use PLP delegated authority to reduce the Lender's credit exposure to the Applicant; therefore, Standard 7(a) and 7(a) Small loans that reduce a Lender's credit exposure to the Applicant must be processed under non-delegated authority. However, SBA Express Lenders may process loans that reduce the SBA Express Lender's credit exposure to the Applicant under SBA Express authority.

**Debt refinance – For Standard 7(a), 7(a) Small, and SBA Express:**

Clarified that in order to be eligible for refinancing, the debt must be, and must have been, current for at least the last 12 months or for the life of the loan, whichever is less.

**Changes of ownership - For 7(a) delivery methods that allow these transactions, clarified:**

Loan maturity for a complete change of ownership may be up to 25 years only when the purchase price includes the commercial real estate from which the Applicant business operates (i.e., is not investment or personal real estate) and when the value of the commercial real estate is 51% or more of the purchase price. Otherwise, the maximum maturity is 10 years. The maximum loan maturity for change of ownership between existing owners and for partial changes of ownership is 10 years.

A complete partner buyout or a partial change of ownership is by its nature a transaction based on the redemption or sale of stock for equity in the business; therefore, the loan maturity is limited to a maximum of 10 years.

Seller earnouts are prohibited; however, buyer rebates based on business performance are allowed because this is a benefit to the Borrower. If the Borrower receives funds based on the rebate, it should first be applied to pay down the 7(a) loan to a point that will not trigger a subsidy recoupment fee, and any remaining funds may be used for business purposes.

The maximum 7(a) loan uses of proceeds for the change of ownership is capped at the business valuation amount. When the business valuation is lower than the sales agreement, the shortfall may be financed with a non-guaranteed loan as long as it is subordinate to the 7(a) loan.

Clarified when a seller may remain as an officer, director, stockholder, or employee of the business.

**Chapter 1: Standard 7(a) Loans**

**Standard 7(a) loans, Changes of Ownership, Equity - Section B, Chapter 1, Para. C.2.b., clarified:**

For changes of ownership resulting in a new owner (complete change of ownership):

At a minimum, SBA requires 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) for such transactions.

Seller debt may not be considered as part of the equity injection unless the seller's loan does not include a balloon payment and, for the first 24 months of the 7(a) loan, the seller debt is on either (a) full standby; or (b) partial standby (interest payments only being made) and the Applicant's historical business cash flow supports the ability to make the payments, and at least a quarter of the SBA-required equity injection is from a source other than the seller.

For changes of ownership between existing owners and for partial changes of ownership: When required, cash contribution can be either an amount sufficient to reflect a debt-to-worth ratio of no greater than 9 to 1 on the pro form balance sheet **or** in the amount of at least 10% of the purchase price of the business, as reflected in the purchase and sale agreement, whichever is less.

**Standard 7(a) loans, Real estate appraisal and business valuation requirements – Section B, Chapter 1, Para. C.3.:** Added the Small Business Act requirement that for all Standard 7(a) loans secured by commercial real property, all Lenders must obtain an appraisal by a State licensed or certified appraiser.

### **Chapter 2: 7(a) Small Loans & SBA Express**

**Maximum loan amount for 7(a) Small and SBA Express – Para.B.1.:** Clarified that 7(a) Small loans have a maximum loan amount of \$500,000 per project, including other 7(a) loans made within 90 days. The maximum aggregate SBA Express loan amount is \$500,000 (gross), inclusive of all outstanding SBA Express, Community Advantage, Community Express, and Patriot Express loans the Applicant and its Affiliates may have.

**Underwriting 7(a) Small loans – Para.C.2.a.:** Clarified the loan submission process using delegated and non-delegated authority when the loan receives a satisfactory score and when it does not receive a satisfactory score.

**Collateral** – Clarified that for loans over \$50,000, the Lender must follow the written collateral policies and procedures that it has established and implemented for its similarly-sized, non-SBA guaranteed commercial loans, except that SBA does not require a Lender to place a lien on non-business assets such as personal homes even if it is the Lender's policy to do so.

**Real estate appraisal and business valuation requirements – Para.B.3.:** Revised the requirements for appraisal and business valuation.

### **Chapter 5: E-Tran Terms and Conditions through Disbursement for all 7(a) Loans**

Clarified SBA does not require signatures on the E-Tran terms and conditions.

Added construction loan provisions in accordance with the regulatory requirement at 13 CFR § 120.200 and providing for a blanket waiver of the requirement for a payment and performance bond.

Clarified the required Note terms for loans that will be sold on the secondary market.

Clarified that the E-Tran terms and conditions must include collateral and lien priority.

Clarified requirements for licenses. The Lender must obtain evidence from the Borrower of all licenses required to operate the business within no more than 90 days after final disbursement of the loan. The loan may not be sold into the secondary market until all required licenses are obtained.

## **Section C: 504 Loan Program Specific Requirements**

### **Chapter 1: Eligibility through Submission of Application**

**Paragraph A.2.b.iii.**, Clarified that loans to Small Manufacturers and eligible Energy Public Policy Projects are excluded from CDC's portfolio job opportunity average.

**Paragraph C.10.h.**, Updated the debt refinance without expansion policy to conform to SBA Policy Notice 5000-847732.

**Paragraph C.11.b.vi.c)**, Clarified loans with balloon payments meet the Substantial Benefit test independent of the 10% reduction requirement.

**Paragraph C.15 Businesses owned by ESOPs**, added a new paragraph for businesses owned by ESOPs.

**Paragraph E.1.c.i, Borrower's Contribution**, clarified that the Borrower's contribution may consist of borrowed funds (subordinate to the Third-Party loan and the 504 debenture, and, without SBA's written approval, may not be repaid at a faster rate than the 504 loan).

**Paragraph E.1.c.i.c)ii., Borrower's Contribution**, clarified the Borrower's contribution for new business and special/single purpose properties in accordance 13 CFR § 120.910.

**Paragraph F.2., Contents of a 504 Loan Application**, clarified SBA Form 1244, "Application for Section 504 Loan," must list all Beneficial Owners of at least 20% of the Applicant, and at least 51% of the total Beneficial Owners of the Applicant.

### **Chapter 2: SBA E-Tran Terms and Conditions through Disbursement**

**Paragraph C.1.b.**, clarified that the Interim Lender must make certifications at the time of debenture closing as stated in SBA Form 2288 and 13 CFR §§ 120.891 and 120.892.

## **APPENDIX 3: DEFINITIONS**

**New Business:** Added a clarification that when an existing business starts or acquires a business that is in the same 6-digit NAICS code with identical ownership and in the same geographic area as the acquiring entity and they are co-borrowers, SBA considers this to be a business expansion and not a new business.

**Rural Area:** Changed the website for where the Census Bureau's urban-rural classification and the Census Bureau's County Classification Lookup Table can be found. [Urban and Rural \(census.gov\)](#)

**Supplemental Guarantor:** Added language indicating a non-owner spouse who is required to provide a limited guaranty in order to secure a lien on jointly owned personal real estate is not a Supplemental Guarantor, because in this case the guaranty is mandatory.

**Questions:**

Questions concerning this Notice may be directed to the Lender Relations Specialist in the [local SBA Field Office](#).

Kathryn Frost  
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Office of Capital Access