



SBA Procedural Notice

TO: All SBA Employees and 7(a) Lenders, Microlenders, Certified Development Companies (CDCs), and SBA Sureties

CONTROL NO.: 5000-857477

EFFECTIVE: May 31, 2024

SUBJECT: Updates to SOP 50 10 7.1 and SOP 50 45 3 Related to the Criminal Justice Final Rule

The purpose of this Notice is to inform all SBA employees, SBA Lenders, SBA Sureties, and SBA Microlenders of the publication, on April 30, 2024, of the “Criminal Justice Reviews for the SBA Business Loan Programs, and Surety Bond Guaranty Program” final rule (89 FR 34094), and to revise the applicable provisions of relevant SBA Standard Operating Procedures (SOPs). This final rule, effective May 30, 2024, amends the regulatory restrictions to improve equitable access based on the criminal background review of applicants with criminal history records seeking to participate in one or more of these programs. SBA recognized the need to update the regulations to reduce barriers to participation in these programs and provide equitable support for qualified small business owners with certain criminal history records. In the final rule, SBA removed restrictions that limit access to capital for qualified people with certain criminal history records.

Prior to the effective date of the final rule, SBA considered 7(a) and 504 business loan program applicants ineligible if the business had an Associate who was incarcerated, on probation, on parole, or was under indictment for a felony or any crime involving or relating to financial misconduct or a false statement. For the Surety Bond Guaranty Program, SBA considered an applicant ineligible if any of the Principals (as defined by 13 CFR § 115.10) were under indictment but not convicted, previously convicted of a felony or had received civil judgment regarding business transactions.

In the Microloan Program, an Intermediary could make Microloans to businesses with an Associate who was on probation or parole at the time, provided that the Associate was not on probation or parole for an offense involving fraud or dishonesty or, in the case of a childcare business, was not on probation or parole for an offense against children.

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EXPIRES: 5/1/25

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

Must be accompanied by SBA Form 58

As a result of the regulatory changes, SBA is making the following revisions to the SBA forms and SOPs identified below. The revised SOP provisions will be effective as of May 30, 2024.

SBA 7(a) Guaranty and 504 Loan Programs

SOP 50 10 7.1, Section A, Chapter 1, Paragraph F.12.(page 19) is revised as follows:

- “12. Businesses with an Associate who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or is under indictment for a felony or any crime involving or relating to financial misconduct or a false statement. 13 CFR § 120.110(n)”

For the 7(a) Loan Program, SBA Form 1919, SBA 7(a) Borrower Information Form For use with all SBA 7(a) Loan Programs, Question #4 (page 2), is revised to read as follows:

- “4. Is the Applicant or any Associate of the Applicant currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or is under indictment for a felony or any crime involving or relating to financial misconduct or a false statement? (if “Yes” the Applicant is not eligible for SBA Financial Assistance.)”

For the 504 Loan Program, SBA Form 1244, Application for Section 504 Loans; Section Two: Information Required to be Submitted by each Associate of the Applicant, Questions #2, #3, and #4 (page 4) are removed in their entirety and replaced with the following:

- “4. Is the Applicant or any Associate of the Applicant currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or is under indictment for a felony or any crime involving or relating to financial misconduct or a false statement? (if “Yes” the Applicant is not eligible for SBA financial assistance.)”

The Rule takes effect May 30, 2024; however, the updated 7(a) Loan Program’s application form, SBA Form 1919, and the 504 Loan Program’s application form, SBA Form 1244, will not be available until after the Rule’s effective date. Until Applicants can apply using updated program application forms:

- For the 7(a) Loan Program, if the Applicant answers “yes” on the question regarding criminal history (SBA Form 1919, page 2, question 4), the Lender must determine whether the Applicant is eligible for a 7(a) loan based on the Criminal Justice Rule’s requirements, and the SBA Lender must document the results in the loan file.
- For the 504 Loan Program, the CDC must determine whether the Applicant is eligible for a 504 loan based on the Criminal Justice Rule’s requirements, and the CDC must document the results in the loan file.

Microloan Program

Microloan Program forms will not be affected by the final rule.

Surety Bond Guarantee Program

Surety Bond Guarantee Program is making revisions as follow:

SOP 50 45 3, Chapter 4, Section 3, paragraph d. (page 27) is deleted in its entirety and replaced with the following:

"d. Incarceration

The good character of the contractor is presumed absent if any Person is currently incarcerated, serving a sentence of imprisonment imposed upon an adjudication of guilty."

SOP 50 45 3, Chapter 7, Section 2, paragraph c (page 47) is deleted in its entirety and replaced with the following:

"c. Character (SBA Form 994 Process) The applicant's good character is a fundamental necessity in surety bond underwriting and must be assessed by the Surety. In making this assessment, SBA requires that each owner of 20% or more equity of the small business, and each of its officers, directors, or general partners ("Subject Individual") must be of good character.

1. The completion of an SBA Form 994, Part V, Individual Certifications on Citizenship and Character and Other Matters, by each Subject Individual is required as part of the character evaluation process. Every person completing an SBA Form 994 must answer each question fully giving details about any "yes" response. NOTE: A "yes" is required even when the record is allegedly sealed, expunged or otherwise unavailable. (This information is kept private and confidential.) There are no exceptions or waivers of this policy.
2. There is a presumption that SBA will not guarantee a surety bond to businesses with Subject Individuals who are currently incarcerated, serving a sentence of imprisonment imposed upon an adjudication of guilty, or under indictment for a felony.
3. An application can be accepted for processing if the Subject Individual indicates they are not currently incarcerated or under indictment for a felony.
4. If the Subject Individual answers "Yes" to incarceration or indictment of a felony, SBA will decline the application because the information supplied on the Subject Individual shows the individual is incarcerated or indicted for a felony and not eligible for assistance.
5. If the SBA Form 994 is incomplete, it cannot be processed and will be returned to the Surety/agent. The Surety/agent must submit a corrected SBA Form 994 before processing continues.

6. A Subject Individual may not reduce his or her ownership in a small business for the purpose of avoiding completion of SBA Form 994. Anyone who would have been considered a Subject Individual within 6 months prior to the application must complete SBA Form 994. The only exception to this 6-month rule is when a Subject Individual completely divests his or her interest prior to the date of application. Complete divestiture includes a divestiture of all ownership interest and severance of any relationship with the small business (and any associated Eligible Passive Company) in any capacity, including being an employee (paid or unpaid).”

SOP 50 45 3, Chapter 8, Section 1 (page 58) is deleted in its entirety and replaced with the following:

“8.1. Matters That Should be Referred to the OIG

All SBA officials, Sureties and other program participants should be on the lookout for fraud and must report any known or suspected irregularities involving SBA programs, program participants, or personnel to the OIG. (13 CFR § 120.197) Whether acting alone or in collusion with others, surety bond guarantee applicants, Sureties or other Obligor may intentionally provide false information to SBA. Examples of irregularities that must be referred include:

- a. Overstating income;
- b. Understating or failing to disclose liabilities and debts;
- c. Overvaluing collateral;
- d. Failing to disclose incarceration or felony indictment status;
- e. Making false claims of U.S. citizenship.
- f. Failing to disclose true ownership of the business;
- g. Using false Social Security numbers to conceal poor credit history;
- h. Submitting altered tax returns;
- i. Creating false work histories’;
- j. Actions by corrupt Surety agents who orchestrate, facilitate or otherwise support any of the illegal acts committed by SBG applicants; or
- k. Misconduct by a Surety, Surety agent or representative, or SBA official such as the solicitation, offer or acceptance of a bribe to approve a surety bond guarantee.”

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