

## Small Business Administration

## § 120.310

(b) If the guarantee fee is not paid, SBA may terminate the guarantee. The Borrower may use working capital loan proceeds to reimburse the Lender for the guarantee fee. Acceptance of the guarantee fee by SBA shall not waive any right of SBA arising from the Lender's misconduct or violation of any provision of this part, the guarantee agreement, the Authorization, or other loan documents.

(c) The Lender shall also pay SBA an annual service fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

[61 FR 3235, Jan. 31, 1996; 61 FR 11471, Mar. 20, 1996]

### § 120.221 Fees which the Lender may collect from a loan applicant.

(a) *Service and packaging fees.* The Lender may charge an applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging and other services. The Lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. The applicant is responsible for deciding whether fees are reasonable. SBA may review these fees at any time. Lender must refund any such fee considered unreasonable by SBA.

(b) *Extraordinary servicing.* Subject to prior written SBA approval, if all or part of a loan will have extraordinary servicing needs, the Lender may charge the applicant a service fee not to exceed 2 percent per year on the outstanding balance of the part requiring special servicing.

(c) *Out-of-pocket expenses.* The Lender may collect from the applicant necessary out-of-pocket expenses such as filing or recording fees.

(d) *Late payment fee.* The Lender may charge the Borrower a late payment fee not to exceed 5 percent of the regular loan payment.

(e) *No prepayment fee.* The Lender may not charge a fee for full or partial prepayment of a loan.

### § 120.222 Fees which the Lender or Associate may not collect from the Borrower or share with third parties.

The Lender or its Associate may not:

(a) Require the applicant or Borrower to pay the Lender, an 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 (unless permitted by this part);

(b) Charge an applicant any commitment, bonus, broker, commission, referral or similar fee;

(c) Charge points or add-on interest;

(d) Share any premium received from the sale of an SBA guaranteed loan in the secondary market with a Service Provider, packager, or other loan-referral source; or

(e) Charge the Borrower for legal services, unless they are hourly charges for requested services actually rendered.

## Subpart C—Special Purpose Loans

### § 120.300 Statutory authority.

Congress has authorized several special purpose programs in various subsections of section 7(a) of the Act. Generally, 7(a) loan policies, eligibility requirements and credit criteria enumerated in subpart B of this part apply to these programs. The sections of this subpart prescribe the special conditions applying to each special purpose program. As with other business loans, special purpose loans are available only to the extent funded by annual appropriations.

#### DISABLED ASSISTANCE LOAN PROGRAM (DAL)

### § 120.310 What assistance is available for the disabled?

Section 7(a)(10) of the Act authorizes SBA to guarantee or make direct loans to the disabled. SBA distinguishes two kinds of assistance:

(a) *DAL-1.* DAL-1 Financial Assistance is available to non-profit public or private organizations for disabled individuals that employ such individuals; or

(b) *DAL-2.* DAL-2 Financial Assistance is available to:

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(1) Small businesses wholly owned by disabled individuals; and

(2) Disabled individuals to establish, acquire, or operate a small business.

### § 120.311 Definitions.

(a) *Organization for the disabled* means one which:

(1) Is organized under federal or state law to operate in the interest of disabled individuals;

(2) Is non-profit;

(3) Employs disabled individuals for seventy-five percent of the time needed to produce commodities or services for sale; and

(4) Complies with occupational and safety standards prescribed by the Department of Labor.

(b) *Disabled individual* means a person who has a permanent physical, mental or emotional impairment, defect, ailment, disease or disability which limits the type of employment for which the person would otherwise be qualified.

### § 120.312 DAL-1 use of proceeds and other program conditions.

(a) DAL-1 applicants must submit appropriate documents to establish program eligibility.

(b) Generally, applicants may use loan proceeds for any 7(a) loan purposes. Loan proceeds may not be used:

(1) To purchase or construct facilities if construction grants and mortgage assistance are available from another Federal source; or

(2) For supportive services (expenses incurred by a DAL-1 organization to subsidize wages of low producers, health and rehabilitation services, management, training, education, and housing of disabled workers).

(c) SBA does not consider a DAL-1 organization to have a conflict of interest if one or more of its Associates is an Associate of the Lender.

### § 120.313 DAL-2 use of proceeds and other program conditions.

(a) The DAL-2 loan proceeds may be used for any 7(a) loan purposes.

(b) An applicant may use DAL-2 loan proceeds to acquire an eligible small business without complying with the change of ownership conditions in § 120.202.

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(c) A DAL-2 applicant must submit evidence from a physician, psychiatrist, or other qualified professional as to the permanent nature of the disability and the limitation it places on the applicant.

### § 120.314 Resolving doubts about creditworthiness.

For the purpose of the DAL Program, SBA shall resolve doubts concerning the creditworthiness of an applicant in favor of the applicant. However, the applicant must present satisfactory evidence of repayment ability. Personal guarantees of Associates are not required for purposes of DAL-1 financial assistance.

### § 120.315 Interest rate and loan limit.

The interest rate on direct DAL loans is three percent. There is an administrative limit of \$150,000 on a direct DAL loan.

#### BUSINESSES OWNED BY LOW INCOME INDIVIDUALS

### § 120.320 Policy.

Section 7(a)(11) of the Act authorizes SBA to guarantee or make direct loans to establish, preserve or strengthen small business concerns:

(a) Located in an area having high unemployment according to the Department of Labor;

(b) Located in an area in which a high percentage of individuals have a low income inadequate to satisfy basic family needs; and

(c) More than 50 percent owned by low income individuals.

#### ENERGY CONSERVATION

### § 120.330 Who is eligible for an energy conservation loan?

SBA may make or guarantee loans to assist a small business to design, engineer, manufacture, distribute, market, install, or service energy devices or techniques designed to conserve the Nation's energy resources.

### § 120.331 What devices or techniques are eligible for a loan?

Eligible energy conservation devices or techniques include:

(a) Solar thermal equipment;