

## § 120.1

### ENFORCEABILITY OF 501, 502 AND 503 LOANS AND OTHER LAWS

120.990 501, 502 and 503 loans.

120.991 Effect of other laws.

AUTHORITY: 15 U.S.C. 634 (b)(6), 636(a) and (h), 696(3), and 697(a)(2).

SOURCE: 61 FR 3235, Jan. 31, 1996, unless otherwise noted.

### GENERAL DESCRIPTIONS OF SBA'S BUSINESS LOAN PROGRAMS

#### § 120.1 Which loan programs does this part cover?

This part regulates SBA's financial assistance to small businesses under its general business loan programs ("7(a) loans") authorized by section 7(a) of the Small Business Act ("the Act"), 15 U.S.C. 636(a), its microloan demonstration loan program ("Microloans") authorized by section 7(m) of the Act, 15 U.S.C. 636(m), and its development company program ("504 loans") authorized by Title V of the Small Business Investment Act, 15 U.S.C. 695 to 697f ("Title V"). These three programs constitute the business loan programs of the SBA.

#### § 120.2 Descriptions of the business loan programs.

(a) *7(a) loans.* (1) 7(a) loans provide financing for general business purposes and may be:

- (i) A direct loan by SBA;
- (ii) An immediate participation loan by a Lender and SBA; or
- (iii) A guaranteed loan (deferred participation) by which SBA guarantees a portion of a loan made by a Lender.

(2) A guaranteed loan is initiated by a Lender agreeing to make an SBA guaranteed loan to a small business and applying to SBA for SBA's guarantee under a blanket guarantee agreement (participation agreement) between SBA and the Lender. If SBA agrees to guarantee (authorizes) a portion of the loan, the Lender funds and services the loan. If the small business defaults on the loan, SBA's guarantee requires SBA to purchase its portion of the outstanding balance, upon demand by the Lender and subject to specific conditions. Regulations specific to 7(a) loans are found in subpart B of this part.

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(b) *Microloans.* SBA makes loans and loan guarantees to non-profit Intermediaries that make short-term loans up to \$25,000 to eligible small businesses for general business purposes, except payment of personal debts. SBA also makes grants to Intermediaries for use in providing management assistance and counseling to small businesses. Regulations specific to these loans are found in subpart G of this part.

(c) *504 loans.* Projects involving 504 loans require long-term fixed-asset financing for small businesses. A Certified Development Company (CDC) provides the final portion of this financing with a 504 loan made from the proceeds of a Debenture issued by the CDC, guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to investors. The regulations specific to these loans are found in subpart H of this part.

#### § 120.3 Pilot programs.

The Administrator of SBA may from time to time suspend, modify, or waive rules for a limited period of time to test new programs or ideas. The Administrator shall publish a document in the FEDERAL REGISTER explaining the reasons for these actions.

### DEFINITIONS

#### § 120.10 Definitions.

The following terms have the same meaning wherever they are used in this part. Defined terms are capitalized wherever they appear.

*Associate.* (1) An Associate of a Lender or CDC is:

(i) 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 involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraphs (1)(i) 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:

(i) An officer, director, owner of more than 20 percent of the equity, or key employee of the small business;

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(ii) Any entity in which one or more individuals referred to in paragraphs (2)(i) of this definition owns or controls at least 20 percent; and

(iii) 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:

(i) For a CDC, the date of certification by SBA;

(ii) For a Lender, the date of application for a loan guarantee on behalf of an applicant; or

(iii) For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

*Authorization* is 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.

*Borrower* is the obligor of an SBA business loan.

*Certified Development Company* (“CDC”) is an entity authorized by SBA to deliver 504 financing to small businesses.

*Close Relative* is a spouse; a parent; or a child or sibling, or the spouse of any such person.

*Eligible Passive Company* is 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.

*Intermediary* is the entity in the Microloan program that receives SBA financial assistance and makes loans to small businesses in amounts up to \$25,000.

*Lender* is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

*Loan Instruments* are the Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

*Operating Company* is 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.

*Preference* is 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.

*Rentable Property* is the total square footage of all buildings or facilities used for business operations.

*Rural Area* is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

*Service Provider* is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

*SOPs* are SBA Standard Operating Procedures, as issued and revised by SBA from time to time.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2117, Jan. 13, 1999; 68 FR 57980, Oct. 7, 2003]

### Subpart A—Policies Applying to All Business Loans

#### ELIGIBILITY REQUIREMENTS

#### § 120.100. What are the basic eligibility requirements for all applicants for SBA business loans?

To be eligible for an SBA business loan, a small business applicant must:

- (a) Be an operating business (except for loans to Eligible Passive Companies);
- (b) Be organized for profit;
- (c) Be located in the United States;
- (d) Be small under the size requirements of part 121 of this chapter (including affiliates). See subpart H of