

## Small Business Administration

## § 120.140

(a) Payments, distributions or loans to Associates of the applicant (except for ordinary compensation for services rendered);

(b) Refinancing a debt owed to a Small Business Investment Company ("SBIC");

(c) Floor plan financing or other revolving line credit, except under §120.390;

(d) Investments in real or personal property acquired and held primarily for sale, lease, or investment (except for a loan to an Eligible Passive Company or to a small contractor under §120.310);

(e) A purpose which does not benefit the small business; or

(f) Any use restricted by §§120.201 through 120.203 and 120.884 (specific to 7(a) loans and 504 loans respectively).

### **§ 120.131 Leasing part of new construction or existing building to another business.**

(a) If the SBA financing (whether 7(a) or 504) is for the construction of a new building, a Borrower may permanently lease up to 20 percent of the Rentable Property to one or more tenants if the Borrower permanently occupies and uses no less than 60 percent of the Rentable Property, and plans to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and plans to permanently occupy and use within ten years all of the remaining space not permanently leased. If the Borrower is an Eligible Passive Company which leases 100 percent of the new building's space to one or more Operating Companies, the Operating Company, or Operating Companies together, must follow the same rules set forth in this paragraph.

(b) If the SBA financing (whether 7(a) or 504) is for the acquisition, renovation, or reconstruction of an existing building, the Borrower may permanently lease up to 49 percent of the Rentable Property if the Borrower permanently occupies and uses no less than 51 percent of the Rentable Property. If the Borrower is an Eligible Passive Company which leases 100 percent of the space of the existing building to one or more Operating Companies, the Operating Company, or Operating Com-

panies together, must follow the same rules set forth in this paragraph.

[68 FR 51679, Aug. 28, 2003]

### ETHICAL REQUIREMENTS

#### **§ 120.140 What ethical requirements apply to participants?**

Lenders, Intermediaries, and CDCs (in this section, collectively referred to as "Participants"), must act ethically and exhibit good character. Ethical indiscretion of an Associate of a Participant or a member of a CDC will be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

(a) Self-deal;

(b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates or an Associate's Close Relatives) or SBA;

(c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);

(d) Be incarcerated, on parole, or on probation;

(e) Knowingly misrepresent or make a false statement to SBA;

(f) Engage in conduct reflecting a lack of business integrity or honesty;

(g) Be a convicted felon, or have an adverse final civil judgment (in a case involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;

(h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the Participant may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;

(i) Fail to disclose to SBA all relationships between the small business and its Associates (including Close Relatives of Associates), the Participant,

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and/or the lenders financing the Project of which it is aware or should be aware;

(j) Fail to disclose to SBA whether the loan will:

(1) Reduce the exposure of a Participant or an Associate of a Participant in a position to sustain a loss;

(2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Participant or an Associate of the Participant;

(3) Repay or refinance a debt due a Participant or an Associate of a Participant; or

(4) Require the small business, or an Associate (including Close Relatives of Associates), to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association);

(k) Issue a real estate forward commitment to a builder or developer; or

(l) Engage in any activity which taints its objective judgment in evaluating the loan.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57980, Oct. 7, 2003]

### CREDIT CRITERIA FOR SBA LOANS

#### § 120.150 What are SBA's lending criteria?

The applicant (including an Operating Company) must be creditworthy. Loans must be so sound as to reasonably assure repayment. SBA will consider:

(a) Character, reputation, and credit history of the applicant (and the Operating Company, if applicable), its Associates, and guarantors;

(b) Experience and depth of management;

(c) Strength of the business;

(d) Past earnings, projected cash flow, and future prospects;

(e) Ability to repay the loan with earnings from the business;

(f) Sufficient invested equity to operate on a sound financial basis;

(g) Potential for long-term success;

(h) Nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and

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(i) The effect any affiliates (as defined in part 121 of this chapter) may have on the ultimate repayment ability of the applicant.

#### § 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in § 121.103 of this chapter, must not exceed a guaranty amount of \$1,000,000, except as otherwise authorized by statute for a specific program. The maximum loan amount for any one 7(a) loan is \$2,000,000. The amount of any loan received by an Eligible Passive Company applies to the loan limit of both the Eligible Passive Company and the Operating Company.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 51680, Aug. 28, 2003]

#### § 120.160 Loan conditions.

The following requirements are normally required by SBA for all business loans:

(a) *Personal guarantees.* Holders of at least a 20 percent ownership interest generally must guarantee the loan. SBA, in its discretion, consulting with the Participating Lender, may require other appropriate individuals to guarantee the loan as well, except SBA will not require personal guarantees from those owning less than 5% ownership.

(b) *Appraisals.* SBA may require professional appraisals of the applicant's and principals' assets, a survey, or a feasibility study.

(c) *Hazard Insurance.* SBA requires hazard insurance on all collateral.

(d) *Taxes.* The applicant may not use any of the proceeds to pay past-due Federal and state payroll taxes.

### REQUIREMENTS IMPOSED UNDER OTHER LAWS AND ORDERS

#### § 120.170 Flood insurance.

Under the Flood Disaster Protection Act of 1973 (Sec. 205(b) of Pub. L. 93-234; 87 Stat. 983 (42 U.S.C. 4000 *et seq.*)), a loan recipient must obtain flood insurance if any building (including mobile