

§ 120.150

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

13 CFR Ch. I (1-1-07 Edition)

(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

Small Business Administration

§ 120.176

homes), machinery, or equipment acquired, installed, improved, constructed, or renovated with the proceeds of SBA financial assistance is located in a special flood hazard area. The requirement applies also to any inventory (business loan program), fixtures or furnishings contained or to be contained in the building. Mobile homes on a foundation are buildings. SBA, Lenders, CDCs, and Intermediaries must notify Borrowers that flood insurance must be maintained.

§ 120.171 Compliance with child support obligations.

Any holder of 50% or more of the ownership interest in the recipient of an SBA loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

- (a) An administrative order;
- (b) A court order;
- (c) A repayment agreement between the holder and a custodial parent; or
- (d) A repayment agreement between the holder and a State agency providing child support enforcement services.

§ 120.172 Flood-plain and wetlands management.

(a) All loans must conform to requirements of Executive Orders 11988, "Flood Plain Management" (3 CFR, 1977 Comp., p. 117) and 11990, "Protection of Wetlands" (3 CFR, 1977 Comp., p. 121). Lenders, Intermediaries, CDCs, and SBA must comply with requirements applicable to them. Applicants must show:

- (1) Whether the location for which financial assistance is proposed is in a floodplain or wetland;
 - (2) If it is in a floodplain, that the assistance is in compliance with local land use plans; and
 - (3) That any necessary construction or use permits will be issued.
- (b) Generally, there is an 8-step decision making process with respect to:
- (1) Construction or acquisition of anything, other than a building;
 - (2) Repair and restoration equal to more than 50% of the market value of a building; or
 - (3) Replacement of destroyed structures.

(c) SBA may determine for the following types of actions, on a case-by-case basis, that the full 8-step process is not warranted and that only the first step (determining if a proposed action is in the base floodplain) need be completed:

- (1) Actions located outside the base floodplain;
- (2) Repairs, other than to buildings, that are less than 50% of the market value;
- (3) Replacement of building contents, materials, and equipment;
- (4) Hazard mitigation measures;
- (5) Working capital loans; or
- (6) SBA loan assistance of \$1,500,000 or less.

§ 120.173 Lead-based paint.

If loan proceeds are for the construction or rehabilitation of a residential structure, lead-based paint may not be used on any interior surface, or on any exterior surface that is readily accessible to children under the age of seven years.

§ 120.174 Earthquake hazards.

When loan proceeds are used to construct a new building or an addition to an existing building, the construction must conform with the "National Earthquake Hazards Reduction Program ("NEHRP") Recommended Provisions for the Development of Seismic Regulations for New Buildings" (which can be obtained from the Federal Emergency Management Agency, Publications Office, Washington, DC) or a code identified by SBA as being substantially equivalent.

§ 120.175 Coastal barrier islands.

SBA and Intermediaries may not make or guarantee any loan within the Coastal Barrier Resource System.

§ 120.176 Compliance with other laws.

All SBA loans are subject to all applicable laws, including (without limitation) the civil rights laws (*see* parts 112, 113, 117 and 136 of this chapter), prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age. SBA requests agreements or