



U.S. Small Business Administration Office of Capital Access

504 Connect Call
March 5, 2019

Office of Capital Access

Bill Manger – OCA Associate Administrator

Steve Kucharski - OPSM Director

Dianna Seaborn – OFA Director

Linda Reilly – 504 Program Chief

Jihoon Kim – OFPO Director

Hien Nguyen – SLPC Director

Susan Streich – OCRM Director

Paul Kirwin – 504 Team Lead

Office of Capital Access



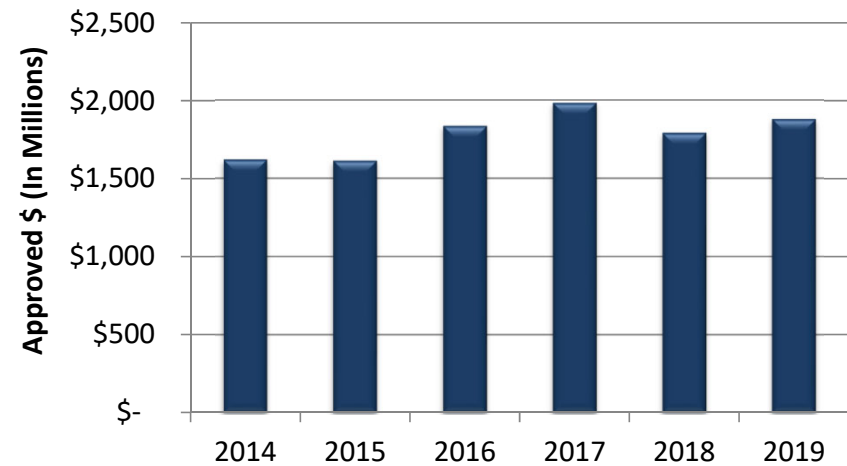
Bill Manger
Associate Administrator

OCA Updates

- OCA activity following furlough
- New SOP 50 10 5 (K)
 - Released February 15, 2019
 - Effective April 1, 2019

504 Loan Program - Year to Date Activity

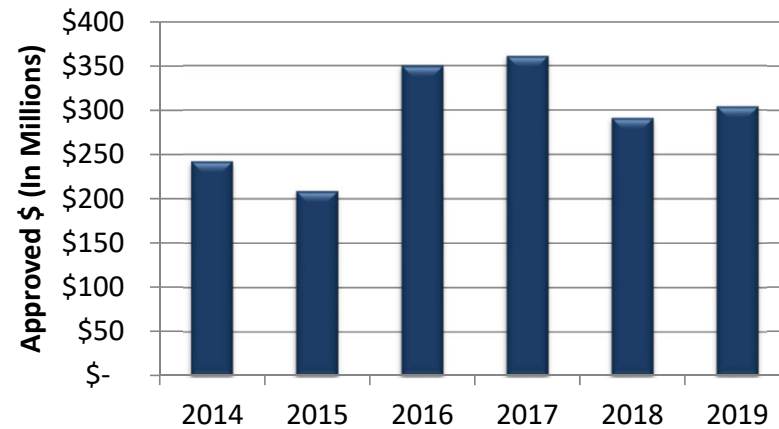
Fiscal Year	Approved Loans	Approved Dollars
2019	2,282	\$ 1,879,339,000
2018	2,214	\$ 1,791,384,000
2017	2,486	\$ 1,982,750,000
2016	2,250	\$ 1,834,740,000
2015	2,263	\$ 1,613,135,000
2014	2,272	\$ 1,620,991,000



Time Period Comparison (activity through 02/28 of each FY)

504 Franchise - Year to Date Activity

Fiscal Year	Approved Loans	Approved Dollars
2019	214	\$ 304,139,000
2018	185	\$ 291,057,000
2017	263	\$ 360,965,000
2016	245	\$ 350,230,000
2015	201	\$ 208,421,000
2014	225	\$ 242,184,000



Time Period Comparison (activity through 02/28 of each FY)

- 85% Increase in eligible brands since the addition of the Franchise Directory
- 3,766 Brands currently listed
- 2,034 Brands listed when the Directory was first published in October 2017



U.S. Small Business
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Office of Performance and Systems Management

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Office of Credit Risk Management

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OCRM

- CDC Annual Reports: OCRM is sending out emails starting this week notifying CDCs if they have any missing items or noted deficiencies in their most recently submitted Annual Reports.
- Impact of Furlough on SMART and ALP Review Schedule
 - 3 SMART Reviews were rescheduled due to the furlough.
 - 1 of those reviews has already been completed and the other 2 will be completed in the next few months.
 - 8 CDCs with ALP authority set to expire in January and February were provided short-term renewals in order to allow SBA to complete its ALP reviews.



U.S. Small Business
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Office of Financial Program Operations

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Sacramento Loan Processing Center

Hien Nguyen

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Office of Financial Assistance

Dianna Seaborn

Director

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OFA Program News

- Appraisal Procedural Notice
- Express Rule comments closed on December 18, 2018; Comments are being reviewed and considered
- 504 Corporate Governance Proposed Rule
- Attended NADCO Winter Board Meeting – CDCs and lenders
- SOP 50 10 6 realignment project

SOP 50 10 5 (K)

- SOP 50 10 5(K): Applications received by SBA on or after April 1, 2019
www.sba.gov/document – scroll to bottom (future document)
- No significant forms changes prior to April 1, 2019
(New 504 escrow option to be announced when available)
- Authorization updates in progress
- E-Tran updates to be in place by April 1, 2019

SOP 50 10 5 (K)

Subparts B and C

- Franchise review
- Updated Environmental guidance
- Credit not available elsewhere
- Liquidity review increase from 10% to 20% (Policy Notice 5000-17057)
- Eligibility of resident health care and nursing home facilities
- Eligibility of hemp-related businesses
- Ineligibility of leasing to any business engaged in illegal activity
- Revised 912 submission process (further updates planned through Notice soon)
- Process for submission of religious eligibility worksheet (SBA Form 1971)
- Revised prurient eligibility determination process
- 100% of applicant ownership must identified in E-Tran
- 4506-T reconciliation of financial information



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504 Loan Program

Linda Reilly

Chief

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Upcoming Calls

7(a) Connect Call March 26, 2019 at 3:00 Eastern

Pre-register at: <http://ems8.intellor.com?do=register&t=1&p=810992>

504 Corporate Governance - April 16, 2019 at 2:00 Eastern

Audience: CDCs and LRSs

Dial in: **1-877-369-5243**

Access Code: **0458297##**

*Entry Link: <http://ems8.intellor.com/login/813204>

504 Connect Call June 4, 2019 at 3:00 Eastern

Dial in: **1-877-369-5243** or 1-617-668-3633

Access Code: **0362747##**

*Entry Link: <http://ems8.intellor.com/login/812219>

*Note: Copy and paste the link directly into your web browser if you encounter difficulty logging in.

Upcoming Calls

504 Connect Call September 10, 2019 at 3:00 Eastern

Dial in: **1-877-369-5243** or 1-617-668-3633

Access Code: **0612973##**

*Entry Link: <http://ems8.intellor.com/login/812220>

504 Connect Call December 10, 2019 at 3:00 Eastern

Dial in: **1-877-369-5243** or 1-617-668-3633

Access Code: **0635975##**

*Entry Link: <http://ems8.intellor.com/login/812221>

*Note: Copy and paste the link directly into your web browser if you encounter difficulty logging in.

Event Invitations

7(a) Loan Program:

Send requests to LaShun Johnson: lashun.johnson@sba.gov

Invitations sent from: SBAConnect@sba.gov

504 Loan Program:

Send requests to Ginger Allen: ginger.allen@sba.gov

Invitations sent from: 504Webinars@sba.gov

Please ensure all 4 email addresses are “whitelisted” in spam filters

SOP 50 10 5 (K) – Previously Announced

Incorporated *previous* 504 program changes announced by Federal Register Notice or SBA Notice:

- 25-Year debenture
For Projects approved on or after April 2, 2018
- Permissible debt refinance without expansion
Effective June 6, 2018
- Review of historic properties
Effective January 1, 2018
As per SOP 50 10 5 (J); clarification provided: Coordination District Counsel

SOP 50 10 5 (K) – Previously Announced

Incorporated *previous* 504 program changes announced by Federal Register Notice or SBA Notice:

- Updated Job Opportunity requirements on Dollars per Job
- Effective November 2, 2018
 - 504 Loan in most areas \$65,000 to \$75,000
 - Special Areas \$75,000 to \$85,000
 - Small Manufacturing \$100,000 to \$120,000

Credit Elsewhere and Liquidity Review

- Policy Notice 5000-17057
 - Credit not available elsewhere
 - Liquidity review increase from 10% to 20%

Project Eligibility Updates

- Residential health care and nursing home facilities
- Hemp-related businesses
 - Refer all questions to OGC
- Leasing to any business engaged in illegal activity
- Borrower occupancy requirements prior to closing

Updates for Consistency

- Prior to submitting an application (non-PCLP CDC) or approving the loan (PCLP CDC), must submit to Associate General Counsel for Litigation and receive approval for:
 - Religious eligibility worksheet (SBA Form 1971) to Form1971Review@sba.gov
 - Business with aspect of prurient nature:
CDC must submit its analysis and supporting documentation to PSMReview@sba.gov

Disclosing 100% Ownership and Verifying Tax Records

- Applicant ownership: 100% must be identified in:
 - Form 1244
 - E-Tran
- IRS Form 4506-T: Financial reconciliation

CDCs must reconcile the Applicant's financial data prior to submitting closing documents to SBA Counsel

Changes in Ownership – All CDCs (including PCLP CDCs)

- Post-Disbursement: CDCs may not unilaterally approve any adjustment to the ownership of a Borrower (inclusive of a percentage change in ownership):
 - For 12 months after final disbursement
 - SOP 50 55 will be updated to reflect the same
- Modifying the Authorization: After approval but before funding: CDCs must request modifications to Authorization through E-Tran
 - SLPC will approve and enter into E-Tran after verification that:
 - Proposed changes comply with limitations on aggregate amount of SBA portions of loans
 - No prior loss to the Government caused by the new owner(s)
 - For PCLP CDCs, SLPC review will be limited to these specific issues

Form 159 Updates

- New SBA Form 159 was released August 31, 2018
 - Same form used for 7(a) and 504 loan programs
 - Updated for clarity and ease of use
- Multiple services by the same Agent - all services may be listed on a single Form 159
- Effective April 1, 2019, CDCs must upload Form 159 for each loan prior to loan closing. Prior to April 1, 2019, CDCs were allowed to provide Form 159s in the CDCs annual report.

Insurance

- Insurance requirements for the authorization
 - Any insurance required by State law
 - Liability insurance; Workers' compensation (at origination with Servicing follow up if notified of an issue); Malpractice
 - Other insurance appropriate to the loan
 - Product liability; Dram shop; Disability; etc.
 - (Dram shop liability insurance is insurance that covers the proprietors of a business that serves alcohol)

Energy Public Policy

- Updated criteria to be considered an Energy Public Policy Project

Increased the amount of energy that a project must generate at the project facility to at least 15% of the energy used by the Applicant

Closings – CDC Responsibilities

- Construction escrow closing guidance
- CDC must certify:
 - Project costs were paid in full
 - Project proceeds were used in accordance w/Authorization
 - Each party contributed required amounts
- CDC must have evidence of the use of proceeds and contributions of each party (Third Party Lender; Interim Lender, Borrower)

Closings – CDC Responsibilities

- Examples of evidence - Use of proceeds and contributions by parties:
 - Land and/or building purchase: Settlement statement
 - Construction or renovation: Construction contracts w/change orders; paid invoices; mechanic's lien releases; progress & final payments
 - Debt refinancing: Copy of the transcript of account and settlement statement
- No funds should be paid directly to the Borrower unless CDC obtains evidence of the Borrower's payments (cancelled checks/paid invoices)

Closings – CDC Responsibilities

- CDC’s statement of no unremedied substantial adverse change must be:
 - Made within 14 business days prior to submission of the opinion to SLPC
 - Supported by financial statements dated no earlier than 120 calendar days from the date of closing

File Reviews

- Requirement for Quality Assurance Reviews removed
- Clarified guidance - Complete File Review (CFR) by OGC
 - No less than 1 in 10 closing packages will be reviewed
 - Frequency of review is at discretion of SBA Counsel
 - Early debenture defaults will be reviewed (repurchased less than two years from date of funding)

Environmental Update

- Special Use Facilities
 - Child-Occupied Facilities: Clarification of testing requirements for lead in paint and drinking water; new definition added for “Child-Occupied Facility.”
 - Dry Cleaners: Minor change to language to reiterate the process: “A Phase I followed by Phase II is required” and to include a reminder that CDCs and lenders can seek an exception to policy when warranted by sending an e-mail to EnvironmentalAppeals@sba.gov
 - Gasoline Stations: No changes to the SOP.

Environmental Update, Continued

- Definitions Section (Appendix 2)
 - “Records Search with Risk Assessment”: The following language was added to the definition: “The Environmental Professional need only review as many of the standard historical sources as are necessary, reasonably ascertainable, and likely to be useful. The Environmental Professional should comment upon any data failure or data gap encountered.”
 - Minor changes to terminology in some of the definitions.
- Reliance Letter (Appendix 3)
 - Sentence added to clarify that SBA is not requiring that environmental professionals waive state or federal statutes of limitations.

Environmental Update, Continued

- NAICS Codes Section (Appendix 4)
 - 312 Beverage & Tobacco Product Manufacturing (*Except breweries, 31212*) – The language in italics was added to eliminate the requirement for a Phase I when the current or prior business use was a brewery.
 - 488 Support Activities for Transportation (*if fuel tanks are present or if repairs or maintenance is performed on site*) – The language in italics was added to clarify when a Phase I is needed for current or prior business operations of this nature.



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Administration

Changes to the Franchise Review Process SOP 50 10 5(K)

Multiple Agreements

When an applicant operates under multiple agreements:

1. CDCs must check the Directory to ensure that all of Applicant's agreements that meet the FTC definition of a franchise are on the Directory. If any of the agreements that meet the FTC definition are not on the Directory, THE APPLICATION CANNOT PROCEED.
2. If all agreements that meet the FTC definition are on the Directory, the CDC must determine which agreements are **critical** (agreement or products, services or trademarks covered by it – account individually or together with other agreements for more than 50% of the applicant's revenues).
3. CDC need only follow the Directory (i.e. obtain an addendum) for agreements that meet the FTC definition of a Franchise AND are critical.
4. If one of the Applicant's brands or agreements has been determined by SBA to be ineligible for SBA financial assistance, the loan cannot be processed, regardless of whether the brand or agreement meets the FTC definition of a franchise or is critical to the Applicant's business.

Single, Non-Critical Agreements

- Exception for Applicants Operating under a Single, Non-Critical Agreement:
 - CDC must first check the Directory to ensure that, if the agreement meets the FTC definition of a franchise, it is on the Directory before processing the application. If the agreement meets the FTC definition of a franchise, but is not on the Directory, THE APPLICATION CANNOT PROCEED.
 - If the agreement is not listed on the Directory and the CDC determines that the agreement does not meet the FTC definition of a franchise, the CDC must determine the brand is eligible (e.g. does not have discriminatory hiring practices) before proceeding with the application.
 - SBA will review this decision at the time of application for non-PCLP applications and prior to closing for PCLP applications.
 - SBA (the SBA Franchise Team) will make the final determination for non-PCLP applications.
 - PCLP CDC bears the risk of an incorrect determination and the loan not able to close on a PCLP application.

Procedure to Add Brands to the Directory

Franchisor must submit the agreement, Franchise Disclosure Document (FDD) if applicable, and all other documents the franchisor requires the franchisee to sign to franchise@sba.gov

- If someone other than the Franchisor submits the documents to SBA for a brand to be added to the Directory, contact information for the Franchisor (name and email address) MUST be included.

Annual Certification (SBA Form 2464)

- For those franchises listed on the Directory that either do not need an addendum or are using an SBA Negotiated Addendum, in order to continue using no addendum or an SBA Negotiated Addendum, the franchisor must submit to SBA each year the “Annual Franchisor Certification” (SBA Form 2464).
- **This certification is provided by the Franchisor to SBA annually. CDCs do not need to obtain SBA Form 2464 or provide it to SBA.**

Procedure to Submit Franchise Applications

- If the non-PCLP CDC determines that the Applicant's brand does not meet the FTC definition of a franchise and it is not on the Directory, then the CDC needs to explain its determination in its credit memorandum when submitting the application to the SLPC and provide the agreement and any additional documentation required by the brand for SBA's review and final determination. *The SLPC will submit the documentation to the SBA Franchise Team for review and the final determination. Alternatively, the CDC can submit the documentation directly to the SBA Franchise Team before submitting the application to the SLPC.*
- If the Applicant's brand is not on the Directory and the PCLP CDC determines the brand does not meet the FTC definition, the PCLP CDC must submit the documents to franchise@sba.gov for a final determination by SBA. After receiving SBA's final determination, the PCLP CDC may proceed with approving the loan under its PCLP authority.

Non-PCLP CLOSING PROCESS

- For all 504 loans, PRIOR TO CLOSING, the CDC must obtain a copy of the executed franchise agreement, the executed SBA Form 2462 or SBA Negotiated Addendum (if applicable), and any other document the franchisor requires the franchisee to sign.
- CDCs obtain the SBA Negotiated Addendum from the franchisor (not SBA). *NOTE: A Franchisor may choose to use SBA Form 2462 even if it has an SBA Negotiated Addendum unless there is a note on the Directory stating the Franchisor can only use a Negotiated Addendum.)*
- While it is prudent for the CDC to review the FDD, as it contains financial information on the franchise brand, it is not necessary for the CDC to retain a copy in its file.
- CDC must provide the executed documents to and receive approval from the SLPC PRIOR to submitting the closing package for debenture funding on a 504 loan.
- Prior to issuing their approval, the SLPC will send the documents to SBA closing counsel in the District Office for review.

PCLP CLOSING PROCESS

- The PCLP CDC will need to submit documentation showing that the Applicant's brand is on the Directory to SBA Counsel for approval PRIOR to submitting the closing documents to SBA Counsel.
- For all 504 loans, prior to closing, the PCLP CDC must obtain a copy of the executed franchise agreement, the SBA Form 2462 or SBA Negotiated Addendum (if applicable), and any other document the franchisor requires the franchisee to sign.
- PCLP CDC obtains the SBA Negotiated Addendum from the Franchisor (not SBA).
- PCLP CDC is encouraged to review the FDD, if applicable, but is not required to obtain or retain a copy in its file.

PCLP CLOSING PROCESS CONT'D

- PCLP CDCs must submit the executed documents to and receive approval from SBA Counsel PRIOR to submitting the closing package for debenture funding on a 504 loan.
- The documents must go directly to SBA closing counsel in the District Office, not to the SLPC.

MANAGEMENT AGREEMENTS

- The SLPC, not the SBA Franchise Team, reviews management agreements.
 - Non-PCLP CDCs submit the management agreement to the SLPC
 - PCLP CDCs review the management agreement to determine if it results in affiliation between the applicant and management company or results in a passive business. PCLP CDC bears the risk of its incorrect determination.
- Management agreements are not listed on the SBA Franchise Directory.
- If an Applicant franchisee is operating under a management agreement where the management company is the Franchisor or is affiliated with the Franchisor, then the Applicant is NOT eligible. SBA has determined that such a relationship does not result in the franchisee operating as an independent small business.

Franchise Appeals

- Franchisors that would like to appeal SBA's decision not to place them on the Directory may do so by forwarding a copy of the decision, along with an explanation of how the determination is perceived to be inconsistent with SBA Loan Program Requirements, to franchise@sba.gov. Franchise appeals will be reviewed by the SBA Franchise Committee comprised of OFA and OGC personnel.
- The Franchise Committee will refer agreements involving businesses that may be engaged in promoting religion, that may have activities of a prurient nature, or that appear to cater to one gender to the Associate General Counsel for Litigation for a final Agency decision.
There is no right of appeal to the Franchise Committee.



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