



SBA Information Notice

TO: All SBA Employees, 7(a) Lenders and Certified Development Companies

CONTROL NO.: 5000-19004

EFFECTIVE: 2/15/2019

SUBJECT: Issuance of SOP 50 10 5(K)

The purpose of this Notice is to announce the issuance of Standard Operating Procedure (SOP) 50 10 5(K), Lender and Development Company Loan Programs. This update to the SOP provides additional guidance and incorporates revisions to conform to changes in SBA regulations and loan program requirements including, but not limited to, the Final Rule on Debt Refinancing in the 504 Loan Program (83 FR 19915), the addition of a 25-year Debenture in the 504 Loan Program, and revisions to guidance on credit elsewhere, minimum equity requirements for certain 7(a) loans, and the eligibility of marijuana-related and hemp-related businesses issued in SBA Policy Notice 5000-17057. **Users are advised to fully read SOP 50 10 5(K) to ensure understanding of all changes.**

The SOP 50 10 5(K) will become effective April 1, 2019, and will apply to all applications received by SBA on or after that date. Participants must continue to use SOP 50 10 5(J) for SBA 7(a) and 504 applications submitted through March 31, 2019.

The significant changes to the SOP include the following:

Subpart A – SBA Lender and Certified Development Company Participation Requirements

Chapter 1, paragraph II.E.1 and Chapter 3, paragraph II.B.2: Removed instruction for SBA Lenders to review SBA's webpage list of Agents that have been subject to an enforcement action or have been otherwise excluded from the privilege of conducting business with SBA. This list is no longer maintained on SBA's website. SBA Lenders must continue to consult the System for Award Management's (SAM) Excluded Parties List.

Chapter 1, paragraph II.E.3 and Chapter 3, paragraph B.5: Revised guidance for 7(a) Lenders and Certified Development Corporations (CDCs) related to when a statement of no objection is needed in connection with a loan to a business when a sole proprietor, general partner, managing member, officer, director, or stockholder with a 10 percent or more interest or a Household Member of such individual, is an employee of another Department or Agency of the Federal Government (Executive Branch) in a grade of at least GS-13 (or its equivalent) or higher. Lenders and CDCs must submit the statement to SNOMemos@sba.gov and receive written clearance from SBA prior to submitting the application to the appropriate processing center (for non-delegated loans) or prior to processing the loan under the SBA Lender's delegated authority (delegated loans).

EXPIRES: 2/1/20

PAGE 1 of 11

SBA Form 1353.3 (12-93) MS Word Edition; previous editions obsolete

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Chapter 1, paragraph III.A.3: Updated SBA's Loan and Lender Monitoring System to include \$350 million or more as a new peer group.

Chapter 1, paragraph IV.C.11 and paragraph IV.D.8: Updated guidance specific to Preferred Lenders Program (PLP) and SBA Express Lenders regarding the prohibition of processing loans under a Lender's delegated authority, including:

- 1) Loans to cooperatives may not be submitted using PLP or SBA Express authority; and
- 2) Once submitted to LGPC, an application withdrawn by the Lender, screened-out, or declined by LGPC may not be approved by any Lender under its PLP or SBA Express authority. E-Tran will not permit the submission of such an application under any Lender's PLP or SBA Express authority for a period of 12 months from the date of the withdrawal, screen-out, or decline of the application.

Chapter 1, paragraph IV.D.8: Updated guidance that a 7(a) Small Loan application not receiving an acceptable credit score may be withdrawn prior to submission through E-Tran or SBA One and processed under SBA Express.

Chapter 1, paragraph IV.E.2: Clarified that the maximum term for Export Express lending authority is 2 years and, for 7(a) Lenders that have not previously participated with SBA, the term may be less than 2 years at the discretion of the Director, Office of Credit Risk Management.

Chapter 3, paragraph II.A.8: Revised the guidance for Certified Development Company (CDC) professional service contract requirements as follows:

- 1) Contracts for management services are only permitted for CDCs affiliated with state and local economic development organizations;
- 2) A CDC may not obtain independent loan review services from another CDC;
- 3) For all contracts that require prior SBA approval (except for contracts involving legal services in connection with loan liquidation or litigation) the 504 Program Branch reviews the contracts and provides its recommendation to the Director, Office of Financial Assistance (D/FA). For contracts involving legal services in connection with loan liquidation or litigation, the Fresno or Little Rock Commercial Loan Servicing Center will review and approve the contracts; and
- 4) Professional services contracts must not evidence any actual or apparent conflict of interest or self-dealing on the part of any of the CDC's officers, management, and staff, including any members of the Board or any Loan Committee.

Chapter 3, paragraph II.B.3: Reduced the frequency of CDC Independent Loan Review requirements from annually to every 2 years; however, OCRM may require an off-cycle Independent Loan Review if deemed necessary.

Chapter 3, paragraph II.B.8: Updated guidance for CDC loan files:

- 1) A CDC must retain a copy of SBA's character determination, if any, in the CDC loan file for the life of the loan.
- 2) After closing, the CDC must forward to SBA all original loan documents as required by SBA Form 2286 and Subpart C, Chapter 6, Para. III.A.12 of SOP 50 10.

EXPIRES: 2/1/20

PAGE 2 of 11

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Must be accompanied by SBA Form 58

- 3) CDCs may retain scanned copies of documents when original hard copy records are not required.

Chapter 3, paragraph II.C.1: Updated the operational changes that require prior written approval by the Office of Financial Assistance (OFA) to include any changes in a CDC's legal structure. Also, clarified that changes in a CDC's legal structure may require a new application for CDC certification.

Chapter 3, paragraph II.C.2: Clarified that changes in CDC Bylaws and Articles of Incorporation must be reported to the Office of Credit Risk Management (OCRM).

Chapter 3, paragraph III.A.1: Revised submission requirements of SBA Form 1081, "Statement of Personal History (For Use By Lenders)."

Chapter 3, paragraph V.A.6: Revised guidance for maintaining Designated Attorney status.

Chapter 3, paragraph VI.B.4 and paragraph VI.C.1: Updated guidance for CDCs applying for a Local Economic Area (LEA) expansion or to become a Multi-State CDC.

Subpart B – Section 7(a) Business Loan Programs

Chapter 1, paragraphs II.E and Chapter 2, paragraph V.A.1: Clarified that the purchase of land as a use of 7(a) loan proceeds is only eligible when the land is being purchased as part of an eligible project.

Chapter 2, paragraph II.D.8: Clarified the franchise review process for Applicants operating under multiple agreements, management agreements, and the appeal process for decisions not to place a brand on the SBA Franchise Directory.

Chapter 2, paragraph II.E.1: Clarified guidance related to the credit elsewhere determination to state that 7(a) Lenders must not make an SBA-guaranteed loan that would be available on reasonable terms from non-Federal, non-State, or non-local government sources, including from the Lender.

Chapter 2, paragraph II.E.2-3: Incorporated the policy change included in SBA Policy Notice 5000-17057 to increase the threshold for Lender review of liquidity from 10 percent to 20 percent for owners of the equity of the Applicant, and provided additional guidance on addressing credit elsewhere in the Lender's credit memorandum.

Chapter 2, paragraph III.A.3: Clarified that residential facilities that do not provide healthcare and/or medical services are not eligible, and businesses that are licensed as nursing homes or assisted living facilities and provide healthcare and/or medical services are eligible.

Chapter 2, paragraph III.A.8: Incorporated policy changes issued in SBA Policy Notice 5000-17057 concerning the eligibility of marijuana-related businesses. Also, consistent with the Agriculture Improvement Act of 2018, revised guidance regarding the eligibility of hemp-related businesses to state that a business that grows, produces, processes, distributes or sells products

EXPIRES: 2/1/20

PAGE 3 of 11

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Must be accompanied by SBA Form 58

made from hemp (as defined in section 297A of the Agricultural Marketing Act of 1946) is eligible.

Chapter 2, paragraph III.A.11: Revised the process for submission of the Religious Eligibility Worksheet (SBA Form 1971) to SBA so that it is the same for all Lenders.

Chapter 2, paragraph III.A.13: Revised the guidance for completing an SBA Form 912 package and how the Agency will complete the character evaluation process.

Chapter 2, paragraph III.A.15: Revised the process for submission of applications for businesses with an aspect of a prurient sexual nature so that it is the same for all Lenders.

Chapter 2, paragraph V.C.1: Clarified that loan proceeds for farm enterprises may be used for the purchase of land, buildings, and land improvements as part of an eligible project.

Chapter 2, paragraph V.E.3: Increased the waiting period from 6 months to 12 months for refinancing debt used to finance a change of ownership when:

- 1) Using delegated authority; and
- 2) The debt is not owed to the seller.

Chapter 2, paragraph V.E.5 and Chapter 6, paragraph I.C.16: Clarified that applications submitted to the LGPC for non-delegated processing must include copies of all supporting documentation for debt to be refinanced.

Chapter 2, paragraph V.F.1: Clarified guidance regarding a Borrower leasing space to a third party and added instructions for when the Lender discovers a Borrower is leasing space to a business engaged in any illegal activity.

Chapter 2, paragraph V.H.1-2: Updated guidance for a change of ownership resulting in a new owner. The following may be financed:

- 1) For Employee Stock Ownership Plans (ESOPs) and cooperatives, any transaction costs associated with purchasing a controlling interest in the employer, but not costs associated with setting up the ESOP or cooperative.
- 2) A small business obtaining a loan for the sole purpose of re-lending the funds to an ESOP to acquire a controlling interest in the small business.
- 3) A cooperative purchasing a controlling interest in the employer.
- 4) For ESOPs and cooperatives, any seller who remains as an owner, regardless of percentage of ownership, must provide their guaranty.

Chapter 2, paragraph V.H.6: Incorporated legislation that permits loans to a cooperative to acquire a controlling interest in the employer small business.

Chapter 2, paragraph V.J.3: Revised guidance regarding eligible uses of proceeds for Export Express loans financing specific export transactions. In addition to checking Ex-Im Bank's Country Limitation Schedule, Lenders must check the sanctions lists maintained by the Department of Treasury Office of Foreign Assets Control.

EXPIRES: 2/1/20

PAGE 4 of 11

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Must be accompanied by SBA Form 58

Chapter 3, paragraph III: Revised guidance that loan maturity for leasehold improvements may not exceed 10 years plus an additional period reasonably necessary to complete the leasehold improvements, which may not exceed 12 months.

Chapter 3, paragraph IV.A.2: Updated guidance regarding the maximum allowable fixed interest rate to reflect the Federal Register Notice published by SBA on November 6, 2018 (83 FR 55478).

Chapter 3, paragraph IV.F.1-2: Updated guidance for SBA Express and Export Express interest rate:

- 1) For fixed rate loans, the interest rate may not exceed the maximum allowable fixed interest rate published by SBA in the Federal Register;
- 2) For variable rate loans, a Lender may charge up to 4.5 percent over the Prime rate on loans over \$50,000 and up to \$350,000 (\$500,000 for Export Express) and up to 6.5 percent over the Prime rate for loans of \$50,000 or less, regardless of the maturity of the loan.

Chapter 3, paragraph VIII.B.1 and paragraph VIII.B.6: Updated language to reflect the revised SBA Form 159, “Fee Disclosure Form and Compensation Agreement.” Multiple services performed by the same Agent may be reported on one form. Lenders must submit SBA Forms 159 within two SBA Form 1502 reporting cycles.

Chapter 3, paragraph X.A.2: As discussed above in Subpart A, removed instruction for Lenders to review SBA’s webpage list of Agents that have been subject to an enforcement action or have been otherwise excluded from the privilege of conducting business with SBA.

Chapter 4, paragraph I.C.1-2; and paragraph I.C.4: Provided guidance that the Lender’s credit memorandum and analysis must address the factors demonstrating the Applicant does not have credit available elsewhere on reasonable commercial terms from non-Federal, non-State, or non-local government sources for all 7(a) loans.

Chapter 4, paragraphs I.C.1-2: Incorporated the revised minimum equity requirements for 7(a) loans involving a change of ownership between existing owners issued in SBA Policy Notice 5000-17057.

Chapter 4, paragraph II.E.1: Added guidance that an assignment of contract proceeds for Export Working Capital Program (EWCP) asset-based loans (ABLs) may be required at the discretion of the Loan Guaranty Processing Center (LGPC) for non-delegated loans or the PLP-EWCP Lender for EWCP loans processed under the Lender’s delegated authority.

Chapter 4, paragraph IV.E.2: Removed Accredited Valuation Analyst (AVA) as a “qualified source” for performing a business valuation because the designation no longer exists.

Chapter 4, paragraph V.E.4: Added guidance that if an Environmental Professional recommends proceeding directly from the Transaction Screen to a Phase II (bypassing the Phase I), and the

EXPIRES: 2/1/20

PAGE 5 of 11

SBA Form 1353.3 (12-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

Lender concurs, the Lender must seek in advance an exception to policy from the SBA Environmental Committee.

Chapter 4, paragraphs V.H.1-3: Added guidance for specific additional environmental assessments that must be performed for child-occupied facilities, drycleaners, and gasoline stations.

Chapter 5, paragraph II.B.3: Expanded SBA's blanket waiver of the requirement for a performance bond on construction loans to also include the labor and materials payment bond when certain conditions are met.

Chapter 5, paragraph IV.D.1 and paragraph IV.D.4: Clarified that, prior to first disbursement, all Lenders are required to reconcile the Applicant's financial data against income tax data received in response to IRS Form 4506-T. If a Lender processing the loan under its delegated authority is unable to reconcile the IRS information, the guaranty may be subject to repair or denial.

Chapter 6, paragraph I: Clarified that the Lender must disclose 100 percent of the Applicant's ownership on SBA Form 1919 and 100 percent of the Applicant's ownership also must be entered in the E-Tran system in order to submit a loan application. Each owner must be identified in the E-Tran system.

Chapter 7, paragraph I.A.3: Revised guidance for actions for approved loans prior to final disbursement for loans submitted under non-Delegated Authority to state that Lenders must obtain approval from LGPC for any adjustments to or changes in the ownership of the Borrower, including percentage of ownership.

Chapter 7, paragraph I.B.1: Revised guidance for actions for approved loans prior to final disbursement for loans submitted under a Lender's Delegated Authority to state that Lenders must obtain approval from LGPC for any adjustments to or changes in the ownership of the Borrower, including percentage of ownership. The LGPC will approve the proposed modification and enter it into E-Tran after:

- 1) Verification that the proposed changes to the ownership of the Borrower comply with limitations on the aggregate amount of SBA portions of all loans to a Borrower, including affiliates; and
- 2) Verification that there has been no prior loss to the Government caused by the new owner(s) or any business owned, operated or controlled by the new owner(s).

Chapter 7, paragraph I.C: Added specific guidance for modifications to EWCP loans post-approval and prior to disbursement.

Chapter 7, paragraph IV.B.4: Clarified that EWCP ABLs may be structured as a sub-limit of a Master Note provided the sub-limit conforms to the requirements of the SBA Note terms.

Chapter 7, paragraph IV.C.2: Updated guidance for documentation of equity injection. Clarified that, for SBA Express, Export Express and 7(a) Small Loans, if the Lender requires an equity injection and, as part of its standard processes for similarly sized, non-SBA guaranteed loans

EXPIRES: 2/1/20

PAGE 6 of 11

SBA Form 1353.3 (12-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

verifies the equity injection, it must do so for its SBA Express, Export Express, and 7(a) Small Loans.

Chapter 7, paragraph IV.G.2: Added a new Borrower certification regarding leasing. Prior to first disbursement, the Lender must require the Borrower and Operating Company to certify that real estate pledged as collateral will not be leased to or occupied by a business engaged in any illegal activity.

Chapter 7, paragraph IV.J.4: Updated guidance that, for EWCP loans involving foreign accounts receivable, the Lender must check the Department of Treasury Office of Foreign Assets Control sanctions list in addition to the Ex-Im Bank's Country Limitation Schedule to determine if the transaction would be prohibited.

Chapter 7, paragraph IV.J.2: Updated guidance that for EWCP loans, the Borrower must submit a borrowing base certificate to the Lender at least monthly, or as frequently as the Lender customarily requires from its Borrowers on similarly sized, non-SBA guaranteed loans if more often than monthly.

Chapter 7, paragraph IV.K.4: Removed the semi-annual monitoring requirement for Working Capital CAPLines.

Chapter 8, paragraph I: Added a note that Lenders may not unilaterally approve any adjustment to or change in the ownership of a Borrower, including a change in percentage of ownership, for 12 months after final disbursement on any loan. Further guidance will be provided in an update to SOP 50 57.

Subpart C – Section 504 Certified Development Company Loan Program

Chapter 1, paragraph IV.B.2: Moved use of construction escrow account provisions that had been located at Chapter 6, paragraph IV.

Chapter 1, paragraph IV.C: Added guidance that when a Project is to acquire an existing facility that the Borrower will immediately occupy, SBA may allow the use of escrow closings instead of requiring interim financing. **(NOTE: Escrow closings with no interim financing will not be available for use until SBA has announced that the necessary forms have been created and/or revised, as appropriate.)**

Chapter 2, paragraph II.D.8: Made the same clarifying revisions to the franchise review process as identified above for 7(a) and clarified the process CDCs must follow to submit franchise loan applications and to obtain SBA approval of certain franchise documentation.

Chapter 2, paragraph II.E.1-2: Revised guidance regarding the CDC's determination that the Applicant does not have the ability to obtain some or all of the requested loan funds on reasonable terms from non-Federal, non-State, or non-local government sources, including from the Third Party Lender, without SBA assistance.

Chapter 2, paragraph II.E.2: Incorporated the policy change included in SBA Policy Notice 5000-17057 to increase the threshold for CDC review of liquidity from 10 percent to 20 percent for owners of the equity of the Applicant, and provided additional guidance on addressing credit elsewhere in the CDC's credit memorandum.

Chapter 2, paragraph III.A.3: Clarified that residential facilities that do not provide healthcare and/or medical services are not eligible, and businesses that are licensed as nursing homes or assisted living facilities and provide healthcare and/or medical services are eligible.

Chapter 2, paragraph III.A.8: Incorporated policy changes included in SBA Policy Notice 5000-17057 concerning the eligibility of marijuana-related businesses. Also, consistent with the Agriculture Improvement Act of 2018, revised guidance concerning the eligibility of hemp-related businesses to state that a business that grows, produces, processes, distributes or sells products made from hemp (as defined in section 297A of the Agricultural Marketing Act of 1946) is eligible.

Chapter 2, paragraph III.A.12: Revised the process for submission of the Religious Eligibility Worksheet (SBA Form 1971) to SBA so that it is the same for all CDCs.

Chapter 2, paragraph III.A.14: Revised the guidance for completing an SBA Form 912 package and how the Agency will complete the character evaluation process.

Chapter 2, paragraph III.A.16: Revised the process for submission of applications for businesses with an aspect of prurient sexual nature so that it is the same for all CDCs.

Chapter 2, paragraph III.D: Revised the special requirements for loans where collateral may be included in the National Register of Historic Places. CDCs must consult with local SBA counsel regardless of the method of loan submission.

Chapter 2, paragraph IV.A.1 and IV.A.2: Updated the Job Opportunity requirements to reflect current policy in the Federal Register Notice published at 83 FR 55224. A 504 Project must achieve at least 1 Job Opportunity created or retained per every \$75,000 of project debenture (\$120,000 for Small Manufacturers) unless one of the 15 community development or public policy goals is met. CDCs' portfolios must maintain a Job Opportunity average of one Job Opportunity created or retained for every \$75,000 guaranteed by SBA or \$85,000 guaranteed by SBA for Projects located in Special Geographic Areas. Also, added Opportunity Zones as a Special Geographic Area.

Chapter 2, paragraph IV.E: Updated the SOP to reflect current policy on permissible debt refinance without expansion published in the May 7, 2018 Final Rule on Debt Refinancing in the 504 Loan Program.

Chapter 2, paragraph IV.J.2: Clarified guidance that:

- 1) Closing and funding of the 504 loan must not take place until the Borrower is occupying the required amount of the Project property and the Borrower is operating from the project property; and

EXPIRES: 2/1/20

PAGE 8 of 11

SBA Form 1353.3 (12-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

2) A Borrower or Operating Company may not lease space to a business engaged in any illegal activity.

Chapter 3, paragraph III.E.4: Added guidance that if an Environmental Professional recommends proceeding directly from the Transaction Screen to a Phase II, the CDC must seek in advance an exception to policy from the SBA Environmental Committee.

Chapter 3, paragraph III.H.1-3: Added guidance for specific additional environmental assessments that must be performed for child-occupied facilities, drycleaners, and gasoline stations.

Chapter 4, paragraph I: Clarified that the CDC must disclose 100 percent of the Applicant's ownership on SBA Form 1244 and 100 percent of the Applicant's ownership also must be entered in the E-Tran system in order to submit a loan application. Each owner must be identified in the E-Tran system.

Chapter 5, paragraph I.A.2: Added the requirement that, prior to closing, the CDC must submit to SBA through E-Tran a copy of the executed Authorization.

Chapter 5, paragraph I.B.1: Updated guidance that for Debt Refinance without Expansion, the loan must be disbursed within 9 months from the date of approval.

Chapter 5, paragraph I.B.2: Updated the SOP to include the 25-year debenture's interest rate and maturity.

Chapter 5, paragraph I.D-D.1: Clarified guidance regarding the CDC's responsibility to ensure all appropriate insurance requirements are included in the Authorization.

Chapter 5, paragraph I.E.4: Clarified that CDCs must reconcile the Applicant's financial data against income tax data received in response to IRS Form 4506-T prior to submitting the closing documents to SBA Counsel.

Chapter 5, paragraph II.A: Added the requirement that CDCs must request a modification to the Authorization for any adjustment to or change in the ownership of a Borrower, including a change in percentage of ownership.

Chapter 5, paragraph II.B: Added guidance for when CDCs may use their unilateral authority to submit actions through E-Tran.

Chapter 5, paragraph II.C: Added guidance that PCLP CDCs may modify and extend the loan authorization unilaterally and must notify SLPC of any change in loan amount. However, PCLP CDCs must obtain prior written consent from the SLPC for any adjustment to or change in the ownership of a Borrower, including a change in percentage of ownership.

Chapter 6, paragraph I.B: Clarified guidance regarding closing responsibilities of all CDC Counsel, both Designated and Non-Designated, who submit 504 Loan closing packages to SBA.

EXPIRES: 2/1/20

PAGE 9 of 11

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Chapter 6, paragraph III.A.1: Clarified the acceptable documentation to support a CDC's certification at closing that project costs were paid in full and project proceeds were used in accordance with the requirements of the Authorization.

Chapter 6, paragraph III.A.4: Clarified that the CDC's statement of no unremedied substantial adverse change must be made within 14 business days prior to submission of the opinion to SLPC and supported by financial statements that are dated no earlier than 120 calendar days from the date of closing.

Chapter 6, paragraph III.A.7: Clarified requirements for the timing of the CDC's request to SLPC to grant access to the Authorization to SBA Counsel.

Chapter 6, paragraph III.A.8: Revised guidance for submission of closing packages to provide that all CDCs will electronically submit closing packages by the deadline established by SBA Counsel.

Chapter 6, paragraph III.C: Clarified guidance regarding Complete File Reviews of 504 loan closings to reflect the current practice and removed the requirement for Quality Assurance Reviews of 504 loan closings.

Chapter 7, paragraph I.A.2: Updated eligibility criteria to be considered an Energy Public Policy Project. Increased the amount of energy that a project must generate to at least 15 percent of the energy used by the Applicant at the project facility.

Chapter 7, paragraphs I.B and I.C, and Chapter 8, paragraph I: Incorporated the 25-year debenture.

Chapter 8, paragraph III.B.1 and III.B.6: Updated language to reflect the revised SBA Form 159. Multiple services performed by the same Agent may be reported on one form. CDCs must submit SBA Forms 159 into E-Tran within 30 days of the initial disbursement on the loan. For those loans that were funded prior to the effective date of this SOP, the CDC may upload Forms 159 to E-Tran or submit with the CDC's Annual Report.

Chapter 8, paragraph V.A.2: Removed instructions for CDCs to review SBA's webpage list of Agents that have been subject to an enforcement action or have been otherwise excluded from the privilege of conducting business with SBA.

Chapter 9, paragraph IV.A.1: Added the restriction that CDCs may not unilaterally approve any adjustment to or change in the ownership of a Borrower, including a change in percentage of ownership, for 12 months after final disbursement on any loan. Further guidance will be provided in an update to SOP 50 55.

Appendices

Appendix 7: Removed pages 6 and 7 because SBA Form AB-4 is obsolete.

EXPIRES: 2/1/20

PAGE 10 of 11

SBA Form 1353.3 (12-93) MS Word Edition; previous editions obsolete

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Appendices 8-11: Removed Appendices 8 through 10, as these forms are available on SBA's website, and renumbered Appendix 11 as Appendix 8.

Questions

Questions and any comments concerning this Notice should be directed to the Lender Relations Specialist in the local SBA Field Office. The local Field office can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Questions or comments may also be submitted to 7aQuestions@sba.gov or 504Questions@sba.gov.

Lenders, CDCs and other interested parties may continue to send suggestions concerning the SOP to SBA at SOP50-10Modernization@sba.gov. This e-mail box is set up to receive only.

Dianna L. Seaborn
Director
Office of Financial Assistance

EXPIRES: 2/1/20

PAGE 11 of 11

SBA Form 1353.3 (12-93) MS Word Edition; previous editions obsolete

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