INTRO TO SOP UPDATES 2019-20

CDC
Small Business Finance

SOP UPDATE

Borrower's Contribution change for Limited or Special purpose use properties (Page 262 &263)

- CDCs must determine if Project Property is "Limited or Special Purpose" and include its conclusion and explanation for this determination to SBA; the determination may require added 5% borrower investment.
- For any business (including affiliates) that has an outstanding debenture for a Project involving a Limited or Special Purpose Property, for each subsequent Project involving a Limited or Special Purpose Property, the borrower must contribute at least 20%.
- Regardless if any prior SBA debt is outstanding or not and it funded a Project involving a Limited or Special Purpose Property, the minimum required equity injection is 20% for a new project' financing should both conditions of a "New Business" and a "Limited or Special Purpose Property" exist in new request.

CDC
Small Business Finance

SOP UPDATE

Applicants Size Determination and Affiliation (Page 265)

New language added clarifying affiliation testing. Affiliation based on management been defined to state that if the officers, managing members or partners who control the management (or the Board of Directors) of the Applicant Business also control the management (or Board of Directors) of one or more concerns, Affiliation arises. Management control can also arise through a Management Agreement. If the Management Agreement gives the managing company sole discretion over operations with minimal oversight by the Applicant, affiliation exists.

Meaningful oversight includes:

- Approval of the annual operating budget,
- Approval of capital expenditures or significant operating expenses,
- Control over bank accounts, and
- Oversight over the Applicant's employees (employees must be the Applicant's employees).
- Management Agreement must be submitted to SBA with 504 application file

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SOP UPDATE

Franchise, License, Dealer, Jobber or Similar Agreements (Page 267)

- A relationship with an applicant established under a license, jobber, dealer or similar agreement is not generally described as a "franchise" relationship. However, if such relationship meets the FTC's definition of a franchise, it is treated by SBA as a franchise for purposes of affiliation determination. For An SBA Franchise means any continuing commercial relationship or arrangement in which the terms of the offer or contract specify, or Franchisor promises or represents, orally or in writing - ALL three criteria must be present to be labeled a Franchise by SBA:
- Franchisee (OC) uses Franchisor's Trademark to offer, sell, or distribute goods, services, or commodities
- The Franchisor has authority to exert a significant degree of control or assistance over the Franchisee's method of operation
- Franchisee condition of requires payment or commits to make a required payment (royalties)to the Franchisor

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SOP UPDATE

SBA Franchise Directory used for approval of Franchisor

(Page 268 & 269)

SBA created a Franchise Directory (the "Directory") of all franchise and other brands reviewed by SBA. The Directory will only include business models that SBA determines are eligible under SBA's affiliation rules and other eligibility criteria. If the Applicant's brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain SBA financing. **CDCs will be able to rely on the Directory and will no longer need to review franchise or other brand documentation for affiliation or SBA eligibility.** When an Applicant operates under multiple agreements (i.e., multiple product lines), CDCs only need to obtain an SBA Franchise addendum for the critical brand. Critical defined as 50% or more of business revenue.

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Small Business Finance

SOP UPDATE

Credit not Available Elsewhere (Pages 276 & 277)

Applicant needs to demonstrate it does not have the ability to obtain some or all of the requested loan funds on reasonable terms from non-Federal sources, including from the Lender or applicant liquidity. Acceptable reasons a lender needs SBA to assist:

- Business needs a longer maturity than the Lender's policy permits
- requested loan exceeds the Third-Party Lender's policy limit regarding the amount that it can lend to one customer
- collateral does not meet the Lender's policy requirements
- Lender's loan policy normally does not allow loans to new businesses or businesses in the Applicant's industry
- factors relating to the credit risk in Lender's opinion, cannot be overcome except for the SBA participation

For all SBA 504 and 7a loans the lender must now include detail on the ***liquidity of all business owners of 20% or more ownership which includes spouse(s) and minor children***. A Personal Financial Statement should be collected to document liquidity.

CDC Small Business Finance

SOP UPDATE

Noncompliance EPC/OC lease on existing SBA loan

(Pages 293 & 294)

The EPC/OC lease payments cannot exceed:

- The loan payment to the SBA & loan payment to the participating private Lender
- Any payment to a lender authorized by SBA to provide the borrower's equity injection; and
- Any additional payment(s) to cover the EPC's direct expenses of holding the property, such as routine maintenance, insurance and property taxes

Existing Debt Refinance without Expansion (Page 297)

- Eligible Business Expenses limitation has been dropped from 25% to 20%; "Other Secured Debt" (Example a CRE secured LOC) is no longer eligible to be included as eligible refinance project cost.

Public Policy Aggregate Lending Limit for MFG or Alternative Energy projects (Page 311)

- SBA introduced an aggregate lending cap for multiple qualifying projects up to $16.5M and $5.5M per individual project

CDC Small Business Finance

SOP UPDATE

Life Insurance on Business Owner (Page 330)

CDC must assess whether the viability of the business is tied to an individual or individuals. Life insurance is required for the principals of sole proprietorships, single member LLCs, or for businesses otherwise dependent on one owner's active participation, consistent with the size and term of the loan. The amount and type of collateral available to repay the loan may be factored into the determination of the appropriate amount of life insurance. If it is determined that the principal is uninsurable, CDC must obtain written documentation from a licensed insurer of the same.

Appraisal Value Deviation (Page 315)

If the appraisal value for subject collateral comes in at less than **95%** the estimated value the CDC has three options to address the collateral gap in value as a solution:

- Debenture must be reduced by gap value
- CDC must secure additional collateral in the amount of gap value
- Additional borrower and/or guarantor will be added to the required Borrower's Contribution in the amount of gap value.

Prior SOP allowed for a value at 90% of estimated value

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SOP UPDATE

Environmental Policy Changes

Dry cleaners:

- The previous requirements for dry cleaners for Phase IIs were only if the facility was over five (5) years old. SBA now will require a Phase I Environmental Site Assessment (ESA) and Phase II on all dry cleaners that currently or previously performed on-site operations utilizing solvents, and Vapor Intrusion must be addresses during the Phase II investigation.

Gas stations:

- SBA revised the language to indicate that the Environmental Professional (EP) must document that the gas station is following "all regulatory requirements" and not just state requirements.

SOP UPDATE

Environmental Policy Changes (continued)

Phase I ESA:

- SBA will accept a Phase I completed within one (1) year of the date submitted to SBA, instead of the previously required update after 180 days. This is a deviation from the EPA AAI ASTM 1527-13 requirements to update portions of the Phase I ESA after 180 days. This does not apply for SBA loan liquidations.

Records Search with Risk Assessment (RSRA) report:

- The RSRA report now has to include a review of historical records back to 1940 or first developed use, whichever is earlier. The type of historical sources remains a decision of the EP, and they could include but not limited to, aerial photographs, city directories, Sanborn fire insurance maps, reverse city directories, etc.

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SOP UPDATE

Environmental Policy Changes (continued)

NAICS codes of environmentally sensitive industries:

- SBA added two (2) new NAICS codes that now require a Phase I ESA:
  1). Trucking facilities with service bays, truck washing or fuel tanks present;
  2). Indoor and outdoor shooting ranges (listed under Other Recreational Industries).
- SBA does not require a Phase I ESA for the following:
  1). Leather & Allied Product Manufacturing if these operations are assembly only;
  2). Fabricated Metal Product Manufacturing if these operations are assembly only;
  3). Death Care Services (funeral homes) – if no embalming or cremation is performed on site.

Reliance Letter:

- SBA revised the definition of the Reliance Letter and modified the language of the letter:
  1). Language was added that the Reliance Letter cannot be modified;
  2). A clarification was added that the EP's E&O insurance must have been in place at the time of the environmental investigation.

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