

§ 120.10, Nt.

13 CFR Ch. I (1–1–21 Edition)

Person is any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

Preference is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making, servicing, or liquidation of a business loan with respect to such things as repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a Certificate of deposit or acceptance of a separate or companion loan, without SBA’s consent.

Rentable Property is the total square footage of all buildings or facilities used for business operations.

Risk Rating is an SBA internal composite rating assigned to individual SBA Lenders, Intermediaries, or NTAPs that reflects the risk associated with the SBA Lender’s or Intermediary’s portfolio of SBA loans or with the NTAP. Risk Ratings currently range from one to five, with one representing the least risk and five representing the most risk, and may be revised by SBA from time to time as published in the FEDERAL REGISTER through notice and comment.

Rural Area is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

SBA Lender is a 7(a) Lender or a CDC. This term includes SBA Supervised Lenders.

SBA Supervised Lender is a 7(a) Lender that is either a Small Business Lending Company or a NFRL.

Service Provider is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

Small Business Lending Company (SBLC) is a nondepository lending institution that is SBA licensed and is authorized by SBA to only make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA’s Microloan program. SBA has imposed a moratorium on licensing new SBLCs since January 1982.

SOPs are SBA Standard Operating Procedures, as issued and revised by SBA from time to time. SOPs are publicly available on SBA’s Web site at <http://www.sba.gov> in the online library.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2117, Jan. 13, 1999; 68 FR 57980, Oct. 7, 2003; 72 FR 18360, Apr. 12, 2007; 73 FR 75510, Dec. 11, 2008; 76 FR 63545, Oct. 12, 2011; 85 FR 7647, Feb. 10, 2020; 85 FR 14780, Mar. 16, 2020]

EFFECTIVE DATE NOTE: At 85 FR 80588, Dec. 14, 2020, §120.10 was amended by revising paragraph (1)(i) of the defined term “Associate”, effective Mar. 27, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 120.10 Definitions.

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Associate. (1) * * *

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender’s or CDC’s stock or debt instruments, or an agent involved in the loan process; or

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Subpart A—Policies Applying to All Business Loans

ELIGIBILITY REQUIREMENTS

§ 120.100 What are the basic eligibility requirements for all applicants for SBA business loans?

To be eligible for an SBA business loan, a small business applicant must:

- (a) Be an operating business (except for loans to Eligible Passive Companies);
- (b) Be organized for profit;
- (c) Be located in the United States;
- (d) Be small under the size requirements of part 121 of this chapter (including affiliates). See subpart H of this part for the size standards of part 121 of this chapter which apply only to 504 loans; and
- (e) Be able to demonstrate a need for the desired credit.

§ 120.101 Credit not available elsewhere.

SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-

Small Business Administration

§ 120.103

Federal, non-State, and non-local government sources. Accordingly, SBA requires the Lender or CDC to certify or otherwise show that the desired credit is unavailable to the applicant on reasonable terms and conditions from non-Federal, non-State, and non-local government sources without SBA assistance, taking into consideration factors associated with conventional lending practices, including: The business industry of the loan applicant; whether the loan applicant has been in operation two years or less; the adequacy of collateral available to secure the loan; the loan term necessary to reasonably assure repayment of the loan from actual or projected business cash flow; and any other factor relating to the particular loan application that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards. Submission of an application to SBA by a Lender or CDC constitutes certification by the Lender or CDC that it has examined the availability of credit to the applicant, has based its certification upon that examination, and has substantiation in its file to support the certification.

[61 FR 3235, Jan. 31, 1996, as amended at 85 FR 14780, Mar. 16, 2020]

§ 120.102 Funds not available from alternative sources, including the personal resources of owners.

(a) An Applicant for a business loan must show that the desired funds are not available from the resources of any individual or entity owning 20 percent or more of the Applicant. SBA will require the use of liquid assets from any such owner as an injection to reduce the SBA loan amount when that owner's liquid assets exceed the amounts specified in paragraphs (a)(1) through (3) of this section. SBA will reexamine the thresholds periodically and, if adjustments are necessary based on nationally-recognized economic indicators, SBA may modify the thresholds from time to time through rulemaking. When the total financing package (*i.e.*, any SBA loans and any other financing, including loans from any other source, requested by the Applicant business at or about the same time, as

defined in Loan Program Requirements (see § 120.10)):

(1) Is \$350,000 or less, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of two times the total financing package, or \$500,000, whichever is greater;

(2) Is between \$350,001 and \$1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one and one-half times the total financing package, or \$1,000,000, whichever is greater; or

(3) Exceeds \$1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one times the total financing package, or \$2,500,000, whichever is greater.

(b) Any liquid assets in excess of the applicable amount set forth in paragraph (a) of this section must be used to reduce the SBA loan amount. These funds must be injected prior to the disbursement of the proceeds of any SBA financing. In extraordinary circumstances, SBA may, in its sole discretion, permit exceptions to the required injection of an owner's excess liquid assets.

(c) For purposes of this section, "liquid assets" means cash or cash equivalents, including savings accounts, CDs, stocks, bonds, or other similar assets. Equity in real estate holdings, the cash value of life insurance policies, and other fixed assets are not to be considered liquid assets. In addition, the liquid assets of any 20 percent owner who is an individual include the liquid assets of the owner's spouse and any minor children.

(d) SBA Lenders must document their analysis and determination in the loan file.

[85 FR 7647, Feb. 10, 2020]

EFFECTIVE DATE NOTE: At 85 FR 80588, Dec. 14, 2020, § 120.102 was removed and reserved, effective Mar. 27, 2021.

§ 120.103 Are farm enterprises eligible?

Federal financial assistance to agricultural enterprises is generally made by the United States Department of Agriculture (USDA), but may be made by SBA under the terms of a Memorandum of Understanding between SBA and USDA. Farm-related businesses which are not agricultural enterprises