

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

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are eligible businesses under SBA's business loan programs.

§ 120.104 Are businesses financed by SBICs eligible?

SBA may make or guarantee loans to a business financed by an SBIC if SBA's collateral position will be superior to that of the SBIC. SBA may also make or guarantee a loan to an otherwise eligible small business which temporarily is owned or controlled by an SBIC under the regulations in part 107 of this chapter. SBA neither guarantees SBIC loans nor makes loans jointly with SBICs.

§ 120.105 Special consideration for veterans.

SBA will give special consideration to a small business owned by a veteran or, if the veteran chooses not to apply, to a business owned or controlled by one of the veteran's dependents. If the veteran is deceased or permanently disabled, SBA will give special consideration to one survivor or dependent. SBA will process the application of a business owned or controlled by a veteran or dependent promptly, resolve close questions in the applicant's favor, and pay particular attention to maximum loan maturity. For SBA loans, a veteran is a person honorably discharged from active military service.

INELIGIBLE BUSINESSES AND ELIGIBLE PASSIVE COMPANIES

§ 120.110 What businesses are ineligible for SBA business loans?

The following types of businesses are ineligible:

- (a) Non-profit businesses (for-profit subsidiaries are eligible);
- (b) Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);
- (c) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under § 120.111);
- (d) Life insurance companies;

(e) Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify);

(f) Pyramid sale distribution plans;

(g) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;

(h) Businesses engaged in any illegal activity;

(i) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(j) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(k) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(l) [Reserved]

(m) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;

(n) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;

(o) Businesses in which the Lender or CDC, or any of its Associates owns an equity interest;

(p) Businesses which:

(1) Present live performances of a prurient sexual nature; or

(2) Derive directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(q) Unless waived by SBA for good cause, businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss;

(r) Businesses primarily engaged in political or lobbying activities; and