

Enforceability Despite Rule Changes

§ 120.180 Are rules enforceable if they are changed later?

Regulations and contractual provisions in effect at the time of a transaction govern an SBA loan financing transaction, notwithstanding subsequent rule or contract changes. SBA may conduct an enforcement action regarding any violation of provisions of regulations or contracts applicable at the time, but no longer in effect or in use.

Loan Applications

120.190 Where does an applicant apply for a loan?

An applicant for a loan should apply to:

- (a) A Lender for a guaranteed or immediate participation loan;
- (b) A CDC for a 504 loan;
- (c) An Intermediary for a Microloan; or
- (d) SBA for a direct loan.

§ 120.191 The contents of a business loan application.

SBA requires that an application for a business loan contain, among other things, a description of the history and nature of the business, the amount and purpose of the loan, the collateral offered for the loan, current financial statements, historical financial statements (or tax returns if appropriate) for the past three years, and a business plan, when applicable. Personal histories and financial statements will be required from principals of the applicant (and the Operating Company, if applicable).

§ 120.192 Approval or denial.

Applicants receive notice of approval or denial by the Lender, CDC, Intermediary, or SBA, as appropriate. Notice of denial will include the reasons. If a loan is approved, an Authorization will be issued.

§ 120.193 Reconsideration after denial.

An applicant or recipient of a business loan may request reconsideration of a denied loan or loan modification request within 6 months of denial. Applicants denied due to a size determination can appeal that determination under part 121 of this chapter. All others, including those requesting modification of an existing loan condition, can only appeal to the office that denied the initial loan application or request. To prevail, the applicant must demonstrate that it has overcome all legitimate reasons for denial. Six months after denial, a new application is required. If the

reconsideration is denied, an applicant may request a final reconsideration by the AA/FA, whose decision is final.

Computerized SBA Forms

§ 120.194 Use of computer forms.

Any applicant or other party involved in SBA Business Loan Programs may use computer generated SBA application forms, closing forms, and other forms designated by SBA if the forms are exact reproductions of SBA forms.

§ 120.195 Duty of Lender, CDC, Intermediary Lender, and Borrower to report fees.

(a) A Lender, CDC, or Intermediary Lender must report to SBA all fees of which it has knowledge or which it charges the applicant, including insurance fees. It must refund to the applicant any fees that SBA considers excessive. Failure to do so may result in an action by SBA to suspend or revoke the Lender's participation status.

(b) An applicant for a business loan must certify to SBA the name of each individual or entity (attorney, loan packager, broker, accountant, Service Provider, Lender) that helped the applicant obtain the loan, describing the services performed, and disclosing the amount of each fee.

Subpart B—Policies Specific to 7(a) Loans

Bonding Requirements

§ 120.200 What bonding requirements exist during construction?

On 7(a) loans where the SBA guarantee covers a period of construction, the Borrower must supply a 100 percent payment and performance bond and builder's risk insurance, unless waived by SBA.

Limitations on Use of Proceeds

§ 120.201 Refinancing unsecured or undersecured loans.

A Borrower may not use 7(a) loan proceeds to pay off an inadequately secured creditor, including a Lender, causing a shift to SBA of all or part of a potential loss from an existing debt.

§ 120.202 Restrictions on loans for changes in ownership.

A Borrower may not use loan proceeds to purchase a portion of a business or a portion of another owner's interest. One or more current owners may use loan proceeds to purchase the entire interest of another current owner, or a Borrower can purchase ownership of an entire business.

§ 120.203 Revolving credit.

SBA may not use its regular 7(a) program for a revolving line of credit, such as "floor plan" financing. (See § 120.390 for special Caplines program.)

Maturities; Interest Rates; Loan and Guarantee Amounts

§ 120.210 What percentage of a loan may SBA guarantee?

SBA's guarantee percentage must not exceed the applicable percentage established in section 7(a) of the Act. The maximum allowable guarantee percentage on a loan will be determined by the *loan amount*. As of October 31, 1995, the percentages are: Loans of \$100,000 or less may receive a maximum guarantee of 80 percent. All other loans may receive a maximum guarantee of 75 percent, not to exceed \$750,000.

§ 120.211 What limits are there on the amounts of direct loans?

(a) The statutory limit for direct loans made under the authority of section 7(a)(1)–(19) of the Small Business Act is \$350,000. SBA has established an administrative limit of \$150,000 for direct loans. The Associate Administrator for Financial Assistance (AA/FA) may authorize acceptance of an application up to the statutory limit.

(b) The statutory limit for direct loans made under the authority of section 7(a)(20) is \$750,000. SBA has established an administrative limit of \$150,000. The Associate Administrator for Minority Enterprise Development may authorize the acceptance of an application that exceeds the administrative limit.

(c) The statutory limit on SBA's portion of an immediate participation loan is the lesser of 90 percent of the loan or \$350,000. The administrative limit is the lesser of 75 percent of the loan or \$150,000. The AA/FA may authorize exceptions to the administrative limit up to \$350,000.

§ 120.212 What limits are there on loan maturities?

The term of a loan shall be:

(a) The shortest appropriate term, depending upon the Borrower's ability to repay;

(b) Ten years or less, unless it finances or refinances real estate or equipment with a useful life exceeding ten years; and

(c) A maximum of 25 years, including extensions. (A portion of a loan used to acquire or improve real property may have a term of 25 years plus an additional period needed to complete the construction or improvements.)