



NAGGL Gets TRAINING **SOP 50 10: Updates and New Opportunities**

Training & Events
Advocacy
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Industry Service



Session Topics

- Major changes in version 5(B) of SOP 50 10 5
- Special Recovery Act Loan Requirements
- Potential Minefields for Lenders
- Other Things that are NEW
- What's Coming
- New Legislation

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Changes in SOP 50 10 5(B)

- Effective for all loans received by SBA on or after 10/1/2009 – SBA Notice 5000-1121
- Available at www.sba.gov/banking in 2 versions:
 - Final technically corrected version AND
 - Tracked changes to identify places where changes made
- Does **NOT** include temporary provisions from Recovery Act – e.g., 90% guaranty, no guaranty fee, ARC loans – or temporary alternative size standard **BUT**
- Includes permanent initiatives from Recovery Act – e.g., lifting of prohibition against refinancing in 504

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SOP 50 10 5(B) Version

- Incorporates policy or procedural notices and regulatory changes governing 7(a) and 504 loan processing published between January 1, 2009 and June 30, 2009
- **Per Notice 5000-1121:** SBA now intends to update the SOP only approximately every 12 months
 - This means that there will likely be more notices reflecting any interim changes
 - So next version due out around 10/1/2010

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Franchises

- Emphasizes (with bold text) the fact that just because a **franchise agreement** is found acceptable does **not** mean that the applicant is eligible
- Adds a definition for ‘**franchise development agreements**’ (aka **master franchise agreements**) **AND**
 - Specifies that such agreements are **ineligible** because they are inherently **speculative** and are considered to be **passive investments**

...

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Franchises

- Specifies that a franchise agreement may **not** require the franchisee to sell its real property to the franchisor upon expiration or breach of the agreement
- Clarifies that SBA will not infer franchisor’s agreement that when the consent of the franchisor/licensor/ dealer/jobber, etc. is required it ‘must not be unreasonably withheld’ – **the specific clause is required**

...

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Credit Elsewhere

- Adds a specific requirement that lender's file 'contain documentation that **specifically identifies the factors** in the present financing that meet the Credit Elsewhere Test'
- Adds a specific requirement that any 'other factors' being cited as a basis for justifying the SBA guaranty be '**specifically documented** in the loan file'
- Both additions consistent with recommendations contained in Government Accountability Office (GAO) report on compliance with Credit Elsewhere Test

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Passive Businesses

- Slightly changes wording regarding documentation required to prove that mini-warehouses, office suites, shopping centers, flea markets and mobile home parks are eligible for SBA financing

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Farm Enterprises

- Adds a **new paragraph** authorizing loan proceeds for:
 - Purchase of land, buildings and land improvements (fencing, irrigation systems, construction of dikes, silos, barns, hog and dairy facilities, etc.)
 - Construction, renovation or improvements (including water systems) of farm buildings other than residences
 - Purchase of farm machinery and equipment
 - Purchase of seed and acquisition of animals
 - Operating expenses directly related to the farming operation, excluding personal or family living expenses**AND**
 - Refinancing of debt related to the farming operation, excluding personal or family debt

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Financing Payment of Taxes

- Clarifies that term 'withholding taxes' means 'payroll taxes' – which may **not** be funded
- Specifies that payment of delinquent **income** taxes *may* be permitted if applicant has an approved payment arrangement with IRS
 - Previously said decision would be on case-by-case basis the same as other delinquent accounts

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Refinancing Long-Term Debt

- For long-term debt – new installment amount must be **at least 10% less** than the existing installment amount – reduced from former 20% requirement to synchronize with 504 refinancing standard
- **Excludes** from this requirement –
 - Long-term debt structured with a demand note or balloon payment
 - Credit card debt
 - Revolving lines of credit (short- or long-term)

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Refinancing Credit Card Debt

- Clarifies that **any** credit card debt being refinanced must have been for business-related purposes – with applicant certification required
- Standards –
 - **If credit card in business name** – Applicant certification sole requirement
 - **If credit card in personal name** – Lender must obtain supporting documentation (such as monthly statements itemizing the charge and receipts describing the charge) for all charges over \$100 on personal cards

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Refinancing Debt That Financed Change of Ownership

- Clarifies that financing allowed when **seller** obtains a current business valuation that meets SBA requirements
- If amount **allocated in business valuation** to intangible assets exceeds \$500,000 and borrower does not have at least 25% equity, application cannot be processed under delegated authority

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'Intangibles'

- Substitutes the term **'intangibles'** where the term **'blue sky'** was previously used
- **Defines intangibles** to include, but not be limited to, goodwill, client/customer lists, patents, copyrights, trademarks and agreements not to compete
- Requires that the amount of intangible assets financed with loan proceeds be specifically identified in the Use of Proceeds section on application and in Loan Authorization

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Intangibles Policy

- Allows change of ownership loans that include purchase of intangible assets
- If purchase price includes **intangible assets in excess of \$500,000** –
 - Borrower and/or seller must provide a combined **equity injection of at least 25%** of the purchase price of the business **to use delegated authority** . . .

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Seller Equity

- **Seller Equity = Seller-take back financing that is on full stand-by (no payments of principal or interest) for at least 2 years**
- Borrower and seller will agree how much equity each will provide –
- Ex: borrower may provide 10%, seller may provide 15%
- Total must equal at least 25%

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Processing Methods

- If the loan amount includes \$500,000 or more allocated for the purchase of intangibles, and there is less than 25% equity injection, loan must be submitted through the **Standard 7(a) Guaranty Processing Center for SBA** consideration – NO processing under delegated authority
- If purchase price of business includes less than \$500,000 for intangibles, equity requirement does not apply – loan can be processed under delegated authority

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Refinancing Seller Take-Back Financings

- Establishes **new** criteria for refinancing seller take-back financings
 - Change of ownership must have occurred > 2 years ago
 - Loan must be, and have been, current for past 24 months
 - Lender must obtain a current business valuation – within 36 months
 - Refinancing request must meet general refinancing requirements
 - Same PLP processing limitations as for original financings

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Loan Increases

- Clarifies that increases to loan amounts, regardless of disbursement status must be approved by SBA
- For term loans made under any program allows increases **in excess of 20%** of original loan amount, and increase **more than 18 months after** original approval – Request must include:
 - Analysis showing that the purpose of the increase is the same as the original purpose of the loan AND
 - Borrower’s cash flow can support the increased payment amount
 - ...

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Loan Increases

- Specifies that for **revolving** lines of credit under Express or pilots where increase > 33% of original loan amount – lender must:
 - Include an analysis of appropriate credit and risk factors consistent with internal practices for similarly sized non-SBA guaranteed loans

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Additional Fixed Interest Rate Basis

- Establishes a new maximum allowed **fixed** interest rate
- SBA will 'periodically' publish rate in the Federal Register with explanation of calculation
- Based on the cost of converting a floating rate note to a fixed rate note using the LIBOR Swap Rate
- May cause renewed interest in ability to split rate between fixed and variable – with one rate for guaranteed portion, other for non-guaranteed portion

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SBA Express Fees

- Specifies that **renewal fees** are not permitted
 - Previously said 'referral' fees

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Agents

- Adds a new paragraph specifying that for **lender service providers** SBA approves the written agreement between the lender and the LSP per 13 CFR 103.5(c)
- Requirement for SBA Form 159 (7a) from other agents paid by applicant or lender remains unchanged

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Creditworthiness / Underwriting

- Adds **two** new requirements to list of items required as part of lender analysis
 - **Site visit** consistent with lender's internal policy for similarly sized non-SBA guaranteed commercial loans **AND**
 - Discussion of whether operating business is the subject of any **Federal, State or Local citations** (including probation) or other actions which would preclude it from normal business operations
 - Adding business 'character' requirement

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Collateral

- Provides flexibility on obtain a line on **personally held publicly-traded assets** within allowable exemption under personal resources test
- If loan not fully secured and such assets available –
 - Lender must **attempt** to obtain a lien **BUT**
 - If lender unable to perfect lien may exclude, but must document file as to the efforts made to obtain the lien, including supporting documentation

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Appraisal Requirements – Construction

- Clarifies that if **new construction** or **substantial renovation** of existing building
 - Appraiser must estimate market value upon completion &
 - When completed – lender must **obtain statement** from appraiser that building was built with only minor deviations (if any) from plans and specs [specifies NOT a second appraisal]
 - If appraiser cannot provide required statement, lender **may not close** the loan without SBA's prior written permission
 - Agency concern – that someone knowledgeable be willing to state building substantially in compliance with plans and spec upon which original estimate of value was based

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Business Valuations

- Clarifies that business valuation **must** be requested by and prepared for lender
 - So that the individual performing the business valuation will be able to appropriately identify the scope of work
- Specifies that business valuation must include –
 - Opinion of value
 - Qualifications of valuator
 - Signature certifying to the information contained in the valuation

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Pre-Closing Business Valuations

- Allows valuation to be obtained prior to closing, and adds language similar to appraisal section describing requirements when business valuation not available during processing
- Application must include estimate of the value of the business and that loan authorization include estimate AND requirement that valuation support estimate
- At closing –
 - If value 90% of estimate – lender may close but must provide a written explanation regarding shortfall
 - If value less than 90% of estimate, SBA must approve closing
 - Except that PLP lenders may close if documented rationale supports action

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Recovery Act – Ineligible Loans

- No loan guaranty may be made to any entity found by Secy of Homeland Security or Attorney General to knowingly have hired, recruited or referred for a fee, for employment in the U.S. an illegal alien
 - To comply, lender must require borrower or operating company to certify it has not been so found
- Ineligible Businesses –
 - Casinos and other gambling establishments
 - Aquariums
 - Zoos
 - Golf courses
 - Swimming pools
 - Fitness and Recreational Sports Centers MAY be eligible but require non-delegated authority processing

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Recovery Act Certification Requirements

- *Recovery Act Loan Documentation Requirements and Restrictions* – SBA Notice **5000-1134**, effective 12/9/2009
- Required Documentation
 - Borrower **certification** of hiring practices
 - Required for **ALL** loans with increased guaranty
 - Must be retained in loan file
 - Evidence that any guaranty fees [7(a)] or processing fees (504) received from borrowers on loans approved between 2/17/2000 and 3/15/2009 were returned to borrower
 - Must be retained in loan file for SBA review . . .

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Recovery Act Certification Requirements

- **Certification** that no funds will be used for a restricted use
 - Certification on applicable eligibility questionnaires and checklists
Must be retained in lender's or CDC's file

- **Certification** of uses for working capital funds
 - Required, prior to disbursement if applicant receives working capital
 - Must be retained lender's file . . .

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More Certification Requirements

- **Credit memorandum and certification** for projects with restricted uses
 - Required if applicant will receive a loan to acquire, construct or renovate an existing facility that also has an ineligible component – e.g., swimming pool or golf course
 - Credit memo must clearly show –
 - SBA loan proceeds will not finance the restricted use AND what other resources will cover the financing of this component AND
 - Prior to 1st disbursement borrower and any operating company must certify that required alternate funding has been obtained
 - Must be retained in lender's or CDC's file

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IG Findings to Date: Missing Borrower Immigration Certifications

- In its first review, IG found 14 cases where required certifications were missing
- Recommendations to AA/CA:
 - Remind lenders of requirement to obtain borrower certification of compliance with immigration laws prior to disbursement
 - Require lenders to obtain the required borrower certifications for the 14 loans identified as deficient
 - Flag the 14 noted loan to ensure this deficiency is properly addressed if purchase ever requested
 - Require lenders to submit borrower certifications of compliance at guaranty purchase, and cancel or reduce the guaranty if lender cannot furnish required certification

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Caution! Other Potential Pitfall Areas

- Failure to establish a trust account to safeguard investors' share of payments on loans sold in the secondary market
- Failure to appropriately check qualifications of loan agents and to periodically review performance of the loans that they place with lender

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So, What Else is New?

- Temporary adoption of the alternative size standard for 7(a) – through 9/30/2010
- New 7 Tab system to facilitate payment of expenses related to care and preservation of collateral issued 7/24/2009
- Revised PLP Eligibility Checklist issued 12/2009
- Revised Standard 7(a) Eligibility Checklist issued 1/31/2010

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Also New

- Revised purchase tabs issued 1/22/2010 – include eligibility requirements for Recovery Act Loans
- Revised 7(a) Servicing and Liquidation Matrix issued 1/29/2010
- 7(a) Authorization (Boilerplate and Wizard), version 2009.4, re-released in **Word 2007** via SBA Notice 5000-1139, effective 2/3/2010
- SOP 50 51 rumored to be nearing completion and ready for in-house SBA clearance

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And the BIG What Else is New?

- **Expiration** of Temporary Recovery Act Loan Enhancements and Re-activation of the Recovery Loan Queue – SBA Notice # 5000-1140, effective 2/16/2010 – **[we will fill in based on the news of the day]:**
 - ___ Minimal appropriations remain
 - ___ Current appropriations have been used up and loans are being placed in a queue waiting for funding as approved loans are cancelled
 - ___ Congress has enacted legislation that will allow continuation of Recovery Act provisions until approximately _____

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On the Horizon . . .

- Issuance of completely revised SOP 50 51, Loan Liquidation
- Additional enhancements to the Loan and Lender Monitoring System (L/LMS)
- Continued monitoring of all aspects of Recovery Act loans by both the SBA Office of the Inspector General and the Government Accountability Office as charged by Congress
- SBA's re-examination of its programs and processes to look for ways to simplify and enhance
 - You can participate in this important project by sending your suggestions to your local SBA field office and to NAGGL – info@naggl.org

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Recent Legislative Changes

- Promised to cover – but, unfortunately they are still pending . . .
- Still hoped for:
 - Increase in maximum 7(a) loan size from \$2 million to \$5 million – with a concurrent increase in the guaranteed amount to keep the maximum guaranty percentage consistent with smaller loans
 - Increase in maximum 504 SBA participation from \$1.5 million to \$5.5 million
 - Increase in microloans size from \$35,000 to \$50,000
- Stay tuned . . . And keep your fingers crossed

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Not Yet a NAGGL Member?

- NAGGL is the VOICE for the 7(a) industry with the SBA, the Administration and the Congress
- NAGGL also offers its members a full range of services including up-to-the-minute information and training
- Visit our Website – www.naggl.org – to see what we have to offer
- Email us at info@naggl.org to learn more about our services – mention that you attended SESBLC and receive a FREE 45-day trial membership AND reduced dues for your first year's membership

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- Any Additional Questions?

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