MBL Member Business Lending, LLC

MBL's Main Street Journal

July 2013

On July 1, 2013, SBA released a revision to **SOP 50 10 5(E)** that revised and clarified SBA's requirements for financing change of ownership transactions with SBA guaranteed loans. Prior to this revision, SBA had restricted SBA financing for change of ownership transactions that were structured as stock purchases where the stock (or ownership interest) of the selling shareholder(s) was being purchased by an individual or individuals. The new rules lift this restriction and greatly simplify the requirements governing change of ownership transactions for SBA lenders.

The new guidelines allow for a change of ownership to be achieved through an asset purchase, a stock purchase or a stock redemption[1]. The revised language of the SOP provides for two basic scenarios in which a change of ownership can occur: (1) a change of ownership between existing owners; and (2) a change of ownership that results in a "new" owner.

A change of ownership between existing owners may be accomplished either through a stock purchase or a stock redemption. Whether structured as a purchase or redemption, the remaining owners must own 100% of the stock at the completion of the transaction. If structured as a purchase, the individuals acquiring the stock, and the company whose stock is being acquired, must be co-borrowers on the loan. If structured as a redemption, the business whose stock is being redeemed must be the borrower and the remaining owners may be either co-borrowers or guarantors.

A change of ownership resulting in a new owner may be structured as either a stock purchase or an asset purchase. If structured as a stock purchase, 100% of the stock may be purchased either by an entity or an individual who is not an existing owner of the business. If the purchaser of the stock is an individual, then the individual and the target must be co-borrowers on the loan. If the purchaser of the stock is an entity or if the transaction is structured as an asset purchase, then the business being acquired may be a co-borrower on the loan. Generally, lenders should consider making the target business a co-borrower when the transaction is structured as a stock purchase, but it is unlikely that a seller in an asset purchase would ever consent to being obligated on the purchaser's loan. As the SBA's language is not mandatory, this should not present any structuring issues for lenders.
Lenders must also ensure that the business will not attempt to deny liability for lack of consideration on debts where it is a co-borrower with the purchasers of the stock.

SBA Base Rates July 2013

WSJ Prime	3.25%
1-Month LIBOR Base Rate	3.20%
SBA Fixed Base Rate	5.34%

*Effective for the first business day of July 2013
**Effective for the period: July 1, 2013 to July 31, 2013

Monthly Training Seminar

July Webinar

MBL will offer the monthly webinar on July 10, 2013. The webinar is part of MBL's free monthly seminar series and is open to all credit union business lending staff.

Lending to Franchises: Meeting the SBA Eligibility Requirments

2:00 – 3:00 p.m. (MDT)
Session number: 804 964 303
Session password: July
Dial in phone number: 1-855-749-4750
Link:

https://mbltraining.webex.com/mbltraining/k2/j.php?ED=208389172&UID=1402350087&HMAC=e939dc78fb100e7dfbb5024c0603ce931b4ba0a8&RT=MiM2

Reminder: MBL Certification Program

MBL is offering 15 courses that allow credit union Representatives to earn their designation of Certified Business Lender.

Please contact Lisa Dent at 801-545-7923 or ldent@mblllc.com for registration information.

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As this analysis varies by state, lenders should consult counsel to ensure the enforceability of the loan documents. If the borrower denies liability on these grounds, the SBA may not honor the guaranty.

The amendments to the change of ownership provisions of the SOP 50 10 5(E) should facilitate change of ownership transactions financed with SBA loans, especially those structured as stock purchases. However, lenders should be mindful of the SBA's new requirements to ensure that they do not jeopardize the guaranty

Franchise Findings

SBA attorneys have assembled a listing of Issues of Eligibility they have identified in various franchise/license/dealer/jobber or similar agreements (Agreements), which SBA calls Franchise Findings. This list contains the names of those franchises and systems that have requirements in their Agreements that could cause the business to be ineligible for SBA Financial Assistance. This list is made available for use by Lenders/CDCs in evaluating the eligibility of a small business that operates under an Agreement. **This list is only a guide and is not a substitute for a full review of the Agreement.**

The issues listed on the Franchise Findings list reflect SBA's rules, regulations and SOPs in effect at the time of the attorney's review. Agreements are constantly updated and changed; therefore, the items on the list may no longer be an issue in the current version of an Agreement. There may, however, be other issues that have not been identified on the list. If you have a specific issue which you need to discuss please contact local SBA District Counsel.

As a reminder, if a Lender/CDC is processing an application under its delegated authority, it is responsible for reviewing the Agreement and making the eligibility determination in accordance with SBA's policies and procedures in effect when the application was filed unless 1) the Agreement is listed on the Franchise Registry and 2) the Lender/CDC has obtained a Certification of Non-Material Change from the Franchisor which states that the Agreement under consideration is the same as the one approved on the Registry.

For additional franchise information, visit:

http://www.sba.gov/content/franchise-findings

The MBL Mission:
"To aid, counsel, and assist our participating credit unions and the member businesses they serve"

What is NAICS?

The North American Industry Classification System (NAICS) classifies business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. The NAICS industry codes define establishments based on the activities in which they are primarily engaged. NAICS codes are also used for administrative, contracting, and tax purposes. NAICS is production oriented (not product oriented) and categorizes businesses with others that have similar methods of production.

SBA uses NAICS as a basis for its size standards. Size standards using NAICS as their basis apply to all Federal government programs, including procurement. When the Federal government intends to acquire goods or services, it identifies the NAICS code that describes the principal purpose of that procurement. Your business may have myriad capabilities, and the NAICS code for a given procurement opportunity may not be the same as your primary NAICS code. That will not keep you from bidding or making an offer, so long as you meet the size standard for the procurement and have the capacity to provide the goods or services

IRS Contact Information

For a current list of IRC Service Center contact points and telephone numbers, refer to **IRS Form 4506-T**. These contacts are to be used to request copies of IRS tax transcripts to verify business financial information included in SBA loan applications for 7(a) and 504 Loans. Lenders and CDCs are reminded that all SBA 7(a) and 504 related requests for IRS tax transcripts must be submitted to IRS Service Centers using **IRS Form 4506-T**. SBA's logo is on the form to ensure SBA related requests are expedited and to ensure there will be no charge for the transcripts. For additional IRS information, visit **IRS.gov**.

What is E-Tran?

E-Tran is an SBA loan guaranty origination/servicing solution that: Leverages internet technology to reduce the turnaround time on loan guaranty requests

- Is integrated into your SBA software products and enables you submit electronically from your existing screens
- Provides increased efficiency and decreased costs in the loan guaranty origination and servicing processes

Who is Eligible to Use E-Tran?

All delegated loan program lenders are eligible for loan origination (SBAExpress, PLP, Community Express, Patriot Express, and Export Express)

All loan programs are eligible for loan servicing.