

## SBA Issues Final Rule Amending Lending Criteria for SBA Business Loan Programs\*

On April 10, 2023, the Small Business Administration (SBA) issued a final rule amending various regulations governing the SBA's 7(a) Loan Program and the 504 Loan Program, including regulations on use of proceeds for partial changes of ownership, lending criteria, loan conditions, reconsiderations, and affiliation standards (the "Final Rule"). 88 FR 21074.

The Final Rule becomes effective on May 11, 2023, and makes the below key changes.

- SBA's current regulations do not permit 7(a) Loan Program proceeds to be used to fund the purchase of a portion of a business or a portion of another owner's interest in a business. The SBA is amending 13 CFR Sections 120.130 and 120.202 to remove this restriction and allow borrowers to use 7(a) loan proceeds to fund the purchase of a portion or the entirety of an owner's interest in the business, or a portion or the entirety of the business itself. Note that this change does not apply to the 504 Loan Program.
- Current SBA regulations set SBA's lending criteria for 7(a) and 504 loans, and require that the applicant must be creditworthy, loans must be sound as to reasonably assure repayment, and sets forth various specific factors SBA lenders should consider in their lending criteria. The SBA is revising 13 CFR Section 120.150 to streamline its lending criteria by reducing the number of factors that are required in determining creditworthiness and reasonable assurance of repayment. The SBA is revising this section to state that, as part of considering whether the applicant is creditworthy and the loan is so sound as to reasonably assure repayment, lenders may consider (as applicable) any of the following three specific criteria when approving loans: (a) the credit score or credit history of the applicant, its associates and any guarantors; (b) the earnings or cashflow of the applicant; or (c) where applicable, any equity or collateral of the applicant.
- Currently, the SBA requires hazard insurance for all 7(a) and 504 loans, and does not distinguish this requirement by the size of the loan. 13 CFR Section 120.160(c). The SBA is revising this rule to only require hazard insurance for collateral on 7(a) loans greater than \$500,000 and 504 projects greater than \$500,000. For loans of \$500,000 or under, SBA lenders must follow their hazard insurance policies and procedures that they have established and implemented for their similarly sized, non-SBA-guaranteed commercial loans.

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- Under current regulations, final reconsideration after denial of a loan application or loan modification request in the 7(a) and 504 Loan Programs is made by the SBA's Director of the Office of Financial Assistance. The SBA is revising 13 CFR Section 120.193 to state that the Director of the Office of Financial Assistance or the Director's designee(s) may make the final decision on reconsideration. This change is intended to allow for more expeditious reconsiderations.
- Finally, 13 CFR Section 121.301 sets forth the size standards and affiliation principles for 7(a) and 504 loans. The SBA is amending this section to remove the principle of control of one entity over another as a separate basis for finding affiliation.

For more information or questions regarding the Final Rule, please contact Joel Cook at **JCook@ABLAWYERS.COM**.