

CHAPTER 2: CREDIT NOT AVAILABLE ELSEWHERE, SPECIAL TRANSACTION STRUCTURES, & OTHER PRIMARY APPLICANT ELIGIBILITY REQUIREMENTS

A. CREDIT NOT AVAILABLE ELSEWHERE

(15 USC 636(a)(1)(A) and [13 CFR § 120.101](#))

On April 21, 2014, the Final Rule on 504 and 7(a) Loan Programs Updates [79 FR 15641](#) eliminating the personal resources test to improve access to its two flagship business lending programs - the 504 Loan Program and the 7(a) Loan Program – became effective. This rule enhanced job creation through increasing eligibility for loans under SBA's business loan programs.

Section 7(a) of the Small Business Act requires that SBA ensure reasonable assurance of repayment from the cashflow of the business. The Final Rule and Section 7(a) of the Small Business Act does not preclude personal liquidity of the Applicant owners being available as a secondary form of repayment. Therefore, personal resources from owners enhance SBA's ability to mitigate loan losses to the taxpayer due to the personal guaranty required of all owners of the small business Applicant.

The plain text of the Credit Not Available Elsewhere test does not require a personal resource test.

Per [13 CFR § 120.101](#), “SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-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.”

Consequently, SBA and delegated SBA Lenders are not required to consider the personal resources of owners of the Applicant, and SBA will not evaluate the personal liquidity of owners at the time of SBA lender purchase request, non-delegated loan origination review, or for purposes of portfolio regulatory compliance during PARRiS and SMART lender reviews. In addition, SBA acknowledges that the certification of credit not available elsewhere for the reasons enumerated in the regulation constitutes on its face that the Lender or CDC 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.

1. The [SBA Lender](#) must certify and indicate that the Applicant does not have the ability to obtain some or all of the requested loan funds on reasonable terms from non-Federal, non-State, or non-local government sources, including from the SBA Lender or Third Party Lender, without SBA assistance.
2. Acceptable factors that support SBA Lender certification and demonstrate an identifiable weakness in the credit or exceed policy limits of the SBA Lender or the Third Party Lender include, among others:
 - a. The business needs a longer maturity than the SBA Lender's/Third Party Lender's policy permits to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business (for example, the business needs a loan that is not on a demand basis);
 - b. The requested loan exceeds the SBA Lender's/Third Party Lender's policy limit regarding the amount that it can lend to one customer;
 - c. The collateral does not meet the SBA Lender's/Third Party Lender's policy requirements;
 - d. The SBA Lender's/Third Party Lender's policy normally does not allow loans to new businesses (e.g., a business that has been in operation for a period of not more than 2 years) or businesses in the Applicant's industry;
 - e. Any other factors relating to the particular credit that, in the SBA Lender's/Third Party Lender's opinion, cannot be overcome except for the guaranty. Examples of "other factors" may include business and personal credit history, management experience, leverage ratio, global cashflow, and loan size relative to the age of the business. The SBA Lender may cite the Applicant's inability to meet the SBA Lender's or Third Party Lender's conventional credit score policy as the sole reason that credit is not available elsewhere.

SBA encourages SBA Lenders to expedite processing of SBA loans by documenting the justification for credit not available elsewhere with an automated process where the SBA Lender selects one of the designated categories outlined in the regulation. There is no requirement for written justification in the SBA Lender's credit memorandum beyond simply indicating one or more reasons from a list of the acceptable factors that support the SBA Lender's certification.

B. SPECIAL TRANSACTION STRUCTURES

1. Eligible Passive Companies

[13 CFR § 120.111](#)

The Eligible Passive Company (EPC) Rule is an exception to SBA regulations that prohibit financing assets that are held for their passive income. ([13 CFR § 120.130\(d\)](#)) Because the EPC rule is an exception, the EPC and the OC must comply with all of the conditions in 13 CFR § 120.111 and each condition is interpreted strictly. If all conditions are not complied with, in the event of default on a 7(a) loan, SBA may deny liability on the guaranty. In 504, SBA may pursue a CDC Recovery Claim under 13 CFR § 120.938 in the case of fraud, negligence, or misrepresentation by the CDC.

An [Eligible Passive Company](#) (EPC) must use loan proceeds only to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more [Operating Companies](#) (OCs) for conducting the OC's business, or to finance a change of ownership between the existing owners of the EPC. An EPC may only use loan proceeds to finance a change of ownership between existing owners of the EPC when the real estate or personal property has been held by the selling owner(s) for at least 36 months.

For specific information on change of ownership loans with an EPC/OC structure:

- For 7(a), see the eligible uses of proceeds section of each delivery method chapter. Note, change of ownership is not an eligible use of proceeds for the CAPLines and EWCP delivery methods, or for revolving facilities.
- For 504, see Section C, Ch. 1, Para. C.13, [Change of Ownership](#) for the circumstances under which change of ownership is permitted. Note: See Para. C.13.a.iii. of such Section for important restrictions that apply if using a 504 loan to finance a change of ownership between existing owners of the EPC.

With the exception of a change of ownership between existing owners of the EPC, an EPC may not use loan proceeds to acquire a business, acquire stock in a business or any intangible assets of a business, or to refinance debt that was incurred for those purposes.

In addition, when the EPC and OC(s) are co-borrowers:

- A 7(a) loan may include loan proceeds for working capital and/or the purchase of other assets, including intangible assets for the OC's use; and
- A 504 loan may include loan proceeds for the purchase of fixed assets to be owned by the OC(s).

An EPC can take any legal form or ownership structure (e.g., corporation, partnership, LLC, sole proprietor, tenancy in common, etc.)

A tenancy in common is a form of legal ownership and does not create a new or separate legal entity. There may be several individuals or entities in a tenancy in common, but the tenancy in common is considered one EPC. The loan documents must be signed by all of the members of the tenancy in common.

Multiple OCs can be separately owned, however, multiple EPCs in one transaction are not permitted. An EPC may own several unique properties that it leases to the same OC(s).

- a. Conditions that apply to all EPCs:
 - i. The OC(s) must be an eligible small business;

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- ii. The proposed use of proceeds must be an eligible use as if the OC(s) were obtaining the financing directly;
- iii. The EPC (with the exception of a trust) and the OC(s) each must be small under the appropriate size standard of [13 CFR Part 121](#);
- iv. The EPC must lease the project property directly to the OC(s); and
 - a) Obtain a fully executed written lease;
 - b) The lease must be subordinated to the SBA's mortgage, trust deed lien, or security interest on the property (Note: This is not the same as a Landlord's Waiver);
 - c) The lease must have a term, including options to renew exercisable solely by the OC(s), at least equal to the term of the loan;
 - d) The EPC (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease. An assignment of the lease is only required when necessary to perfect the assignment of rents under applicable law, or to enable the SBA Lender to exercise the tenant's rights upon default;
 - e) The rent or lease payments cannot exceed the amount necessary to make the loan payment to the Lender and an additional amount to cover the EPC's direct expenses of holding the property, such as routine maintenance, utility expenses, insurance, and property taxes.

For 504 loans, loan payments to the SBA, the Third Party Lender, and if applicable, to a lender authorized by SBA to provide the Borrower's contribution, are included in the calculation of "loan payment to the Lender." Rent or lease payments cannot include amounts for accelerated payments on the Third Party Loan;

- f) When calculating repayment ability, the SBA Lender must consider whether the OC's cash flow will be sufficient to cover the loan payment (for 504 loans, including the loan payment to the Third Party Lender), in addition to the expenses of holding the property including the payment of routine maintenance, property taxes, utility expenses, insurance, and all other ongoing expenses;
- g) The OC(s) must lease 100% of the property from the EPC, but it can sublease a portion of the property under the rules governing occupancy requirements with which all SBA Borrowers must comply (see Chapter 3, Para. C, [Occupancy and Leasing Requirements](#) of this Section for more information);
- h) If, in acquiring the property, the EPC becomes the beneficiary or owner of the rights to an existing mineral lease on the property, the EPC must assign its interest in the lease (together with its rights to all rental, mineral, royalty, bonus, or similar lease payments that might accrue by virtue of the existing mineral (oil and gas) lease) to the OC(s); and any such assignment must be subordinated to all Deeds of Trust or

Mortgages.

- v. An EPC (excluding a trust) may not engage in any business activity other than leasing the property to the OC(s). The EPC may own more than one property provided all the property is leased to the same OC(s).
- vi. The OC(s) must be a guarantor or a co-Borrower on the loan.
 - a) Each holder of an ownership interest constituting at least 20% of either the EPC or the OC(s) must guarantee the loan (if the holder is a trust, then the Trustee shall execute the guarantee on behalf of the trust).
 - b) Each spouse owning less than 20% of an EPC or OC must personally guarantee the loan in full when the combined ownership interest of both spouses and minor children is 20% or more.
 - c) For a non-owner spouse, the SBA Lender must require the signature of the spouse on the appropriate collateral documents. The spouse's guaranty secured by jointly held collateral will be limited to the spouse's interest in the collateral.
 - d) If a person has executed the Note as a Borrower in an individual capacity, that person does not also have to execute a personal guaranty.
 - e) When deemed necessary for credit or other reasons, SBA or, for a loan processed under an SBA Lender's delegated authority, the SBA Lender, may require other appropriate individuals or entities to provide full or limited guaranties of the loan without regard to the percentage of their ownership interests, if any.
 - f) The OC(s) must be a co-Borrower if it receives any proceeds or if proceeds will be used to purchase any assets for the OC(s) use.
- vii. The amount of any loan received by an EPC applies to the loan limit of both the EPC and the OC.
- b. Conditions that apply when the EPC is owned in whole or in part by a trust.
 - i. The eligibility status of the Trustor will determine trust eligibility.
 - ii. All donors to the trust will be deemed to have Trustor status for eligibility purposes.
 - iii. The Trustee must warrant and certify that the trust will not be revoked or substantially amended for the term of the loan without the prior written consent of SBA.
 - iv. The Trustor must guarantee the loan.
 - a) If an Employee Stock Ownership Plan trust agreement prohibits it from being a guarantor or co-Borrower, then it cannot use the EPC form of borrowing.
 - b) Beneficiaries that exercise any control over the actions of the trust also must guarantee the loan.

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- v. The Trustee shall certify in writing to SBA, or to the SBA Lender processing a loan under its delegated authority, that:
 - a) The Trustee has authority to act;
 - b) The trust has authority to borrow funds, pledge trust assets, and lease the property to the OC(s);
 - c) The Trustee has provided accurate, pertinent language from the trust agreement confirming the above; and
 - d) The Trustee has provided SBA or the SBA Lender processing a loan under its delegated authority with a true and complete list of all trustors and donors and will provide an updated list to SBA or the SBA Lender processing a loan under its delegated authority any time the list changes.
- vi. The trust itself does not have to be small by SBA size standards.
- c. Size Determinations under the EPC rule.
 - i. If the EPC and the OC(s) are affiliated, the two companies are combined for determining size.
 - a) If there is only one OC, use the OC's NAICS code.
 - b) If there are multiple, unaffiliated OCs, use the NAICS code of the OC that generates the most revenue. Note: Each OC must be small based on its own NAICS code.
 - c) If the multiple OCs are affiliated, then use the rules detailed in 13 CFR §121.107 for determining the primary industry of affiliated businesses. The NAICS Code of the primary industry of the OC shall be the identifying NAICS Code.
 - ii. If the EPC and the OC(s) are not affiliated, each entity must be small under the size requirement for its particular industry.

The existence of a lease between the EPC and the OC(s) does not, in and of itself, create an affiliation, even if the EPC and OC(s) are co-Borrowers.
- d. When sending data to SBA, use the same NAICS Code that was used to determine size for the Applicant.
- e. Submission of Financial Statements by the EPC and the OC(s):
 - i. The EPC and each OC must submit Financial Statements. The OC's statements are subject to tax verification.
 - ii. The regular requirement for an Aging of receivables and payables is waived for EPCs.

2. Loans to Employee Stock Ownership Plans (ESOPs)

For 7(a) loans only: SBA may assist a qualified employee trust (or equivalent trust) that meets the requirements and conditions for an ESOP prescribed in all applicable IRS, Treasury, and Department of Labor regulations. 13 CFR §§ [120.350](#) - [120.354](#)

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- a. SBA may guarantee a 7(a) loan to an ESOP for two purposes:
 - i. Purchasing a controlling interest (at least 51 percent) in the employer small business; or
 - ii. Purchasing qualified employer securities. The employer small business may use the funds received from the purchase of the qualified employer securities for any general 7(a) purpose.
 - iii. In the case of either a.i. or a.ii. above, the small business concern must be a co-borrower on the 7(a) loan.
- b. SBA may guarantee a 7(a) loan to an eligible employer small business for the sole purpose of making a loan to a qualified employee trust (ESOP) that results in the qualified employee trust owning at least 51 percent of the employer small business concern.
- c. Transaction costs associated with the purchase of the controlling interest by the ESOP or equivalent trust may be included in the use of proceeds, but any transaction costs associated with setting up the ESOP may not be included in the use of proceeds.
- d. If the seller of the employer small business remains as a partial owner, the seller must provide a full, unlimited guarantee regardless of percentage of ownership. Note: This is a statutory requirement and cannot be waived.
- e. Lenders may process loans to an ESOP or to an eligible small business owned or controlled by an ESOP under delegated authority. However, Lenders are reminded that regardless of processing method (delegated or non-delegated) the ESOP must be in compliance with IRS, Treasury, and the Department of Labor requirements.
- f. The IRS prohibits ESOPs from guarantying a loan; therefore, SBA does not require the ESOP to guarantee the loan. In addition, members of the ESOP are not required to personally guarantee the loan. All owners of the Applicant who hold an ownership interest in the small business outside the ESOP are subject to SBA's guaranty requirements. (See Ch. 5, Para. A, [Guaranties](#), of this Section for more information.)
- g. The application cannot be structured as an EPC/OC. ([13 CFR § 120.111\(a\)\(6\)](#)) SBA regulations require each 20% or more owner of the EPC and each 20% or more owner of the OC to guarantee the loan, and the regulation does not provide for an exception.
- h. Prior to first disbursement, the Lender must obtain documentation that the ESOP or equivalent trust meets the requirements of all applicable IRS, Treasury, and Department of Labor regulations.
- i. Loans to ESOPs for the purpose of purchasing a controlling interest (at least 51 percent) in the employer small business are not subject to the requirement for equity injection.

3. Cooperatives

- a. Eligibility: All Applicants operating under a cooperative structure must meet

SBA's eligibility requirements.

- b. SBA Lenders may not process loans to a cooperative or to an eligible small business owned or controlled by a cooperative under delegated authority.
- c. Each loan must be guaranteed by at least one individual or entity. (See Ch. 5, Para. A, [Guaranties](#), of this Section for more information.)
- d. For 7(a) only: SBA may guarantee a loan to a cooperative to purchase a controlling interest (51% or more) in the employer small business. Any transaction costs associated with the purchase of the controlling interest, but not costs associated with setting up the cooperative, may be included in the use of proceeds.
- e. The SBA Lender must submit supporting organizational documents and agreements as applicable with the loan application depending on the type of cooperative and the purpose of the loan (e.g., a loan to a cooperative to acquire a controlling interest in the employer concern), which may include Cooperative Agreement; Organization documents; Articles of Incorporation/Organization; Bylaws; Operating/Conversion/Redemption/Membership Agreement(s); or any other agreements as necessary.

4. 401(k) Plans Including Rollovers as Business Start-ups (ROBS) Plans

A business that is owned in whole or in part by a 401(k) plan (including a Rollovers as Business Startups (ROBS) plan) may be eligible provided the SBA Lender complies with the requirements in this section and the plan complies with all applicable IRS, Treasury, and Department of Labor requirements.

When evaluating applications involving such businesses, SBA Lenders must consider that a 401(k) plan sponsor's failure to administer the plan properly may result in plan disqualification and adverse tax consequences to the plan's sponsor and its participants, which may impact the Borrower's ability to repay the loan.

Applications where the Applicant or any owner (including a corporation formed through a ROBS plan) is a:

- Single Employer Plan, including ROBS plans, may be processed under an SBA Lender's delegated authority if the only investment held by the 401(k) plan at the time of application is the equity in the Applicant business. Note: Any subsequent contributions required under IRS and/or Employee Retirement Income Security Act (ERISA) regulations are permitted.
 - Multiple-Employer Plan, (i.e., plans that hold in trust the assets of other businesses), including ROBS plans, must be submitted to the SBA processing center under non-delegated processing. NOTE: Size standards and maximum SBA guarantee limits to a Borrower and its affiliates apply to the multiple-employer plan.
- a. The SBA Lender must:
- i. Identify in E-Tran and in the credit memorandum:
 - a) The specific type of 401(k) plan (Single Employer Plan, Multiple Employer Plan, etc.); and

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- b) If applicable, that the Applicant is using a ROBS plan for the equity contribution or other purpose (if the latter, specify the purpose of the ROBS plan).
- ii. Obtain the full unconditional guaranty of the sponsor(s) of the 401(k) plan regardless of the sponsor's individual ownership interest in the Applicant concern. This guaranty must be a secured guaranty if required by SBA's existing collateral policies. For more information on collateral: For 7(a), see the collateral section in each delivery method chapter of Section B. For 504, see Section C, Ch. 1, Para. E.2.a., [Collateral](#).
- iii. The SBA Lender must obtain the following 401(k) plan documentation with the loan application:
 - a) A favorable determination letter from IRS providing advance assurance that the terms of the 401(k) plan satisfies qualification requirements. [IRS Publication 794](#) explains the significance of the favorable determination letter, points out critical areas that may affect the qualified status of a 401(k) plan, and provides general information on the reporting requirements for the 401(k) plan;
 - b) For an existing 401(k) plan, the Annual Return/Report of Employee Benefit Plan (e.g., IRS Form 5500, IRS Form 5500-EZ, etc.);
 - c) For a ROBS plan:
 - i) C Corporation formation documents;
 - ii) 401(k) plan adoption documents;
 - iii) Stock purchase agreements; and
 - iv) Related corporate resolutions.
- b. SBA loan proceeds may not be used for any 401(k) plan formation costs.
- c. Prior to any disbursement of loan proceeds, the SBA Lender must obtain the Borrower's certification that the Borrower and the 401(k) plan are in compliance with all applicable IRS, Treasury, and Department of Labor requirements and that it will comply with all relevant operating and reporting requirements.

C. PRIMARY APPLICANT ELIGIBILITY REQUIREMENTS VERIFIED BY THE SBA LENDER

The following types of businesses are ineligible. The SBA Lender is responsible for determining the Applicant's business is not ineligible due to the following:

1. Businesses in which an SBA Lender or any of its Associates owns an equity interest, directly or indirectly, are not eligible. The only exception is when the Associate of the Applicant is a Small Business Investment Company (SBIC), in which case the requirements of 13 CFR § [120.104](#) apply. 13 CFR § [120.110\(o\)](#)
2. A Small Business Lending Company (SBLC) may not make a loan to an Applicant that has received financing (or a commitment for financing) from a Small Business Investment Company (SBIC) that is an [Associate](#) of the SBLC. 13 CFR § [120.476](#)

CHAPTER 3: USES OF PROCEEDS

A. ELIGIBLE USES OF PROCEEDS

13 CFR [120.120](#)

1. A Borrower may use loan proceeds from any [SBA Loan](#) to:

- a. Acquire land (by purchase or lease) as part of an eligible project;
- b. Improve a site (e.g., grading, streets, parking lots, landscaping) including up to 5 percent for community improvements such as curbs and sidewalks;
- c. Purchase one or more existing buildings;
- d. Convert, expand, or renovate one or more existing buildings;
- e. Construct one or more new buildings;
- f. Acquire (by purchase or lease) and install fixed assets (for a 504 loan, these assets must have a useful life of at least 10 years and be at a fixed location, although short-term financing for equipment, furniture, and furnishings may be permitted where essential to and a minor portion of the 504 Project);
- g. Finance a Lender's Other Real Estate Owned (OREO):

When loan proceeds will be used to finance the purchase of real estate owned by the 7(a) Lender; or for 504, the Third Party Lender, making the loan, the application must:

- i. Be submitted to the SBA loan processing center (delegated authority may not be used to process these applications);
- ii. Include an independent real estate appraisal that meets the SBA Loan Program Requirements (the appraisal requirement cannot be delayed until loan closing). For 7(a), the appraisal must also provide the liquidation value of the real estate.
- iii. Include an explanation of the circumstances surrounding the 7(a) Lender or Third Party Lender's acquisition of the real estate. If the acquisition of the property was triggered by a business failure at that particular location, the SBA Lender must submit a detailed explanation of why the new Applicant will succeed at that same location; and
- iv. For 7(a): Identify the SBA Lender's cost in the real estate. In order to get the full SBA guaranty, the sales price may not exceed the mortgage balance plus care and preservation expenses or the liquidation value, whichever is less. If the sales price is greater than the mortgage balance plus care and preservation expenses or the liquidation value (whichever is less), then the SBA guaranty will be reduced accordingly.

For example:

OREO Sales Price:	\$1.2 million
Lender's costs or liquidation value (whichever is less):	\$1.0 million
Guaranty amount: 75% of \$1.0 million:	\$750,000
Effective SBA guaranty: \$750,000/\$1,200,000:	62.5%

2. For 7(a) only, Borrower may also use loan proceeds for:
 - a. Inventory;
 - b. Supplies;
 - c. Raw materials (including work-in-progress);
 - d. Working capital (if the Operating Company is a co-Borrower with the Eligible Passive Company, part of the loan proceeds may be applied for working capital and/or the purchase of other assets, including intangible assets, for use by the Operating Company).
 - e. Revolving lines of credit under CAPLines, SBA Express, Export Express, and the Export Working Capital Program (EWCP);
 - f. Under Export Express or EWCP: For Standby Letter of Credit when required as a bid bond, performance bond, or advance payment guarantee.
3. Farm Enterprises
 - a. The purchase of land, buildings, and land improvements (fencing, irrigation systems, construction of dikes, silos, barns, hog and dairy facilities, etc.) as part of an eligible project;
 - b. Construction, renovation, or improvement (including water systems) of farm buildings other than residences;
 - c. For 7(a) only:
 - i. The purchase of farm machinery and equipment;
 - ii. The purchase of seed and the acquisition of animals;
 - iii. Operating expenses directly related to the farming operation, excluding personal or family living expenses; and
 - d. The refinancing of debt related to the farming operation, excluding personal or family debt, provided the refinancing meets SBA Loan Program Requirements.

Note: The acquisition of land in excess of the farming operation's needs is not an eligible use of proceeds. In addition, the Applicant must not use loan proceeds to purchase vacant or row crop land for possible future use, future construction, or to lease to third parties. For example, a concentrated animal feedlot operation (CAFO) that only requires 10 acres of land for its operation (including housing and feeding of the animals, service and access roads, and waste management facilities) may not use SBA-guaranteed loan proceeds to obtain excess farmland that is not used in the operation of the Applicant. If excess land is being acquired at the same time as the [SBA Loan](#), the excess land must be financed from

sources other than SBA and the source of the financing must be documented in the loan file.

B. RESTRICTIONS ON USES OF PROCEEDS

[13 CFR § 120.130](#)

Loan proceeds may not be used for any of the following purposes (including the replacement of funds used or borrowed for any such purpose):

1. Payments, distributions, or loans to an Associate of the Applicant (as defined in [13 CFR § 120.10](#)), except for compensation for services actually rendered at a fair and reasonable rate or to facilitate 7(a) loans for changes of ownership in accordance with § [120.202](#) and the guidance in Section B of this SOP on partial changes of ownership;
2. Refinancing a debt owed to a New Markets Venture Capital Company (NMVCC);
3. Floor plan financing;
4. Revolving lines of credit, except under Export Working Capital Program (EWCP), CAPLines, SBA Express, and Export Express programs;
5. Investments in real or personal property acquired and held primarily for sale, lease, or investment;
6. Payment of Delinquent Taxes; or
 - a. Loan proceeds must not be used to pay past-due Federal, state, or local payroll taxes, sales taxes, or similar taxes that are required to be collected by the Applicant and held in trust on behalf of a Federal, state, or local government entity.
 - b. Payment of delinquent business income taxes may be permitted if the Applicant has an approved payment arrangement with the IRS and the Applicant is current on the payments in the arrangement.
7. [13 CFR § 120.881](#) For the 504 Loan Program only: To finance the relocation of the Applicant out of a community, if there will be a net reduction of one-third or more in the Applicant's workforce or a substantial increase in unemployment in any area of the country. An exception may be allowed if the CDC can justify the relocation because:
 - a. The relocation is for key economic reasons and crucial to the continued existence, economic wellbeing, and/or competitiveness of the Applicant; and
 - b. The economic development benefits to the Applicant and the receiving community outweigh the negative impact on the community from which the Applicant is moving.
8. To pay any creditor in a position to sustain a loss causing a shift to SBA of all or part of a potential loss from an existing debt [13 CFR § 120.201](#) and [13 CFR § 120.884\(b\)](#).
9. A purpose that does not benefit the small business;
10. Any use restricted by [13 CFR §§ 120.201](#) and [120.884](#) (specific to 7(a) loans and 504 loans respectively)

C. OCCUPANCY AND LEASING REQUIREMENTS

1. Occupancy

[13 CFR § 120.131](#)

Amount of Rentable Property (based on the total project) that can be leased:

- a. When loan proceeds are used to purchase or improve real estate, or when debt secured by real estate is refinanced with loan proceeds:
 - i. For an existing building, the Applicant must occupy 51% of the Rentable Property and may lease to a third party up to 49%; or
 - ii. For new construction, the Applicant must occupy 60% of the Rentable Property, may permanently lease to a third party up to 20% and temporarily lease an additional 20% with the intention of using some of the additional 20% within 3 years and all of it within 10 years.
- b. When the real estate is owned by an EPC:
 - i. The EPC must lease 100% of the Rentable Property to an eligible OC(s).
 - ii. For an existing building, the OC(s) must occupy 51% of the Rentable Property and may sublease up to 49%; or
 - iii. For new construction, the OC(s) must occupy 60% of the Rentable Property, may permanently sublease to a third party up to 20% and temporarily sublease an additional 20% with the intention of using some of the additional 20% within 3 years and all of it within 10 years.
- c. “Rentable Property” is the total square footage of all buildings or facilities used for business operations ([13 CFR § 120.10](#)) excluding stairways, elevators, and mechanical areas and including common areas. Rentable Property may also include exterior space (except parking areas) that is actively used in Borrower’s business operations. To determine the occupancy percentage allocated to the Applicant or OC(s), the SBA Lender may include the square footage of all common areas.
- d. Circumstances may justify allowing the Applicant a period of time after closing of the SBA Loan to comply with the above occupancy requirements such as when a pre-existing lease may have a few more months to run. In no case may the small business have more than 1 year to meet occupancy requirements.

CDCs must not submit a 504 closing package if the Borrower will not be occupying and operating in the required amount of Property after closing and funding. If the Borrower will not be able to meet the occupancy requirements, the CDC must submit in advance and in writing to SLPC a request to extend the period of time necessary for the Borrower to meet occupancy requirements, along with an explanation and any supporting documentation, for SLPC approval.
- e. The Borrower may not use loan proceeds to improve or renovate any of the Rentable Property to be subleased to a third party. For 504 loans, such improvements may not secure the [Third Party Loan](#).

f. Residential Space as Part of the Business

If the nature of the business requires a resident owner or manager, loan proceeds may be used for the purchase of an existing building(s) or construction of a new building(s) that includes residential space essential to the business.

2. Responsibilities When the Borrower is Leasing Space

- a. The lease term, including renewal options exercisable only by the Borrower, must equal or exceed the term of the loan.
- b. An assignment of lease and Landlord's waiver should be obtained either when a substantial portion of the loan proceeds are to be used for leasehold improvements or a substantial portion of the collateral consists of leasehold improvements, fixtures, machinery, or equipment that is attached to leased real estate.
- c. If the loan proceeds will finance existing or new improvements on a leasehold interest in land, the underlying ground lease must include, at a minimum, detailed clauses addressing the following:
 - i. Tenant's right to encumber leasehold estate;
 - ii. No modification or cancellation of lease without SBA Lender's or assignee's approval;
 - iii. SBA Lender's or assignee's right to:
 - a) Acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by SBA Lender or successors; lessor may not unreasonably withhold, condition, or delay the reassignment;
 - b) Sublease;
 - c) Share in hazard insurance proceeds resulting from damage to improvements;
 - d) Share in condemnation proceeds; and
 - e) SBA Lender's or assignee's rights upon default of the tenant or termination.
- d. For loans collateralized by Indian lands held in trust, if the owner of the land cannot get approval for a lien on the property, the SBA Lender may consider requiring an Assignment of Lease. The Assignment of Lease also has to be approved by the Secretary of the Interior or his/her authorized representative.