

## § 120.150

and exhibit good character. Ethical indiscretion of an Associate of a Participant or a member of a CDC will be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

- (a) Self-deal;
- (b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates or an Associate's Close Relatives) or SBA;
- (c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);
- (d) Be incarcerated, on parole, or on probation;
- (e) Knowingly misrepresent or make a false statement to SBA;
- (f) Engage in conduct reflecting a lack of business integrity or honesty;
- (g) Be a convicted felon, or have an adverse final civil judgment (in a case involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;
- (h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the Participant may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;
- (i) Fail to disclose to SBA all relationships between the small business and its Associates (including Close Relatives of Associates), the Participant, and/or the lenders financing the Project of which it is aware or should be aware;
- (j) Fail to disclose to SBA whether the loan will:
  - (1) Reduce the exposure of a Participant or an Associate of a Participant in a position to sustain a loss;
  - (2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance)

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from the Participant or an Associate of the Participant;

- (3) Repay or refinance a debt due a Participant or an Associate of a Participant; or
- (4) Require the small business, or an Associate (including Close Relatives of Associates), to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association);
- (k) Issue a real estate forward commitment to a builder or developer; or
- (l) Engage in any activity which taints its objective judgment in evaluating the loan.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57980, Oct. 7, 2003]

### CREDIT CRITERIA FOR SBA LOANS

#### § 120.150 What are SBA's lending criteria?

The applicant (including an Operating Company) must be creditworthy. Loans must be so sound as to reasonably assure repayment. SBA will consider:

- (a) Character, reputation, and credit history of the applicant (and the Operating Company, if applicable), its Associates, and guarantors;
- (b) Experience and depth of management;
- (c) Strength of the business;
- (d) Past earnings, projected cash flow, and future prospects;
- (e) Ability to repay the loan with earnings from the business;
- (f) Sufficient invested equity to operate on a sound financial basis;
- (g) Potential for long-term success;
- (h) Nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and
- (i) The effect any affiliates (as defined in part 121 of this chapter) may have on the ultimate repayment ability of the applicant.

#### § 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in §121.103 of this chapter, must not exceed a guaranty