

Pertinent Statutes, Regulations, and Guidance in Effect on January 11, 2016

15 U.S.C. § 636

(B) Background checks.

Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

15 U.S.C. § 634b(11)

(b) Powers of Administrator.

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may—

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

15 U.S.C. § 687b(a)

(a) Investigations of violations.

The Administration may make such investigations as it deems necessary to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be

investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

13 C.F.R. § 115.18(c) (Surety Bond Program)

(c) Notification requirement. The Prior Approval or PSB Surety must promptly notify SBA of the occurrence of any event in paragraphs (b) (1) through (5) of this section, or if any of the Persons described in paragraph (b) of this section does not, or ceases to, qualify as a Surety. SBA may require submission of a Statement of Personal History (SBA Form 912) from any of these Persons.

13 C.F.R. § 120.110(n) (Guaranteed Lending Program)

The following types of businesses are ineligible:

(n) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude.

13 C.F.R. § 120.150(a) (Guaranteed Lending Program)

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.

SBA Standard Operating Procedures (SOP) 50 10 5(D) Chapter 2(III)(D)(3)(n)(4) (Guaranteed Lending Program, referencing 13 C.F.R. 120.110(n))

(4) To determine eligibility under this section, the Agency requires that every proprietor, general partner, officer, director, managing member of a limited liability company (LLC), owner of 20% or more of the equity of the Applicant, Trustor (if the Small Business Applicant is owned by a trust), and any person hired by the Applicant to manage day-to-day operations (“Subject Individual”) must be of good character. The completion of an SBA Form 912, Statement of Personal History (“912”), by each Subject Individual is required as part of the character evaluation process and the form must be completed within 90 days of submission of the

application to SBA. Every person completing a 912 must answer each question fully giving details about any “yes” response. NOTE: A “yes” is required even when the applicant believes the record is sealed, expunged or otherwise unavailable. (This information must be kept private and confidential.) There are no exceptions to or waivers of this policy.

SOP 50 45, Chapter 4(3)(a) (The Surety Bond Guarantee Program)

4.3. Character of the Contractor.

The contractor must possess good character and reputation to be eligible for SBG assistance.

a. Presumption of Good Character. The contractor possesses good character and reputation if each owner of 20% or more equity, and each of its officers, directors, or general partners (the contractor and each such owner, officer, director or partner referred to as “Person(s)” for purposes of this paragraph) possesses good character and reputation. Each of these Persons must submit a completed SBA Form 912, “Statement of Personal History” with the initial application and if there are any changes in ownership.

SOP 50 30 8, Chapter 3.6 (Disaster Assistance Program)

3.6 Character Determination.

It is not in the public interest for SBA to extend financial assistance to persons who are not of good character. If any adverse information develops concerning the character or background of a disaster loan applicant or principal owner, as disclosed on SBA Form 912, "Statement of Personal History," or from any other source, SBA must make a determination as to the applicant’s character before a loan can be approved.