INELIGIBLE BUSINESSES AND ELIGIBLE PASSIVE COMPANIES

§ 120.110 What businesses are ineligible for SBA business loans?

The following types of businesses are ineligible:

(a) Non-profit businesses (for-profit subsidiaries are eligible);

(b) Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);

(c) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under § 120.111);

(d) Life insurance companies;

(e) Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify);

(f) Pyramid sale distribution plans;

(g) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;

(h) Businesses engaged in any illegal activity;

(i) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(j) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(k) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(l) Consumer and marketing cooperatives (producer cooperatives are eligible);

(m) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;

(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;

(o) Businesses in which the Lender or CDC, or any of its Associates owns an equity interest;

(p) Businesses which:

(1) Present live performances of a prurient sexual nature; or

(2) Derive directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(q) Unless waived by SBA for good cause, businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss;

(r) Businesses primarily engaged in political or lobbying activities; and

(s) Speculative businesses (such as oil wildcatting).

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds 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 for conducting the Operating Company's business (references to Operating Company in paragraphs (a) and (b) of this section mean each Operating Company). Any ownership structure or legal form may qualify as an Eligible Passive Company.

(a) Conditions that apply to all legal forms:

(1) The Operating Company must be an eligible small business, and the proposed use of the proceeds must be an eligible use if the Operating Company were obtaining the financing directly;

(2) The Eligible Passive Company (with the exception of a trust) and the Operating Company each must be small under the appropriate size standards in part 121 of this chapter;

(3) The lease between the Eligible Passive Company and the Operating Company must be in writing and must be subordinated to SBA's mortgage, trust deed lien, or security interest on

the property. Also, the Eligible Passive Company (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease;

(4) The lease between the Eligible Passive Company and the Operating Company, including options to renew exercisable solely by the Operating Company, must have a remaining term at least equal to the term of the loan;

(5) The Operating Company must be a guarantor or a co-borrower (with the Eligible Passive Company) of the loan (in a 7(a) loan including working capital, the Operating Company must be a co-borrower); and

(6) Each holder of an ownership interest constituting at least 20 percent of the Eligible Passive Company and the Operating Company must guarantee the loan (the trustee shall execute the guarantee on behalf of any trust).

(b) *Additional conditions that apply to trusts.* The eligibility status of the trustor will determine trust eligibility. All donors to the trust will be deemed to have trustor status for eligibility purposes. A trust qualifying as an Eligible Passive Company may engage in other activities as authorized by its trust agreement. The trustee must warrant and certify that the trust will not be revoked or substantially amended for the term of the loan without the consent of SBA. The trustor must guarantee the loan. For purposes of this section, the trustee shall certify to SBA that:

(1) The trustee has authority to act;

(2) The trust has the authority to borrow funds, pledge trust assets, and lease the property to the Operating Company;

(3) The trustee has provided accurate, pertinent language from the trust agreement confirming the above; and

(4) The trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.

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USES OF PROCEEDS

§ 120.120 What are eligible uses of proceeds?

A small business must use an SBA business loan for sound business purposes. The uses of proceeds are prescribed in each loan's Authorization.

(a) A Borrower may use loan proceeds from any SBA loan to:

(1) Acquire land (by purchase or lease);

(2) Improve a site (e.g., grading, streets, parking lots, landscaping), including up to 5 percent for community improvements such as curbs and sidewalks;

(3) Purchase one or more existing buildings;

(4) Convert, expand or renovate one or more existing buildings;

(5) Construct one or more new buildings; and/or

(6) 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).

(b) A Borrower may also use 7(a) and microloan proceeds for:

(1) Inventory;

(2) Supplies;

(3) Raw materials; and

(4) Working capital (if the Operating Company is a co-Borrower with an Eligible Passive Company, part of the loan proceeds may be applied for working capital if used for that purpose only by the Operating Company).

(c) A Borrower may use 7(a) loan proceeds for refinancing certain outstanding debts.

§ 120.130 Restrictions on uses of proceeds.

SBA will not authorize nor may a Borrower use loan proceeds for the following purposes (including the replacement of funds used for any such purpose):

(a) Payments, distributions or loans to Associates of the applicant (except for ordinary compensation for services rendered);

(b) Refinancing a debt owed to a Small Business Investment Company (''SBIC'');

(c) Floor plan financing or other revolving line credit, except under § 120.390;

(d) Investments in real or personal property acquired and held primarily