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Business Lending News

NEW YEAR, NEW SOP: OUR TAKE SOP 50 10 5 (I) FRANCHISE & CREDIT ELSEWHERE CHANGES

This is the second in our series reviewing SBA's [SOP 50 10 5 \(I\)](#), which took effect on January 1, 2017. The new SOP includes streamlined procedures for 912 submissions, franchise processes and credit elsewhere. Next up: Franchises and Credit Elsewhere. See Subpart B, Chapter 2, II, B, pg. 78 & III. B, pg. 81; Subpart C, Chapter 2, B, pgs. 228-232. And importantly, SBA's new Addendum to the Franchise Agreement, Item 9, pg. 342.

The updated SOP streamlines eligibility procedures for SBA's eligibility review of franchise applicants, and clarifies the "affiliate" relationship between Franchisees and Franchisors. Most significant is the SBA's new [Addendum to Franchise Agreement, Form 2462](#). How significant? Without it, there's no loan.

Important: SBA's New Franchise Loan Addendum.

SBA is holding a hard line on this one. The big change: SBA will no longer review Franchise/License agreements to determine the affiliation between Franchisor and Franchisee. As an SBA lender, you now must obtain a fully executed SBA Addendum to Franchise Agreement, which covers conditions for Change of Ownership, Covenants, Forced Sale of Assets, and Franchisee Employment.

For the loan to be eligible, both parties -- Franchisor and Franchisee - must sign the Addendum before any funds are disbursed. Further, SBA will not accept alterations to the Addendum. If there are any changes to the document or if either party refuses to sign, the loan is NOT eligible for SBA funding.

More Franchise Changes.

SBA will no longer have use of their internal listing of franchises or FRANdata's [Franchise Registry](#) to address the eligibility of a franchise. For more information, see the SOP's changes in the SBA section of the Franchise Registry.

Also, when submitting a franchise loan application on ETran or SBAOne, you MUST identify the loan as a Franchise. The SOP now states that failure to identify the loan as a Franchise, and/or failure to obtain the Franchise Addendum, could result in a denial of liability on the guaranty.

And finally, the SBA Addendum isn't the only document you must have on file. The SOP states that the Addendum addresses only the "affiliation" issue between Franchisee/Franchisor. Before any disbursement of loan proceeds, you must have on file, the executed Franchise Agreement, the SBA Addendum to Franchise Agreement, and you must review all other documents the Franchisor requires the Franchisee to execute to comply with SBA Loan Program requirements.

Credit Elsewhere Changes.

In the new SOP, the SBA has removed language that the lender's legal lending limit and liquidity depend on selling the guaranteed portion of the loan on the secondary market as acceptable factors for the Credit Elsewhere rule.

Now, you need to demonstrate that credit is not available elsewhere using other factors available. In addition, SBA's expectation is that lenders consider this issue on a case-by-case /loan-by-loan basis and not rely on cookie cutter responses to the issue of Credit Elsewhere.

We hope this information has been helpful! At JRB, we're committed to providing you with educational information on SBA and customer business lending issues as they arise. To discuss your organization's lending programs, [Contact JRB](#).

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For complete details of the SOP 50 10 5 (I) changes, see [SBA Information Notice 5000-1399](#).