



# Your Partner In Lending STRATEGIES

## New SOP 50 10 5(D) - Effective 10/01/11

Mid-September SBA issued a notice and a copy of the lasted version of the SOP 50 10 5, version (D) became effective 10/1/2011. This effective date correlates with the start of a new SBA fiscal year. While some changes are minor, others are quite significant.

A few of the most significant changes effect the SBA CAP-line Program, Franchise Review, the addition of the Small Loan Advantage (SLA) Program, and Export Express Program. Minor changes include loans to finance a Change in Ownership, Debt Refinance, Interest Rate Adjustments, Use of Lender Service Providers and Environmental Investigations of Gas Stations. Areas of added clarification include, Prior Loss to Government, Default on Government Debt, Accrual Methods, Allowable Fees, SBA Form 159 (Compensation Agreement), Business Valuations, Life Insurance, and Modifying the Loan Authorization.

To easily view these changes in more detail, SBA has provided a marked up copy on their website, along with a final copy. [CLICK HERE](#) to view/print a copy.

This month I have extracted a few areas from the SOP that effect our local lenders most often.

### Change in Ownership: (Pg. 138)

H. Change of Ownership (13 CFR 120.202)

1. A Small Business Applicant may use loan proceeds for a

change of ownership in the following circumstances:

a) The Small Business Applicant is purchasing 100% of the ownership interest in a business (either an asset purchase, [transfer of a partnership interest](#) or a [redemption of stock](#)); or

b) [The Small Business Applicant is acquiring 100% of the ownership interest of one or more exiting owners. When a change of ownership is between existing owners, this must be accomplished through redemption of stock by the corporation or through the purchase of a partner's interest by the partnership. A partner, shareholder, or an unrelated third party may not use SBA-guaranteed loan proceeds to purchase an existing owner's interest in the business.](#)

### Appraisal and Business Valuation Requirements:

(Pg. 189)

i) An appraisal may be submitted as part of the loan application to assist with the underwriting or as part of the loan closing. [In no case may the lender rely on an appraisal that was prepared more than 12 months prior to the date of the application.](#)

... (Pg. 191)

d) In order for the individual performing the business valuation to identify the scope of work appropriately, the business valuation must be requested by and prepared for the lender. [The scope of work should identify whether the transaction is an asset purchase or stock purchase and be specific enough for the individual](#)

[performing the business valuation to know what is included in the sale \(including any assumed debt\).](#) The business valuation must include the individual's opinion of value, the qualifications of the individual performing the valuation and their signature certifying to the information contained in the valuation. [The lender may not use a business valuation prepared for the applicant or the seller.](#) The cost of the valuation may be passed on to the Small Business Applicant.

e) The lender may use a going concern appraisal to meet these requirements if:

(1) The loan proceeds will be used to purchase a special use property;

(2) The appraisal is performed by an appraiser experienced in the particular industry [and who is either a —qualified source as identified in paragraph 5.c\) above or has successfully completed the Appraisal Institute course —Fundamentals of Separating Real and Personal Property from Intangible Business Assets;](#) and

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| SBA Base Rates<br>October 2011 |       |
|--------------------------------|-------|
| SBA LIBOR Base Rate            | 3.24% |
| SBA FIXED Base Rate            | 4.84% |
| SBA Peg Rate                   | 3.13% |
| WSJP Rate                      | 3.25% |



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(3) The appraisal allocates separate values to the individual components of the transaction including land, building, equipment and intangible assets.

**Life Insurance Requirement:** (Pg. 204)

### D. Life Insurance

1. Lender must determine if repayment of the loan is dependent upon an owner's active participation in the business. In other words, if the owner dies, will the business operations be adversely affected and the loan default? In these situations, the lender must require life insurance unless the lender determines due to the adequacy of collateral and/or the presence of secondary sources of repayment that life insurance is not necessary. Lender must document this determination in the credit memo. If the lender determines that life insurance is not necessary and there is a loss on the loan due to the death of the owner, the lender will be responsible for the loss.

2. The amount of life insurance required must be consistent with the size and term of the loan. The amount and type of collateral available to repay the loan may be factored into the determination of the appropriate amount of life insurance.

3. For each policy required under this paragraph, lender must obtain a collateral assignment, identifying the lender as assignee, that is acknowledged by the Home Office of the

Insurer. The lender must assure that the borrower pays the premiums on the policy. The lender may utilize an escrow account for the payment of the premiums on the policy. If the lender chooses to use an escrow account for this purpose, lender must follow the escrow policy for commercial real estate taxes and insurance set forth in Chapter 7, Paragraph IV.B.2.c) of this Subpart.

4. The lender may accept the pledge of an existing life insurance policy. When a new policy is required, a decreasing term policy is most appropriate. Credit life insurance or whole life insurance should not be required.

5. SBA Express, Export Express and Patriot Express lenders may follow their internal policy for similarly sized non-SBA guaranteed commercial loans.

**Accrual Methods:** (Pg. 157-158)

SBA does not require a specific accrual method, unless the loan is sold in the Secondary Market. Loans sold on the Secondary Market must either use 30/360 or Actual/365 as the interest accrual methods. While the interest accrual method 365/360 is permitted on loans not sold on the Secondary Market, lenders are cautioned that they cannot use this accrual method and charge the maximum allowable rate of interest because this will result in an Annual Percentage Rate that exceeds SBA's regulatory maximum.



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