

Management Agreements SOP guidance 50 10 5(J), Subpart B, Ch. 2, para II.D.7.

7. Affiliation based on Management. (13 CFR § 121.301(f)(3))

a) Affiliation arises where the CEO or President of the Applicant business (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one of more other concerns. Affiliation also arises where a single individual, concern or entity controls the management of the Applicant business through a management agreement.

b) Management agreements that give the management company sole discretion over the business operations with minimal oversight of the decision-making by the Applicant business, while not passive, create affiliation between the management company and the Applicant business. (For a discussion of management agreements that do result in a passive business, see Paragraph III.A.3. of this Chapter.) SBA has determined, however, that affiliation is not created between the Applicant business and the management company if the management agreement includes meaningful oversight by the Applicant business over the management company's activities.

c) "Meaningful oversight" by the Applicant business means involvement in the decisions made concerning the operation of the business, which include a management agreement that provides for the Applicant business to do all of the following:

- i. Approve the annual operating budget;
- ii. Approve any capital expenditures or operating expenses over a significant dollar threshold;
- iii. Have control over the bank accounts; and
- iv. Have oversight over the employees operating the business (who must be employees of the Applicant business).

Paragraph III.A.3.

3. Passive Businesses (13 CFR § 120.110(c)):

Passive businesses owned by developers and landlords that do not actively use or a) occupy the assets acquired or improved with the loan proceeds (except as Eligible Passive Companies under 13 CFR § 120.111) are not eligible.

Businesses primarily engaged in subdividing real property into lots and b) developing it for resale on its own account are not eligible.

Businesses that are primarily engaged in owning or purchasing real estate and c) leasing it for any purpose are not eligible. For example, shopping centers, salon suites, and similar business models that generate income by renting space to accommodate independent businesses that provide the personal services are not eligible.

Businesses that lease land for the installation of a cell phone tower, solar panels, d) billboards, or wind turbine also are not eligible. However, the business operating the cell phone tower, solar panel, billboard, or wind turbine may be eligible.

Businesses that have entered into a management agreement with a third party e) that gives the management company sole discretion to manage the operations of the business, including control over the employees, the finances and the bank accounts of the business, with no involvement by the owner(s) of the Applicant business, are not eligible. (See paragraph II.D.7 of this chapter for additional guidance on management agreements.)

Apartment buildings and mobile home parks are not eligible. f)

The limited circumstances under which certain businesses engaged in renting or g)leasing may be eligible are as follows:

- i. Hotels, motels, recreational vehicle parks, marinas, campgrounds, or similar types of businesses are eligible if more than 50% of the business's revenue for the prior year is derived from transients who stay for 30 days or less at a time. If the Applicant is a start-up, the Applicant's projections must show that more than 50% of the business's revenue will be derived from transients who stay for 30 days or less at a time.
- ii. Residential facilities that are licensed as nursing homes or assisted living facilities are eligible.
- iii. Businesses that are engaged in leasing equipment, household goods or other items are eligible. (See subparagraph A.2 above regarding the eligibility of businesses engaged in lending.)
- iv. Businesses such as barber shops, hair salons, nail salons, and similar types of personal services businesses are eligible, regardless of whether they have employees or contract with individuals to provide the services. (See subparagraphs a) and c) above regarding ineligibility of developers and landlords.)
- v. An ineligible passive business cannot obtain an SBA loan for any purpose, including the purchase or construction of a building for its own use.