



SBA Information Notice

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| TO: | All SBA Employees and SBA Lenders | CONTROL NO.: | 5000-17009 |
| SUBJECT: | SOP 50 10 5(J) - Revisions to Franchise Review Process for 7(a) and 504 Loans | EFFECTIVE: | October 13, 2017 |

The U.S. Small Business Administration (SBA) has issued Standard Operating Procedure (SOP) 50 10 5(J), which will be effective January 1, 2018. Among other changes, SBA has revised the review process for applicants for 7(a) and 504 loans that are or will be operating under a franchise, license, dealer, jobber, or similar agreement that meets the Federal Trade Commission (FTC) definition of a franchise.¹ These changes are found in Subpart B, Chapter 2, Paragraph II.D.8 for 7(a) loans and Subpart C, Chapter 2, Paragraph II.D.8 for 504 loans.

This Notice describes the key changes made to the franchise review process in SOP 50 10 5(J) to improve consistency and certainty for Lenders, Certified Development Companies (CDCs), franchisors, franchisees, and SBA personnel. **Under these changes, Lenders and CDCs will no longer have to review franchise or other brand documentation for affiliation or eligibility.**

For loans processed through December 31, 2017, SBA Lenders must continue to follow the franchise review procedures set forth in SOP 50 10 5(I) and SBA Policy Notice 5000-1941 (effective 2-14-2017), and should contact franchise@sba.gov to obtain an SBA Franchise Identifier Code, if necessary.

Key Revisions to the Franchise Review Process

1. *SBA Franchise Directory:*

SBA has created and is posting a list, the SBA Franchise Directory (the "Directory"), on its website of all franchise and other brands reviewed by SBA that are eligible for SBA financial assistance. The Directory includes only those brands that SBA has determined are eligible under SBA affiliation rules and other eligibility criteria. **If the applicant's brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain SBA financing.** (To help minimize confusion over brands that may appear to be franchises but that do not meet the FTC definition, SBA will include such brands on the Directory at their request if they are eligible in all other respects.)

The Directory will be maintained on SBA's website at www.sba.gov/for-lenders and will contain the following information:

¹ While relationships established under license, jobber, dealer and similar agreements are not generally described as "franchise" relationships, if such relationship meets the FTC's definition of a franchise (see 16 CFR § 436.1(h)), they are treated by SBA as a franchise for purposes of affiliation determinations per 13 CFR 121.301(f)(5). SBA is no longer excluding dealer agreements with new car manufacturers from affiliation determinations.

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SBA Form 1353.1 (12-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

- Whether the brand meets the FTC definition of a franchise;
- An SBA Franchise Identifier Code, if applicable (a code will only be issued if the agreement meets the FTC definition of a franchise)²;
- Whether an addendum to the franchise agreement is needed and, if so, whether the franchisor will use the SBA Addendum to Franchise Agreement (SBA Form 2462)³ or an SBA Negotiated Addendum (with respect to an SBA Negotiated Addendum, the Directory will list the addendum most recently negotiated with SBA, which will not be earlier than 2015); and
- Whether there are additional issues the SBA Lender must consider with respect to the brand (e.g., documentation that the business will be open to all, review of any third party management agreement to ensure Applicant is not a passive business or affiliated with the management company).

Beginning January 1, 2018, for applications involving a franchise or similar relationship, before submitting the application to SBA for non-delegated processing or approving the loan under delegated authority, Lenders and CDCs must check the Directory to determine if it includes the applicant's brand. (The SOP includes specific guidance for applicants that operate under multiple agreements.) If the brand is on the Directory, Lender or CDC can proceed with processing the application. If the brand is not on the Directory, then the application cannot be processed.

If the applicant's brand is not on the Directory, the SOP sets out the procedures a franchisor must follow to request that SBA add its brand to the Directory. **Although the new procedures will not be effective until January 1, 2018, in order to ensure as many brands as possible are included on the Directory by that date, SBA will begin accepting requests from franchisors to be placed on the Directory with the issuance of this Notice. In addition, if a change needs to be made with respect to how a brand is listed on the Directory, franchisors can request such changes following the process set out in the SOP to request that SBA add its brand to the Directory.**

2. Annual Certification from Franchisor:

- For those franchises listed on the Directory that either do not need an addendum or are using an SBA Negotiated Addendum, in order to continue using no addendum or an SBA Negotiated Addendum, the franchisor must submit to SBA each year the "Annual Franchisor Certification" (SBA Form 2464, the "Certification").⁴ For brands listed on the Directory as using the SBA Addendum to Franchise Agreement (SBA Form 2462), no certification is required to remain on the Directory.
- The Certification requires the franchisor to represent that:

² The SBA Franchise Directory will include new SBA Franchise Identifier Codes for each brand. Because the new procedures will not be effective until January 1, 2018, in order to avoid confusion, when the Directory is initially posted it will not include the SBA Franchise Identifier Codes. They will be included on the Directory prior to January 1, 2018.

³ The SBA Addendum to Franchise Agreement (SBA Form 2462) and Instructions for its use have been slightly revised and are incorporated into the SOP as Appendix 9.

⁴ The Certification and Instructions for its use are incorporated into the SOP as Appendix 10.

- the terms of the current agreement that affect affiliation have not changed from the agreement reviewed by SBA for placement on the Directory; and
- if the franchisor is using an SBA Negotiated Addendum, no changes have been made to its SBA Negotiated Addendum.
- The franchisor's annual certification must be submitted to SBA as soon as it issues an updated franchise agreement, but in no event later than April 30. If not received by that date, Franchisor must use SBA Form 2462 for all SBA-guaranteed loans.
- If the franchisor cannot certify as required or would like to change its addendum, the franchisor will have to follow the process set forth in the SOP to add brands to the Directory.

3. Submission of Documentation to the SBA Processing Centers

For non-delegated loans, if the applicant's brand meets the FTC definition of a franchise, Lender/CDC must identify the name of the franchise and the SBA Franchise Identifier Code when entering the application in E-Tran or SBA One. **No other franchise documentation must be submitted to the appropriate processing center with the application.** The processing centers will confirm that the brand is listed on the Directory.

For delegated loans, if the applicant's brand meets the FTC definition of a franchise, Lender/CDC must document in its file that the applicant's brand is on the Directory and identify the franchise and the SBA Franchise Identifier Code when entering the application in E-Tran or SBA One. Lender must submit the documentation showing the applicant's brand is on the Directory with any guaranty purchase request. For loans approved under their delegated authority, PCLP CDCs must submit the documentation showing the applicant's brand is on the Directory to the SLPC prior to closing. *If the applicant's brand is not on the Directory and the delegated lender/PCLP CDC determines the brand does not meet the FTC definition and proceeds with approving the loan under its delegated authority, SBA will review this decision at time of purchase (for a 7(a) loan) or time of closing (for a 504 loan), and the delegated lender/PCLP CDC bears the risk of an incorrect determination. SBA will also review this decision and all relevant documents when conducting lender oversight activities.*

When an Applicant operates under multiple brands, the SBA Lender must identify the name of the franchise and the SBA Franchise Identifier Code for the brand that generates the largest amount of the Applicant's revenue when entering the application into E-Tran or SBA One. The SBA Lender must identify all other brands the Applicant operates under and their SBA Franchise Identifier Codes (if applicable) in the credit memorandum. For non-delegated loans, the SBA processing centers will confirm all brands critical to the Applicant's business operation are on the Directory. For loans processed under the SBA Lender's delegated authority, the SBA Lender must document in its file that all brands critical to the Applicant's business operation are on the Directory.

4. Post-Approval Documentation

For all 7(a) loans, prior to first disbursement, the Lender must obtain and retain in its file a copy of the executed agreement, the executed SBA Form 2462 or SBA Negotiated Addendum (if applicable), and any other document(s) the franchisor requires the franchisee to sign. For all 504

loans, prior to closing, the CDC must obtain a copy of the executed agreement, the executed SBA Form 2462 or SBA Negotiated Addendum (if applicable), and any other document(s) the franchisor requires the franchisee to sign. The CDC must provide a copy of the executed SBA Form 2462 or SBA Negotiated Addendum (if applicable) to the SLPC prior to submitting the closing package for debenture funding on a 504 loan.

For those brands listed on the Directory, the purchase centers will no longer review franchise agreements and related documents at the time of guaranty purchase. In order to ensure the 7(a) Lender obtained the required documents and the documents were properly executed, the documents must be provided with any request for SBA to honor the guaranty on a defaulted 7(a) loan. In addition, a delegated lender must provide evidence that the applicant's brand was listed on the Directory at the time of approval.

NOTE: Effective January 1, 2018, the Franchisor Certification for Use with SBA Negotiated Addendum (SBA Form 2463) will no longer be used and will be discontinued.

Questions

Questions concerning this Notice may be submitted to franchise@sba.gov.

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Office of Capital Access