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SBA Lending: Documenting, Closing and Servicing 7(a) and CDC/504 Loans

Navigating SBA Approval and Authorization Process and Best Closing Practices for Preserving the Loan Guaranty

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1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Documenting, Closing and Servicing SBA 7(a) and 504 Loans

**Best Practices for Lenders and Counsel
to Navigate the SBA Approval, Closing
and Post-Closing Process**

Overview of Topics

- ▶ SBA loan programs
 - ▶ 7(a) loans
 - ▶ CDC/504 loans
- ▶ Approval and Authorization Process
 - ▶ 7(a) and 504 Loans
- ▶ Closing process (Proper Documentation)
- ▶ Servicing the Loan
- ▶ Loan Defaults / Preserving the Guaranty
- ▶ SOP 50 10 5 (J) Highlights

SBA 7(A) Loan

- ▶ SBA's primary program for helping start-up and existing small businesses
- ▶ SBA guarantees loans made by participating lender institution
- ▶ Use funds for a Sound Business Purpose (i.e., LTWC, construction, acquisition of equipment, business acquisition, refinance existing debt)
- ▶ Maximum - \$5 Million (Express- \$350,000)
- ▶ Variations - CAPLines, Community Advantage Approved Lenders, Rural Business Loans

CDC / 504 Loans

- ▶ Created October 1980 - “Foster economic development, create or preserve job opportunities and stimulate growth, expansion and modernization of small businesses.” 13 C.F.R. 120.800
- ▶ Finance the acquisition of certain long-term fixed assets/property
- ▶ Real Estate (20 or 25 yrs) / Personal Property (10 yrs)
- ▶ Typical 50/40/10 Structure
- ▶ CDC issues debenture - sold to private investors; guaranteed by SBA
- ▶ Maximum Debenture - \$5 million / \$5.5 million
- ▶ Interest Rates
- ▶ Fees

APPROVAL PROCESS - 7(a) Loans

- ▶ Review the transaction early to ensure SBA-Eligibility
- ▶ Ensure your underwriting group captures all SBA closing requirements
- ▶ Review the commitment letter to ensure all SBA closing requirements have been met
- ▶ When the deal is accepted, embrace the new SBAOne process for your SBAExpress or PLP approval
- ▶ SBA Eligibility Memorandum - Not required, but it can save a guarantee

The 7(A) Authorization

- ▶ Use SBAOne to craft the Authorization
- ▶ Close it as approved or risk repair or denial
- ▶ Take the appropriate collateral; lien positions, PGs, UOP
- ▶ Changes needed are done by memorandum
 - ▶ Ensure changes are made to the deal via E-tran or the Centers
- ▶ Critical to a “good” guarantee
 - ▶ Eligibility
 - ▶ Use of Proceeds
 - ▶ Cash Injection
 - ▶ Closing Requirements

Types of 7(a) Lender Participation

- ▶ GP - least experienced; Lender submits complete application to SBA; SBA prepares Authorization
- ▶ CLP - more experienced; greater authority (streamlined application); SBA signs off on approval
- ▶ PLP - most experienced lenders (Webster); greater authority; streamlined process

APPROVAL PROCESS - 504 Loans

- ▶ Work early and closely with your local CDC
- ▶ Joint calling with the Bank and the CDC
- ▶ Understand the need and Use of Proceeds
- ▶ Set expectations with the Borrower on timing
 - ▶ SBA approves the Credit
 - ▶ SBA approved the Environmental report
 - ▶ SBA approves the appraisal

The 504 Authorization

- ▶ The CDC and the SBA prepare the final Authorization
- ▶ Review carefully to ensure it matches the Bank approval and commitment (the Borrower's expectations)
- ▶ Ensure the CDC reviews the Authorization with the Borrower
- ▶ Have the Borrower execute the Authorization
- ▶ Any changes need CDC and SBA approval
- ▶ Close as approved or risk the SBA not funding the debenture

Closing and Documenting the 7(a) and 504 Loans

- ▶ Required SBA Forms
- ▶ Non-SBA Required Documents
- ▶ SBA Language
- ▶ Unique SBA Closing Pitfalls

Closing and Documenting the 7(a) Loan: REQUIRED FORMS

- ▶ Form 147, Note (Schedule A) - except SBA Express
- ▶ Form 1050, Settlement Sheet
- ▶ Form 159, Compensation Agreement (for each required agent)
- ▶ Form 722, Equal Opportunity Poster
- ▶ Form 4506-T, Tax Return Verification
- ▶ Form 601, Agreement of Compliance (Construction >\$10k)
- ▶ Form 148 and 148L, Guarantees
- ▶ Form 155, Standby Agreement

Closing and Documenting the 7(a) Loan: CRITICAL BUT NOT SBA

- ▶ Mortgage Deed / Deed of Trust
- ▶ Assignment of Leases
- ▶ Security Agreement
- ▶ Landlord Consent
- ▶ Borrower / Guarantor - entity resolutions
- ▶ Borrower's Certification

SBA Required Language - All 7(a) Loans

- ▶ The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:
 - ▶ (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.
 - ▶ (b) Bank or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.
- ▶ Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note.

Closing and Documenting the 504 Loan: REQUIRED FORMS

- ▶ Form 1501- Note
- ▶ Form 1504 - Debenture
- ▶ Form 159 - Compensation Agreement
- ▶ Form 1506 - Servicing Agent Agreement
- ▶ Form 2289 - Borrower Operating Company Certification
- ▶ Form 2287 - Third Party Lender Agreement
- ▶ Form 2288 - Interim Lender Certification
- ▶ Form 722 - Equal Opportunity Post
- ▶ Form 148 and 148L - Guarantees
- ▶ ACH Authorization
- ▶ CDC Board Resolution; CDC Certification

Closing and Documenting the 504 Loan: CRITICAL BUT NOT SBA

- ▶ Mortgage
- ▶ Collateral Assignment of Leases
- ▶ Security Agreement
- ▶ Landlord Consents
- ▶ SBA/CDC Loan Agreement
- ▶ EPC / OC Resolutions, Trade Name Certificates
- ▶ Can you negotiate terms? Negotiate changes to 3PL loan?

Unique SBA Closing Issues

▶ DO YOUR DUE DILIGENCE

- ▶ UCC Searches and lien terminations; Title Work; OFAC/Beneficial Ownership; Flood Search; Trade Names
- ▶ Construction approvals - unusual zoning restrictions

▶ 7(a) Authorization

- ▶ The Authorization is not a contract to make a loan . The Authorization is not a Loan Agreement. 13 C.F.R. 120.10
- ▶ Incorporate via Loan Agreement
- ▶ Match up precisely

Unique SBA Closing Issues con'd

▶ LEASE ISSUES

- ▶ 7a - Lease must be equal to the Loan Term
 - ▶ Exceptions for shorter term?
- ▶ 504 - entire premises to OC; Minimum 20-25 year; Rent limitation
- ▶ Intervening Tenants
 - ▶ SNDAs - does the SBA give non-disturbance?
 - ▶ OC Assignment of Lease
- ▶ Landlord Waiver / Assignment of Leases
 - ▶ Depends on use of loan proceeds
 - ▶ 7(a) Loans - Assignment of Lease (60 day notice + cure period)

Unique SBA Closing Issues con'd

▶ CAPITAL INJECTION

- ▶ Real Estate acquisition (2 mos bank statements; closing statement)
- ▶ Gift Letters
- ▶ Controlling the Funds Disbursed

▶ LIFE INSURANCE ASSIGNMENT

- ▶ NOT Beneficiary
- ▶ Binder vs. Policy (Who Owns Policy)
- ▶ Forms of Assignment
- ▶ Policy Amounts
- ▶ Authorization re: Communication

Unique SBA Closing Issues con'd

▶ **USE OF PROCEEDS**

- ▶ Ensure money used for intended purposes
- ▶ Two Party Check
- ▶ Wiring directly to Seller / Borrower's Counsel (with undertaking)
- ▶ Permanent Working Capital

▶ **LIEN POSITION**

- ▶ Release vs. Allowable
- ▶ Perfection and Proof of Lien Position
- ▶ "Project" Collateral - match 3PL

▶ **Government Shut Downs!**

Unique SBA Closing Issues con'd

- ▶ **LIST OF EQUIPMENT / FIXTURES**
 - ▶ Collateral for Loan
 - ▶ Description and Serial Number
- ▶ **Beneficial Ownership Form / Membership**
 - ▶ Spousal implications
 - ▶ Removal of Members prior to Application
 - ▶ ESOP / 401k Issues
- ▶ **Insurance**
 - ▶ What is acceptable proof of coverage?
 - ▶

Servicing the 7(a) Loan

- ▶ Follow SBA SOP 50-57
- ▶ Follow SBA Unilateral Loan Servicing Matrix
 - ▶ Do not compromise your guarantee; “Requires Prior SBA Approval”
 - ▶ Document everything
- ▶ Conventional Portfolio versus SBA Portfolio
- ▶ Site Visits
- ▶ Annual Reviews
- ▶ Collection of annual financial statements
- ▶ Know your Borrower!

Servicing the 504 Loan

- ▶ Work closely with your CDCs
- ▶ Partner the CDC portfolio manager with the Bank portfolio PMs
- ▶ Service the conventional portfolio similarly as the SBA portfolio
- ▶ Any changes post-closing needs CDC/SBA approval
- ▶ Site Visits
- ▶ Annual Reviews
- ▶ Collection of annual financial statements
- ▶ Know your Borrower!

Loan Defaults

- ▶ Track SBA portfolio for delinquency, get involved early
- ▶ Communicate with the Borrower
- ▶ Site visits; critical to maintaining the SBA guarantee-60 days
- ▶ Assist or modify when appropriate; work with your Borrower
- ▶ Conference with your Workout professionals, assist in next steps

Securing the Guaranty

- ▶ Should the loan default
 - ▶ Review all documentation
 - ▶ Perform a site visit immediately
 - ▶ Transfer the file to the workout department
 - ▶ Secure the collateral
 - ▶ Repair or Denial
 - ▶ Eligibility
 - ▶ Use of Proceeds
 - ▶ Cash or asset injection
 - ▶ Collateral
 - ▶ Ensure proper reporting on the 1502 report

New Laws Affecting SBA Loans

- ▶ SOP 50 10 5(J)
- ▶ Effective January 1, 2018
- ▶ What is new?

Contact Information

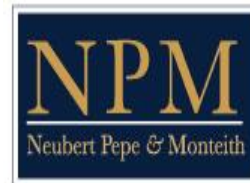
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