



SBA Information Notice

TO: All SBA Employees

CONTROL NO.: 5000-1394

SUBJECT: Litigation Plan Requirements and Legal Fee Reimbursement

EFFECTIVE: October 4, 2016

This Information Notice is for the purpose of reminding 7(a) Lenders and Certified Development Companies (CDCs) of SBA's policy concerning their responsibility for submitting Litigation Plans to SBA.

SBA regulations require that 7(a) Lenders and CDCs submit for approval a Litigation Plan to the appropriate SBA Loan Center prior to the commencement of all non-routine litigation (13 C.F.R. 120.540; see also SOP 50 57 2, Ch. 21, (3)(a)(1); and SOP 50 55, Ch. 24, D(3)(a)(1)). Non-routine litigation includes:

1. All litigation where factual or legal issues are in dispute and require resolution through adjudication;
2. Any litigation where legal fees are estimated to exceed \$10,000 in the aggregate;
3. Any litigation involving a loan where a Lender has an actual or potential conflict of interest with SBA;
4. Any litigation involving a 7(a) loan where the Lender has made a separate loan to the same borrower which is not an SBA loan; or
5. Any litigation involving receivership proceedings.

Additionally, a 7(a) Lender or CDC must submit an Amended Litigation Plan to the appropriate SBA Loan Center if changes arising during the course of the litigation transform routine litigation into non-routine litigation, or if the anticipated or actual legal fees increase by more than 15 percent.

SBA may grant a limited waiver of these requirements under emergency or exigent circumstances if a 7(a) Lender or CDC:

- Makes a good faith effort to obtain SBA's written approval before undertaking the emergency action;
- Submits a written Litigation or amended Litigation Plan to SBA as soon after the emergency as possible; and
- Takes no further litigation action without SBA's written approval of the Plan or amended Plan. (13 C.F.R. § 120.540(f))

Compliance with these requirements is not optional. Therefore, SBA may decline to pay legal fees if a 7 (a) Lender or CDC fails to obtain prior written approval from SBA for any Litigation Plan or Amended Litigation Plan, absent the grant of an emergency waiver.

EXPIRES: 10/1/17

PAGE 1 of 2

SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

7(a) Lender and CDC questions should be directed to the lender relations specialist or field counsel in the local SBA field office. The local SBA field office may be found at www.sba.gov/localresources.

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