

## § 109.360

Intermediary's loss reserve level is potentially inadequate to protect SBA from loss. ILP Relending Fund proceeds must not be used to establish or maintain the loan loss reserve.

### § 109.360 Recordkeeping and reporting requirements.

(a) *Maintenance of records.* The ILP Intermediary must maintain at its principal business office accurate and current financial records, including books of accounts, and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program, including files on loans made to Eligible Small Business Concerns. Records may be preserved electronically if the original is available for retrieval within 15 calendar days.

(b) *ILP Intermediary reporting.* The ILP Intermediary must submit the following to SBA:

(1) *Portfolio Identification Reports.* All loans made by the ILP Intermediary to an Eligible Small Business Concern under this program must be entered into the Intermediary Lending Program Electronic Reporting System (ILPERS) within seven calendar days of closing the loan.

(2) *Quarterly reports.* By the 30th calendar day following the end of each calendar quarter, each ILP Intermediary must submit a Portfolio Status Report via ILPERS to update the payment status and outstanding principal balances of its loans to Eligible Small Business Concerns. Additionally, each ILP Intermediary must submit an ILP Program Activities Report with accompanying bank statements to demonstrate the use and management of ILP program funds.

(3) *Audited financial statements.* Within four months after the close of the ILP Intermediary's fiscal year, the ILP Intermediary must submit to SBA audited financial statements as prepared by an independent certified public accountant, except that ILP Intermediaries subject to OMB Circular A-133 must submit audits prepared in accordance with that circular. The AA/CA or designee may provide extensions to the filing deadline.

(4) *Reports of changes.* An ILP Intermediary must submit to SBA a sum-

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mary of any changes in the ILP Intermediary's organization or financing (within 30 calendar days of the change), such as:

(i) Any change in its name, address or telephone number;

(ii) Any change in its charter, by-laws, or its officers or directors (to be accompanied by a statement of personal history on the form approved by SBA);

(iii) Any material change in capitalization or financial condition; and

(iv) Any change affecting the ILP Intermediary's eligibility to continue to participate in the ILP program.

(5) *Other reports.* Each ILP Intermediary must submit such other reports as SBA may require from time to time.

### Subpart D—Requirements for ILP Intermediary Loans to Small Businesses

#### § 109.400 Eligible Small Business Concerns.

(a) To be eligible to receive loans from an ILP Intermediary under this program, a small business must:

(1) Be organized for profit;

(2) Be located in the U.S.;

(3) Be small under the size requirements applicable to 7(a) business loans (including Affiliates);

(4) Be a startup, newly established, or growing small business;

(5) Together with Affiliates and principal owners, not have credit elsewhere; and

(6) Be creditworthy and demonstrate reasonable assurance of repayment of the loan.

(b) The following types of businesses are not eligible to receive a loan from an ILP Intermediary under this program:

(1) Nonprofit businesses (for-profit subsidiaries are eligible);

(2) Financial businesses primarily engaged in the business of lending;

(3) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds;

(4) Life insurance companies;

(5) Businesses located in a foreign country;

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(6) Pyramid sale distribution plans;

(7) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;

(8) Businesses engaged in any illegal activity;

(9) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(10) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(11) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(12) Consumer and marketing cooperatives (producer cooperatives are eligible);

(13) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;

(14) Businesses in which the ILP Intermediary or any of its Associates owns an equity interest;

(15) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;

(16) Businesses which:

(i) Present live performances of a prurient sexual nature; or

(ii) Derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(17) Businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss unless the agreement provides otherwise;

(18) Businesses primarily engaged in political or lobbying activities; and

(19) Speculative businesses (such as oil wildcatting);

(20) Businesses located in a Coastal Barrier Resource Area (as defined in the Coastal Barriers Resource Act);

(21) Businesses owned or controlled by an applicant or any of its Associates who are more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement;

(22) Businesses in which any Associate is an undocumented (illegal) alien; or

(23) Businesses owned or controlled by an applicant or any of its Associates who are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

### § 109.410 Loan limits—loans to Eligible Small Business Concerns.

No small business (including Affiliates) may have more than \$200,000 outstanding under this program at one time. The provisions of § 120.151 do not apply to loans under this program.

### § 109.420 Terms of loans from ILP Intermediaries to Eligible Small Business Concerns.

(a) *General.* The terms of a loan made by the ILP Intermediary to an Eligible Small Business Concern must be agreed to by the ILP Intermediary and the Eligible Small Business Concern. The loan terms must be within the limits established by SBA in these regulations.

(b) *Maximum loan size.* The maximum amount of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program is \$200,000.

(c) *Maturity.* The term of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program must be the shortest appropriate term. The maximum loan term is 10 years or less, unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years, in which case the maximum loan term is 25 years.

(d) *Interest rate.* The maximum interest rate the ILP Intermediary may charge for loans less than or equal to \$50,000 is 8.75 percent. The maximum