

SBA

SOP 52 00 B

Microloan Program

Office of Economic Opportunity

U.S. Small Business Administration



SMALL BUSINESS ADMINISTRATION STANDARD OPERATING PROCEDURE

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|-----------------------------------|-------------------|-----------------|-----|
| SUBJECT: Microloan Program | S.O.P. | | REV |
| | SECTION 52 | NO. 00 B | 01 |

INTRODUCTION

1. Purpose: Provide comprehensive guidance regarding the procedures and program requirements of the Microloan Program.
2. Personnel Concerned: All SBA employees.
3. Originator: Office of Capital Access

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CHAPTER 1. GENERAL DESCRIPTION OF THE MICROLOAN PROGRAM

1.1 Introduction and Authority

This Standard Operating Procedures (SOP) document provides guidelines for the management and administration of the U.S. Small Business Administration (SBA) Microloan Program. It is for use by SBA personnel, program participants, and other interested parties.

Any discussion of program funding is provided with the understanding that the amount of available funding may change depending on the appropriated level of funds from one year to the next.

The Microloan Program was initially authorized on October 28, 1991 via Public Law 102-140 which added subsection (m) to section 7 of the Small Business Act, 15 U.S.C. 636, authorizing SBA to establish a Microloan Demonstration Program. Section 201(c)(1) of P.L. 105-135 eliminated the word “Demonstration” on December 2, 1997.

Section 7(m) of the Small Business Act (15 U.S.C. § 636(m)) and 13 C.F.R. Part 120, Subpart G set forth the legal authority and framework for the Microloan Program.

1.2. Purpose, Mission, and Objectives

The purpose of the Microloan Program is to assist women, low income, veteran, and minority entrepreneurs, and other small businesses in need of small amounts of financial assistance. Under the Microloan Program, SBA makes direct loans to Intermediaries that, in turn, use the proceeds to make small loans to eligible Microborrowers.

The mission of the Microloan Program is to integrate micro-level financing with training and technical assistance for start-up, newly established, existing, and growing small businesses.

The major objectives of the Microloan Program include:

- Continued availability of business capital and business based training and technical assistance for start-up, newly established and growing small business concerns in need of micro-level financing;
- Development and expansion of efficient and effective local non-profit Intermediaries committed to economic and microenterprise development in their communities;
- Provision of sound program support and customer assistance;
- Ensure broad geographic availability of the Microloan Program, including availability in rural areas and HUBZones;
- Appropriate portfolio management and oversight to limit Agency risks against loss, waste, fraud, or abuse;
- Proper administration of grant funding to ensure timely and effective delivery of training and technical assistance; and

- Develop and provide timely, accurate, and useful output and outcome data.

1.3. Other Applicable Requirements

Microloan Program participants, including Intermediaries, Grantees, and Microborrowers, must comply with the Microloan Program regulations found in 13 C.F.R. 120.700 et seq.

Intermediaries and Grantees must also comply with the government-wide and SBA-specific grant rules found at 2 C.F.R. Parts 200 and 2700. In addition, Microloan Program participants must comply with Parts 112, 113, 117, 120 (as specified herein), and 121 of Title 13, Code of Federal Regulations. Part 112 prohibits discrimination on the ground of race, color, or national origin. Part 113 prohibits discrimination based on race, color, religion, sex, marital status, disability, or national origin. Part 117 prohibits discrimination based on age. Part 120 states loan policy. Part 121 details size standards. Intermediaries must retain their loan files for at least six years following the final disposition of each loan (i.e., after the loan has been paid in full or charged off).

For purposes of this document, unless otherwise noted, when a specific official is mentioned, it is assumed that when that official is not available, an authorized designee will fulfill the responsibility being discussed.

1.4. Sources of Guidance

In addition to this SOP, users should also be aware of the following related documents:

1. Office of the Chief Operating Officer/Grants Management Office SOP 00 18, The Management of Grants and Cooperative Agreements ;
2. SBA Office of Credit Risk Management (OCRM) SOP 50 53, Lender Supervision and Enforcement (general monitoring, supervision, and enforcement policies and procedures related to SBA's lending programs);
3. OCRM SOP 51 00, On Site Lender Reviews and Examinations; and
4. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Parts 200 and 2701.

1.5. Exceptions to Policy

When the policy set forth in this SOP does not adequately address the unique circumstances regarding a particular matter, and a Microloan Intermediary provides a compelling reason as to why an exception to policy is necessary, an exception to policy may be approved by the Program Office Chief. The Program Office Chief may not approve an exception to policy if such exception would be inconsistent with a statute or regulation. A Microloan Intermediary must submit any requests for an exception to policy to its Financial Analyst in the Microenterprise Development Division. The Analyst will consider the request and make a recommendation to the Program Office Chief or individual acting in that capacity, which will make the final decision. This decision must be documented in the file. This procedure may only be used in situations where a minor deviation from standard policy is necessary for the specific situation. Exceptions

to policy will be considered on a case-by-case basis and the decision will only apply to the specific request.

CHAPTER 2. DEFINITIONS

For purposes of the Microloan Program, the following definitions will be used.

2.1 Agency

The U.S. Small Business Administration (SBA)

2.2. Associate

- A. An Associate of an Intermediary is:
 - 1. An officer, director, key employee or holder of 20 percent or more of the voting rights of the Intermediary, or an agent involved in the loan process;
 - 2. Any entity in which one or more individuals referred to in paragraph A.1 of this definition or a Close Relative of any such individual owns or controls at least 20 percent of the voting rights;
- B. An Associate of a Microborrower is:
 - 1. An officer, director, owner of more than 20 percent of the equity, or key employee of the Microborrower;
 - 2. Any entity in which one or more individuals referred to in paragraph B.1 of this definition owns or controls at least 20 percent; and
 - 3. Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company (SBIC) licensed by SBA).
- C. For purposes of this definition, the Associate relationship exists six months before the following dates and continues as long as the Microloan note or the loan to the Intermediary is outstanding:
 - 1. For an Intermediary, the date of the Note;
 - 2. For a Microborrower, the date of the Microloan application to the Intermediary.

2.3. Budget Period

the 12-month period in which expenditure obligations are incurred by a grant recipient as stated in the Program Announcement.

2.4. Close Relative

A spouse, a parent, a child or sibling, or the spouse of any such person.

2.5. Consortium of Intermediaries

A group of eligible organizations that applies to become a single Intermediary. Each member of the group must be eligible and qualified to be an Intermediary lender in its own right.

Accordingly, if at least one member of the group is found to be either not eligible, not qualified, or both, the entire group will be so considered and will not be funded.

2.6. Cost of Funds

The actual interest paid by an Intermediary on its loan from SBA. The interest rate calculation is the interest rate charged on the Note, minus the applicable discount (buy-down). The buy-down will be equal to either 1.25 percentage points or 2.00 percentage points based on the average size of Microloans made by an Intermediary during its participation in the Microloan Program. In no case will the cost of funds be less than zero.

2.7. Counseling

individual advice, guidance or instruction given to a current or prospective Microborrower.

2.8. Credit Alert Verification Reporting System (CAIVRS)

a Federal government database used by SBA to determine if an organization applying to become a Microloan Intermediary has a Federal debt that is currently in default or foreclosure or has had a claim paid by a reporting agency within the last three years.

2.9. Current Rate of Lending

The amount of Microloans made over the previous five years (or over the total time of participation in the Microloan program if less than five years) divided by the number of months in that period.

2.10. Deposit Account

a demand, time, savings, passbook, or similar account maintained with an insured depository institution (not including an account evidenced by a Certificate of Deposit).

2.11. District Office

The local office of SBA responsible for the geographic area in which an Intermediary is located.

2.12. Grant

A Federal award of money, or property in lieu of money, to an eligible grantee that must account for its use in accordance with its Notice of Award. For Microloan Program purposes, funds are to be expended for the provision of training and technical assistance to program funded Microborrowers and to some extent, potential Microborrowers.

2.13. Grant Appeals Committee (GAC)

an ad hoc committee composed of SBA officials and employees drawn from the Office of

Executive Management, Installations and Support Services and other offices with grant management responsibilities. It is convened on an as-needed basis solely to resolve payment related disputes between grant recipients and SBA grant program offices. The committee has no authority to review disputes that do not concern the payment or recoupment of SBA grant funds.

2.14. Grantee

an entity that receives a grant.

2.15. HUBZone

The term “HUBZone” means a historically underutilized business zone, and includes the following areas: qualified census tracts, qualified nonmetropolitan counties, Indian reservations, redesignated areas, base closure areas, and qualified disaster areas.

2.16. In-Kind Contribution

A non-monetary contribution to costs associated with program implementation, measurable in dollars by converting the market value of goods and services directly benefiting and specifically identifiable to the Program. It may be property, facilities, services, or other non-monetary contributions from non-federal sources committed by the recipient organization to support the conduct of project activities.

2.17. Insured Depository Institution

Any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC). The term Insured Depository Institution also includes any credit union that is insured by the National Credit Union Administration.

2.18. Intermediary

an entity participating in the Microloan Program that makes and services Microloans to eligible small businesses and that provides marketing, management, and technical assistance to its Microborrowers and potential Microborrowers. An Intermediary may be:

- a. A private, nonprofit community development corporation or other entity,
- b. A consortium of private, nonprofit community development corporations or other entities,
- c. A quasi-governmental economic development entity, other than a state, county, municipal government or any agency thereof, or
- d. An agency of a nonprofit entity established by a Native American Tribal Government

2.19. Loan Loss Reserve Fund (LLRF)

A deposit account established at an Insured Depository Institution used to pay any shortage in the MRF caused by delinquencies or losses on Microloans, which an Intermediary must maintain at a required level until it has repaid its loan to SBA.

2.20. Matching Funds

There are two types of matching funds:

Loan Match- An amount equal to 15% of the amount to be borrowed from SBA which must be in the form of cash, and deposited into either the Microloan Revolving Fund or the Loan Loss Reserve Fund prior to the disbursement of loan funds from SBA to the Intermediary. Cash for the Loan Match must be non-borrowed, non-Federal funds.

Grant Match- With the exception of a 5% bonus grant to Specialized Intermediaries (as defined below), which has no matching funds requirement, an amount equal to 25% of the Federal grant award amount which may be in the form of cash or in-kind contributions or a combination of both. Such matching funds will be required at the time a grant disbursement is requested. The cash contribution for the Grant match must be non-borrowed, non-Federal funds allocated specifically to the operation of the technical assistance project. Federal Grant funds under this program together with Intermediary's Grant Matching funds must be administered as a single pool of funds which are expended pursuant to the specific approved budget and terms and conditions of the grant Notice of Award (NOA).

2.21. Microborrower

an individual or small business concern that borrows SBA Microloan Program funds from an Intermediary for the purpose of starting, continuing, or growing a business. Microborrowers must have legal status in the United States. Microborrowers are also subject to the general requirements for borrowers referenced in 13 CFR Part 120.

2.22. Microloan

a short-term (six years or less), fixed interest rate loan of not more than \$50,000 made by an Intermediary to an eligible small business.

2.23. Microloan Deposit Account Control Agreement

The agreement, formerly known as the Tri-partite Agreement, signed by the Intermediary, the Intermediary's Insured Depository Institution, and SBA that perfects SBA's security interest in the MRF and LLRF accounts.

2.24. Microloan Intermediary Application System (MIAS)

The web-enabled system through which an organization interested in applying to become an Intermediary submits initial application information and the Agency reviews initial application data.

2.25. Microloan Program Electronic Reporting System (MPERS)

The web-enabled system through which Intermediaries submit data and information regarding Program lending and technical assistance/training activities, and any successor system regardless of its name.

2.26. Microloan Program Participants

Intermediaries, Grantees, and Microborrowers

2.27. Microloan Revolving Fund (MRF)

A deposit account established at an Insured Depository Institution used by an Intermediary to receive SBA loan funds, fund Microloans, receive repayments from Microloan borrowers, and repay SBA.

2.28. Non-Federal Sources

Funds from sources other than the Federal Government that may include, but are not limited to, indirect costs and in-kind contributions paid for under non-Federal programs. Funds from Community Development Block Grants (CDBG) are considered non-Federal for purposes of the Microloan Program.

2.29. Notice Of Award (NOA)

the legal instrument by which SBA provides funding to recipients of TA grants. Also known as the grant agreement, the NOA consists of Standard Form 1222 and the program-specific terms and conditions attached to it, as well as any other documents which it incorporates by reference.

2.30. Program Income

Gross income earned by a Grant recipient from federally supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights. Program income in this regard pertains only to grant funding.

2.31. Program Office

the Microenterprise Development Division at SBA Headquarters.

2.32. Project Period

the period of time, usually one year, during which a grant recipient conducts activities under a TA grant.

2.33. Quarter

A three month period in accordance with the following dates:

| Calendar Year Quarters | Federal Fiscal Year Quarters |
|-------------------------|------------------------------|
| January 1 - March 31 | October 1 - December 31 |
| April 1 - June 30 | January 1 – March 31 |
| July 1 – September 30 | April 1 – June 30 |
| October 1 – December 31 | July 1 – September 30 |

2.34. Quasi-Governmental Economic Development Entity

A legal entity created by or associated with one or more state or local governmental entities that is organized as a non-profit entity to carry out commercial economic development projects.

2.35. Rural Area

A county with a population that is 50 to 100 percent rural, as determined by the U.S. Census Bureau.

2.36. Service Area

The geographic area in which SBA has approved the Intermediary to provide Microloan Program services. A client shall be considered inside an Intermediary's service area if the primary physical address of the business is or will be in that service area. All service areas must be domestic in nature (within one or more States, as defined.)

2.37. Specialized Intermediary

An Intermediary that is eligible for a reduced interest rate and a bonus grant because it has closed microloans that average \$10,000 or less during the term of its participation in the Program.

2.38. Start-up

A business which has been operating for two years or less.

2.39. State

Any of the 50 States of the United States of America (or the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, or American Samoa).

2.40. Technical Assistance (TA)

Counseling or training services provided to current or prospective Microborrowers under a TA grant. TA includes assistance in marketing, management, business counseling and training. Counseling may include giving advice, guidance, or instruction specifically tailored to an individual or a group of individuals associated with a single business. Topics must include information necessary to start, manage, market, and/or operate a small business. Information delivery media may vary and expand beyond person to person oral communication to include teleconferencing, electronic media, printed materials, or any like delivery mechanism provided it is effective in assisting clients to reach their training goals.

2.41. Training

advice, guidance, or instruction provided to groups of current or prospective Microborrowers, whether by in-person group sessions or by other modes of delivery such as teleconferences, videos, publications, electronic media, and the internet. Training may include teaching a group of individuals, not necessarily associated with a single business, in classroom or other public

settings.

2.42. Year

There are several different definitions of year, as follows:

- a. Calendar Year- the period of time beginning on January 1 and ending at midnight on the following December 31.
- b. Federal Fiscal Year- the period of time beginning on October 1 and ending at midnight of the following September 30.
- c. Note Year- the period of time beginning on the date of the ratification of the Note and ending one year later.

CHAPTER 3- PROGRAM IMPLEMENTATION

Sub-Chapter 3-A SELECTION OF MICROLOAN PROGRAM PARTICIPANTS

To be approved to participate as a Microloan Program Intermediary Lender (Intermediary), an applicant must be deemed both eligible to receive funding and qualified to administer the program. The eligibility determination and qualification process are based on the review of information submitted in the application for participation. District Office personnel may provide limited guidance on the application process and the eligibility criteria to applicants. However, they may not provide assistance in development of the application.

3.A.1 Eligibility to Participate as an Intermediary

Only those applications from organizations SBA deems eligible will be further reviewed for qualification. Throughout its participation in the Program, an Intermediary must remain eligible to participate. To be considered eligible, an applicant must meet each of the following requirements:

- a. At time of application, the applicant must have a minimum of one year of internal experience directly making and servicing short-term, fixed rate loans of not more than \$50,000 to startup, newly established, or growing small business concerns. The applicant must have directly funded the Microloans and not simply provided referrals to, or guarantees against, loans made by another entity.
- b. At time of application, the applicant must have at least one year of experience providing intensive marketing, management, and technical assistance, in house, to its Microborrowers. In-house TA refers to TA that is provided by the applicant's own staff or contract staff, rather than by another organization. In-house TA can be provided on- site, remotely, by webinar, via the internet (when combined with one-on-one discussion) or by other means.
- c. The applicant must be one of the following types of organizations:

- i. A private, nonprofit community development corporation or other private, nonprofit entity (such as a credit union);
 - ii. A consortium of private, nonprofit organizations or nonprofit community development corporations (each member of the consortium must meet eligibility requirements in order for the consortium to be eligible);
 - iii. A quasi-governmental economic development entity (such as a planning and development district) other than a state, county, municipal government, or any agency thereof if-
 - A. No application is received from an eligible nonprofit organization, or
 - B. SBA determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application, or
 - iv. An agency of or a nonprofit entity established by a Native American Tribal Government.
- d. The applicant must be located within the United States, including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

3.A.2 Application Submission

Applicants must submit an application for participation as an Intermediary via either hard copy, the forms for which are available by contacting the closest SBA District Office (contact information available at <https://www.sba.gov/tools/local-assistance>), or through the Microloan Intermediary Application System, accessed through SBA's Capital Access Login System (CLS). To obtain directions for access to CLS, contact your local SBA District Office using the link provided above.

In addition to the online application submission, Microloan Intermediary applicants must also submit the following items to the Program Office:

- Copy of Federal or State certificate of non-profit status;
- Certificate of Good Standing from the Secretary of State (must be less than 1 year old);
- Copy of Articles of Incorporation and By-laws, as amended. In reviewing the mission statement and Bylaws, SBA will evaluate the congruency of the applicant's goals and objectives with those of the Microloan Program. Applicants that provide assistance exclusively to certain groups may be required, as a condition of loan approval, to change their Bylaws in order to conform to fair-credit lending requirements.
- Organizational chart(s) (must be current as of the time the application is submitted to SBA). The chart(s) should make clear each staff position integral to the operation and delivery of the Microloan Program (including any contractors) and delineate appropriate management control and oversight of those individuals. Applicant

consortium charts should show both the organization of each member of the consortium and the interrelationship of the groups as members of the whole.

- Resume and signed SBA Form 1081 (signed not more than 90 days from the date the application was received by SBA) for each Officer, Director, and person key to the applicant’s lending and technical assistance operations. Form 1081 is also required for key personnel that are contractors, but who are under the direct, day-to-day control and supervision of the applicant. If any officer, director, or person key to the applicant’s lending and technical assistance operations answers “yes” to any of question numbers 10a, 10b, 10c, 11a and/or 11b on SBA Form 1081, they must also submit fingerprint cards (available at SBA District Offices or can be ordered at <https://www.fbi.gov/>, or Electronic Fingerprint Submissions that are compatible with the Federal Bureau of Investigation’s Automated Fingerprint Identification System, or any successor system in place for biometric identification. SBA will evaluate the responses on the Forms 1081 to determine if further background checks on any individuals are needed. SBA will analyze the resumes of the Officers, Board members, and key personnel for demonstration of knowledge, experience and commitment to small business lending. All Associates of an Intermediary must meet the ethical requirements described in 13 CFR §120.140. In addition, 13 CFR Part 105, which contains certain restrictions on employing former SBA staff or members of their households, applies to Microloan Intermediaries.
- Loan policies and procedures (must be the current version at the time the application is submitted to SBA). SBA will review these documents to ensure that the applicant has sound underwriting, lending, and servicing requirements in place and to determine any organizational requirements regarding training and technical assistance for its clients.
- Signed SBA Form 1711, Certification Regarding Lobbying (signed within 90 days of SBA’s receipt of the application);
- Signed SBA Form 1623, Certification Regarding Debarment (signed within 90 days of SBA’s receipt of the application); and
- Signed SBA Form 160, Resolution of the Board of Directors (signed within 90 days of SBA’s receipt of the application).

SBA will use the information submitted in the application and the documents indicated above to determine whether the applicant is eligible. Ineligible applicants will be notified of the reasons for ineligibility and all materials submitted will be returned to the applicant. Such applicants are encouraged to re-apply after resolving the eligibility issues. Applications from eligible entities will undergo a qualification review.

3.A.3. Qualification Review

Only applications from eligible entities will be evaluated for qualification. As detailed further

below, SBA will evaluate applications using four major qualification categories: (1) the applicant organization's strengths and weaknesses; (2) its history of providing Microloans and technical assistance; (3) the qualifications of its governing board, officers, and key staff; and (4) its financial health. Regarding key staff, applicants should have at least three full time staff members, including an Executive Director or its equivalent, who are not members of the Board of Directors. The existence of at least three staff members will indicate that the applicant is organizationally ready to operate under a system of checks and balances and that it will be able to continue operating in the event a staff person leaves. In addition, SBA recognizes that some Intermediaries use contractors. When using contractors, the following guidelines will apply:

1. Back-room activities may be contracted out. This would include the printing of bills, utilizing a collection agency for defaulted loans (see limitations on use of collection agencies in Section 3.F.16), and other such activities that have no effect on the provision of loans or training and Technical Assistance to microborrowers.
2. Intermediaries may choose to pay some staff as independent contractors as long as they are providing the same services that staff would provide. However, independent contractors may not be used to substitute for an adequate full time staff of employees as described above.

Regarding the organization, Applicants should have a physical location that Microborrowers and potential Microborrowers can visit, at a minimum during normal business hours, and at which records can be stored and training can be provided.

Each eligible application will be scored and reviewed by Program Office staff. All applications are scored out of a total possible 100 points. Applicants that score at least one-half of the available points in each of the four categories and at least 80 total points are considered qualified and undergo a due diligence review.

| QUALIFICATION | QUESTIONS | MAXIMUM AVAILABLE POINTS |
|--|--|---------------------------------|
| Organization | Mission Statement, Geographic Area, and Lending Policies & Procedures | 10 Points |
| History of Microlending & Technical Assistance | Lending History and Technical Assistance History matrices, includes demographics | 30 Points |

| | | |
|---------------------|---|-----------|
| Personnel Resources | Board of Directors, Officers, and Key Personnel matrices and Loan Committee composition | 20 Points |
| Financial Health | Key financial ratios, Audited financial statements, and Auditors' Opinions | 40 Points |

3.A.4. Due Diligence Review

Each application that meets the eligibility and qualification requirements will be reviewed by a Program Office Financial Analyst. The Analyst will review and validate all information submitted to ensure accuracy and validity. This review will include an inquiry to CAIVRS to ensure that the applicant does not have any delinquent debt to the Federal Government and SAM.gov to review debarment status. Other Federal databases may be added as well.

Additionally, the Analyst will review information provided by the District Office responsible for the geographic area in which the applicant is located. The District Office will be asked to provide any knowledge of the applicant's history of providing Microloans and technical assistance, whether the applicant has the capacity to deliver the proposed services and whether there is sufficient demand to support a Microloan program in the applicant's service area.

3.A.5. Limitations on Selection and Funding of Intermediaries: Maximum Number of Intermediaries, Geographic Restrictions, and Funding Availability

In general, SBA will review, approve and award funds based on the order in which applications are received. Selection and funding of Intermediaries is subject to the following limitations:

- a. Maximum Number of Intermediaries. The statutory maximum number of Intermediaries that may participate in the program at any given time is 300.

Geographic Limitations - During the first six months of each Fiscal Year, at least \$800,000 or 1/55th of available loan funds (whichever is less) will be made available for loans to Intermediaries in each state. This requirement for the geographic disbursement of loan funds is Statutory. The 1/55th above is determined by dividing the value of all funds currently appropriated in the current fiscal year for lending (which may be only a partial budget if operating under a continuing resolution) under the Microloan Program by 55. An Intermediary's state is determined based on its primary physical location, regardless of its Service Area. Any applications that cannot be funded during the first six months due to geographic limitations will be kept on file in the order they were received. Subject to the availability of funds, such applications will be funded during the seventh

month of the Fiscal Year.

- b. Quasi-governmental economic development entities - SBA will consider an application from a quasi-governmental economic development entity seeking to become an Intermediary only when it determines that program services for a particular geographic area would be best provided by such an organization.
- c. Funding Availability.
 - Preference for underserved markets: If the amount of requested loan funds from existing and new Intermediaries exceeds the amount of available funds, SBA may hold back up to 20% of available loan funds to ensure that due consideration is given to new Intermediaries and those having the greatest impact to underserved markets.
 - Preference for applicants in underserved locations: If the amount of requested loan funds from new Intermediaries exceeds the amount of available funds, SBA may choose to select a new intermediary in an underserved location (a location that is currently unserved by an SBA Microloan Program Intermediary Lender), as determined by the Agency, over a new applicant in an area that is already served by one or more existing Intermediaries.
 - SBA may choose to negotiate loan amounts.

3.A.6. Approval of Application

The Program Office Financial Analyst will consider the applicant's score, the District Office recommendation, due diligence information, and any applicable funding limitations to determine whether to recommend approval of an application and for what amount. The loan amount will be determined based on the applicant's requested loan amount and the Analyst's determination that the applicant can reasonably be expected to lend the funds requested within a reasonable period of time, not to exceed two years. Reasonable expectations will be based on the historical lending patterns, its ability to deliver TA and the financial health of the applicant.

The recommendation will be submitted to the Program Office Chief, who will review all information and make the final decision whether to approve an application for participation as an Intermediary. Final approval will include a statement of the approved loan amount and any conditions that must be met prior to loan closing. An applicant that is not accepted will not be offered appeal rights. Rather, the materials submitted by unsuccessful applicants will be handled as follows:

- Applicants that are not eligible will be notified of the reasons and all materials submitted will be returned.
- Applicants that are eligible but not qualified will be notified and asked whether

they want their materials returned so that they can reapply at a later date, OR, whether they would prefer that their materials be retained by the Program Office for one year so that they can continue to submit information that will strengthen their application.

Sub-Chapter 3-B. Terms of SBA Loans to Intermediary Lenders

3.B.1. Maximum Loan Amount

An Intermediary may not borrow more than \$750,000 in the first year of participation in the Microloan Program. After the first year, the maximum loan amount is \$2,500,000. By law, an Intermediary's total outstanding Microloan Program debt must not exceed \$5 million.

3.B.2. Use of Proceeds

Proceeds of the loan shall be used for no other purposes than to make Microloans or to repay SBA.

3.B.3. Loan Maturity

Any loan made by SBA to an Intermediary under this program will have a maturity of ten years from the Note Date.

3.B.4. Accruing Interest

Interest on funds loaned to an Intermediary will begin to accrue at the time funds are disbursed by SBA. Interest will accrue only on funds which have been disbursed to the Intermediary.

3.B.5. Cost of Funds

The base interest rate (Base Rate) for a loan to an Intermediary is the rate applicable to five year obligations of the United States Treasury (5-year Treasury Bill Rate), adjusted to the nearest one-eighth of one percent at the time SBA commits funds for the loan in the ETRAN system. This Base Rate is then discounted downward, based on the average size of Microloans made by the Intermediary during its participation in the Program as follows:

1. Rate discounted by 2% if the Intermediary maintains an historical portfolio of Microloans averaging \$10,000 or less (Specialized Intermediaries)
2. Rate discounted by 1.25% if the Intermediary maintains an historical portfolio of Microloans averaging more than \$10,000

The Base Rate, after adjustment, is the Intermediary's Cost of Funds. The Intermediary's Cost of Funds is calculated annually, beginning one year from the date of the Note. The Cost of Funds will be reviewed annually and adjusted as necessary in accordance with the anniversary date of the Note. This process is called "recasting". In the event that a disbursement takes place after the initial deferral period, SBA will automatically recast the loan. At no time will an

Intermediary's Cost of Funds be less than zero. An Intermediary may request that its monthly payment be recalculated upon making an early partial repayment.

Any change in the Cost of Funds will be applied to the total outstanding principal balance due SBA at the time of recalculation. SBA will notify the Intermediary in writing of the change in the Cost of Funds and the resultant new monthly payment amount. Recalculations will only affect the interest rate going forward so that with the exception of the first year, a recalculated Cost of Funds will not be applied retroactively.

The Intermediary should contact its assigned Analyst in the event of a system error resulting in miscalculation of the proper Cost of Funds or monthly payment amount. If, upon review, SBA determines that payments were miscalculated, SBA will adjust the monthly payment amount. In the event that SBA has charged excess interest in error, such excess will be credited back to the outstanding principal balance of the loan. Monthly installments will be calculated based on the outstanding balance of the loan, Cost of Funds and months remaining to maturity of the loan so that the loan will be fully repaid at maturity. Any underpayments will be made up via increased payments to SBA; any overpayments will be applied to reduce the principal debt. SBA will not issue refunds for over-payments, unless the overpayment is made at the time of full payoff of the loan.

3.B.6. Deferment Period

Repayment of the principal and interest on the SBA loan to the Intermediary is deferred for the first year. During the deferment period, interest will accrue on funds which have been disbursed. Because an Intermediary's Cost of Funds is based on the average size of its Microloans, SBA does not calculate the Cost of Funds until one year from the date of the Note. Therefore, the rate of interest accrued during the deferment period will be retroactively applied after the Cost of Funds has been determined. Following the initial twelve month deferment, the loan will fully amortize over the remaining nine years (108 months). Interest accrued during the first year will be divided equally by 108 and added to the calculated payment over the remaining life of the loan.

3.B.7. Repayment by Intermediary to SBA

Monthly payments to SBA will begin on the 7th day of the thirteenth month after the Note Date. Payments will be automatically withdrawn from the Microloan Revolving Fund (MRF) bank account through www.pay.gov

In the event the payment cannot be automatically withdrawn from the MRF, or if the Intermediary wishes to make a prepayment, the Intermediary must contact its Analyst for alternative payment options, such as a pre-authorized debit payment through www.pay.gov

Timely payments are the responsibility of the Intermediary regardless of system errors or any other issue that causes a failure in notification of payments due. Failure by the Intermediary to make timely payments to SBA may result in the Agency taking action against the Intermediary

which may include, but not be limited to: requiring a more frequent reporting schedule (monthly rather than quarterly), accelerating the maturity of the loan and demanding payment in full, taking enforcement actions, or debarment of the Intermediary from eligibility for Federal funding.

Pre-payment of any loan made to an Intermediary under this program will be accepted at any time without penalty. Prepayment of a loan does not guarantee that SBA will make a new loan to the Intermediary.

SBA may agree to a deferment of an Intermediary's repayment of the SBA loan in cases of a disaster, or other extraordinary circumstances. Deferment of payments shall not extend the maturity of the SBA loan past the original maturity date.

3.B.8. Collateral Requirements

a. General: The full measure of SBA's collateral consists of the cash balance in the Microloan Revolving Fund (MRF), the cash balance in the Loan Loss Reserve Fund (LLRF), and the SBA Microloan Notes made by the Intermediary. At all times, the sum of the balances in the MRF and the LLRF, and outstanding balance of the performing Microloans must equal 115% of the loan balance owed to SBA by the Intermediary. Therefore, if any part of the collateral fluctuates to the extent that the total collateral falls below 115% of the debt balance due to SBA, the Intermediary must inject cash into the MRF and/or LLRF accounts to ensure that the collateral is maintained at the required level.

b. MRF and LLRF: Intermediaries should be careful to manage their funds so as not to exceed federal deposit insurance coverage. Deposited funds that are in excess of the federal deposit insurance coverage amounts are deposited at the Intermediary's risk. Intermediaries should ensure that their MRF account(s) remain active and strive to maintain unused funds at levels equal to or lower than the FDIC limits. From time to time, LLRF funds may grow beyond Federal Insurance limits. When this occurs, the Intermediary should contact the Agency regarding the establishment of a second LLRF account, the withdrawal of extra LLRF funding, or another solution as preapproved in writing by the Agency.

If the sum of the balances available in the MRF and LLRF, plus the outstanding balance of the performing SBA Microloan Notes is greater than 115% of the debt due to SBA, an Intermediary may request permission to withdraw excess funds from the MRF or LLRF. The Intermediary must submit a written request to the Program Office indicating the requested withdrawal amount and the reasons for the withdrawal. SBA's decision whether or not to allow the withdrawal will consider the Intermediary's portfolio performance and compliance with Microloan Program requirements, and any other factors that may impair the Intermediary's ability to repay its debt to SBA. SBA may, in its sole discretion, approve, deny, or place restrictions on any request for withdrawal of collateral.

c. Microloan Notes: A UCC financing statement (Form UCC-1) will be filed to perfect SBA's

security interest in the Microloan notes. The Intermediary is responsible for covering the costs of filing, including any renewal filings. The Intermediary is also responsible for disaster safe storage of its Microloan notes. SBA may take physical possession of the Microloan notes at any time at its discretion. To protect SBA's security interest in the Microloan notes receivable, the following statement must appear on each Microloan note:

“This note has been pledged to the U.S. Small Business Administration (SBA) as collateral. Further assignment cannot be made without prior written consent of the SBA.”

Sub-Chapter 3-C. Closing and Disbursement of SBA Loans to Intermediary Lenders

3.C.1. General Loan Closing Procedures

Upon SBA's commitment of new loan funds to an Intermediary, the Program Office will notify the appropriate District Office and the Intermediary. Microloan Program Intermediary Loans are closed at the District Office level. Because not all District Offices have an attorney on staff, SBA will inform the Intermediary as to which District Office will perform the closing. The Program Office will provide the Intermediary and the appropriate District Office with closing instructions and documents. See Sections 3.C.5. and 3.C.6. for a list of required closing documents.

Loan closing must take place within 120 days of the date of loan approval. Failure of the Intermediary to close its loan from SBA in a timely manner may result in cancellation of the loan commitment. SBA may, in its sole discretion, consider an extension of the closing date. A request for extension of the closing date must be made in writing prior to the expiration of the initial closing period, and should clearly state the reason for the request. Because an extension is considered a modification of the Loan Authorization and Agreement (LAA), an SBA Form 327, “Modification or Administrative Action” reflecting the modified date must be completed, executed, and maintained in the Intermediary file. Closing extensions are generally limited to thirty days.

3.C.2. Letter to the Intermediary

Upon SBA's commitment of new loan funds to the Intermediary, the Program Office will send a letter to the Intermediary with closing instructions and materials included (the Notice Letter). The letter informs the Intermediary of the new loan commitment, the amount approved, the Intermediary's Service Area, and the requirement for closing the loan within 120 days of approval. The letter also provides closing instructions and a point of contact.

3.C.3. Closing Costs Incurred by the Intermediary

The Intermediary will be responsible for payment of the closing costs for the SBA loan. These include any lien and judgment search fees and Uniform Commercial Code (UCC) filing fees

necessary to secure SBA's lien position on the Microloan notes. Additionally, the Intermediary will be responsible for costs associated with the renewal of a UCC filing, which generally occurs when a filing reaches the age of five years.

3.C.4. Establishment of the MRF and LLRF Bank Accounts

Prior to closing, the Intermediary must establish its MRF and LLRF accounts in an Insured Depository Institution. The Insured Depository Institution in which the MRF and LLRF accounts are established must not be owned by, or affiliated with, the Intermediary. MRF and LLRF funds may be deposited to Federally-insured money market accounts provided the funds are liquid and can be accessed at any time without penalty. They may NOT be deposited to a "sweep" account, or any other investment instrument that exposes the funds to risk. Because they must remain liquid, MRF or LLRF funds may not be deposited to one or more Certificates of Deposit or other accounts that may cause the funds to become unavailable. An Intermediary must establish new MRF and LLRF accounts for each subsequent loan it receives from SBA. (Intermediaries with SBA loans that currently share MRF and LLRF accounts may continue to share those accounts until the loans are paid in full.)

The Intermediary will enter into a Deposit Account Control Agreement (DACA) with SBA and the Insured Depository Institution (formerly known as the Tri-partite Agreement). This agreement perfects the Agency's security interest in the MRF and the LLRF accounts. Under the DACA, SBA has the right to freeze the Intermediary's MRF and LLRF accounts, at its discretion, if SBA determines that the Intermediary's actions may increase SBA's financial risk. In the event the Intermediary defaults on its obligations to SBA, goes out of business, or chooses to cease participation in the Microloan Program, SBA has the right to any and all proceeds in the MRF and LLRF accounts up to the amount due to the Agency under the Microloan Program.

3.C.5. SBA District Office Loan Closing Responsibilities

The SBA Loan to the Intermediary will be closed in the District Office within 120 days of the loan approval date. The entire closing package will be returned to the Program Office via overnight mail after all documents are properly signed and recorded as necessary. An electronic scanned copy of the closing package must also be sent to the Program Office.

The closing package sent by the Program Office to the District Office will include:

- a. A copy of the LAA.
- b. A copy of the Notice Letter to the Intermediary
- c. A copy of the Intermediary Loan Closing Checklist.
- d. A copy of each of the documents referred to in the Loan Closing Checklist and in this SOP, except the DACA and the Opinion of District Office Counsel.

The SBA District Counsel is responsible for ensuring that the loan is properly closed in accordance with state requirements and using the forms as listed on the Loan Closing Checklist. In addition, the District Counsel must provide a letter indicating that the loan has been closed in

accordance with local requirements. The SF 3881 and the SF 5510 are to be completed by the Intermediary and its Insured Depository Institution and returned to the District Office for completion of the SBA section by the District Counsel.

SBA will take security interests in both the MRF and the LLRF accounts and in the Microloan notes. The District Counsel will prepare the DACA for execution by the Intermediary, the District Director, and the Insured Depository Institution where the MRF and LLRF accounts are located. The District Counsel will consult with the Office of General Counsel as necessary to make any appropriate changes to the DACA.

The SBA District Counsel will also prepare and file a UCC financing statement (Form UCC-1) to perfect SBA's security interest in the Microloan notes. The Intermediary is responsible for covering the costs of filing, including renewal filings.

3.C.6. Closing Documents

The closing documents, also listed on the Loan Closing Checklist, are described below.

- SBA Form 349MR, "Loan Authorization and Agreement" (LAA) - Executed by the Program Office Chief upon approval of the SBA loan, and executed and delivered by the Intermediary at closing.
- SBA Form 147M, "Note" - Executed by the Intermediary and delivered at closing.
- SBA Form 1059, "Security Agreement" - Prepared by District Counsel, executed by the Intermediary and delivered at closing.
- Deposit Account Control Agreement - Executed by the District Director or his/her designee, the Intermediary, and the Intermediary's Insured Depository Institution where the applicable MRF and LLRF accounts are housed.
- SBA Form 160 Resolution of the Board of Directors - provides evidence that the Board of Directors is in agreement with participation in the Program, entering into debt for the Program, and operating under Program terms and conditions. This form also lists the organization's officers who are authorized to sign the loan closing documents. The completed form is to be returned to the Program Office, by the District Office, as a part of the closing package.
- Opinion of District Office Closing Counsel - A letter, written and executed by District Counsel indicating that the loan has been closed in accordance with the laws of the State and that the MRF and LLRF are properly secured. The letter is shipped to the Program Office as a part of the closing package.
- Standard Form 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" - This form facilitates SBA's loan disbursements to the Intermediary's MRF. SBA will complete the top section of the form and forward it to the Intermediary to be completed by the Intermediary and the Insured Depository Institution housing the MRF account. The completed form is to be returned to the Program Office by the District Office as a part of the closing package.

- Standard Form 5510, “Authorization Agreement for Preauthorized Payments – This form authorizes and facilitates automated loan payments from the Intermediary’s MRF to SBA. The Intermediary will complete and sign the top portion of the form. The bottom half is completed and signed by the Insured Depository Institution housing the MRF account. A second form 5510 will be completed in the same fashion as above for the LLRF account so that SBA has the authority to withdraw LLRF funds in certain circumstances, such as an Intermediary exiting the Program. The completed forms are to be returned to the Program Office, by the District Office, as a part of the closing package.

3.C.7. Closing Package Returned to Program Office

After closing, the SBA District Office will return the Loan Closing Checklist, along with all required documents, to the Program Office. The Checklist must be signed and dated by the SBA District Counsel.

Upon receipt of the closing package by the Program Office, copies will be made of all of the closing documents. An SBA Form 649, “Listing Collateral Documents,” will be completed listing the following original Intermediary Loan closing documents:

- Original LAA
- Original Note, noting the amount and the execution date
- Original Security Agreement, noting the execution date
- Original DACA pertaining to the MRF and LLRF Accounts and noting the execution date.
- Original Resolution of the Intermediary’s Board of Directors
- SF 5510 for LLRF
- SF 3881 and 5510 for MRF

The SBA Form 649, along with the originals of the documents listed, will be delivered to the SBA Collateral Cashier, who will verify receipt by dating and signing the SBA Form 649. The executed SBA Form 649 and copies of all the Intermediary Loan closing documents will be placed in the Intermediary Working File in the Program Office.

3.C.8. Enrollment of Intermediaries in the ACH Disbursement System

After the Intermediary loan closing has been completed the Program Office will insure that the Intermediary is properly enrolled in PIMS, ETRAN, ELIPS, MPERS and PAY.GOV, or any successor systems, using information from the Closing Package, including the SF3881 MRF Automated Clearing House System (ACH) form. This step is required before the loan disbursement can be scheduled. Scheduling is accomplished using ETRAN Servicing which is an electronic system that facilitates communication between the Denver Finance Center, the loan accounting system and the Program Office. A loan disbursement requires both the recommendation of a Financial Analyst and approval by the Program Office Chief.

3.C.9. Entering the Intermediary into the Agency Systems

After approval of the Intermediary's Microloan Program application, the Program Office will retain the application package in accordance with Federal record retention requirements. Basic Intermediary information will be entered into the PIMS, ETRAN, MPERS and PAY.GOV and/or successor system(s).

- a. The Analyst will complete the Partner Information Management System (PIMS) Form to assign an eight digit Intermediary Lender Number and deliver the PIMS Form to the appropriate staff member for entry of the information into PIMS. (Note that for an existing Intermediary, the Intermediary Lender Number will already exist so this step will not be necessary.)
- b. Once the Intermediary Lender information is entered into PIMS, the Analyst will use ETRAN Origination to commit funds and generate the SBA Loan Number.
- c. Upon generation of the Loan Number, the Analyst will generate the Intermediary Loan closing documents by accessing the Microloan Closing System (Access Database or successor system).
- d. The Program Office Chief will approve the Intermediary Loan closing documents and execute the Loan Authorization and Agreement (LAA). The Intermediary Loan is approved when the Program Office Chief signs the LAA.

3.C.10. Loan Match Requirement

Each Intermediary must deposit a matching fund contribution of at least 15% of the requested disbursement amount into either the MRF or the LLRF prior to the disbursement of loan funds from SBA. The Intermediary may deposit the full match amount for the entire SBA loan amount before the initial disbursement or it may deposit 15% of the disbursement amount prior to each disbursement. Matching funds must be from non-Federal sources and cannot be borrowed. For the purposes of the Microloan Program, Community Development Block Grant (CDBG) funds are considered to be from non-Federal sources. Upon request, and SBA's approval, Intermediary's accumulated undistributed Microloan Program earnings can be used as matching funds for a loan disbursement. SBA will not approve such a request if the result of such use of funds results in a collateralization ratio (collateral/SBA debt balance) of less than 115%.

3.C.11. Limit on Loan Disbursements

The initial disbursement on a new Intermediary's first SBA loan is limited to 35% of the loan amount. Subsequent disbursements and first disbursements on any subsequent loans are not subject to the 35% limit and will be reviewed and decided based in part on an analysis of the Intermediary's existing MRF balances, recent microloan closings and current pipeline of approved and pending microloans. The disbursement amount requested must be reasonably tied to the anticipated lending needs of the Intermediary based on recent and anticipated loan closing performance. Intermediaries should anticipate loan fund needs in advance and request funds no

more often than quarterly. SBA will not disburse loan funds on a Microloan by Microloan basis. SBA shall retain sole authority to determine the appropriate disbursement amount to approve in each case. An Intermediary's compliance with rules, regulations and reporting compliance will be a factor in SBA's determining whether to disburse funds, and on the appropriate amount to disburse. With the exception of the first disbursement to an Intermediary, no loan disbursements will be made to an Intermediary unless it has utilized at least 75% of its previously disbursed funds to make Microloans.

Loan disbursements may be withheld if the Intermediary fails to comply with any Microloan Program rules, regulations or requirements, such as collateral coverage percentage (which is always 115%) or reporting requirements, or does not demonstrate acceptable portfolio performance. Loan disbursements may also be denied if combined MRF balances appear to be sufficient to allow the Intermediary to meet its current lending needs in SBA's sole discretion.

3.C.12. Limit on Disbursement Period

SBA loans of \$750,000 or less will be fully disbursed within twenty-four (24) months of the Note Date. SBA loans in amounts greater than \$750,000 will be fully disbursed within thirty-six (36) months of the Note Date. Funds not disbursed by the deadline will be de-obligated unless the Intermediary has requested and SBA has approved an extension. Additionally, Intermediaries that allow loan capital to be de-obligated may be subject to reduced loan amounts on future loan requests.

To request an extension of the disbursement period, the Intermediary must submit a written request at least 30 days in advance of the disbursement period expiration date. The request must include: a reasonable explanation of the circumstances leading to the need for an extension, the anticipated timing of future disbursements, and a report outlining Intermediary's backlog of approved and pending microloans. SBA reserves the right to deny any request for an extension. Any disbursement made after the 12 month deferral period will result in a recalculation of the monthly payment amount to reflect the increase in loan principal balance. This will not alter the maturity date of the loan.

3.C.13. Disbursement Process

The initial disbursement of loan funds to the Intermediary will be made as soon as possible after receipt of a satisfactory loan closing package by the Program Office from the District Office handling the closing. When determining the amount of a disbursement request, the Intermediary should anticipate its Program-related lending needs (pipeline) in advance and request a disbursement that will cover its needs for a minimum of three months (one quarter).

To request a disbursement of loan funds, the Intermediary must send a written request to its assigned Program Office Analyst. E-mail is an appropriate substitute for a formal letter of request provided it comes from an authorized person on the Intermediary Staff, generally the

Executive Director, the Director of Lending, or the finance officer. The Intermediary's request must specify the amount requested and must include the following:

- (1) Evidence of the Intermediary's 15% Loan Match deposit to the MRF or LLRF. Any request by an Intermediary for a disbursement from SBA must be accompanied by account statements and deposit slips from the applicable Insured Depository Institution demonstrating that the required match has been deposited to the MRF or LLRF.
- (2) Evidence of Need for Funds- Anticipated Pipeline. The request for disbursement must indicate the current and anticipated pipeline for use of loan funds.

Upon receipt of the disbursement request, the Program Office will assess the Intermediary's pipeline demands, available funds, portfolio performance and compliance with Microloan Program Requirements. The Program Office will notify the Intermediary in writing whether the disbursement request is approved. If the disbursement request is approved, SBA loan proceeds will be disbursed to the Intermediary through direct deposit to the MRF account. If the disbursement request is not approved, the Program Office will notify the Intermediary via email of the reasons and contact the Intermediary to discuss.

3.C.14. Disbursement Instructions

Upon determination that a disbursement is appropriate, the Program Office Analyst will complete the "Disbursement Instructions"

The disbursement of loan funds to the Intermediary is electronically managed through the use of ETRAN Servicing. The assigned Analyst will generate a disbursement recommendation by accessing the ETRAN Servicing system (or successor system), entering the required loan and disbursement information, and printing disbursement detail. The Analyst will recommend disbursement by initialing and dating the Disbursement Instructions and signing and dating the disbursement detail from ETRAN Servicing. The Disbursement Instructions and disbursement detail will be forwarded to the Program Office Chief, who will approve the disbursement in ETRAN Servicing and by initialing and dating the Disbursement Instructions and signing the disbursement detail.

The approval of the Program Office Chief in ETRAN Servicing will send an electronic order to the Administrative Accounting Branch at the Denver Finance Center, which will order a wire transfer of funds from the Department of Treasury. The wire transfer will be deposited to the Intermediary's MRF.

3.C.15. Intermediary Requests for Supplemental Loans

SBA will consider additional loans to Intermediaries (Supplemental Loans) as warranted by the Intermediary's needs and by its performance as an SBA Intermediary.

Upon receipt of the final disbursement of a loan from SBA, an Intermediary may request another loan, provided that the supplemental loan would not cause the Intermediary's total outstanding Microloan Program debt to exceed the legal Program limit (currently \$5 million). The Intermediary should send a written request to the appropriate SBA Program Office Analyst stating the amount of the request and justifying the need. Such loan requests will be reviewed as soon as possible after receipt. The review will include a financial analysis of the Intermediary's Microloan Program portfolio performance, collateral coverage, MRF and LLRF (cash on hand that is available to lend); recent lending volume trends; compliance with Microloan Program requirements to date; the reasonableness of the requested loan amount in relation to the Intermediary's capacity to lend the funds over a reasonable amount of time. If the Intermediary is not performing satisfactorily, is under collateralized, unable to efficiently utilize the loan funds, or has not loaned out at least 75% of its most recent SBA loan, the request may be denied.

The Program Office Analyst will consider the information described above and any applicable funding limitations (see Section 3.A.5.) to determine whether to recommend approval of the supplemental loan request and for what amount. The loan amount will be determined based on the applicant's requested loan amount and the Analyst's determination that the applicant can be expected to loan out the funds requested within a reasonable time frame.

Reasonable expectations will be based on the Intermediary's historical lending patterns, the financial health of the Intermediary, and the Program's loan fund availability.

The recommendation of the Program Office Analyst will be submitted to the Program Office Chief, who will review the recommendation and make the final decision on the supplemental loan request. If the loan is approved, it will be closed following the same procedures outlined above in Sections 3.C.1 through 3.C.7. Note that the Intermediary must establish a new MRF and LLRF in order to close each supplemental loan. If the supplemental loan request is denied, the Analyst will notify the Intermediary of the reasons.

Sub-Chapter 3.D. Program Operational Requirements for Intermediaries

3.D.1. Intermediary Responsibilities

Intermediaries have two overriding responsibilities under this program.

First, an Intermediary must use the funds borrowed from the SBA exclusively to provide Microloans to those small and micro businesses the Intermediary deems qualified to borrow, manage and repay a loan. In order to be considered an active Microloan Program Intermediary Lender and be able to receive full grant awards (as further discussed in Section 3.E.4) an Intermediary must close a minimum number of 10 microloans each fiscal year.

Second, Intermediaries must provide an integrated program of business training and technical

assistance for their Microborrowers and prospective Microborrowers. Microloans are often successful due to the mentoring/lending relationship between the Intermediary and the business client. Such clients may be new to self-employment, unaccustomed to the requirements of debt repayment, and in need of basic business skills. A strong Technical Assistance program will increase the probability of Microborrower success and help ensure a healthy loan repayment rate. An Intermediary must put forth and document a good faith effort to provide Technical Assistance to each Microborrower. SBA recognizes that in some instances a client may abandon its business aspirations or become unresponsive to an Intermediary's efforts. Under such circumstances, an Intermediary must document its efforts to follow up with a Microborrower. Such documentation will be placed in the loan file and may include, for example, copies of communications to the client encouraging it to participate in Technical Assistance opportunities being provided by the Intermediary.

3.D.2. Service Area

Each Intermediary will operate within its approved Service Area. The approved Service Area will be indicated in the initial letter of acceptance into the program. The Intermediary shall not operate outside of its Service Area. Any modification of the Service Area must be approved in writing at the Microloan Program office. The Program Office will consider the effect of the expansion on any other Intermediary already serving the requested area, the availability of Microloans (if any) in the requested area, and whether the area is already saturated with Intermediaries. Special consideration may be given for expansion into rural areas or HUBZones. The Program Office Chief may call the District Director to discuss the expansion and gain further understanding of the probable effects of the proposed expansion. In highly contentious situations, the Director of the Office of Economic Opportunity will have final decision making authority on requests for additional territory.

An Intermediary may not operate in more than one state unless the Program Office has approved the Intermediary for a multi-state Service Area. With any request for a Service Area of non-contiguous states, the Program Office must be satisfied that:

- a. the Intermediary's current market is being adequately serviced
- b. the proposed new Service Area is underserved, and
- c. the Intermediary has the organizational structure, capacity, and expertise to effectively deliver Microloans and technical assistance to the proposed area.

3.D.3 Use of SBA Logo/Decal

- a. Generally. An Intermediary may publicize its relationship with SBA, including identifying itself as an SBA participating lender, by placing the appropriate SBA-approved decal on the window of the lending institution or placing identical decal icons on its website. An Intermediary may not use the SBA logo in any manner in any advertisement, brochure, publication or promotional piece, or state or imply that the lender or its borrowers will receive any preferential treatment by SBA.

- b. Use of Window Decals. The SBA-approved lender decal may only be used to inform the public of the Intermediary's relationship with SBA and may not be used to promote, or appear to promote, the Intermediary's non-SBA products or services. Window decals are available from SBA district offices.
- c. Use of Decal Icons on Website. The SBA-approved lender decal icon is an exact replica of the window decal and may only be used to inform the public of the Intermediary's relationship with SBA and may not be used to promote, or appear to promote, the Intermediary's non-SBA products or services.
 - When using the SBA-approved lender decal icon on a website, the Intermediary must include the following public statement, "Approved to offer SBA loan products under SBA's Microloan Program".
 - The lender decal icon may be downloaded from, and must be used in accordance with SBA's lender decal guidelines found at <http://www.sba.gov/content/advertising-your-sba-relationship>.
- d. Oversight. An Intermediary's usage of the window/building decal and any identical decal icons on its website may be reviewed as part of the Agency's lender oversight activities.

3.D.4. Microloan Revolving Fund (MRF)

The MRF is to be used only for the following purposes:

- To receive funds from SBA;
- To make payments to SBA;
- To disburse Microloans;
- To receive Microloan repayments; and
- To fund the LLRF (Intermediaries may choose to deposit matching funds into the MRF or directly into the LLRF. When the Loan Match is deposited to the MRF, funds may be transferred to the LLRF each time a Microloan is made. When the Loan Match is deposited to the LLRF this is not necessary).

All microlending activity should be managed through the MRF. An Intermediary that uses an operating account or general fund to collect payments for its organization may request permission from SBA to utilize the operating account for deposit of SBA Microloan payments. All SBA Microloan payments must be transferred from the operating account to the MRF within two weeks (10 working days) of receipt or by the end of the quarter, whichever occurs first.

SBA reserves the right to revoke Intermediary's permission to use an operating account if an Intermediary fails to transfer the SBA Microloan payments to the MRF in the manner described above.

3.D.5. Loan Loss Reserve Fund (LLRF)

The LLRF will be used to pay any shortage in the MRF caused by delinquencies or losses on

Microloans. Funds in the LLRF are collateral against the debt owed to SBA. In the event of failure on the part of the Intermediary, SBA may use all or part of the LLRF funds to repay the Intermediary's debt to the Agency.

The LLRF must be maintained in an amount equal to at least fifteen percent (15%) of the outstanding balance of Microloans owed to the Intermediary under the corresponding loan from SBA, unless the Intermediary has been granted a reduction in the reserve requirement.

At any time after 5 years of participation in the Microloan Program, an Intermediary may request a reduction in the required LLRF amount from 15% of the outstanding balance of Microloans owed to 10% of the outstanding balance of Microloans owed provided the Intermediary's five-year average default rate is less than 10%. When reviewing such a request, SBA will consider such factors as the pre-recovery loss rate, the continued ability to repay debt to the Agency, the level of collateral on debt to the Agency, and general compliance with program requirements. Permission for a reduction in the LLRF requirement is not necessarily permanent. SBA will review the Intermediary's performance on a quarterly basis and reserves the right to restore the LLRF requirement to the 15% level based on the results of the quarterly review. A reduction in the amount required in the LLRF does not constitute a reduction in the collateral requirement (which is always 115% of the Intermediary's debt balance to SBA), nor does it constitute a reduction in the Loan Match contribution requirement (which is always 15% of the amount of a loan disbursement from SBA). Rather, a reduction in the LLRF requirement frees funding for increased microlending.

The Intermediary may use its Loan Match funds to fund the LLRF. The Intermediary must maintain the LLRF in the required amount until it has fully repaid its loan to SBA. Deposits may be made to the LLRF at any time. All deposits will become a part of the LLRF and may not be withdrawn from the LLRF except under the following circumstances:

- A. In the event of a Microloan default: Any Microloan with an uncured payment delinquency of more than 120 days is considered to be in default and must be charged off before the next set of quarterly reports is due. When the Microloan is charged off, the amount of the outstanding principal balance of the defaulted Microloan must be transferred from the LLRF to the MRF. If the replenishment of the MRF by the LLRF causes the LLRF to fall below 15% of the remaining outstanding Microloan portfolio balance (or 10% if the Intermediary's requirement has been reduced), the Intermediary must raise additional non-borrowed, non-Federal funds to bring the LLRF up to the appropriate amount before the end of the following quarter.
- B. In the event the LLRF is over funded, the Intermediary may send a request to the Program Office seeking specific authorization to withdraw funds from the account. SBA will review the Intermediary's program performance, financial position, repayment capacity, and collateral position to determine whether such a withdrawal may be approved. A withdrawal will not be allowed if it would cause the collateral to

fall below 115% of the debt owed to the Agency, or if it would cause the LLRF to fall below 15% (or 10% if that is the approved loan loss reserve rate) of the outstanding balance of performing Microloans made by the Intermediary.

3.D.6. Training

SBA will provide or procure training opportunities for Program participants at various times throughout each calendar year. Such training opportunities may include conferences, other in-person training, webinars, or conference calls. It is expected that when the training is deemed mandatory, at least one of each Intermediary's staff members will attend. Based on the type of training, this should include at least one person other than the Executive Director. Generally, the Intermediary may include, in its grant budget, the cost of up to two people from its organization attending SBA Microloan Program conferences or other in-person training.

3.D.7. Notification of Changes

The Intermediary should notify SBA in advance of the following changes:

- a. Mergers involving an SBA Intermediary: Because any merger involving an Intermediary may affect the eligibility and/or ability of the entity to participate in the Microloan Program, SBA should be consulted prior to any merger. A merger may cause SBA to require a new Microloan Deposit Account Control Agreement for the MRF and LLRF accounts or other documentation to ensure continued Program delivery.
- b. Significant changes affecting the MRF or LLRF accounts, such as moving the accounts to a different Insured Depository Institution or opening additional MRF or LLRF accounts for insurance purposes. Such actions may require modifications to the Microloan Deposit Account Control Agreement.
- c. Changes in the Intermediary's address, telephone number, email address, officers, directors, professional staff, bylaws, or articles of incorporation. Note that a Statement of Personal History (SBA Form 1081) that has been signed within the past 90 days must be submitted to the Program Office along with a job description and resume for any new officer, director, or professional staff member. SBA must approve such personnel prior to that person working on the Intermediary's SBA Microloan Program.

Name changes should be submitted to the Program Office upon filing of the Amended Articles of Incorporation.

3.D.8. Voluntary Separation from the Program

At any time, an Intermediary may choose to terminate its Microloan Program participation. The following steps should be taken:

- A. When the Intermediary will leave the program but remain in business: The Intermediary must submit written notification to the Agency regarding its intent to terminate its participation. SBA will review the notification and determine the total outstanding debt owed to the Agency by the

Intermediary. A payoff amount will be provided to the Intermediary by SBA. SBA will also determine the amount of funding available in the MRF and LLRF accounts so that those funds can be applied to the debt.

The Intermediary will pay, in full, the balance of debt owed to SBA. The Intermediary will continue to service Microloans made by the Intermediary under the program. Once the debt to the Agency is paid in full, SBA will release its liens on the MRF, LLRF, and the Microloan notes. Any grant funds already obligated for use by the Intermediary may continue to be used for the provision of technical assistance to existing Microborrowers. However, no new grants will be awarded once the Intermediary's debt has been paid in full. Intermediaries voluntarily leaving the program and paying their debts in full may re-apply for participation in the future by sending to the Program Office an updated audited financial statement, organizational chart with resume and Form 1081 for all new officers, directors and professional staff who will run the microloan operation, and a narrative of current microloan and technical assistance program operations.

B. When the Intermediary will leave the program and go out of business: The Intermediary must notify the Agency, in writing, as soon as the decision to go out of business is made. Upon notification, SBA will invoke its liens on the MRF, LLRF, and Microloan notes. SBA will apply the funds from the MRF and LLRF accounts to the Intermediary's outstanding debt.

- If the amount in the accounts pays off the debt, SBA will release its liens on the Microloan notes. The Intermediary will dispose of the notes at its discretion.
- If the amount in the accounts does not pay off the debt, the Intermediary may request to sell its Microloan notes, at either at par or for the amount of debt owed to SBA, whichever is less, and apply the proceeds to the debt owed SBA.
- If the Intermediary chooses not to sell its Microloan notes, SBA will take possession of all Microloan notes outstanding. The Intermediary must ensure that information in MPERS is current, including payment and contact information on all outstanding Microloan notes. The Intermediary must also identify any Microloan notes for which the Intermediary took collateral and ensure that the appropriate collateral documents (e.g., deeds or titles) are in the loan files. The Intermediary must execute an assignment, approved by SBA, to assign the outstanding Microloan notes and any underlying collateral to SBA.
- SBA will take possession of the notes and any collateral documents and send them to the appropriate SBA Loan Servicing Center (The Center). The Center will set up each Microborrower with a note receivable and will collect the debt directly from the Microborrower.

3.D.9. Final SBA Loan Payoff by Intermediary

Upon payoff of an SBA Loan by an Intermediary, SBA shall send the original note stamped paid in full to the Intermediary. SBA shall also inform the SBA District Office of the paid in full

status so that UCCs can be terminated (unless the accounts are actively being shared by another SBA loan that has a balance). The liens on the notes for the Microloans made under the paid loan will be released only if there is adequate collateral remaining available against Program debt owed to the Agency. If, after payoff, the Intermediary will have additional Program debt to the Agency, it may request that the Microloan notes originally associated with the paid-in-full loan be re-associated with an existing SBA loan in order to strengthen the collateral for the existing loan. Re-association will not change the terms or conditions of the re-associated Microloan notes. The Intermediary must continue to report on each re-associated Microloan until the Microloan has either been paid in full or charged off, or until the SBA loan has been paid in full. An Intermediary shall be considered to have left the Microloan Program six months after final payoff of all Program debt to SBA. An Intermediary that leaves the Program may reapply in accordance with the provisions outlined in Section 3.D.8.(A) above.

Sub-Chapter 3-E. Grants from SBA to the Intermediary for the Provision of Training and Technical Assistance

This Sub-Chapter provides comprehensive guidance for the issuance and administration of Microloan Program Technical Assistance (TA) grants.

3.E.1. General Guidelines

SBA is authorized to provide grants to Intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small businesses that are borrowers or prospective borrowers under the Agency's Microloan Program.

Intermediaries must use their TA grant funds to deliver ongoing training to their Microborrowers, including training and counseling on topics such as business formation; pro forma financial/breakeven planning/analysis; marketing; bookkeeping and accounting; basic tax, licensing and legal requirements; and personnel/labor issues. TA services, and their method of delivery, are not universal. The effectiveness of any single approach to providing technical assistance, or any combination of approaches, may differ from one community to the next. As such, SBA allows each grant recipient to determine the best approach for assisting its clients.

Each Intermediary will be expected to document, in the loan/client file, the individual TA needs of each Microborrower/client.

Intermediaries are restricted by law from using more than 50 percent of their grant funds to provide TA to prospective Microborrowers. Therefore, Intermediaries should develop partnerships with other SBA funded TA providers, such as Women's Business Centers, Veteran's Business Outreach Centers, Small Business Development Centers, SCORE Chapters, and PRIME recipients to assist with pre-loan TA.

Grant recipients must administer and expend TA grant funds, including Grant Match funds, in accordance with the applicable OMB cost principles and administrative requirements. The rules regarding the administration and expenditure of grant funds may be found in the Office of Management and Budget (OMB) Omni-Circular (2 C.F.R. Part 200) as well as SBA's own grant rules at 2 C.F.R. Part 2700. In general, this means that all grant expenses must be allowable, allocable, and reasonable. With the exception of approved indirect costs, all costs claimed under a TA grant must be directly related to the provision of Technical Assistance to prospective and actual Microloan Program borrowers.

Grant recipients seeking to claim indirect costs (e.g., general administrative costs, overhead, etc.) may claim no more than 10% of their direct costs as indirect costs as long as they have never negotiated an indirect cost rate agreement, or they must either have a current approved indirect cost rate agreement or negotiate an indirect cost rate with their cognizant agency. In order for a TA grant recipient to allocate more than the 10% de minimis indirect cost rate, it must have a currently valid negotiated indirect cost rate agreement. The proportional cost of a Single Audit under 2 C.F.R. Part 200 can be expensed as a direct cost.

3.E.2. Intermediary Grants

SBA is authorized to make grants to Intermediaries for the purpose of aiding them in providing TA to their borrowers.

An Intermediary may receive a TA grant if it:

1. Has adequately utilized grant funds awarded in prior years;
2. has a debt balance outstanding to SBA under the Program;
3. continues to meet the requirements for participation in the Microloan Program;
4. has a satisfactory record of performance (including meeting the minimum loan production requirements, see Section 3.D.1 above); and
5. is otherwise in good standing with SBA.

Intermediaries not meeting requirement 1 and/or 4 above, may still receive grant funding at a reduced level, if SBA has received an acceptable corrective action plan from the Intermediary and determines that sufficient funding exists to allow such reduced grants. Such determination by SBA will at a minimum include whether or not current appropriation levels will allow (a) all grantees that qualify for a Bonus Grant to receive such grant and (b) all grantees meeting the above requirements to receive grants of at least 10% of their respective debt balance to SBA.

The maximum amount of TA grant funding an Intermediary may receive will vary from year to year based upon the availability of funds and will be determined in accordance with the procedures outlined in Section 3.E.4. However, in no event will an Intermediary receive a grant for any annual grant cycle in an amount greater than 25 percent of the debt it owes to SBA under this Program.

Bonus grants for certain Intermediaries. An Intermediary will be eligible

to receive a Bonus grant, in an amount equal to 5 percent of the balance of Microloan Program debt owed to SBA if its historical Microloans closed averages \$10,000 or less (i.e., it is a Specialized Intermediary).

Following the end of the Federal fiscal year, at the time SBA calculates annual Microloan Program grant amounts, SBA will use MPERS data to calculate the historical Microloans closed average in order to determine whether the Intermediary qualifies as a Specialized Intermediary and is thus eligible for a bonus grant. Bonus grants do not require a Grant Match.

3.E.3. Grant Funding Levels

The amount of TA grant funding made available to SBA varies from year to year and is dependent on annual Congressional appropriations. Thus the maximum authorized grant percentage (25 percent of the amount owed to SBA under the Microloan Program) may not be available in every year. Regardless of the amount of TA grant funding received from SBA, each Intermediary is required to provide the appropriate level of TA to its portfolio of Microborrowers.

SBA may award a TA grant to a new Intermediary (see Section 3.E.8.(1) below), but will not disburse grant funds until that Intermediary receives a loan disbursement.

3.E.4 Allocation of Grant Funds

Each year, the Program Office will calculate the amount of each Intermediary's grant award based on the following prioritization until all available grant funds have been allocated:

1. Bonus Grants - 5% of debt balance to SBA for each Specialized Intermediary
2. Grants for New Intermediaries (see Section 3.E.8.(1))
3. Grantee Pool – Up to 10% of debt balance to SBA for all grantees that meet the requirements in Section 3.E.2., including those receiving Bonus Grants in #2 above, subject to funds availability
4. Grants for Intermediaries that did not have a satisfactory record of performance (including meeting the minimum loan production requirements) Up to 5% of the debt balance to SBA for grantees falling into this category, subject to funds availability
5. Performance Incentive 1 – based on number of microloans completed in prior fiscal year – calculated at SBA discretion and subject to funds availability
6. Performance Incentive 2 – based on number of active Microborrowers in prior fiscal year – calculated at SBA discretion and subject to funds availability

SBA will strive to make awards to all grantees that meet the requirements in Section 3.E.2. that are at least equal to 15% of each Intermediary's outstanding debt balance to SBA, but in no event will an Intermediary's grant award exceed the legal limit of 25% of the Intermediary's outstanding debt balance to SBA. Each Intermediary's debt balance to SBA will be measured at December 1st of the applicable fiscal year. Measurement of each Intermediary's closed microloans and active microloan portfolio will be measured via MPERS snapshot for the period

ended 9/30 of the prior fiscal year.

Loan production and status data must be complete in order to properly calculate grant awards. Such data will be obtained via MPERS. As such, it is crucial that all Microloans made during a fiscal year be entered into MPERS by the Intermediary within 7 days of the end of the Federal Fiscal Year. Loan production numbers will be taken directly from MPERS and only Microloans reported through that system, by midnight, October 7 of each year will be considered when determining an Intermediary's production.

Once the available grant amount for each Intermediary has been determined, the Program Office will inform each Intermediary of the specific dollar amount of grant funding the Agency anticipates it will receive and how to submit its application and budget information. Each Intermediary must then respond to that notification in writing declaring its intention to either apply for, or decline, all or part of the TA grant for that year.

3.E.5. Submission and Review of Grant Applications and Award of Grant Funds

The Office of Grants Management (OGM) will post application Instructions for Microloan Program grantees only, along with relevant application forms, on Grants.gov. Because Microloan Program grants are only available to Intermediaries and are non-competitive in nature, the Instructions will be published as a private announcement which will open to approved Program participants only.

Intermediaries must submit their Grant application packages via Grants.gov in accordance with the Instructions. Items to be included in the Grant application package will be specified in Grants.gov.

In order to submit an initial Grant application, an Intermediary must first obtain a DUNS number from Dun & Bradstreet and register with the System for Award Management (SAM).

All applications and required documents must be submitted no later than the due date designated in the Instructions. Any application packages submitted after that date will be automatically rejected by Grants.gov and those organizations may be unable to receive a grant, or may have their grant amount and applicable project period reduced. As such, unused funding may be awarded to other entities. Applications missing any of the required documents may be considered incomplete and rejected.

Upon closing of the application period, OGM will download all grant applications submitted on a timely basis from Grants.gov and forward them to the Program Office for review. The Program Office will verify the amount of funding requested against the amount allocated to each Intermediary. The Program Office will also verify that budgeted expenses and activities stated in the submission are eligible for funding. The Program Office will not attempt budget negotiations beyond verifying eligibility. OGM will complete budget negotiations. In any given year, when

the amount requested or planned activities do not meet the appropriate standard, SBA may afford the Intermediary the opportunity to correct its application. However, it will not re-open the application deadline.

3.E.6. Award of Grant Funds

Upon receipt of the Approval List, OGM will prepare an SBA Form 1222, "Notice of Award" (NOA). OGM will obligate the grant funds and send an Agency signed copy of the NOA to the Intermediary. The Intermediary MUST countersign and return the NOA to OGM. OGM will forward a copy of the countersigned NOA to the Program Office. Only then will the Program Office be able to process grant payment requests. SBA will not consider a payment request until the Agency receives the countersigned NOA from the grantee.

3.E.7. Grant Match

Grant Match must be derived solely from non-Federal, non-borrowed sources. For purposes of the Microloan Program, Department of Housing and Urban Development Community Development Block Grant (CDBG) funds are non-federal and may be used as matching funds. Grant Match may take the form of cash, in-kind contributions, or indirect costs. The prohibition against using borrowed funds as match includes "refundable" grants (i.e., grants that must ultimately be repaid and are therefore considered by SBA to constitute borrowed funds).

Acceptable sources of Grant Match include funds pledged by the grant recipient itself, its parent entity, and its affiliates; as well as donations from outside sources. Grant Match sources may also provide in-kind contributions to the Intermediary, including volunteer time and donated equipment, publications, software or space.

A grant recipient must fully document all Grant Match it provides against the grant (e.g., cancelled checks, letters of donation, etc.). For each contribution, a grant recipient must maintain documentation identifying the name, phone number, and email address of the donor/grantor, the amount/value (along with the basis for valuation), the intended purpose and any requirements, restrictions or stipulations. Grant Match funds do not need to be maintained in a separate account, but they must be clearly traceable via an audit trail. SBA does not require that all Grant Match funds be available at the time of Application. It will, however, withhold payment of advances or reimbursements until documentation that Grant Matching funds have been expended is received with a request for payment.

3.E.8. Special Conditions and Restrictions

1. Newly selected Intermediaries.

For Grant purposes, an Intermediary will be considered newly selected during its first two years in the Program. A former Intermediary that is re-entering the Program will be considered newly selected for purposes of allocating TA Grant funds as long as the re-entry does not occur within 12 months of the prior exit.

- a. A newly selected Intermediary may receive the greater of \$50,000, or the grant as calculated by the formula outlined in Section 3.E.4.
 - b. No grant disbursements will be made until loan funds have been disbursed to the Intermediary.
 - c. Any Intermediary that is newly selected after grant funds have been awarded for a fiscal year will have to wait until the next fiscal year's grant funding becomes available before it can be awarded grant funds.
2. All Intermediary grants will be for a term of one year. The grant project period will be specified in the Notice of Award.
 3. Intermediaries are restricted by law from using more than 50 percent of their grant funds to provide TA to prospective Microborrowers. Expenditures of at least 50 percent of grant funds must be related to providing assistance to existing SBA Microborrowers.
 4. Intermediaries are restricted by law from using more than 50 percent of their grant funds to contract with third parties for the provision of TA to Microborrowers. While SBA generally expects Intermediaries to be able to provide routine TA to Microborrowers, in some circumstances it may be more cost effective for an Intermediary to occasionally contract with a trainer with specialized experience or knowledge to assist one or more Microborrowers than it would be for the Intermediary to retain such a trainer on a full time basis.

3.E.9. Payments to Grant Recipients

1. Submission of Payment Requests- A new Intermediary, receiving its first grant under the Program, may request a single advance payment provided it has debt outstanding to SBA under the Program. Thereafter, grant recipients will generally be paid on a reimbursement basis. SBA generally reimburses grant funds quarterly. Reimbursement will cover only those actual expenses incurred by a grant recipient in support of its provision of Technical Assistance to SBA Microborrowers and prospective SBA Microborrowers. Reimbursement requests must be received by SBA no later than 30 days after the end of the quarter during which they were incurred, with the exception of final quarter costs which must be requested within 90 days of the end of the quarter.

- a. A grant recipient must submit all requests for payment to the Program Office using a Standard Form 270 "Request for Advance or Reimbursement," along with a Detailed Expenditures Worksheet (including a narrative of expenses) and Personal Services Supplement, a Standard Form 425 "Federal Financial Report", and a Standard Form PPR "Performance Progress Report" (or your own custom-designed format that includes all the same information required by the SF PPR) with a Technical Assistance Narrative Report and Matrix attached and a letter certifying that their matching funds requirement has been met. In addition, all costs claimed under a reimbursement request must be properly documented and kept in the Intermediary's files. Acceptable forms of documentation include receipts, invoices, contracts, cancelled checks, employee timesheets/payrolls, etc.

b. Requests for advances. Although payment of grant funds is typically conducted through the reimbursement process, TA grant recipients are eligible for a first quarter advance of grant funds at the start of their initial Budget Period (First time grant recipients only). The amount of any advance will be limited solely to the grant recipient's projected first quarter Technical Assistance expenses. After the first quarter of the Intermediary's initial Budget Period, The Intermediary will be required to shift to a reimbursement basis for further payment requests. This means that while the Intermediary may request an advance for the first quarter, it must wait until the end of the second quarter to request reimbursement for that quarter.

To request an advance, the Intermediary must submit a Standard Form 270 "Request for Advance or Reimbursement" and Standard Form 425 "Federal Financial Report" to its assigned Program Office analyst. The Intermediary must also include a projection of how and when it expects to expend the advance over the quarter. Any advanced amounts that are not used within the quarter must be reconciled with the following quarterly reimbursement request. Interest earned on advanced funds in excess of \$125 must be returned to the Agency.

2. Processing Payment Requests- No payment request should be submitted for less than \$1,000 unless the total amount of grant funding awarded in a single year is equal to \$4,000 or less, or the request is for a final payment on a grant.

Upon receipt of a request for payment, the Program Office will review the request for completeness and accuracy; to ensure that the level of activity and success with milestones warrants payment, that statutory expenditure requirements are being met, and that costs are appropriate to the budget and the NOA. Once all questions are answered, and issues responded to by the Intermediary, the Program Office will retain a copy of the approved request in the file and forward the request for payment under a cover sheet initialed by the appropriate Analyst and the Program Office Chief to OGM.

After receiving the payment request from the Program Office, OGM will review the request to confirm that it has been properly completed, adequately supported, and is otherwise ready for payment. If OGM identifies any remaining issues with the payment request, OGM will work directly with the grant recipient, and inform the Program Office of same. Once all issues are corrected, OGM will approve, stamp, and sign the request, add a copy to the file and forward it to SBA's Office of Fiscal Operations (OFO) in Denver for payment.

3. Grant Award Closeout- Within 90 calendar days of the end of a grant Project Period, grant recipients must submit all required reports and any outstanding reimbursement requests. SBA will reimburse the recipient for allowable amounts. If the SF 425 indicates any unused balance, SBA will confirm that balance, prepare an SBA Form 1223 and forward it to OGM for de-obligation of remaining, unused funds.

3.E.10. Carryover Requests

A carryover request may be submitted if an Intermediary is scheduled to receive a new grant at the conclusion of its current Project Period, and it believes that it will have funds remaining under the current award. Carryover requests must be received by the Program Office at least 60 days prior to the end of the project period. A request for carry-over received less than 60 days prior to the end of the Project Period will not be honored.

3.E.11. No Cost Extension Requests

A No Cost Extension request may be submitted if an Intermediary is not receiving a follow-on award and will have funds remaining under its current award. No Cost Extensions will be limited to twelve months. If the Program Office Chief approves the request for a no-cost extension, the Intermediary will be able to continue to conduct project activities and draw down against its remaining grant funds expended through the next quarter. A request for a no-cost extension must be received at least 45 days prior to the end of the grant period. No extension request will be honored if it is received less than 45 days prior to the end of the original grant period.

3.E.12. Training for Intermediaries

SBA will provide or procure training for Intermediaries each year. At SBA's sole discretion, training may include a single annual conference, regional training conferences, training via electronic media, or any combination thereof. Because SBA expects Intermediaries to take full advantage of Microloan Program training offerings, Intermediaries are authorized to budget the cost for attendance at such training, for up to two people, into their grant budget documents. Intermediaries are not authorized to budget the cost of attendance at any non-SBA training or at any SBA training unrelated to the Microloan Program into their Microloan Program grant budgets. Intermediaries may only include the cost of attendance at one SBA Microloan Program training meeting per year in their Microloan Program grant budgets.

3.E.13. Marketing Costs

Intermediaries may include costs of marketing the Microloan Program to prospective borrowers into their Microloan Program grant budgets. Marketing includes, for example: advertising of the Microloan Program, community seminars, and website development designed to lead to an increase in Microborrowers assisted. Marketing costs must not exceed 25% of grant funds.

3.E.14. Conflict of Interest

The following conflict of interest policies apply to all SBA TA grant awards:

- a. Where an employee or contractor of a non-Federal entity providing assistance under an SBA award also provides services in exchange for pay in her or his private capacity, that employee or contractor may not accept as a client for her or his private services any individual or firm she or he assists under an SBA award.
- b. No non-Federal entity providing assistance under an SBA award (nor any subrecipient, employee, or contractor of such an entity) may give preferential treatment to any client referred to it by an organization with which it has a financial, business, or other

- relationship.
- c. Except where otherwise provided for by law, no non-Federal entity may seek or accept an equity stake in any firm it assists under the auspices of an SBA award. Additionally, no principal, officer, employee, or contractor of such an entity (nor any of their Close or Secondary Relatives as those terms are defined by 13 CFR 108.50) may seek or accept an equity stake or paid position in any firm the entity assists under an SBA award.

Sub-Chapter 3-F. Microloans from the Intermediary to the Microborrower

The Intermediary will be responsible for determining whether a Microborrower is qualified to receive a Microloan using SBA's eligibility and Program guidelines and its own lending policies. SBA will not review any Microloan applications nor will it become involved in any appeal of a declination, unless the appeal is made on grounds of failure to comply with the Civil Rights Compliance sections of 13 CFR Part 12.

3.F.1. Agency Oversight

SBA conducts periodic risk assessments on each Intermediary. SBA will conduct annual site visits to Intermediary offices, and may also conduct site visits to Microborrower locations. Site visits may be conducted by the District Office, by the Program Office, by the Office of Credit Risk Management, by the Office of Inspector General, by the Office of General Counsel, or by a team consisting of any combination of these offices' personnel. Other Agency personnel and/or Agency contractors may be invited to join site visits as well. Personnel conducting site visits will use a site visit checklist to be provided by the Program Office.

SBA reserves the right to inspect any and all records of the Intermediary, as well as its offices, files, organizational and Program documentation. SBA may conduct random Microloan file reviews to determine whether the Intermediary is keeping appropriate records, ensuring Microborrower eligibility, and adhering to Program requirements. Intermediaries that are not in compliance may be subject to increased reporting, limitations on disbursement of loan and/or grant funds, removal from the Program, or other sanction as appropriate to the situation.

SBA oversight begins at the application stage when SBA reviews the application (key personnel, service area information, loan policies and procedures, eligibility documents, financial documents, and other items called for in the application information), verifies information, and accepts or rejects an applicant as qualified or not qualified to become an Intermediary.

Oversight of the Intermediary continues throughout each Intermediary's period of participation in the Microloan Program as SBA continually reviews reports, account information, Microloan portfolio performance, technical assistance milestones, repayment anomalies, collateral, and other such information for compliance with program requirements.

Intermediaries are subject to OCRM SOPs and other oversight documents as indicated in paragraph 1.4 of this document.

3.F.2. Small Business Concerns eligible to become Microborrowers

Microborrowers must be eligible to receive financial assistance under Section 7(a) of the Small Business Act and Parts 120 and 121 of SBA regulations, which discuss SBA business loan policy and small business size regulations. In every case, the following eligibility requirements must be met:

- The Microborrower (including its Affiliates, if any) must:
 - be a start-up, newly established, or growing for profit small business concern or, a non-profit child care center.
 - be located within the Intermediary’s approved service area.
 - meet type of business eligibility standards at the time of application for the Microloan.
 - be considered small under 7(a) business loan size requirements. Reference 13 CFR §121.201 for applicable Size Standards.
 - if a franchise, follow the guidance for franchises provided in Appendix 2 to this SOP.

A Microbusiness applying for a loan of more than \$20,000 must meet a “no credit elsewhere” test and must have good prospects for success. The purpose of the “no credit elsewhere” test is to determine if the Microloan applicant has the ability to obtain some or all of the requested microloan funds at comparable interest rates from non-Federal sources. A Microloan cannot be made for more than \$20,000 if similar rates and terms are available from private sector lenders using non-Federal dollars.

For loans of more than \$20,000, the Intermediary must substantiate the factors that prevent the financing from being accomplished without Intermediary support and the Microborrower’s application file must contain documentation that such credit is not available elsewhere at comparable interest rates. The documentation must specifically identify the factors in the present financing that meet the “no credit elsewhere” test.

Acceptable factors that demonstrate an identifiable weakness in the credit and why the Microloan applicant does not have credit elsewhere include, among others:

- The business needs a longer maturity than is available (for example, the business needs a loan that is not on a demand basis);
- The collateral does not meet non-Federal source requirements;
- Non-Federal sources normally do not allow loans to new businesses or businesses in the applicant’s industry; and/or
- Other – Any other factors relating to the specific credit that, in the Intermediary’s opinion, cannot be overcome except through Intermediary support.

Documentation may also include a letter of denial (which is not required but may be used), a survey of local loan products available at the time of application, or other such information. In the case of a multi-party financing package, in which the Microloan will exceed \$20,000, there must be written documentation from the other lender(s) that but for the Microloan (and the attendant TA if appropriate), said lender would not participate in the financing package.

SBA will evaluate the Intermediary's "no credit elsewhere" analysis and accompanying documentation when fulfilling its oversight responsibilities.

3.F.3. Ineligible types of businesses

Intermediaries are responsible for ensuring the eligibility of each Microborrower. The following types of businesses are not eligible to receive a loan under the Microloan Program.

- a) Any nonprofit business other than a nonprofit childcare center;
- b) Any financial business primarily engaged in the business of lending;
- c) Life Insurance companies;
- d) Any businesses located in a foreign country;
- e) Any pyramid sale distribution plan;
- f) Any business deriving more than one-third of its gross annual revenue from legal gambling activities;
- g) Any business engaged in illegal activity;
- h) Any private club or business that limits membership for reasons other than capacity;
- i) Government-owned entities (except businesses owned or controlled by a Native American tribe);
- j) Any businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;
- k) Loan packagers earning more than one third of their gross annual revenues from packaging SBA loans;
- l) Any business in which the Intermediary or any of its Associates owns an equity interest;
- m) Any business with an Associate who is incarcerated, or is currently under indictment for a felony or a crime of moral turpitude.
 - The Intermediary has the authority to determine whether it will make a Microloan to an individual with an arrest record who is not currently incarcerated, or currently under indictment.
- n) Any business that presents live performances of a prurient sexual nature; or derives directly or indirectly more than 5 percent of gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
- o) Any business that has caused a Prior Loss to the Government unless the Prior Loss to the Government is fully satisfied. The Intermediary must document its file as to how the loss has been fully satisfied. (See Appendix 1 for further discussion of Prior Loss)
- p) Any business that has Delinquent Federal Debt, other than an SBA Microloan. (See Appendix 1 for further discussion of Delinquent Federal Debt).

- q) Any business primarily engaged in political or lobbying activities;
- r) Any speculative business (such as oil wildcatting);
- s) Any businesses located in a Coastal Barrier Resource Area (as defined in the Coastal Barriers Resource Act);
- t) Any 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;
 - An individual who enters into a child support repayment agreement and is in compliance with that agreement is not considered delinquent.
- u) Any businesses in which an Associate is an undocumented (illegal) alien; or
- v) Any business 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.

3.F.4. Loans to Businesses with Associates on Parole or Probation

Effective July 15, 2015, businesses with an associate on parole or probation are eligible to receive loans under the Program except if the offense:

- a. involved fraud, or dishonesty, or
- b. in the case of a childcare business, involved an offense against a child.

Offenses involving fraud and dishonesty include, for example, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, conversion, counterfeiting, willful misapplication or any other fraudulent or dishonest acts resulting in financial loss.

Implementation of this new rule does not impose a requirement on Intermediaries to complete loans to these businesses. Loans to these businesses must meet SBA Microloan Program requirements, and Intermediary's credit and underwriting policies. Intermediaries must use prudent lending practices when lending to these businesses.

3.F.5. Microloans to Businesses owned by Non-Citizens

Legal permanent residents (LPRs) and other non-citizens lawfully in the U.S. with an appropriate work visa are eligible for Microloans. An Intermediary must not make a Microloan to a business owned by an individual who is in the U.S. without legal documentation or who is not authorized to work in the U.S. An Intermediary must obtain evidence of legal status for all borrowers that are not citizens. For businesses owned by LPRs, Intermediaries must obtain evidence of LPR status, such as USCIS Form I-551 (551), Lawful Permanent Resident Card, commonly referred to as the "green card," or unexpired immigration visa with Customs and Border Protection stamp evidencing LPR status. For non-citizens that do not have LPR status, Intermediaries must obtain evidence of authorization to work in addition to evidence of legal status.

3.F.6. Conflicts of Interest

An Intermediary or its Associates may not have a real or apparent conflict of interest with a small business. (13 CFR §120.140)

Intermediaries must exercise care and judgment in determining whether a conflict of interest exists and document the file in detail. Intermediaries must not make a microloan if the Intermediary, its Associates, partner or a close relative:

- a. Has a direct or indirect financial or other interest in the microloan applicant; or
- b. Had such interest within 6 months prior to the date of application.

3.F.7. Use of Microloan Proceeds

Microloans may be used for the purchase of furniture, fixtures, supplies, materials, equipment, and/or for working capital. Microloans may not be used for real estate. Microloan program funds should not be used to improve any part of a private home unless that part is specifically dedicated to the funded business. Intermediaries may choose, at their discretion, to refinance Microborrower debt. However, this should only be considered when it will improve the debt position/cash flow of the Microborrower.

Microloan proceeds may not be used for the following purposes (including the replacement of funds used for any such purpose):

- a. Payments, distributions, or loans to an Associate of the applicant except for compensation for services actually rendered at a fair and reasonable rate;
- b. Refinancing debt owed to an SBIC or New Market Venture Capital Company (NMVCC);
- c. Floor plan financing or other revolving line of credit;
- d. Investments in real or personal property acquired and held primarily for sale, lease, or investment; or
- e. Payment of delinquent taxes including Federal, state, or local payroll taxes, sales taxes, or similar taxes that are required to be collected by the applicant and held in trust on behalf of a Federal, state, or local government entity. However, payment of delinquent business income taxes may be permitted if:
 - the applicant has an approved payment arrangement with the IRS and is current on the payments in the arrangement; and
 - the percentage of the microloan proceeds used to pay delinquent business income taxes does not exceed 20% of the total microloan amount (multiple loans cannot be used to circumvent this limitation).

All Intermediaries must document each disbursement on a microloan. The documentation must contain sufficient detail for SBA to determine:

- The recipient of each disbursement;
- The date and amount of each disbursement; and

- The purpose of each disbursement.

See Section 3.F.17.d for examples of documentation acceptable for disbursement verification.

3.F.8. Other Requirements

Intermediaries and Microborrowers must comply with all applicable laws including (but not limited to) the following:

1. Flood Insurance requirements (13 CFR 120.170) based on the Standard Flood Hazard Determination FEMA Form 086-0-32
 - a) If any portion of collateral on a Microloan is located in a special flood hazard area, the Intermediary must require the Microborrower to obtain flood insurance under the National Flood Insurance Program (NFIP). This requirement extends to all collateral located in a building, or on unimproved property, that is in a special flood hazard area.
 - b) Insurance coverage must be at least equal to the outstanding principal balance of the loan or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), whichever is less.
2. Flood-Plain and Wetlands Management requirements (See 13 CFR 120.172).
3. Lead-Based Paint requirements when loan proceeds are for the construction or rehabilitation of the business section of a residential structure (See 13 CFR 120.173).
4. Civil Rights Laws- SBA funded Microloans are subject to all applicable laws, including laws prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability, or age (see 13 CFR parts 112,113,117, and 136)

3.F.9. Microloan Amounts

The maximum loan that may be made to a Microborrower under this program is \$50,000 and there is no minimum microloan size.

In no case shall an Intermediary make a program Microloan of more than \$50,000 to one borrower; or have more than \$50,000 outstanding and committed to any single borrower, including its affiliates. Intermediaries should use due diligence to ensure that the Microloan applicant is not in debt to the SBA Microloan Program due to having borrowed from more than one SBA Microloan Program Intermediary.

3.F.10. Multi-Party Financing

In order to allow small businesses to grow while maintaining a connection to a technical assistance delivery system, SBA permits the use of Microloan funds as part of a multi-party financing package. Not more than \$50,000 may be in the form of a Microloan. The remaining amount must come from other sources. The non-Program part of the package may be in the form of an SBA 7(a) guaranteed loan or any other source. However, Microloan funds may not be used

in connection with an SBA 504 loan due to restrictions under that program. A Microloan made as a part of a multi-party financing package must meet the “no credit elsewhere test” if it exceeds \$20,000 described in Section 3.F.2.

3.F.11. Microloan Interest Rates

The maximum interest rates for Microloans are outlined in 13 CFR 120.707(c) and are calculated based on the Intermediary’s Cost of Funds.

- (A) The Intermediary may charge a Microborrower up to seven and three quarters percent (7.75%) over the Intermediary’s Cost of Funds on a Microloan of more than \$10,000
- (B) The Intermediary may charge a Microborrower up to eight and one-half percent (8.50%) over the Intermediary’s Cost of Funds on a Microloan of \$10,000 or less.

First Year Microloan Interest Rates - For the purpose of making Microloans during the first year of Program participation, the Intermediary may assume a 2.0% discount on its interest rate for the loan from SBA in calculating its Cost of Funds. That is, if the Note for the loan from SBA is signed at X%, the Intermediary can make Microloans based on X - 2% + spread from (A) or (B) above. However, if the Intermediary knows in advance that it will most likely be making loans that are on average greater than \$10,000, it should use the 1.25% discount and calculate its interest rate to the Microborrower based on (X-1.25% + spread from (A) or (B) above) during the first year.

The term interest rates as described in this Section refers to a coupon rate which is not an annualized Percentage Rate (APR) and is independent of fees which may be allowed under this Program.

See Section 3.B.5. for further discussion of the Intermediary’s Cost of Funds.

3.F.12. Microloan Maturity

The maximum maturity of any Microloan made under this program will be six years. In the event an Intermediary restructures a Microloan or otherwise puts a Microborrower into a workout situation, the life of the Microloan must not exceed 6 years from the date of the Microloan note.

No Microloan may be made as a revolving line of credit.

3.F.13. Microloan Collateral Requirements

Underwriting requirements for Microloans are determined by the Intermediary. Although the Intermediary is not specifically directed regarding collateral, SBA expects the Intermediary to use prudent lending practices. Such practices may or may not include requiring collateral and/or Microborrower equity. It is noted that a Microborrower may have a history of unsuccessful attempts at obtaining financing or credit from traditional lending sources. Therefore, Intermediaries are urged to temper collateral requirements with strong technical assistance and to

be creative in their definitions of acceptable collateral.

No Intermediary, and no Associate of an Intermediary, may take, or hold, an equity interest in any business receiving financing under this Program. Equity presents a conflict of interest between the Intermediary and the Microborrower.

3.F.14. Credit Life and Disability Insurance

Credit life insurance requirements are disallowed unless the following criteria are met:

- a. Local law requires that it be offered to all borrowers, OR
- b. When, at the time an Intermediary joins the program, it is the internal policy of the Intermediary to require such coverage, provided said coverage will not be required on Program Microloans of less than \$10,000, AND
- c. Any proceeds to the Intermediary from the sale of credit life insurance are limited to use either as an addition to the MRF, an addition to the LLRF, or for administrative expenses directly related to the cost of providing microlending services.

Disability insurance is viewed by the Agency as an imposition of excessive loan related costs. It is not allowed under the Microloan Program unless required by State Law.

3.F.15. Microloan Packaging Fees and Closing Costs

The Intermediary may charge reasonable packaging fees limited to 3% of the amount of the Microloan for loans with terms of one year or more, and 2% for loans with terms of less than one year.

Actual, paid and documented out-of-pocket closing costs may also be charged to the Microborrower, such as filing or recording fees, collateral appraisals, credit reports, and other such direct charges related to loan closing. These costs must be itemized and kept in the loan file for SBA's possible review. The costs of software used to prepare loan documents cannot be passed on to a Microborrower.

Fees charged to a Microborrower may be added to the loan amount and financed over the life of the Microloan provided the total loan amount, including the fee, does not exceed \$50,000.

No fees may be charged for the provision of TA.

3.F.16. Servicing Microloans

Each Intermediary will service the Microloans it makes. Servicing includes, but is not limited to, payment processing, collection, and liquidation. Any Microloan payments that are initially received by an account other than the MRF account must be moved to the MRF account within ten business days of receipt or by the end of the quarter, whichever comes first.

Loan servicing costs are not payable from TA Grant funds. Loan servicing is considered a cost of doing business. Intermediaries are expected to use loan interest and origination fee earnings to help pay for loan servicing costs. Over time, earnings appear as excess funding in the MRF and/or LLRF. Permission to withdraw excess accumulated earnings may be submitted to the Program Office. After an analysis of the position of the Intermediary is completed, SBA will determine whether a withdrawal will be allowed and the amount of such withdrawal.

Microloans that are more than 30 days late are considered delinquent. Intermediaries with delinquency rates of greater than 15 percent may be subject to increased oversight. Such Intermediaries will also be asked to submit a plan for reducing the delinquency rate. In some instances, SBA may withhold or cancel disbursements of loan and/or grant funds until the Intermediary's position improves to the satisfaction of SBA.

It is incumbent on the Intermediary to work with each Microborrower to avoid Microborrower defaults. Intermediaries should consider restructuring Microloans before they fail but only if a restructure will assist the Microborrower in meeting its goals. At no time will an Intermediary be allowed to make payment for a Microborrower. Restructuring a microloan shall not occur if such restructuring results in a loan term that exceeds 72 months. If this is the case, the Intermediary has the option of refinancing the microloans with a new microloan which can have a loan term of up to 72 months. No Microloan should be restructured only to delay a failure.

Any Microloan that exceeds 120 days delinquent must be charged off in MPERS. At the time the Microloan is charged off, the amount of the outstanding principal balance of the charged-off Microloan must be transferred from the LLRF to the MRF. If the transfer of funds from the LLRF to the MRF causes the LLRF to fall below 15% of the outstanding balance of Microloans, the LLRF must be replenished with non-borrowed, non-federal funds. Further, if as a result of a charge off of microloans the Intermediary's collateralization falls below 115% of its debt balance to SBA, it must contribute additional non-borrowed, non-federal funds to bring its collateralization percentage to at least 115%.

Intermediaries may use collection agencies to collect payments on microloans that are reported as active in MPERS only upon SBA's prior approval. Any collection activity must terminate if SBA takes possession of the microloans. In no event shall Intermediaries sell any microloans reported as active in MPERS to a debt buyer without prior SBA approval.

3.F.17. Microloan Closing Documentation

Microloans will be closed in accordance with local requirements. SBA will require the following documentation be retained in the Microborrower file for each Microloan closed:

- a. A copy of the Microborrower's original intake form or application materials, and evidence of any pre-loan technical assistance that may have been provided.
- b. A copy of the materials reviewed as part of the underwriting process, including,

but not limited to, any credit analysis documentation, correspondence and credit report (if there is a credit report), and the final decision document regarding approval or denial of the loan.

- c. A copy of the Microloan Note which shall contain all pertinent repayment terms such as payment amount, total number of payments to be made, and payment due dates. The following statement must appear in each Microloan note, either in the body of the language or as an addendum initialed by the Microborrower:

“This note has been pledged to the U.S. Small Business Administration (SBA) as collateral. Further assignment cannot be made without prior written consent of the SBA.”

- d. Evidence that the proceeds of the Microloan were used for the purpose for which application was made. The following documentation is acceptable:
 - I. Joint payee checks;
 - II. Copies of receipts, invoices or other supporting documentation marked paid by the seller or vendor; or
 - III. Evidence of an electronic funds transfer to a vendor along with a copy of the invoice.

If the Microloan application includes working capital as a use of proceeds and those proceeds will be used to pay normal operating expenses (e.g., payroll, utilities, etc.), then the Intermediary must maintain evidence (e.g., cancelled check or evidence of electronic funds transfer) in their loan file that the working capital disbursement was made to the microborrower business, not to the business owner.

- e. A copy of the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, SBA Form 1624. It is also a best practice for Intermediaries to use SAM.gov (or its successor system) to research whether or not their Microborrowers have been debarred, suspended, or are ineligible to participate in the Microloan transaction.

3.F.18. Signature Requirements for Microborrowers

Each State has its own set of laws regarding marital signature requirements. Intermediaries should be aware of, and operate under, their respective State laws in this regard. Any Intermediary may ask for a co-borrower.

However:

- (A) An Intermediary may not require that the co-borrower be a spouse simply by virtue of the borrower being a married person.
- (B) An Intermediary may require signature of the spouse, for security purposes only, if the collateral being offered is owned jointly by the borrower and the spouse.

3.F.19. Microloan Repayments

The initial payment on a Microloan should be scheduled for within 60 days of the closing of the

Microloan. Subsequent Microborrower payments must be scheduled on a monthly or more frequent basis except that an Intermediary may choose to defer payments in the event of a workout or restructure. All Microloans should amortize so that no Microloan will have a balloon payment at the end of the loan term.

Payments are to be deposited directly into the Intermediary's MRF account. In some cases, and only with advance written approval from the Program Office, payments may be deposited to the Intermediary's operating or collection account. Microloan payments deposited to an operating or collection account must be moved to the MRF within ten business days of receipt of the payment, but in no event later than the end of the quarter.

At the Intermediary's discretion, a Microloan repayment schedule may be changed to help ensure full repayment of the Microloan. No deferment may extend beyond 6 months. And, no deferment may cause the life of the Microloan to extend beyond 6 years. For example, a natural disaster, the sudden incapacitation of the business owner, or a regional economic downturn may call for an Intermediary to consider a deferment on a Microloan.

3.F.20. Late Fees and NSF Fees Chargeable to the Microborrower

Late fees are permitted when the Microborrower fails to make a payment to the Intermediary on time as long as they are discussed in the Note between the Intermediary and the Microborrower. A late fee may not exceed 5% of the payment amount.

An Intermediary may also require Microborrowers to reimburse the Intermediary for any non-sufficient funds (NSF) fees incurred as a result of insufficient funds for a microloan payment.

3.F.21. Paid-in-Full Microloans

Loan and TA files for paid-in-full Microloans are to be retained by the Intermediary for at least three years after full repayment. Upon repayment of a Microloan, the Intermediary will update the MPERS to show the Microloan as paid-in-full.

3.F.22. Technical Assistance and Training Provision, Design, and Limitations

Intermediaries must provide Technical Assistance (TA) to Microborrowers. Intermediaries may also provide TA to potential Microborrowers.

No fees may be charged to Microborrowers for Technical Assistance.

TA should be integrated into lending and post loan follow-up. Any TA provided after a Microloan is made is considered post-loan TA for that Microborrower. By law, no more than 50% of grant funds may be used to enter into third party contracts for the provision of technical assistance; therefore, at least half of TA will be provided internally. By nature, most TA will be general business training. However, industry specific, specialized TA may be provided by an outside entity. Upon selection to participate in the program, each Intermediary must have a TA program in place.

TA is to be provided to Microborrowers throughout the life of each Microloan. Intermediaries will be asked to produce follow-up data regarding business success at the time a Microloan is paid in full. No client may be refused TA due to race, gender, age (provided they are legally of age to enter into a loan agreement), ethnicity, religion, disability, or any other reason as stated in Fair Credit lending laws. Clients enter TA programs at varying levels of business competency. Intermediaries must be prepared to deliver TA accordingly and offer more than one style of TA.

An Intermediary may, as a part of the Microloan application process, require that an applicant avail itself of TA so as to help ensure loan readiness. Whether or not an Intermediary receives grant funding, it must provide post-loan TA to SBA Microborrowers.

Note that the simple availability of TA on an Intermediary's website is not considered sufficient for the provision of adequate TA. While on-line training is a useful tool, it should never be used as the sole source of TA. It is important that the Intermediary develop an ongoing relationship with each Microborrower, that it conduct site visits, and that it provide face-to-face counseling and training from time to time.

(See also the definition of TA at Section 2.40 and subchapter 3.E)

3.F.23. Denial of Microloans by the Intermediary

Microloan applications will be approved or denied at the discretion of the Intermediary. The Intermediary is responsible for ensuring that all denial of credit documentation is in order (clear, concise, detailed) and retained in its files for a minimum of three years.

CHAPTER 4. – INTERMEDIARY RECORD KEEPING, REPORTING, and OVERSIGHT

SBA must ensure that the Microloan Program is effectively administered and controlled and is reasonably protected from waste, fraud, mismanagement, or undue risk. Any and all suspected occurrences of waste, fraud and abuse must be immediately reported to SBA's Office of Inspector General through the Online Complaint Submission System at: <https://sbax.sba.gov/oigcss/>. Reports can also be mailed to: Office of Inspector General, 409 3rd Street, SW, Suite 7150, Washington, DC 20416. The Office of Inspector General can also be reach via telephone at: 800-767-0385. To accomplish these objectives, SBA has developed critical recordkeeping and reporting requirements for Microloan Program participants. Each Intermediary will be required to fulfill these reporting requirements until it pays its Program debt in full or otherwise leaves the Program.

SBA reserves the right to inspect the offices, files, and documentation of Microloan Program participants. SBA will conduct annual site visits to Intermediary offices, and may also conduct site visits to Microborrower locations. Reports, account information, Microloan portfolio performance, technical assistance accomplishments

against milestones, repayment anomalies, collateral, and other such information will be reviewed regularly to ensure that Program participants are in compliance with Program requirements. Intermediaries that are not in compliance may be subject to enforcement actions.

Sub-Chapter 4.A. Intermediary Recordkeeping and Reporting

4.A.1. General Loan Record Requirements

Intermediaries must establish and maintain a separate case file on each SBA Microloan borrower. Each case file must be maintained in a disaster protected and properly controlled storage environment. Original Microloan notes (which are SBA collateral) must be stored in a disaster safe separate from the working file. A copy of the Microloan note should be in each working case file. Access must be carefully limited as the files contain personally identifiable information. All original Microloan documents, including any collateral documents, must be retained at least until such Microloan has been paid in full.

All Microborrower case files must contain the Microloan application, documentation substantiating the Microborrowers' eligibility (including "no credit elsewhere" documentation for loans over \$20,000), information regarding technical assistance provided, loan servicing activities, documentation of jobs created and retained as a result of the microloan and chronological communications records.

Electronic Microloan files and records must be fully protected, disaster safe, and safe from inappropriate access. They must be accessible to SBA in the event of a site visit.

4.A.2. Microloan Portfolio Electronic Reporting System (MPERS)

The MPERS is a web-based, electronic reporting system that facilitates SBA's collection of critical information on the characteristics and status of each SBA Microloan. MPERS is used by the Intermediary to report Microloans made and to provide and update account balance and status information on each Microloan until all Microloans are either paid in full or charged off. MPERS also allows SBA to efficiently track and assess the accomplishments of each Intermediary as well as the Microloan Program as a whole, to provide accurate and timely summary data to SBA oversight officials, and to monitor the performance and strength of Intermediary portfolios. The data reported is used for statistical, portfolio management, and reporting purposes. Personally Identifiable Information is protected.

SBA Intermediaries must have access to the Internet and have an appropriate web browser installed so that they may report as required. Additional information and instructions on MPERS are available in the MPERS User's Manual, which can be found in the MPERS system help section. Intermediaries will be provided with access to, and training regarding, this system.

4.A.3. Periodic Loan Reports

Intermediaries will submit loan reports using the following schedule.

| Report | Within 7 days of Microloan Closing | Quarterly | Annually | Upon Request | Submission Method |
|------------------------------|------------------------------------|---------------------------|----------|--------------|-------------------|
| Portfolio ID | X | | | | MPERS |
| Portfolio Status | | X | | | MPERS |
| MRF/LLRF Status | | X with bank statements | | | MPERS and PDF |
| Audited Financial Statements | | | X | | MPERS or PDF |
| Other Documentation | | | | X | As Requested |

Electronic reporting on SBA microlending activity must be completed and submitted as detailed below. A pattern of failure to submit accurate and complete reports in a timely manner will be viewed as a failure to comply with Microloan Program requirements.

A. Within Seven days of the making of a Microloan—Each time a Microloan is made, the Intermediary must submit a Portfolio ID Report via MPERS. The Portfolio ID Report contains basic identifying information for each Microborrower, including demographic information.

All Microloan Portfolio ID Reports for loans made during a single Fiscal Year must be reported by midnight on October 7th of the next Fiscal Year. Data in the system on October 8th of each year will represent the Intermediary's official production for the previous Fiscal Year and form the basis for determination of Microloan Program eligibility and grant allocation in the coming year. Because SBA will only count complete entries into MPERS when determining an Intermediary's annual Microloan production for eligibility purposes, all new entries, corrections, and updates to MPERS must be completed on time, by midnight of October 7th each year.

In the event of a system failure, SBA may extend the year end reporting period for up to 30 days prior to pulling the final Fiscal Year production report. Because Portfolio ID Reports are to be in the system within seven days of each Microloan Closing, SBA will not consider overcrowding due to last minute reporting to be a system failure. In no case will an annual production report be pulled for any period ending later than midnight of November 7th of any given year.

An Intermediary that fails to fully and accurately report in MPERS the annually required minimum volume of SBA funded Microloans may lose its eligibility for training and technical assistance grant funds and may be considered to be inactive.

B. Within 30 days of the end of each Quarter, the Intermediary will submit:

1. MPERS Microloan Portfolio Status Report (PSR) - The PSR provides the Intermediary and SBA with a picture of the performance of its Microloan Portfolio. It is used by the Agency to assist with loan servicing and oversight. It provides Microloan aging and other information useful in determining delinquency and default rates, and other performance information.

The PSR provides SBA with up-to-date Microloan portfolio repayment, aging, and servicing data. Initial data is entered automatically into the PSR each time a Portfolio ID Report is submitted. This data includes basic identifying information for the Microborrower and terms of the Microloan. By midnight of the seventh (7th) day after the end of each quarter, the PSR must be updated with aging data as of the last day of the quarter for each Microborrower.

SBA will periodically review PSRs to assess the Intermediary's ability to manage its Microloan portfolio. Intermediaries are required to submit quarterly PSRs until the Intermediary exits the Microloan Program.

2. MRF and LLRF Status Reports supported by Bank Statements – The MRF and LLRF Status Reports must be submitted quarterly via MPERS. The MRF and LLRF Status reports provide a uniform method for the Agency to review numerous statements of varying design. In addition, Intermediaries must send bank statements showing the detail of transactions on the accounts for the quarter. Bank Statements may be sent via e-mail or delivered in hard copy and will be compared to the activity reported in the PSR, and will be used to ensure appropriate use of funds.

C. Annually, within 180 days of the end of the Intermediary's Fiscal Year, the Intermediary will submit an annual audited financial statement via MPERS, or a substitute system. Intermediaries subject to audit requirements under the Single Audit Act must submit audits prepared in accordance with 2 C.F.R. Part 200. The financial statements will be used to examine the use of Microloan program funds, financial position of the Intermediary, operational issues as noted by the auditing accountant and any exceptions or concerns noted by the auditing accountant.

Preparation of Annual Audited Financial Statements. The audited financial statement must be prepared by an independent public accountant who:

- is registered or licensed to practice as a public accountant and is in good standing under the laws of the state or other political subdivision of the United States in which the Intermediary's principal office is located;
- is in compliance with the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct;
- meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

- has received, or is enrolled in, a peer review program that meets AICPA industry guidelines and standards.

Content of Annual Audited Financial Statements. The Audited Financial Statement must be prepared pursuant to the procedures and standards prescribed by the AICPA, Generally Accepted Auditing Standards (GAAS), Generally Accepted Government Auditing Practices (GAGAP) and 2 CFR Part 200, Subpart F (Audit Requirements for Federal Awards), if applicable. In addition to specifically addressing the financial condition and well-being of the grant recipient, the auditor's statement must also:

- include an opinion (or disclaimer of opinion) about whether the financial statements and
- schedules of expenditures are fairly presented in accordance with GAAS and GAGAP;
- report on the status of internal controls relative to the financial statements and major programs;
- describe the degree to which the recipient has complied with the applicable laws, regulations, policies, procedures, and terms and conditions of the federal assistance award;
- determine whether the Intermediary is "high risk" or "low risk"; and
- in the case of an Intermediary, assess the internal controls over the Intermediary's Loan Loss Reserve Fund and Microloan Revolving Fund.

4.A.4. Grant Reporting

It is SBA's responsibility to ensure that TA grants are administered so as to maximize the effectiveness of the program and safeguard taxpayer funds from waste, fraud or mismanagement. To accomplish these objectives and facilitate monitoring and oversight, SBA requires TA grant recipients to abide by several recordkeeping and reporting standards. Additionally, in the event SBA receives information indicating that a TA grant recipient or one of its employees may be responsible for committing fraud or misuse of grant resources, the matter must be referred to the Office of Inspector General in accordance with SOP 90 22 5, Investigations Program. In addition to the required loan fund reports, Intermediaries must submit quarterly reports regarding training and technical assistance activity. These reports should accompany quarterly requests for payment to allow the Agency to review the report and request documents simultaneously to expeditiously facilitate payment. Intermediaries will submit grant reports in accordance with the following schedule:

| Report | Quarterly | Annually | Upon Request | Submission Method |
|------------------------|-----------------------|----------|--------------|-------------------|
| SF425 | X with 270 Request | | | Paper or PDF |
| SF-PPR or similar form | X with 270 Request | | | Paper or PDF |
| TA Narrative Report | X | | | Paper or PDF |

| | | | | |
|-----------------------------------|---|-----------------------|---|--------------|
| Detailed Expenditure Worksheet | X | | | Paper or PDF |
| Audited Financial Statements | | X Same as for Loan | | MPERS |
| Requested documentation as needed | | | X | Per Request |

Quarterly financial and performance reports. Within 30 days of the end of each quarter, grant recipients must submit to the Program Office both a Standard Form 425 “Federal Financial Report” and a Standard Form PPR “Performance Progress Report” (or your own custom-designed format that includes all the same information required by the SF PPR) with a Technical Assistance Narrative Report. The Financial Analyst must review all such reports in order to verify that the grant recipient is conducting its TA project as required and that it is meeting its projected milestones.

4.A.5. Calculation of Technical Assistance Expenditures

Grant funds must be expended so that not more than 50% of the funds awarded are used for the provision of Technical Assistance to potential SBA Microborrowers (pre-loan TA) and at least 50% of the funds awarded are used for the provision of TA to actual SBA Microborrowers (post-loan TA). SBA will allow certain costs to be included in the Intermediary’s annual grant budget, including travel expenses for required SBA training (if no other federal funds are available to cover these expenses,) supplies, and such other expenses that do not fall into the category of provision of TA but are necessary for its delivery. To properly calculate the expenditure ratio of grant funds, the Intermediary must determine the hourly cost of providing TA. This hourly cost may include time to develop or improve training, the actual time spent with a client, classroom time, or any other time used in the provision of TA. The hourly rate may not exceed \$250 per hour.

Sub-Chapter 4-B. Intermediary Oversight

Oversight incorporates the ongoing activities associated with the making and servicing of loans to Intermediaries and Microloans. This includes approving, disbursing, collecting, reporting, analyzing, guiding, assisting, and otherwise handling loans, grants, and performance data in order to mitigate risk to the Agency.

On a daily basis, the Program Office provides oversight via the collection, review, and analysis of reported data, narrative reports, account information, portfolio performance review, and other available information. Serious or ongoing compliance issues will be referred to the SBA Office of Credit Risk Management (OCRM) for further action, including potential enforcement action.

Reports, account information, loan activity, technical assistance activity, and grant performance

are reviewed on a quarterly basis. A quarterly risk assessment is conducted on each Intermediary to review the amount in the MRF and LLRF accounts, its Microloan portfolio collateral position, the historical Microloan default rate, and the current Microloan delinquency rate. The results of the review will trigger follow-up communications between the Program Office and the Intermediary as needed. For instance, an Intermediary showing a weak collateral position on a quarterly review will be contacted by the Program Office with requirements for strengthening that position.

A review of audited financial statements is conducted annually to determine positive and negative trends, the presentation of any compliance issues by the auditor, the financial health of the Intermediary entity outside its Microloan Program activities, and any issues that may or should be of concern to the Agency such as compliance with other government programs, other debts owed, and failure to meet non-Microloan Program performance requirements.

An Intermediary found to be performing at a less than acceptable level may be put onto a monthly reporting schedule, if recommended by the Analyst and approved by the Program Office Chief, to help them improve their operations. Evidence of less than acceptable performance may include:

- Default and/or delinquency rates that are consistently above 15%;
- MRF and LLRF funds that are insufficient to meet the 115% collateral requirement when coupled with outstanding Microloan balances;
- MRF and/or LLRF funds that do not balance with Microloans reported in MPERS to have been closed;
- Failure to update Microloan repayment status and/or microloan aging information;
- Charging interest rates that exceed the maximum allowable rate;
- Charging fees in excess of those allowed;
- Allowing microloans that are older than 6 years to be reported as active microloans in MPERS;
- Sudden decreases in MRF or LLRF account balances due to unapproved withdrawals;
- Any other anomaly discovered by the Analyst during regular risk assessments Any concerns raised during a site visit

4.B.1. Site Visits

As part of SBA's oversight activities, the local SBA District Office will conduct annual site visits to Intermediary offices. The local SBA Office may also conduct site visits to Microborrower locations.

The local SBA District Office reviewers will submit the site review report to the Program Office. The results of the Site Review will be shared with the Intermediary by the Program Office. Based on the results of the site visit, SBA may require the Intermediary to take corrective actions, including the requirement that the Intermediary provide periodic status reports until issues are resolved to SBA's satisfaction.

4.B.2. Review of Loans

During the normal daily servicing and oversight of Microloan Program Intermediaries, SBA will review Microloans to ensure they are made to eligible borrowers. In the event the Intermediary has made a Microloan to an ineligible business, for an ineligible purpose, or in a manner that is out of compliance with program requirements, SBA will require the Intermediary to liquidate the ineligible loan within 30 days of notification of the Intermediary. The Intermediary may liquidate the loan through any means, including a refinance of the loan with non-Program funds. The Intermediary will be required to deposit into its MRF an amount equal to the outstanding principal balance of the ineligible Microloan.

4.B.3. Job Creation and Retention Data

Intermediaries will report job creation and retention data as a part of the Portfolio ID reporting process. Intermediaries must retain documentation in each loan file supporting the data on jobs created and retained as a result of receiving a Microloan. Such documentation must match the jobs created and retained figures reported by the Intermediary to SBA in the MPERS system. Acceptable documentation includes but is not limited to signed statements from the Microloan borrower listing the position titles and work schedule for each position created and retained. It is the intention of the Microloan Program that each time a Microloan is made it will either create, or retain, at least one job. Beyond that job, the Intermediary must also account for any other jobs created or retained. Jobs created will be counted in terms of 40 hours-per-week full time equivalents (FTEs) so that two 20 hours-per-week part time jobs will create one FTE and should be reported as one job. One full time job should also be reported as one job. SBA reserves the right to verify the correctness of jobs created and/or retained during any visits to an Intermediary or Microborrower site.

4.B.4. Enforcement Actions

SBA endeavors to resolve most issues informally by working with the Intermediary to resolve any performance or compliance issues. However, an integral part of overseeing the Microloan Program is SBA's authority to supervise and take enforcement actions as necessary. The regulations at 13 CFR 120.1425, 120.1540, 120.1600, and 2 C.F.R. Parts 200.338-.342 apply. If the Intermediary does not comply with Microloan Program requirements, it may form the basis of a supervisory or enforcement action as described in the regulations. Intermediaries with serious or ongoing compliance issues that may be subject to potential enforcement action will be referred to OCRM.

If the Intermediary is unable or unwilling to come into compliance, SBA, in its discretion, may revoke the Intermediary's authority to participate in the Microloan Program. Revocation includes liquidation of the Intermediary's MRF account(s), LLRF account(s), seizure of any outstanding Microloan notes, and forfeiture of any unused grant funds by the Intermediary. An Intermediary's liability under this Program is limited to the amounts in the MRF and LLRF account(s) and any outstanding Microloans (except that the Intermediary is liable to SBA for any loss caused by the Intermediary's fraud, negligence, violation of any of the ethical requirements, or violation of any

Microloan Program Requirements). Failure of the Intermediary to fully repay its debt to the Federal Government may result in debarment of the entity from receiving further Federal funding.

APPENDIX 1

Discussion of Prior Loss and Delinquent Federal Debt

The Prior Loss and Delinquent Federal Debt provisions in paragraph 3.F.3 apply to:

- The Microloan applicant that incurred the Delinquent Federal Debt or caused the Prior Loss (either directly or as a guarantor);
- Any business owned, operated or controlled by the Microloan applicant or an Associate of the Microloan applicant that incurred the Delinquent Federal Debt or caused the Prior Loss (either directly or as a guarantor); and
- For Delinquent Federal Debt only, any guarantor who has a Delinquent Federal Debt.

As used below, the terms “Federal loan” or “Federally assisted financing” includes any loan made directly or guaranteed/insured by any Federal agency (except for disaster loans with respect to Delinquent Federal Debt), any unreimbursed advance payments under 8(a) or similar programs operated by any Federal agency, and federally-backed student loans. It does not include unpaid/delinquent taxes or any loss incurred by the Federal Deposit Insurance Corporation (FDIC) when it sells a loan at a discount or any loan purchased, held or securitized by Fannie Mae or Freddie Mac.

Prior Loss

Prior Loss means the dollar amount of any deficiency on a Federal loan (including disaster loans) or Federally-assisted financing that is recognized by a Federal agency after it has concluded its write-off and/or close-out procedures for the particular account including the following:

- Loss on the sale or other disposition of collateral acquired after default,
- Any compromise, i.e. resolution or settlement of a loan balance for less than the full amount due,
- Bankruptcy by a borrower and/or any guarantors, and
- Any unreimbursed advance payments by a Federal agency.

Delinquent Federal Debt

A debt is considered “delinquent” when any Federal loan (excluding disaster loans) or Federally-assisted financing has not been paid within 90 days of the payment due date. A debt is considered “delinquent” even if the creditor agency has suspended or terminated collection activity with respect to such debt.

A Federal debt is not considered delinquent if:

- The creditor agency has released the obligor from paying the debt;
- The obligor is subject to, or has been discharged in a bankruptcy proceeding;
- The obligor has entered into a satisfactory written repayment agreement and is current;

- or
- the debt is in an administrative or judicial appeal process.

(Note: If there was a loss associated with any of these debts, however, the loan remains subject to the rules governing Prior Loss to the Government.)

CAIVRS

Intermediaries are encouraged to check the Credit Alert Verification Reporting System (CAIVRS) to determine if any potential Microborrower has either a Delinquent Federal Debt or a Prior Loss which would result in ineligibility for a Microloan.

CAIVRS allows the Intermediary to enter multiple tax id numbers (either SSN or EIN) to search for an outstanding Delinquent Federal Debt or Prior Loss in connection with a loan application. Intermediaries may register for access to CAIVRS at

<https://entp.hud.gov/idapp/html/f57register.cfm>

APPENDIX 2

Procedures for Microloans to Franchises

The procedures described below apply to all Microloan applications involving a franchise or similar relationship¹ that meets the Federal Trade Commission definition of franchise.²

a) The SBA Franchise Directory:

SBA has created the SBA Franchise Directory (the “Directory”) of all franchise and other brands reviewed by SBA that are eligible for SBA financial assistance. The Directory will only include business models that SBA determines are eligible under SBA’s affiliation rules and other eligibility criteria. **If the Microloan applicant’s brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain an SBA Microloan.** (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.) **Intermediaries will be able to rely on the Directory and will no longer need to review franchise or other brand documentation for affiliation or eligibility.**

The Directory will be maintained on SBA’s website at

<https://www.sba.gov/document/support-object-object-sba-franchise-directory>.

It will contain the following information:

1. Whether the brand meets the FTC definition of a franchise;
2. The SBA Franchise Identifier Code, if applicable (a code will only be issued if the agreement meets the FTC definition of a franchise);
3. Whether an addendum is needed and, if so, whether the franchisor will use the SBA Addendum to Franchise Agreement (SBA Form 2462) 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);

¹ While a relationship established under a license, jobber, dealer or similar agreement is not generally described as a “franchise” relationship, if such relationship meets the Federal Trade Commission’s definition of a franchise, it is treated by SBA as a franchise for purposes of affiliation determinations in accordance with 13 CFR § 121.301(f)(5).

² The Federal Trade Commission (FTC) definition of a “franchise” in [16 CFR § 436.1\(h\)](#) states as follows:

Franchise means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller [franchisor] promises or represents, orally or in writing, that:

- a. The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark;
- b. The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and
- c. As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.

and

4. Whether there are additional issues the Intermediary 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 Microloan applicant is not a passive business or affiliated with the management company).

b) Use of the Directory by Intermediaries:

For applications involving a franchise or similar relationship that meets the FTC definition of a franchise, the Intermediary must check the Directory to determine if it includes the Microloan applicant's brand.

1. If the Microloan applicant's brand is on the Directory, the Intermediary may proceed with making the Microloan.
2. If the Microloan applicant's brand is not on the Directory, the Intermediary cannot make a Microloan.³

c) Procedures for making Microloans to Franchises:

1. If the Microloan applicant's brand meets the FTC definition of a franchise, Intermediary must document in its file that the Microloan applicant's brand is on the Directory and identify the name of the franchise and SBA Franchise Identifier Code in the loan file.
2. *If the Microloan applicant's brand is not on the Directory and the Intermediary determines the brand does not meet the FTC definition and proceeds with approving the loan, SBA may review this decision when conducting oversight activities.*
3. If the Directory indicates that an addendum is needed (SBA Form 2462 or an SBA Negotiated Addendum), the Intermediary must obtain an executed copy and retain in the loan file.⁴
4. If the Microloan applicant applies for further assistance under an agreement that already has an executed addendum, Intermediary will not need to obtain a new addendum in connection with the subsequent application for financial assistance.
5. The Intermediary must also obtain a copy of the executed franchise agreement and any other document the franchisor requires the franchisee to sign. These documents must be retained in the loan file.
6. Under the following circumstances, Intermediaries must consult the most current version of SBA SOP 50 10 for additional guidance:
 - I. Applicant operates under multiple agreements;

³ A franchisor that would like to add its brand to the SBA Franchise Directory should consult the most recent version of SBA SOP 50 10 for guidance.

⁴ If the Microloan applicant franchisee has multiple locations and each location operates under a separate franchise agreement, each location (i.e., each agreement) must have its own SBA Form 2462 or an SBA Negotiated Addendum, if applicable. If the applicant has a brand or agreement that is not critical to the applicant's business operation (i.e., the brand or agreement represents 50% or less of the applicant's revenues), the Intermediary must check the Directory to ensure the Microloan applicant's brand is eligible before processing the application, but does not need to obtain an addendum for that agreement.

- II. Applicant is a franchisor;
- III. Applicant has franchise development agreements or area development rights; or
- IV. Applicant has a third-party management agreement;

Prior to any disbursement of loan proceeds, the Intermediary must obtain a copy of the executed franchise agreement, the executed SBA Form 2462 or SBA Negotiated Addendum (if applicable), and any other document the franchisor requires the franchisee to sign. In order to ensure the Intermediary obtained the required documents and the documents were properly executed, SBA may review these documents when conducting oversight activities.