

SBA

SOP 50 53 (2)

Supervision and Enforcement

Office of Credit Risk Management

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

SUBJECT: Supervision and Enforcement	S.O.P.		REV
	SECTION	NO.	
	SOP 50 53		2

INTRODUCTION

1. Purpose: Update SBA procedures for supervision and enforcement of SBA Lenders and Intermediaries.
2. Personnel Concerned: All SBA Employees
3. SOP Cancelled: SOP 50 53 (A)
4. Updated Information: The Office of Capital Access has updated SOP 50 53 to incorporate developments in SBA’s supervision and enforcement program given new legislation, regulations, notices, delegations of authority, and evolving practices. This update is accomplished within the current SOP framework for the Office of Credit Risk Management (OCRM) supervision and enforcement and notably includes SBA’s Risk-Based Review Protocol, PARRiS and SMART methodologies, civil monetary penalties, temporary suspensions/revocations of Secondary Market Sales authority under 13 CFR 120.660, Lender oversight fees, receivership provisions for SBA Supervised Lenders and CDCs, and oversight of SBA Lender management of Agent activities. In addition, it updates Lender peer groups, the corrective action process, Informal Enforcement Actions, confidentiality of supervisory information, guidance on shortened and non-renewal of delegated authority, and Intermediary enforcement. In this revision, SBA has added cross-references to statutory, regulatory, and other authorities strengthening the SOP. Finally, OCRM has also added oversight guidance from SOP 50 10, allowing that SOP to streamline its overview of SBA oversight in its next version.
5. Originator: Office of Capital Access

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		PAGE

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Chapter 1: Introduction

1. Introduction

- a. This SOP establishes SBA's procedures for supervision and enforcement actions for SBA's 7(a) lenders, Certified Development Companies (“CDCs”), and Microloan Intermediaries (“Intermediaries”),¹ as it relates to their SBA lending operations. Throughout this SOP, SBA 7(a) Lenders and CDCs are referred together as “SBA Lenders” while SBA Lenders and Intermediaries are collectively referred to as “Participants”.

The SOP describes appropriate actions in response to a Participant’s violation of law, rules, regulations, SBA notices, and/or unsafe and unsound practices or conditions.

This SOP also addresses SBA monitoring of a Participant’s management of Agent activity along with enforcement procedures for Agents that participate in SBA business loan programs. For purposes of this SOP, “Agent” refers to an Agent under 13 CFR § 103.1(a) of an Applicant or Participant in SBA's business loan programs.²

- b. The SBA has an active program of educating, monitoring, and overseeing Participants,³ the purpose of which is to:
 - i. Maximize the efficiency of SBA's 7(a), 504 and Microloan programs by effectively managing program credit risk, monitoring Participant performance, and enforcing Loan Program Requirements (as defined in 13 CFR § 120.10) to ensure the viability of SBA lending;
 - ii. Identify unacceptable risk profiles to encourage compliance, and as appropriate, enforce program lending requirements to improve and manage the risk of individual Participants as well as the aggregate risk of SBA's loan portfolios; and
 - iii. Promote responsible credit gap lending that supports SBA's mission to increase access to capital to small businesses.
- c. General Approach to Credit Risk Management. The Agency initially seeks to educate and work with Participants using graduated processes for the Participant to reduce risk and come into compliance before taking any enforcement action. Specifically, SBA educates Participants on SBA Loan Program Requirements

¹ Note: SBA may, in its judgement and discretion, apply certain of these SOP provisions to Microloan Intermediaries and to Intermediary Lending Pilot Program Intermediaries.

² This includes for example, Lender Service Providers, consultants, and brokers/referral agents.

³ 13 CFR § 120.1000.

through SOPs, notices, webinar/teleconference training, and at conferences. In addition, when SBA identifies risk or noncompliance through monitoring or reviews, SBA generally seeks to work with the Participant through a corrective action process or Increased Supervision to address SBA concerns. As a result, most Participants come into compliance, reduce risk, and avoid facing enforcement actions. SBA generally takes enforcement action only when the Participant cannot sufficiently reduce risk, cannot correct serious noncompliance, or does not have the willingness or ability to correct. See 85 FR 14772 (March 16, 2020).

- d. General Principals for Application of Monitoring, Increased Supervision and Enforcement with Respect to Participants. SBA has a responsibility to appropriately manage and oversee its loan programs and the requirements it places on Participants (15 USC § 657t). General principals for application of oversight:
 - i. Risk-based to best utilize resources.
 - ii. Use graduated processes (with flexibility to administer appropriate supervisory actions earlier to address progressively serious risk concerns) as follows:
 - a) Routine monitoring. Most problems and weaknesses should be identified and addressed through routine monitoring, including the corrective action process.
 - b) Intensive monitoring. Issues not addressed or of higher risk should be addressed through Increased Supervision.
 - c) Enforcement actions. Anticipate that following routine and intensive monitoring only a smaller number of problems/issues will remain and need to be addressed through enforcement actions.
 - iii. Identify and address risk-based concerns and ultimately, if necessary, make determinations about a Participant's continuing participation in SBA's lending programs.
 - iv. Processes and procedures are evolutionary. Because programs develop, markets are fluid, and technologies are evolving, SBA's approaches will adapt with them.
- e. Oversight and Type of Participant: The extent of monitoring, Increased Supervision and Enforcement will depend upon the type of SBA Participant overseen, (e.g., SBA Supervised Lenders⁴ versus 7(a) Lenders regulated by Federal Financial Institution Regulators⁵) and the extent to which SBA may rely on or coordinate oversight with a Participant's primary federal regulator. For 7(a) Lenders regulated

⁴ SBA Supervised Lenders are defined in 13 CFR § 120.10.

⁵ Federal Financial Institution Regulators are defined in 13 CFR § 120.10.

by the Federal Financial Institution Regulators (“Federally Regulated 7(a) Lenders”), references in this document to SBA supervision and SBA supervisory activities or actions refer to the Participants' SBA operations.

- f. Documentation: Supervisory and enforcement actions are supported through documentation provided by the SBA staff, such as a Financial Analyst.
- g. This SOP provides guidance on how the Office of Credit Risk Management (OCRM):
 - i. Groups and prioritizes actions into "large" and "small" dollar-magnitude risk categories;
 - ii. Conducts supervisory activities both on-site and off-site;
 - iii. Selects the action or combination of actions best suited to effectively supervise Participants in a consistent manner while preserving flexibility for specific circumstances; and
 - iv. Selects enforcement actions.
- h. Supervision and Confidentiality: Each Participant and Permitted Party (as defined in 13 CFR § 120.1060) or others for whom SBA has approved access by prior written consent is prohibited from disclosing its Reports,⁶ Lender Risk Ratings,⁷ Lender Confidential Information⁸ and related information, in whole or in part, in any manner, without SBA’s prior written permission. Permitted Parties include parent entities, officers, directors, employees, auditors, and consultants, in each case who demonstrate a legitimate need to know such information for the purpose of assisting in improving the Participant’s operations in conjunction with SBA’s Program and SBA’s portfolio management. Consultants must be under a written contract with the Participant specifically to assist with addressing Report Findings and Corrective Actions. The Agreement must state the consultant agrees to abide by the disclosure prohibition and must state consultant must not use the Report, Lender Risk Rating, or Confidential Information for any purpose other than to assist that Lender with addressing its Findings and Corrective Actions. Consultants and Permitted Parties do not include Lender Service Providers. An approved party other

⁶ Reports mean the review or examination report and related documents.

⁷ Lender Risk Ratings are also known as “Risk Ratings” (which are defined in 13 CFR § 120.10) and “Lender Purchase Ratings” (“LPR”).

⁸ Confidential Information includes all the Participant-related information/data contained in the Lender Portal except the dollar amounts associated with SBA purchase of and charge off of Participant’s loans and information already publicly available related to the Participant’s capital, non-performing assets, and regulatory actions (e.g., from a bank’s public Call Report). Confidential Information also includes any information related to SBA’s supervision of the Participant (e.g., review or corrective action correspondence) and any actions taken by SBA related to enforcement (e.g., Informal Enforcement Actions as defined in SOP 50 53 or by regulation, notices of proposed enforcement action) unless made public by SBA (e.g., in a Cease and Desist Order).

than a Permitted Party (e.g., a prospective buyer of an SBLC license) must execute a nondisclosure agreement approved in advance by SBA. A Participant and Permitted Party must not make any representations concerning the Report, Lender Risk Rating, or Confidential Information. The Report, Lender Risk Rating, and Confidential Information must not be relied upon for any purpose other than SBA oversight and SBA's portfolio management purposes. A Participant must ensure that Permitted Parties are aware of and agree to the regulatory requirements (e.g., no subsequent disclosure, safeguarding the information, no reliance) and ensure that each such Permitted Party abides by the requirements.

The prohibition on disclosure in 13 CFR § 120.1060 does not create enforceable rights by Participant. Participant must not unilaterally disclose such information to other bank regulators or agencies. Participant must refer those parties to SBA. SBA may disclose Reports, Lender Risk Ratings, or other Confidential Information in its discretion (e.g., to other Federal and state regulators); however, such disclosures do not waive any privilege nor Participant's obligation under 13 CFR § 120.1060 to maintain the confidentiality of the information.

- i. This SOP provides general internal guidance on how SBA conducts supervision and enforcement responsibilities. It is intended to be flexible to consider individual facts and circumstances. It does not intend that every consideration factor or step must always be applied. SBA will use this guidance along with judgment and Agency discretion in making supervisory and enforcement determinations.

Therefore, this SOP is not intended to, does not, and may not be relied upon to, create rights, substantive or procedural for Participants or any other party enforceable at law or in any administrative proceeding against SBA.

2. Notice of Implementation

- a. This SOP is effective beginning January 1, 2021.
- b. This SOP is supplemented by SOP 51 00, which details SBA standard operating procedures for reviews and examinations for 7(a) Lenders, CDCs, and Intermediaries.

3. Authority

The following statutory and regulatory citations provide authority for this SOP: 15 USC § 650; 15 USC § 657t and u; 15 USC § 634 note, citing, Public Law 104-208, Division D, Title I, § 103(h); 15 USC § 634(b)(14); 15 USC § 634(b)(7); 15 USC § 636(a)(2)(C)(iii); 15 USC § 636(a)(31) and (m); 15 USC § 633(b)(3); 15 USC § 634(f); 15 USC § 687(f); 15 USC § 696(3)(A); 15 USC § 697(a)(2); 15 USC § 697e(c)(8); 15 USC § 634(b)(6); 15 USC § 697d, e, and g; 13 CFR Parts 103 and 120; SBA's Delegations of Authority No. 12-G, Rev. 1, 79 FR 56842 (Sept. 23, 2014) as amended by Amendment 1, 83 FR 48681 (Sept.

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26, 2018) (Delegations of Authority); SBA Lender Risk Rating System Notice, 79 FR 24053 (April 29, 2014). See also 13 CFR § 120.10 for key lender oversight definitions.

Chapter 2: OCRM Monitoring and Risk Based Review/Exam Protocol

1. Overview and General Policy

- a. Generally, OCRM oversees SBA's Participants to identify unacceptable risk profiles and, if appropriate, enforce Loan Program Requirements to improve and manage the risk of individual Participants as well as the aggregate risk of SBA's loan portfolio.

This is accomplished through monitoring to:

- i. Identify Participants whose SBA program risk exceeds SBA's risk tolerance levels.
 - ii. Identify problems and weaknesses in Participants' SBA program performance.
 - iii. Assist Participants in correcting problems and weaknesses before they become serious problems.
 - iv. Enable SBA Lenders to proactively manage their SBA programs through the Lender Portal.
- b. For SBA Lenders, OCRM uses flexible risk-based protocols, which consider SBA Lender specific facts and circumstances. The risk-based protocols feature two composite risk measurement methodologies and scoring guides commonly referred to as "PARRiS" and "SMART".
 - i. PARRiS is an acronym for the specific risk areas or components that SBA reviews for SBA 7(a) Lenders. PARRiS components are as follows: "P" - Portfolio Performance; "A" - Asset Management; "R" - Regulatory Compliance; "Ri" - Risk Management; "S" - Special Items.
 - ii. SMART is an acronym for the specific risk areas or components that SBA reviews for CDCs. SMART components are as follows: "S" – Solvency and Financial Condition; "M" – Management and Board Governance; "A" – Asset Quality and Servicing; "R" – Regulatory Compliance; "T" – Technical Issues and Mission.

Each PARRiS and SMART component includes quantitative and qualitative performance factors. For a list of the quantitative and qualitative factors currently being used, see Appendix 1 for PARRiS component factors and Appendix 2 for SMART component factors. Review of the factors assists SBA in better identifying an SBA Lender's specific risk areas, assess the level of risk a Participant poses to SBA, and make recommendations for corrective action as needed.

- c. For Intermediaries, given the unique contribution of this program to SBA's mission, the potential program integrity and program reputational risk, and the relatively small dollar level of risk, OCRM will conduct its monitoring practices to reflect these aspects of the microloan portfolio.
- d. For Participants, OCRM generally conducts monitoring/reviews of Participants commensurate with the dollar level of lending and the relative risk to the Agency's program portfolio, as determined by SBA, in its discretion. While SBA will generally follow the guidance set forth below on the level and type of Participant monitoring, SBA reserves the right to use its judgment and discretion in making individual determinations, as appropriate.
- e. A Participant must maintain sufficient documentation and complete loan files to support the Participant has met Loan Program Requirements. A Participant must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to review, inspect, and copy all records and documents, relating to its SBA loan portfolio or as requested for SBA oversight. A Participant must also timely submit such documentation or reports to SBA as required or upon request. See 13 CFR § 120.180 and § 120.1010.

2. Determining the Level of Monitoring

- a. Level of monitoring is determined by relative magnitude of risk among individual Participants within their respective loan programs. Larger dollar-volume Participants are generally subject to greater monitoring, as they expose SBA to a greater level of potential risk than smaller dollar-volume Participants.
- b. Level of monitoring is also tailored to the Participant and designed to identify weaknesses in the Participant's conformance with SBA Loan Program Requirements as defined and applied in 13 CFR § 120.10 and § 120.180, respectively.

Monitoring includes:

- i. SBA portfolio performance;
- ii. Credit quality;
- iii. Non-lending requirements (e.g., 1502 Reporting and resolution of receivables due the SBA);
- iv. Financial Condition; and

- v. Consideration of the relative extent of risk to SBA (e.g., dollar and/or program integrity risk).
- c. To define groups of SBA Lenders by dollar risk to SBA, the following peer groups have been established:
 - i. For 7(a) Lenders, peer groups are based upon gross outstanding SBA loan dollars, as follows:
 - a) \$350,000,000 or more
 - b) \$100,000,000 - \$349,999,999
 - c) \$10,000,000 - \$99,999,999
 - d) \$4,000,000 - \$9,999,999
 - e) \$1,000,000 - \$3,999,999
 - f) \$0 - \$3,999,999B (active with at least one loan disbursed in past 12 months)
 - g) \$0 - \$3,999,999A (inactive with no loans disbursed within the past 12 months)
 - ii. For the 504 program CDCs, peer groups are based upon gross outstanding SBA loan dollars, as follows:
 - a) \$350,000,000 or more
 - b) \$100,000,000 - \$349,999,999
 - c) \$30,000,000 - \$99,999,999
 - d) \$10,000,000 - \$29,999,999
 - e) \$5,000,000 - \$9,999,999
 - f) \$0 - \$4,999,999
 - iii. For Intermediaries, no peer groups have been established at this time.
- d. Generally, SBA Lenders with gross outstanding SBA loan dollars greater than \$10,000,000 receive monitoring conducted through in-depth reviews/examinations and performance monitoring. SBA Lenders below that threshold typically receive monitoring conducted primarily through desktop reviews and performance

monitoring. However, when an SBA Lender with a portfolio less than \$10,000,000 in SBA Share Dollars has higher risk characteristics, SBA may, in its discretion, increase the level of monitoring or supervision, including conducting additional and expanded scope reviews.

- e. For Intermediaries, SBA's oversight is structured to reflect the risks of this portfolio including those associated with program integrity and program reputational risks as well as the dollar level of risk.

3. Participant Monitoring and Review Tools

- a. Reporting. Required regular reporting for all Participants provides a partial basis of monitoring. Required reporting includes, but is not limited to, the following, by type of Participant.
 - i. All 7(a) Lenders - SBA Form 1502 and SBA Form 172 reporting.
 - ii. CDCs - Annual Reports (due within 180 days of each CDC's fiscal year end), CDC Quarterly Delinquency Report, Liquidation Plans, Premier Certified Lenders Program Loan Loss Reserve Fund Reporting, and wrap-up reports.
 - iii. SBA Supervised Lenders - Annual Reports and Quarterly Reports on financial condition and Quarterly Capital Certification.
 - iv. Intermediaries - Required monthly Microloan Program Electronic Reporting System ("MPERS") reporting, quarterly Portfolio Status Reports ("PSRs"); quarterly Microloan Revolving Fund ("MRF") and Loan Loss Reserve Fund ("LLRF") Status reporting and accompanying bank statements, quarterly technical assistance narrative reports, any special reports (e.g., Recovery Act Reporting) and annual financial audits.

For a more complete list of all required reports, refer to SOPs 50 10, 51 00, 50 55, 52 00, and 50 57.

- b. SBA Loan and Lender Monitoring System (L/LMS) and Lender Portal. L/LMS enables SBA to track and analyze SBA Lender performance. SBA may use L/LMS as the primary means of reviewing lower dollar/risk SBA Lenders. For higher dollar/risk SBA Lenders, SBA may use L/LMS to assist in prioritizing, planning, and conducting more in-depth reviews and to monitor SBA Lenders between more-in-depth reviews.

SBA communicates lender performance to individual SBA Lenders using SBA's Lender Portal. Lender Portal data includes both summary performance and credit quality data. The Lender Portal allows an SBA Lender to view its own performance data, including but not limited to the following:

- i. Quarterly Lender Risk Ratings (LRR or LPR) – “1” through “5” with a risk rating of “1” generally reflective of lower risk to SBA, and “5” generally reflective of greater risk to SBA, based upon the SBA loan portfolio credit quality and other risk and program integrity related factors. SBA may consider rapid growth that may skew metrics and other factors in considering a Lender’s risk. See 13 CFR § 120.10 (Risk Rating definition); 13 CFR § 120.1015; and Risk Rating Notices at 75 FR 9257 (March 1, 2010), 75 FR 13145 (March 18, 2010) and 79 FR 24053 (April 29, 2014).
- ii. PARRiS or SMART Score – Quantitative risk factors are benchmarked against risk tolerance levels established by SBA to produce a risk score. Appendix 3 shows a sample PARRiS Scorecard with Benchmarks and PARRiS risk indicators (“Indicators”). Appendix 4 shows a sample SMART Scorecard with Benchmarks only as SMART does not currently have Indicators.

SBA’s Lender Portal also allows an SBA Lender to view peer group and portfolio averages for most of the metrics. For more information on the Lender Portal, see SOP 50 10.

See also CFR § 120.1025 on Monitoring in general.

- c. External information sources available for monitoring.
 - i. Call Reports of federally regulated Participants reviewed for capital sufficiency and other measures.
 - ii. Other publicly available financial information compiled on federally-regulated Participants (e.g., Financial information services data, IRS Form 990s).
 - iii. U.S. Securities and Exchange Commission (SEC) reports for publicly traded Participants.
 - iv. Audited financial statements, when available or required.
 - v. Federal and state regulatory issuances (e.g., Orders, Consent Agreements, Memorandums of Understanding (MOUs) if available, etc. for information regarding solvency, commercial lending, as well as management and internal controls).
 - a) Participants that demonstrate weaknesses as identified (i) usually in a public document by a federal/state regulator (e.g., Cease and Desist Order or Agreement) or (ii) by its primary auditor (e.g., in a Going Concern Opinion) receive additional monitoring and review

including, but not limited to, monitoring of Secondary Market activities.

- vi. Federal and/or State regulatory examinations, if available.
 - vii. Any other relevant external information that may affect the risk position of SBA will be considered (e.g., court filings, criminal proceedings, news, publications).
- d. Risk-Based Review/ Exam Protocols
- SBA has established a Risk-Based Review (“RBR”) Protocol for Participants. In general, SBA’s RBR protocol for Participants features the following levels of review:
- i. Federally Regulated 7(a) Lenders
 - a) Lender Portal
 - b) Desktop Review/Analytical Review
 - c) Targeted Review
 - d) Limited Scope Review
 - e) Full Scope Review
 - f) Delegated Authority Review
 - g) Other Reviews (e.g., Secondary Market Sales Evaluation Loan-By-Loan Reviews)
 - ii. SBA Supervised Lenders
 - a) Lender Portal
 - b) Desktop Review/ Analytical Review
 - c) Targeted Review
 - d) Safety and Soundness Exam
 - e) Delegated Authority Review
 - f) Annual Report Review (See also 13 CFR § 120.464(a)(1))

- g) Quarterly Condition and Certification of Capital Compliance Review (See also 13 CFR § 120.462 and § 120.464(a)(2))
 - h) Other Reviews
 - iii. CDCs
 - a) Lender Portal
 - b) Desktop Review/Analytical Review
 - c) Targeted Review
 - d) Full Review
 - e) Corrective Action Testing Review
 - f) Delegated Authority Review
 - g) Annual Report Review (See also 13 CFR § 120.830)
 - h) Other Reviews
 - iv. Intermediaries
 - a) Site Visit/Virtual Reviews

See 13 CFR § 120.1050; SOPs 51 00 and 52 00; and SBA Notices 5000-1332, Revised Risk-Based Review Protocol for SBA Operations of Federally Regulated 7(a) Lenders (December 29, 2014); 5000-1351, PARRiS Risk-Based Review – Revised Terminology (September 11, 2015); 5000-1397, Updated PARRiS Methodology for Oversight of SBA Operations of Federally Regulated 7(a) Lenders (November 8, 2016); 5000-1348, Revised Risk-Based Review Protocol for Certified Development Companies (August 5, 2015); 5000-1398: Updated SMART Methodology for Oversight of CDCs (November 9, 2016); 5000-1940, Revised Risk-Based Review/Examination Protocol for SBA Supervised Lenders (January 18, 2017); as updated from time to time.

- e. Other reviews available for monitoring include, but are not limited to:
 - i. All Participants
 - a) Monitoring of specific performance measures (performance measures review) (e.g., loss rates, growth, trend analysis).

- b) Systemic monitoring assessment that identifies and evaluates the risk characteristics of certain types of Participants.
- c) Agreed Upon Procedures Reviews (AUP) performed by third-party practitioners upon which SBA and the Participants agree, who follow review protocol as prescribed by SBA. For example, to ascertain SBA Loan Program Requirements compliance for smaller Participants that are not subject to in-depth reviews.
- d) Other Self-Assessments – including, but not limited to, Independent Loan Reviews for CDCs and SBA Supervised Lenders. Generally, case-by-case.
- e) Reviews/Monitoring of SBA Lender Agent Activity
 - i. Review of SBA Lender Management and Oversight of Agent Activity. SBA expects an SBA Lender to conduct robust comprehensive and appropriately documented due diligence and ongoing risk management of each of the institution’s third-party service providers that support critical SBA lending activities. An SBA Lender’s risk management process may include, for example, assessing the quantity of risk posed to the institution by use of the third-party service provider and the ability of the institution to monitor and control risk; contract structuring and review; ongoing benchmarking of service provider performance; and monitoring the third party's actions on behalf of the SBA Lender for compliance with applicable laws and regulations. SBA may review SBA Lender risk management of Agent activity through reviews. For purposes of this provision, the term “third-party services provider” or “Agent” means all parties included in the definition of “Agent” in 13 CFR Part 103 that assist the 7(a) Lender or CDC with making, servicing, liquidating, or litigating their SBA business loans (e.g., lender service providers, consultants, brokers/referral agents). See 85 FR 14772, 14776 (March 16, 2020).
 - ii. Monitoring/Analysis of Agent Performance. SBA may analyze performance of loans associated with Agents and with the SBA Lenders they support to assist in identifying higher risk Agents.
- ii. Federally Regulated 7(a) Lenders
 - a) Preferred Lender Program (PLP) annual assessments (statutorily mandated for all PLP lenders) which may take the form of Full

Reviews, Delegated Authority Reviews and/or a systematic monitoring assessment, as applicable per fiscal year.

- b) Secondary Market Sales Evaluation Loan by Loan Review.
- iii. SBA Supervised Lenders (7(a) Program)
 - a) Preferred Lender Program (PLP) annual assessments. See above.
 - b) Monitoring of capital levels.
 - c) Secondary Market Sales Evaluation Loan by Loan Review.
- iv. CDCs
 - a) Bureau of Premier Certified Lender Program (PCLP) Oversight LLRF monitoring. See 13 CFR § 120.1005.
 - b) Monitoring capital levels.
- v. Intermediary
 - a) Monitoring capital levels.
 - b) Monitoring collateral coverage.
 - c) Intermediary loan repayment monitoring (monthly).
 - d) SBA conducts periodic reviews either on-site or done virtually.
- f. SBA may utilize a Targeted Review or Evaluation with the scope focused on a problematic issue. For example:
 - i. Where information suggests a serious deficiency in a narrow area (e.g., enforcement order of other regulators);
 - ii. Where the circumstances warrant, as determined by SBA (generally a risk related or program integrity matter (e.g., high losses or purchase rate, early defaults, deficiencies identified in Secondary Market loan-by-loan reviews, indications of deficiencies in technical assistance));
 - iii. For Participants in a new SBA program to identify best practices; or
 - iv. For specifically defined purposes based on other monitoring information and/or to ensure program compliance.

4. Reports

In general, SBA will provide a Participant a copy of SBA's written Review/Exam Report (Report) which may include Findings, Corrective Actions Required and recommendations within 60 business days of concluding its formal review or analysis. If SBA expects to submit the Report after the end of the 60-day period, it will notify Participant of the expected date and the reason for the additional time. Each director or manager must become fully informed of the Report contents. See 13 CFR § 120.1055(a).

5. Corrective Action Assessments

In Reports or through notices, SBA may issue Corrective Actions Required to correct Findings (deficiencies or exceptions) identified. See 13 CFR § 120.1055(a).

A Participant must respond in writing within 45 business days of email receipt of such Report or notice unless SBA notifies Participant of a different timeframe.⁹ The response must include a corrective action plan with details on actions Participant will take to address each Finding and Corrective Action Required.

A Participant must implement all Corrective Actions within 90 calendar days of the date of email receipt of the Report or notice unless SBA provides written notice of another timeframe. See 13 CFR § 120.1055(b).

After receiving Participant's response, SBA generally will conduct a Corrective Action Required Assessment (CARA) and notify Participant whether its plan/actions are satisfactory, not satisfactory, or SBA requires additional information. See 13 CFR § 120.1055(c).

SBA may conduct a Targeted Review to confirm Participant implemented its Corrective Actions. The Corrective Action process is a key tool for bringing Participants into compliance and limiting agency and Participant risk.

6. Timing and Frequency of Monitoring

Monitoring is an on-going process. Generally, Participants with higher risk characteristics are monitored more intensively, and with higher level of direct interaction.

The tables below provide a summary guide for SBA risk-based monitoring actions of 7(a) Lenders, CDCs, and Intermediaries.

⁹ SBA, in its discretion, may notify a Participant of a (i) shorter timeframe (e.g., if deficiencies are few in number but so significant that delay could cause losses to SBA or Participant - when a Participant is making ineligible loans) or (ii) a longer timeframe (e.g., when Participant's management is in transition or until after a Participant attends a Headquarters meeting on significant Findings and Corrective Actions). 85 FR 14772, 14775 (March 16, 2020).

Tables of Monitoring Actions

SBA 7(a) Lenders Risk Based Monitoring Chart

Types of Monitoring	Federally Regulated 7(a) Lenders	Non-Federally Regulated Lenders (NFRLs)	Small Business Lending Companies (SBLCs)
L/LMS – quarterly off-site review	Applicable	Applicable	Applicable
Loan Payment Reporting (e.g., SBA Forms 1502 and 179)	Applicable	Applicable	Applicable
Delegated Authority Review	Applicable	Applicable	Applicable
Performance Measures Review	Applicable	Applicable	Applicable
Other External Info as Available	Applicable	Applicable	Applicable
Call Reports	Applicable	Not Applicable	Not Applicable
Quarterly Condition Reports	Not Applicable	Applicable	Applicable
Capital Certification	Not Applicable	Applicable	Applicable
Annual Reports	Not Applicable	Applicable (Audited)	Applicable (Audited)
Other Reports (e.g.120.464) ¹⁰	Discretionary	Discretionary	Discretionary
Systematic Off-Site Monitoring Assessment	Discretionary, higher risk	Applicable	Applicable
On-Site Review	Discretionary (Higher Risk)	Discretionary (As Needed)	Discretionary (As Needed)
Safety and Soundness Exam	Not Applicable	Discretionary (Higher Risk)	Applicable ¹¹
Agreed Upon Procedures Review	Discretionary (As Needed)	Discretionary (As Needed)	Discretionary (As Needed)
Targeted Review, On-Site or Off-Site	Discretionary (As Needed)	Discretionary (As Needed)	Discretionary (As Needed)

¹⁰ 13 CFR § 120.464 also references some additional reports triggered by certain circumstances.

¹¹ Other Regulated SBLCs could have an SBA review instead of safety and soundness exam.

Certified Development Companies (CDCs) Risk-Based Monitoring Chart

Types of Monitoring	
Performance Measure Reviews	Applicable
L/LMS – Quarterly Off-Site Review	Applicable
Bureau of PCLP LLRF Monitoring	Applicable
Delegated Authority Review	Applicable
Annual Reports	Applicable (Audited - As Needed)
Agreed Upon Procedures Review	Discretionary (As Needed)
Desktop/ Analytical review	Discretionary (As Needed)
Targeted Reviews	Discretionary (As Needed)
Full Scope Reviews	Discretionary (As Needed)
Corrective Action Testing Reviews	Discretionary (As Needed)
Other Reports (e.g., 120.830(g))	Discretionary (As Needed)
Systematic Off-Site Monitoring Assessment	Discretionary (Higher Risk)

Intermediary Risk-Based Lender Monitoring Chart¹²

Types of Monitoring	
MPERS Loan Performance Reports (monthly)	Applicable
Quarterly MRF and LLRF (Loan Loss Reserve Fund) Reports with Bank Statements	Applicable
Annual Site Visits (conducted virtually or on-site)	Applicable
Technical Assistance Report (Quarterly)	Applicable
Annual Audit Reports	Applicable
Recovery Act Quarterly Report to FederalReporting.gov	Applicable
Targeted off-site review	Discretionary (As Needed)
Site Reviews	Discretionary (As Needed)
Agreed Upon Procedures Review	Discretionary (As Needed)
Targeted Site review	Discretionary (As Needed)
Other Reports	Discretionary (As Developed by SBA)

¹² Monitoring, site reviews and technical assistance oversight to be coordinated by OCRM with OFA and District Offices.

Chapter 3: OCRM Increased Supervision of Participant's SBA Operation

1. Overview and General Policy

- a. Increased Supervision of a Participant's SBA operations may be applicable when, for example:
 - i. Monitoring identifies weakness or a higher lender risk level (e.g. unacceptable 5-Year Cumulative Net Yield, 12-Month Default Rate, elevated Early Default Rate, Less Than Acceptable with Corrective Action Review/ Exam assessment, Order or Agreement by Federal Financial Institution Regulator);
 - ii. Close supervisory attention, monitoring, and modification of Participant conduct or processes is necessary, as determined by SBA (e.g., to correct significant noncompliance that may negatively impact the Participant's SBA operations and to avoid unnecessary losses);
 - iii. A recommendation for corrective action solution requires written communication to Participant management (e.g., Board of Directors (BOD) or SBA department management) regarding weaknesses and risks identified; and/or
 - iv. Management and/or BOD demonstrate unwillingness or inability to implement its corrective action plan.

2. Determining Level of Increased Supervision

- a. Supervisory responses are tailored to Participant responses and issues observed and may be conducted by application of multiple types of Increased Supervision concurrently. Supervisory responses are designed to improve or modify Participant performance (numerical or qualitative improvement) to conform to SBA Loan Program Requirements.
- b. Factors (as considered by SBA based on expertise, judgment, and discretion), include but are not limited to:
 - i. Nature, extent (e.g., frequency, breadth) and severity of problems and weaknesses (may include consideration of dollar magnitude of risk and program integrity);
 - a) SBA may also consider the level of involvement in various programs or other Participants.
 - ii. Condition and size of the SBA loan portfolio (both current and projected);

- iii. Ability and willingness of the Participant to correct in a timely manner;
- iv. Level of BOD and management commitment to correct the identified problems and weaknesses within an appropriate time frame;
- v. Responsiveness of the Participant in determining which type of Increased Supervision should be undertaken or whether SBA will take enforcement action and the severity of that action; and
- vi. Evidence of Increased Supervision conducted, any earlier enforcement actions, failure to comply with the Increased Supervision or earlier enforcement action, and the consequences for the Participant for the failure to comply is an important part of establishing the record for more severe subsequent actions.

3. Types of Increased Supervision

Below are examples of types of Increased Supervision SBA may undertake and some circumstances that may lead to them. If Increased Supervision is undertaken, the Participant will generally receive written notification of the action, including the rationale.

- a. Lender Risk Rating (LRR) downgrade may occur due to the following:
 - i. Federal regulator issues an Order or Consent Agreement affecting capital or commercial lending issues.
 - ii. Going Concern opinion issued by independent auditor.
 - iii. Any identified condition that affects capital, solvency, or prudent commercial lending ability, including but not limited to rapid growth, early loan default trends, and continued poor performance.
 - iv. Substantially worse "5-Year Cumulative Net Yield", as defined by SBA in SBA's Lender Portal.
 - v. Other documented reasons that SBA may identify as part of its supervisory responsibilities. See also Risk Rating Notices.
- b. Secondary Market Sales Evaluation
 - i. When an SBA Lender is subject to a Cease & Desist Order, Consent Agreement affecting capital or commercial lending issues, Going Concern Opinion matter, or other supervisory action that cites unsafe and unsound banking practices or other items of concern to SBA and its potential risk to SBA through loan sales.

- a) Any 7(a) Lender that intends to sell in the Secondary Market must notify SBA within five business days (or as soon as practicable thereafter) of the issuance of any such action or opinion, including providing copies of the relevant documents to SBA for review, prior to negotiating secondary market sales.
 - b) SBA will evaluate the additional risk associated with the 7(a) Lender's Secondary Market sales in determining whether to provide SBA's prior written consent to a Secondary Market sale. SBA may require a lender to submit its loans to SBA for review prior to negotiating sale (i.e., Secondary Market Sales Evaluation Loan-by-Loan review); require that financial assurances be provided to cover the potential losses that may occur from repairs and denials of SBA loan Guarantees; or take other action to facilitate the prudent administration of the Secondary Market. Any evaluation performed is solely for SBA purposes and should not be relied upon by others.
 - i. SBA may assess fees in conjunction with Secondary Market Sales Evaluation Loan-by-Loan Reviews. See Chapter 5 on Lender Oversight Fees.
 - c) The Director – Office of Financial Assistance (D/FA) and Director – Office of Credit Risk Management (D/OCRM), together, may temporarily suspend for up to 120 days and/or revoke for up to two years Lender's Secondary Market Sales authority in accordance with 13 CFR § 120.660. A revocation may follow an initial period of suspension.
- c. Shortened Renewal of SBA Lender Delegated Authority. SBA may grant a shortened delegated authority renewal period for an SBA Lender exhibiting increased risk. See 13 CFR § 120.440, § 120.840-841, and § 120.845-846 and SOP 50 10 for SBA Lender delegated authority criteria and applicable requirements. See also Delegation of Authority No. 12-G, Revision 1, Amendment 1, published at 83 FR 48681 (September 26, 2018), as amended from time to time, for approving official for delegated lending authority.

Generally, SBA considers the following factors:

- i. Marginally Acceptable underwriting, closing, servicing, or liquidation of SBA loans. SBA may look at the training, experience, and depth of SBA Lender staff and management. SBA may look at record of noncompliance with SBA Loan Program Requirements for underwriting, closing, servicing, and liquidating SBA loans. See 13 CFR § 120.440(a)(1), § 120.841(a) and (d), § 120.845(d)(2), and § 120.846;

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- ii. Noncompliance (material but generally not severe) with SBA Loan Program Requirements. See 13 CFR § 120.440(a)(3), § 120.841(d), and § 120.846(a)(3);
 - iii. If a Participant is identified as high risk by SBA based on performance (e.g., based on Lender Risk Rating or Lender Purchase Rating of 4 or 5, PARRiS or SMART score, industry concentration rates, high Early Default Rates, rapid portfolio growth, high 24-Month Repair/Denial Rate, weak financial condition evidenced for example by loss trends or declining net assets). See 13 CFR § 120.440(a)(2) and (6) citing § 120.410(a)(2), and § 120.841(c);
 - iv. If a Participant is already under Increased Supervision (e.g., because Participant is under Informal Enforcement). See 13 CFR § 120.440(a)(5);
 - v. If a Participant has received a Marginally Acceptable with Corrective Action Required or Less than Acceptable with Corrective Action Required Risk-Based Review assessment and identified deficiencies have not been resolved to SBA's satisfaction. See 13 CFR § 120.440 (a)(2) citing § 120.410(a)(2) and § 120.841(c);
 - vi. Failure to meet a minimum number of SBA loans approved and size of the portfolio. See 13 CFR § 120.440(a)(6), § 120.841(b); and/or
 - vii. Such other factors as determined by SBA.
- d. Non-renewal of SBA Lender Delegated Authority. SBA may determine not to renew delegated authority at its expiration date for any applicable SBA Lender. See 13 CFR § 120.440, § 120.840-841, and § 120.845-846 and SOP 50 10 for SBA Lender delegated authority criteria and applicable requirements.

In addition to the factors stated above for shortened renewals, SBA generally considers the following factors:

- i. Less than Acceptable underwriting, closing, servicing or liquidation of SBA loans. SBA may look at the training, experience, and depth of the SBA Lender staff and management. SBA may look at record of noncompliance with SBA's Loan Program Requirements for underwriting, closing, servicing and liquidating SBA loans. See 13 CFR § 120.440(a)(1), § 120.841(a) and (d), § 120.845(d)(2), and § 120.846;
- ii. A Marginally Acceptable with Corrective Actions Required or Less Than Acceptable with Corrective Action Required Risk-Based Review assessment that has Findings that have not been resolved to SBA's

satisfaction. See 13 CFR § 120.440(a)(2) and (4) citing § 120.410(a)(2), and § 120.841(c);

- iii. Lack of Satisfactory or Good Standing status with its state regulator, Federal Financial Institution Regulator, or SBA, as determined by SBA (See SOP 50 10 for details) and as evidenced by an order or consent agreement by its primary regulator or the presence of other regulatory concerns as determined by SBA. See 13 CFR § 120.410(e) and (f), § 120.440(a)(5), § 120.841(d)(5), and § 120.816(a) and (b);
- iv. A Going Concern Opinion issued by an independent public accountant. See 13 CFR § 120.420(f)(2), § 120.440(a)(6), § 120.825, § 120.841(d)(6);
- v. Less than satisfactory SBA performance as determined by SBA (e.g., Metrics that reflect high risk performance, that may be significantly worse than peer groups or portfolio averages. Metrics might include, for example, losses (e.g., 5-Year Cumulative Net Yield, Early Default Rate, 12-Month and 5-Year Default Rate, Stressed Loan Rate, 24 Month Repair/ Denial Rate, Percentage of Gross Loan Dollars in Active Default). SBA, however, recognizes that poor performance may be masked by rapid growth or other factors. See 13 CFR § 120.440(a)(2) and (a)(6) citing § 120.410(a)(2), and § 120.841(c);
- vi. Failure to satisfactorily resolve all required Corrective Actions as determined by SBA. See 13 CFR § 120.440(a)(4);
- vii. Significant or material noncompliance with SBA Loan Program Requirements (e.g., SBA Form 1502 reporting deficiencies, untimely resolution of fees and invoices, failure to properly maintain LLRF when required). See 13 CFR § 120.440(a)(3), § 120.841(d), § 120.846(a)(2) and (3);
- viii. Significant program integrity concerns as determined by SBA. See 13 CFR § 120.440(a)(6), § 120.841(d)(5) and (7);
- ix. A proposed or implemented SBA enforcement action. See 13 CFR § 120.440(a)(5);
- x. Other risk-related factors as determined by SBA (e.g., an officer or employee under investigation or indictment for felony, fraud, etc., an identified condition that materially affects capital, solvency or prudent commercial lending ability). See 13 CFR § 120.420(f), § 120.440(a)(6), § 120.841 and § 120.846; and/or
- xi. Any other basis under law or under SBA Loan Program Requirements.

In addition to the items above, paragraphs "d" through "i" are additional types of Increased Supervision.

4. Headquarters Meeting

SBA may require a Participant's senior management officials to attend an in-person or virtual meeting with SBA officials at SBA Headquarters to discuss significant concerns about SBA loan program noncompliance, other risk or program integrity issues, and the Participant management's plan for effective and timely resolution of the issues.

5. Increased Reporting

- a. When weaknesses or findings (generally identified in reviews or exams) are of a nature not easily or quickly resolved (e.g., with change of personnel, necessary policy or procedure changes).
- b. Long-term approach to solution requires continued reporting on milestones and achievements.
- c. Confidence in the BOD and management is vital to acceptance by SBA of such an understanding.
- d. Interim evaluations by OCRM may be necessary to determine level of achievement.
- e. Participant may receive periodic written correspondence, such as letter(s), emails or other correspondence informing them of status and any continued required reporting, information, and/or other responses.

6. Capital Restoration Plan (Only SBA Supervised Lenders)

An SBA Supervised Lender must file a written capital restoration plan with SBA within 45 days of the date that the SBA Supervised Lender provides notice to SBA under 13 CFR 120.462(d) or receives notice from SBA (whichever is earlier) that the SBA Supervised Lender has not met its minimum capital requirement. 13 CFR § 120.462(e).

7. Accelerated Scheduling of Review/ Examination

Often takes the form of a Targeted Review or site visit.

8. Watch List

- a. Identifies higher-risk Participants that warrant elevated oversight attention. SBA will determine the general parameters that demonstrate such higher risk. For example; (i) significant noncompliance or program integrity concern; (ii) Federal Financial Institution Regulator order or consent agreement addressing capital, asset

quality, or commercial lending; (iii) Less than Acceptable or in some cases Marginally Acceptable with Corrective Action Required Review assessment; or (iv) identified condition that could affect capital, solvency or prudent commercial lending ability (e.g., rapid growth, early loan default trends, industry concentrations).

- b. Other reasons, as determined by SBA on a case-by-case basis.

9. Proceedings Resultant from Increased Supervision

- a. Termination of Increased Supervision. Satisfactory resolution, as determined by SBA in its discretion, of any issue triggering Increased Supervision (e.g., Regulatory Order dismissed, Corrective Actions resolved to SBA's satisfaction, etc.).
- b. Initiation of Enforcement Action(s)

For example:

- i. Participant's failure to correct a deficiency or reduce risk to an acceptable level within appropriate timeframe, as determined by SBA;
- ii. SBA's confidence is not high in the Board or management's willingness to correct;
- iii. Uncertainty regarding Participant ability/competency to complete the remedial measures; and/or
- iv. Other factors or other negative indicators listed in Chapter 4.

Chapter 4: OCRM Enforcement

1. Overview and General Policy

- a. This Chapter, as with the balance of the SOP, is intended to provide general guidance. It is intended to be flexible to consider individual facts and circumstances. It does not mean every consideration factor or step must be applied. SBA will use this guidance along with judgment and Agency discretion. Therefore, this SOP and Chapter are not intended to, do not, and may not be relied upon to create rights, substantive or procedural, for Participants enforceable at law or in any other administrative proceedings against SBA.
- b. OCRM's responsibility for enforcement is to take appropriate enforcement actions as determined by SBA against those Participants that demonstrate unacceptable risk profiles and/or an inability or unwillingness to proactively or timely resolve the issues which create the unacceptable risk profile.
- c. Enforcement actions are taken to achieve the outcomes of:
 - i. Limiting Agency risk where it exceeds risk tolerance levels.
 - ii. Communicating problems and weaknesses to the highest level of Participant's management; and/or
 - iii. Satisfactorily resolving the risk factors that created the need for an enforcement action.
- d. Strategy for enforcement actions, in general, is:
 - i. Progressive use of available enforcement options;
 - ii. Flexibility in tailoring the enforcement action to the specific Participant situation;
 - iii. Designed to correct deficiencies and return Participant's portfolio to safe and sound condition and/or limit risk; and
 - iv. To achieve the desired outcome in a reasonable timeframe.
- e. A supervisory or enforcement action in one SBA program may affect a Participant's participation in another SBA program.

2. Determining Severity of Enforcement Action

a. Quantitative considerations

- i. Performance measures which demonstrate that a Participant's performance is multiple levels "worse" than portfolio or peer performance;
- ii. A 5-Year Cumulative Net Yield, as defined in SBA's Lender Portal, or other net flow measure that demonstrates a negative impact on SBA programs (e.g., losses);
- iii. Percentage measures which demonstrate poor handling by the Participant of required competencies (e.g., high 24-Month Repair/Denial Rate, high guarantee purchase rate over the last 12 months or by disbursement cohort year, high Early Default Rate); or
- iv. Repeated failures by Participant to comply with applicable laws, regulations, or SBA Loan Program Requirements.

As part of the quantitative considerations, SBA may consider rapid growth or other factors that may mask quantitative risk indicators.

b. Qualitative considerations

- i. Nature, extent (e.g., in frequency and breadth), and severity of SBA Loan Program violations or problems (may include consideration of dollars magnitude of risk);
- ii. Demonstrated commitment and ability of Participant management and Board to correct identified problems within appropriate timeframe;
- iii. History of success implementing corrective actions;
- iv. Previously identified unaddressed problems;
- v. Fraud or false statements or similar indicators;
- vi. Financial condition or insolvency (legal or equitable);
- vii. Other outstanding enforcement actions by SBA or other authority; or
- viii. Other relevant risk or program integrity related concerns, as determined by SBA.

c. Guiding principles in making enforcement decisions

- i. Protecting the integrity of SBA programs and protecting taxpayers from Participants who fail to comply with applicable law, regulations, and SBA Loan Program Requirements.
- ii. SBA's evaluation of the Participant's impact of the identified grounds and the proposed corrective actions on the identified risk to the SBA. Usually, less severe impact will result in less severe enforcement action.
- iii. Ability and willingness of management and/or Board to take immediate action to mitigate the grounds will generally result in a less serious enforcement action, while demonstrated lack of ability or willingness generally dictates more severe enforcement action. Ability and willingness to address issues is also evaluated in terms of level and frequency of past concerns and the Participant's ability and willingness to correct them. For example, repeat finding(s) with no resolution may be considered more significant than first time finding(s), depending upon the nature of the finding(s).
- iv. SBA will generally document such unwillingness or inability in its decision(s) in support of the magnitude of enforcement action(s).
- v. Certain grounds or circumstances dictate immediate enforcement action. This is considered a severe enforcement action, and is generally taken when it is determined by SBA in its sole judgment and discretion that (i) one or more of the grounds in 13 CFR § 120.1400(c) or (f) exist and that (ii) immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity. See 13 CFR § 120.1400(c)(11); 13 CFR § 120.1400(c)(12); 13 CFR § 120.1425(c)(6).
 - a) Situations that may warrant immediate suspension may include, but are not limited to, where there are significant findings relating to the SBA Lender's determination of eligibility (e.g., credit elsewhere; use of proceeds; concerns as to the SBA Lender's financial condition, capital levels, or solvency; an SBA Lender is not licensed; the SBA Lender does not have staff capable of making, servicing, or liquidating loans, as determined by SBA in its discretion; etc.) or on the credit review, or the underwriting, approval, loan servicing and/or liquidation processes; evidence of fraud; significant concerns as to the SBA Lender's financial condition, capital levels, or solvency; relatively high losses; CDC loses nonprofit status; or where an SBA Lender is no longer licensed or lacks staff capable of making, servicing, or liquidating loans, as

determined by SBA in its discretion. See 85 FR 4772 (March 16, 2020).

- d. Mitigating factors that SBA may consider, in its discretion, include, but are not limited to:
 - i. Small portfolio Participants whose performance measures may be unduly affected by one or two poorly performing loans relative to the size of the Participant's total SBA portfolio;
 - ii. Contribution to SBA mission as identified through a demonstrated commitment to credit gap lending and meeting the needs of underserved markets in a manner that does not significantly increase the risk of the Participant's SBA program;
 - iii. Local economic conditions;
 - iv. Concentrations in a sector experiencing an economic downturn;
 - v. Purchase of a failed Participant's SBA portfolio with subsequent adverse effects on the acquiring Participant's Portfolio Performance metrics;
 - vi. Acceptable review/ examination results as determined by SBA;
 - vii. Other actions already taken to limit risk. Examples include, but are not limited to, not using delegated authority to approve applications, no secondary market sales or loans sold are subject to loan-by-loan review; or
 - viii. Other reasons, as determined by SBA on a case-by-case basis.

3. Grounds for Enforcement Actions

- a. Circumstances which demonstrate that the Participant is not in compliance with all terms, conditions, and remedies in SBA Loan Program Requirements.
- b. Ten general grounds for Formal or Informal Enforcement are established in SBA regulations at 13 CFR § 120.1400 and apply to all SBA Lenders, with several additional or specific grounds applicable to certain types of SBA Lenders. See 13 CFR § 120.1400(d) for SBA Supervised Lenders, (e) for SBLC's, and (f) for CDCs.

The ten general grounds, as determined by SBA are:

- i. Failure to maintain eligibility requirements for specific SBA program and delegated authorities. See 13 CFR § 120.1400(c)(1);
 - a) For CDCs, includes failure to receive approval for at least four loans during last two consecutive fiscal years.

- ii. Failure to comply materially with any requirement imposed by SBA Loan Program Requirements, e.g., eligibility requirements, program fee requirements, program reporting requirements. See CFR § 120.1400(c)(2);
 - a) For PCLP CDCs – failure to maintain LLRF as reported on SBA Form 2233.
- iii. Making a material false statement or failure to disclose a material fact to SBA. See 13 CFR § 120.1400(c)(3);
- iv. Not performing underwriting, closing, disbursing, servicing, liquidation, litigation, or other actions in a commercially reasonable and prudent manner. See 13 CFR § 120.1400(c)(4);
- v. Failure within the time specified to correct an underwriting, closing, disbursing, servicing, liquidation, litigation, or reporting deficiency or failure in a material respect to take corrective action after receiving notice from SBA of the deficiency and the need to take corrective action. SBA will consider failure to take corrective action an example of willful violation of SBA Loan Program Requirements (e.g., Act/ regulations). See 13 CFR § 120.1400 (c)(5);
- vi. Engaging in a pattern of uncooperative behavior or taking any action that SBA determines is detrimental to the integrity or reputation of an SBA program, that undermines management or administration of a program, or that is not consistent with standards of good conduct. See 13 CFR § 120.1400(c)(6);
- vii. Repeated failure to correct continuing deficiencies. See 13 CFR § 120.1400(c)(7);
- viii. Unauthorized disclosure of Reports, Lender Risk Rating (LRR), or other Confidential Information, e.g., SBA Supervisory Information, including but not limited to, Small Business Predictive Score (SBPS) loan scores; loan level performance data; and review, examination, and systematic off-site monitoring assessments. See 13 CFR § 120.1400(c)(8); or
 - a) See Chapter 1 section on “Confidential Information” for additional detail.
- ix. Any other reason that SBA determines in its discretion that may increase SBA’s financial risk, e.g., repeated Less than Acceptable Risk Rating (generally in conjunction with other indicators of increased financial risk), Less Than Acceptable review/examination results, failure to properly

oversee Agent activity, operating or other deficiencies that increase SBA's potential risk, or possible fraud. See 13 CFR § 120.1400(c)(9).

- a) In accordance with SBA SOP 50 10, SBA expects SBA Lenders to exercise due diligence and prudent oversight of their third-party vendors (e.g., Lender Service Providers and other Agents), including having written policies governing such relationships and monitoring the performance of their vendors. See also 84 FR 29092, 29095 (June 21, 2019) and 85 FR 14772, 14776 (March 16, 2020).
- x. As otherwise authorized by law. See 13 CFR § 120.1400(c)(10).

See paragraph 2.c.v above for grounds for immediate enforcement action.

- c. Grounds for Formal Enforcement Action established in SBA regulations at 13 CFR § 120.1425 that apply to all Intermediaries, as determined by SBA are:
 - i. Failure to comply materially with any SBA Loan program Requirements. See 13 CFR § 120.425(c)(1);
 - ii. Failure to meet any one of the following performance standards: (1) coverage of service territory (including honoring boundaries); (2) fulfillment of reporting requirements; (3) manage program funds and matching funds in a satisfactory and financially sound manner; (4) communicate and file reports within six months after beginning participation in the program; (5) maintain a currency rate of 85.0 percent or more; (6) maintain a cumulative default rate of 15.0 percent or less; (7) maintain a staff trained in Microloan program issues and SBA Loan Program Requirements; (8) maintain the financial ability to sustain the Intermediary's operations (e.g., adequate capital etc. for operations and to repay the SBA promissory note(s)). SBA may review an Intermediary's financial information and related metrics, such as amount of unrestricted net assets and changes in net assets year-over-year; (9) provide in-house technical assistance to SBA's satisfaction (e.g., maintain required ratio of 1 loan to 30 clients); or (10) close and fund the required number of microloans per year. See 13 CFR § 120.1425(c)(2).
 - iii. See also the grounds listed above in Paragraphs 3. b (v) through (x) for SBA Lenders, including but not limited to, any other reason that SBA determines in its discretion that may increase SBA financial or program risk (e.g., possible fraud). See 13 CFR § 1210.1425(c)(3) to (7).

4. Enforcement Actions

- a. Informal Enforcement Action. Generally used when problems are narrow in scope and are correctable or where violations are less frequent or less severe (but warrant

enforcement), and SBA is confident of Participant's Board and management commitment and ability to correct; or while SBA is more fully assessing risk:

- i. SBA Supervisory Letter.
- ii. Mandatory Training (as distinguished from recommended training, e.g., in a corrective action).
- iii. Board Resolution or Commitment Letter (committing to take corrective action).
- iv. Voluntary Actions (e.g., agreement not to utilize delegated authority or sell loans into Secondary Market).
- v. Other Voluntary Agreements between SBA and Participant. Voluntary Agreements are an efficient and effective means for Participants to work cooperatively with SBA to mitigate risk and resolve significant concerns or deficiencies.¹³
- vi. For Intermediaries, withhold technical assistance grant funds until performance issues are adequately addressed.
- vii. Others, as SBA determines appropriate on a case by case basis.

See also, 13 CFR § 120.1300.

- b. Formal Enforcement Actions. Generally follow Informal Enforcement Actions where (1) grounds under 13 CFR § 120.1400 or § 120.1425 exist and (2) there are significant problems in systems or controls, serious insider abuse or deceptive action, substantial law violation, serious compliance problems, material noncompliance with or insufficient corrective action commitment, fraud or suspected fraud, examiner access refused, or reporting failures, as determined by SBA. SBA may use a Formal Enforcement Action as an initial action based on risk and the frequency or severity of problems and circumstances, as determined by SBA in its discretion.

The following Formal Enforcement Actions apply to SBA Lenders (13 CFR § 120.1500(a)):

- i. Imposition of portfolio guaranty dollar limit. See 13 CFR § 120.1500(a)(1).

¹³ In general, 7(a) Lenders may appeal Informal Enforcement Actions, except Voluntary Agreements, to the appropriate Federal District Court or SBA's Office of Hearings and Appeals within 20 calendar days of the date of the decision. See 13 CFR § 120.1300(c). A 7(a) Lender in voluntarily entering into the agreement is deemed to knowingly agree not to pursue its rights to an appeal under 13 CFR § 120.1300(c).

- ii. Suspension or revocation of delegated authority. See 13 CFR § 120.1500(a)(2).
 - iii. Full or partial suspension or revocation from SBA program or pilot program participation. See 13 CFR § 120.1500(a)(3).
 - a) Partial suspension may include the authority to make, close, service, liquidate, or litigate SBA loans. A 7(a) Lender or CDC suspended from loan making is obligated to maintain all servicing and liquidation activities delegated to it unless otherwise specific in writing by the D/ OCRM. See 15 USC § 657t(g).
 - iv. Immediate suspension of delegated or SBA program authority. See 13 CFR § 120.1500(a)(4).
 - v. Debarment (procedures set forth in 2 CFR). See 13 CFR § 120.1500(a)(5).
 - vi. All other actions available under SBA Loan Program Requirements. 13 CFR § 120.1500(a)(6).
 - vii. All other actions available under law (e.g., enforcement of SBA Loan program Requirements in Federal District Court). SBA specifically reserves the right to proceed against Participants in Federal Court as and when SBA determines that it is in the best interests of SBA programs and in order to protect taxpayers from Participants that fail to comply with applicable law, regulations, and SBA Loan Program Requirements; e.g., actions under 15 USC § 650(c) civil actions against SBLCs, under 15 USC § 634(b)(1) agency authority to sue, under 13 CFR § 120.535(d) loan document assignment when SBA takes over servicing.
- c. 7(a) Lender Specific Formal Enforcement Actions.
- i. Secondary Market Sales Suspension or Revocation (other than 13 CFR § 120.660, temporary suspensions and revocations). See 13 CFR § 120.1500(b)(1).
 - ii. General Civil Monetary Penalties (CMPs) against a 7(a) Lender (maximum amount of up to \$250,000, as amended by Federal Register Notice from time-to-time).

In determining whether and/or what amount to assess, SBA may consider e.g., (1) the gravity (e.g., severity and frequency) of the violation; (2) history of previous violations; (3) financial resources and good faith of 7(a) Lender; and (4) any other matters as justice may require. See 13 CFR § 120.1500(b)(2).

- a) CMPs create a monetary incentive for 7(a) Lenders to comply with SBA Loan Program Requirements. This tool can be particularly effective as a deterrent against financial-related non-compliance (e.g., Lender nonpayment or late payment of amounts it owes to SBA for borrower payments, recoveries received, denials of liability, SBA loan purchase repairs, or fees owed). CMPs may also be warranted in certain critical circumstances (e.g., where there is a violation of an order, directive, or agreement, or where there is fraud). SBA might also use CMPs where there are reporting failures or delays (e.g., for failure to timely submit complete purchase packages following SBA Secondary Market purchase). These examples are not all inclusive. See 85 FR 14772, 14777 (March 16, 2020).
- d. SBA Supervised Lender Specific Formal Enforcement Actions.
 - i. Specific CMPs for Reporting Failures in accordance with 13 CFR § 120.465. See 13 CFR § 120.1500(c)(4).
 - ii. Cease and Desist Order. See 13 CFR § 120.1500(c)(1).
 - iii. Capital Directive (SBLCs only). See 13 CFR § 120.1500(d)(1).
 - iv. Management Suspension or Removal. See 13 CFR § 120.1500(c)(2).
 - v. Civil Action (e.g., to terminate SBLC license). See 13 CFR § 120.1500(d)(2).
 - vi. Receivership. See 13 CFR § 120.1500(c)(3).
 - vii. Increase of minimum capital level (factors and procedures separately set forth in 13 CFR § 120.472 and 473).
 - e. CDC Specific Formal Enforcement Actions
 - i. Require transfer of CDC existing 504 portfolio and associated information (e.g., digitizing format if applicable, software used, etc.), pending applications, and rights associated therewith (including all processing, closing, servicing, late and other fees). See 13 CFR § 120.1500(e)(1).
 - ii. Instructing the Central Servicing Agent (CSA) to withhold the payment of servicing, late, and/or other fee(s) to a CDC. See 13 CFR § 120.1500(e)(2).

- iii. For PCLP CDCs, liquidation of LLRF account, in whole or part, and application of the liquidated funds to any outstanding balance owed to SBA pursuant to the procedures in 13 CFR § 120.847(i).
- iv. Receivership. See 13 CFR § 120.1500(e)(3).

f. Intermediary Formal Enforcement Actions

- i. Suspension (e.g., authority to make service, liquidate, and/or litigate SBA microloans, and imposition of a freeze on MRF and LLRF accounts). See 13 CFR § 120.1540(a).
- ii. Immediate Suspension. See 13 CFR § 120.1540(b).
- iii. Revocation, including:
 - a) Removal from the program;
 - b) Liquidation of the Intermediary's MRF and LLRF accounts by SBA, and application of the liquidated funds to any outstanding balance owed to SBA;
 - c) Payment of outstanding debt to SBA by the Intermediary;
 - d) Forfeiture or repayment of any unused grant funds by the Intermediary;
 - e) Debarment of the organization from receipt of Federal funds until loan and grant repayment are met; and
 - f) Surrender of possession of Intermediary's SBA microloan portfolio to SBA, with the microloan portfolio and all associated rights transferred on a permanent basis to SBA, in accordance with SBA's rights as a secured creditor.

See 13 CFR § 120.1540(c).

- iv. Other actions available under law. See 13 CFR § 120.1540(d).

5. Enforcement Procedures

- a. The Internal responsibilities and decision authorities for both informal and formal enforcement actions, in general, are:
 - i. OCRM Staff, e.g., Financial Analyst, will make the enforcement recommendation.

- ii. A Supervisory Financial Analyst will review the recommendation and concur or non-concur with the enforcement recommendation.
- iii. The Director – Office of Credit Risk Management (D/OCRM) will either approve or not approve Informal Enforcement Actions. If approved, the Participant is notified.
- iv. The D/OCRM will either recommend approval or non-concur with the formal enforcement recommendation except for Agent Suspension or Revocations. If the D/OCRM recommends approval, the recommendation is advanced as set forth in Lender Oversight Delegations of Authority 12-G Revision 1, 79 FR 56842 (September 23, 2014) as revised by Amendment 1, 83 FR 48681 (September 26, 2018) except for Agent Suspension or Revocations.
 - a) Agent Suspension or Revocations. With respect to matters arising under the Agency’s financial assistance programs, authority is delegated to the D/OCRM to suspend or revoke the privilege of any Agent to conduct business with SBA under 13 CFR Part 103. This delegation may not be re-delegated. See also Para. 7 of this chapter.
- v. The D/OCRM formal enforcement approval recommendations are presented to the Lender Oversight Committee (LOC) (See 13 CFR § 120.10 for the definition).
 - a) The LOC approves, disapproves, or modifies the D/OCRM recommendations of final Formal Enforcement Action decisions for Participants except those under Small Business Act Sections 23(b) (directive to increase capital for SBLC), 23(d) (revocation or suspension of loan authority for SBA Supervised Lenders), and 23(e) (Cease and Desist Order for SBA Supervised Lenders).
 - i. The Associate Administrator – Capital Access (AA/CA) approves or does not approve capital directive enforcement actions (e.g., Small Business Act Section 23(b) action).
 - ii. LOC votes to recommend Small Business Act Sections 23(d) and 23(e) actions or another action or to vote to not recommend such actions to the Administrator.

Support for decisions will be documented (e.g., with presentation package, short-form minutes, or other documentation).

- b) Enforcement action approval/non-approval may be re-delegated except for SBLC capital directives, SBA Supervised Lender

suspension/revocations and cease and desist orders are in accordance with Small Business Act Sections 23(b), (d), and (e), which are discussed above in 5. a. i. e).

- c) LOC may establish subcommittees (e.g., to approve final decisions on certain enforcement actions, promote consistency in enforcement actions, or to work up enforcement action cases).
- d) LOC oversees supervision and enforcement efforts by OCRM to promote consistency and sufficiency of Participant oversight efforts.

See also 15 USC § 657u and Delegations of Authority 12-G, Rev. 1., Para I.B., 79 FR 56842 (September 23, 2014) as revised by Amend. 1, 83 FR 48681 (September 26, 2018), as amended from time to time.

- b. The external Formal Enforcement Action procedures (excluding 13 CFR Part 103 actions).
 - i. In general, procedures for Formal Enforcement Actions against Participants and other regulated Small Business Lending Companies, Management Officials, and Other Persons under Section 23 of the Small Business Act, are governed by and found in 13 CFR § 120.1600.

SBA will generally follow the procedures in subsection (a) of 13 CFR 120.1600 except for certain enforcement actions against SBA Supervised Lenders, Management Officials, and Other Persons as set forth in subsections (b) and (c) or in the event SBA determines that it is appropriate to seek enforcement under any applicable section of the Small Business Act or any other applicable law or regulation.

External Formal Enforcement Action procedures are summarized as follows, in general:

- a) Notice. Notice procedures are set forth in 13 CFR § 120.1600(a). A Formal Enforcement Action under subsection (a) generally begins with a written notice, which identifies the Formal Enforcement Action SBA is initiating, when the Formal Enforcement Action takes effect, a reasonably detailed recitation of the facts underlying the action, how to contest the Formal Enforcement Action, and copies of the pertinent documents, if required under 13 CFR § 120.1600(a)(1)(ii).
- b) Opportunity to Object. The Participant may object to a Formal Enforcement Action by filing a written objection with the appropriate SBA official identified in the notice within the time limits established by SBA. See 13 CFR § 120.1600(a)(2).

- c) Requests for Additional Information. SBA may request further information from a Participant. See 13 CFR § 120.1600(a)(3)(iii).
- d) Agency Decision. SBA will issue a written notice of final Agency decision to a Participant. The notice of final Agency decision will comply with the applicable provisions of 12 CFR § 120.1600(a)(3) and (4).
- e) Appeals. For Participants, appeals of the final Agency decision generally may only be filed in the appropriate Federal District Court. Except for decisions against SBA Supervised Lenders that are covered by procedures in 13 CFR § 120.1600(b) or (c) or 13 CFR § 120.465, 7(a) Lenders may alternatively appeal such decisions to SBA's Office of Hearings and Appeals (OHA) within 30 calendar days of the date of the decision. The enforcement action will remain in effect pending resolution of the appeal, if any. In the event of such an appeal, OHA will issue its decision in accordance with 13 CFR Part 134. See 13 CFR § 120.1600(a)(5).
- f) Emergency Actions. SBA will take emergency actions as necessary to protect the Agency from unnecessary risk. SBA may go directly to the most severe formal actions as appropriate given the facts and circumstances being considered.
- g) SBA Supervised Lenders (SBLCs and NFRLs). There are specific procedures for certain enforcement actions as detailed in 13 CFR § 120.1600(b) and (c). These certain types of Formal Enforcement Actions include (1) suspension, revocation or cease and desist orders against SBA Supervised Lenders or Management Officials, or Other Persons; (2) immediate suspension or immediate cease and desist order against SBA Supervised Lenders; (3) removal of management official; (4) appointment of a receiver for, or certain transfers of assets or servicing rights of SBA Supervised Lenders; (5) imposition of a civil penalty for reporting against SBA Supervised Lenders under 13 CFR § 120.465; and (6) issuance of capital directives against SBLCs.

SBA also reserves the right to invoke any applicable section of the Small Business Act or any other applicable law if SBA determines it is appropriate in fulfilling its duties under the Small Business Act.

- h) Consultation with Office of General Counsel (OGC). Enforcement actions involve complex legal issues. The General Counsel and his/her staff have primary responsibility at SBA for interpretation of applicable laws and regulations, and the drafting and review of legal documents related to oversight and enforcement actions. OCRM must seek assistance from OGC on the interpretation of regulations and in determining the appropriate enforcement action and procedure, as necessary.
 - i) Debarments. The procedures described in this paragraph “b” do not cover debarments. Debarment procedures are generally government-wide and covered in 2 CFR Parts 180 and 2700 and 48 CFR Part 9.4.
- c. OCRM may terminate an enforcement action if it determines, in its discretion, that the Participant has complied with the actions and requirements established by SBA and the risk to the Agency or integrity of the loan program has been sufficiently mitigated. Participants generally will receive written notice of the termination of the enforcement action.
- d. OCRM will track all enforcement actions, their status, and final disposition.
- e. The LOC will provide quality assurance through establishment of guidance to OCRM and based on OCRM reporting enforcement actions taken and their status.
- f. Fraud or suspected fraud against the Government, a Participant, or other governmental agents must be referred to the Office of Inspector General (OIG). Referral of a matter to the OIG is appropriate if there are facts that show or that give rise to a reasonable concern that a party engaged in misrepresentation of material facts with the intention of causing, or which actually caused, the Government or its agents (such as SBA Lenders issuing guaranteed loans) to take an action or to refrain from taking an action.

6. Receiverships

- a. SBLCs (except Other Regulated SBLCs as defined in 13 CFR § 120.10)
 - i. Upon SBA’s determination that grounds for an enforcement action against an SBLC (except an Other Regulated SBLC) exist under 13 CFR § 120.1400, SBA may, pursuant to 13 CFR § 120.1500(c)(3), apply to a Federal court for the appointment of a receiver. Typically, SBA will use its receivership authority as a remedy of last resort. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR § 120.1500.
 - ii. SBA will review the facts and circumstances of the enforcement action when deciding whether or not to seek the appointment of a receiver. SBA will also make a determination regarding the scope of the receiver’s duties and powers.

In deciding whether to seek a receiver and in determining the scope of a receivership, SBA will consider the following:

- a) The existence of fraud or false statements;
 - b) An SBLC's refusal to cooperate with SBA enforcement action instructions or orders;
 - c) An SBLC's insolvency (legal or equitable); and/or
 - d) The dollar amount of any claims SBA may have against the SBLC.
- iii. Under 13 CFR § 120.1400(a)(2), an SBLC (except an Other Regulated SBLC) that makes SBA 7(a) guaranteed loans after October 20, 2017, has consented to SBA's right to seek a receivership in appropriate circumstances. Such consent is deemed to apply only if the SBLC makes 7(a) loans on or after January 1, 2018. The SBLC's consent does not in any way preclude the SBLC from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. An SBLC's consent to receivership as a remedy does not require SBA to seek the appointment of a receiver in any particular SBA enforcement action.

b. NFRLs

- i. Upon SBA's determination that grounds for an enforcement action against a NFRL exist under 13 CFR § 120.1400, SBA may, pursuant to 13 CFR § 120.1500(c)(3), apply to a Federal court for the appointment of a receiver. Typically, SBA will use its receivership authority as a remedy of last resort. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR § 120.1500.
- ii. SBA will review the facts and circumstances of the enforcement action when deciding whether or not to seek the appointment of a receiver. SBA will also make a determination regarding the scope of the receiver's duties and powers, including whether the receivership will be limited to the NFRL's assets related to the SBA loan programs. In deciding whether to seek a receiver and in determining the scope of a receivership, SBA will consider the following:
 - a) The existence of fraud or false statements;
 - b) A NFRL's refusal to cooperate with SBA enforcement action instructions or orders;
 - c) A NFRL's insolvency (legal or equitable);

- d) The size of the NFRL's SBA loan portfolio(s) in relation to other activities of the NFRL;
 - e) The dollar amount of any claims SBA may have against the NFRL; and/or
 - f) The existence of other non-SBA enforcement actions against the NFRL.
 - iii. Under 13 CFR § 120.1400(a)(2), a NFRL that makes 7(a) guaranteed loans after October 20, 2017, has consented to SBA's right to seek a receivership in appropriate circumstances. Such consent is deemed to apply only if the NFRL makes 7(a) loans on or after January 1, 2018. The NFRL's consent does not in any way preclude the NFRL from contesting whether or not SBA has established the grounds for seeking the remedy of receivership. A NFRL's consent to receivership as a remedy does not require SBA to seek the appointment of a receiver in any particular SBA enforcement action.

c. CDCs

- i. Upon SBA's determination that grounds for an enforcement action against a CDC exist under 13 CFR § 120.1400, SBA may, pursuant to 13 CFR § 120.1500(e)(3), apply to a Federal court for the appointment of a receiver. Typically, SBA will use its receivership authority as a remedy of last resort. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR § 120.1500.
 - ii. SBA will limit the scope of the receivership to the CDC's assets related to the SBA loan program(s) except where the CDC's business is almost exclusively SBA-related. Further, SBA will only seek a receivership if either of the following circumstances are present:
 - a) The existence of fraud or false statements, or
 - b) The CDC has refused to cooperate with SBA enforcement action instructions or orders.
 - iii. Under 13 CFR § 120.1400(a)(1), a CDC that obtains approval for 504 loans after October 20, 2017, has consented to SBA's right to seek a receivership in appropriate circumstances. Such consent will be deemed to apply only if the CDC makes 504 loans on or after January 1, 2018. The CDC's consent does not in any way preclude the CDC from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. A CDC's consent to receivership as a remedy does not require SBA to seek the appointment of a receiver in any particular SBA enforcement action.

7. Part 103 Enforcement Procedures

This section establishes procedures SBA will use when determining whether to suspend or revoke the privilege of an Agent, as defined below, to conduct business with SBA under 13 CFR Part 103. The definition of Agent incorporates by reference the terms, “Applicant”, “Participant”, and “conduct business with SBA”, as those terms are defined in 13 CFR § 103.1, and the term “business loan programs”, as defined in 13 CFR § 120.1. The term “Agent” includes all Agents that are representing an Applicant or Participant by conducting business with SBA in connection with SBA business loan programs. See 13 CFR § 103.1 for additional definitions that pertain to Part 103 actions. In addition, “Respondent” means the subject of an SBA suspension or revocation action.

- a. Cause for suspension or revocation actions. SBA may suspend or revoke an Agent’s privilege to conduct business with the SBA for any of the causes identified in 13 CFR § 103.4. As with other enforcement actions, OCRM must seek assistance from OGC on the interpretation of regulations and in determining the appropriate enforcement action and procedure, as necessary.
- b. Notice of proposed suspension or revocation. After consideration of the causes in 13 CFR § 103.4, if the D/OCRM proposes to suspend or revoke a Respondent’s privilege to conduct business with SBA, the official sends the respondent a Notice of Proposed Suspension or Revocation, advising:
 - i. That the D/OCRM is considering suspending or revoking a Respondent’s privilege to conduct business with SBA;
 - ii. Of the factual basis for proposing to suspend or revoke a Respondent’s privilege to conduct business with SBA in terms sufficient to put the Respondent on notice of the conduct or transactions upon which the proposed suspension or revocation is based;
 - iii. Of the good cause under 13 CFR § 103.4 upon which the D/OCRM relied for proposing the Respondent for suspension or revocation;
 - iv. Of the length of the proposed suspension or revocation; and
 - v. Of the applicable provisions of 13 CFR Part 103, this section, and other Agency procedures governing suspension or revocation.
- c. Contesting a proposed suspension or revocation. If a Respondent wishes to contest a proposed suspension or revocation, the Respondent, or Respondent’s representative, must provide the D/OCRM a written response identifying information in opposition to the proposed suspension or revocation. The response must identify all specific facts that contradict the statements contained in the Notice of Proposed Suspension or Revocation, include all legal arguments and contain all supporting documentation the Respondent wishes the D/OCRM to consider in opposition to the proposed suspension

or revocation. The Respondent should include any information about any of the factors listed in 13 CFR § 103.4. A general denial is insufficient to raise a genuine dispute over facts material to the suspension or revocation.

- d. Time to contest proposed suspension or revocation. A Respondent must send the response to the D/OCRM within 30 calendar days of the Respondent's receipt of the Notice of Proposed Suspension or Revocation, or within some other term established by SBA in that notice. The Respondent may request additional time to respond to the Notice of Proposed Suspension or Revocation if the Respondent can show good cause as to why the Respondent is not able to respond within the applicable timeframe.

Respondents must request additional time in writing and the D/OCRM must receive that request before the time for a response lapses. The Respondent will be deemed to have received the Notice of Proposed Suspension or Revocation the earlier of:

- i. Two days after SBA sends the Notice or Proposed Suspension or Revocation, if SBA sends the Notice to the Respondent's last known street address by overnight delivery or,
 - ii. When sent, if the Agency sends the notice by email, unless the Respondent can provide compelling evidence to the contrary.
- e. Conduct fact-finding for suspensions and revocations. If the D/OCRM determines that fact-finding is necessary for proper consideration of the proposed suspension or revocation because a genuine dispute of material facts exists, he or she may refer the matter to another official for fact-finding. If SBA conducts fact-finding, the Respondent and SBA may present witnesses and other evidence, and confront any witness presented; and, the fact finder must prepare written findings of fact for the record.

A transcribed record of fact-finding proceedings must be made, unless the Respondent and SBA agree to waive it in advance. If the Respondent wants a copy of the transcribed record, the Respondent may purchase it.

- f. Standard of proof for a suspension or revocation. If a suspension or revocation action, SBA must establish the cause for the suspension or revocation by a preponderance of the evidence.
- g. Burden of proof in a suspension or revocation action. SBA has the burden to prove that a cause for suspension or revocation exists. Once a cause for suspension or revocation is established, the Respondent has the burden of demonstrating to the satisfaction of the D/OCRM that suspension or revocation is not warranted.
- h. Notice of suspension or revocation. After consideration of all relevant information, the D/OCRM sends the Respondent a written decision stating that the D/OCRM decided either:

- i. Not to suspend or revoke a Respondent's privilege to conduct business with SBA; or
- ii. To suspend or revoke a Respondent's privilege to conduct business with SBA. In this event, the D/OCRM's decision:
 - a) Refers to the Notice of Proposed Suspension or Revocation;
 - b) Specifies the reasons for suspension or revocation; and
 - c) For a suspension, states the period of suspension, including the effective dates.
- i. Reconsideration of a suspension or revocation. A Respondent may ask the D/OCRM to reconsider the suspension or revocation decision to reduce the time of the suspension or revocation. The Respondent, however, must put the reconsideration request in writing and support the reconsideration request with documentation.
- j. Appeal of a suspension or revocation. Respondents may appeal suspension or revocation to SBA's Office of Hearings and Appeals under 13 CFR Part 134. A Respondent's suspension or revocation remains in effect during the pendency of any administrative appeal under 13 CFR Part 134.
- k. The System for Award Management Exclusions (SAM Exclusions), formerly known as the Excluded Party List Systems (EPLS). SAM Exclusions is a widely available source of the most current information about persons who are excluded or disqualified from certain transactions with the Federal government. These transactions are specified in 2 CFR Part 180 and adopted by reference in 2 CFR Part 2700. SAM Exclusions contain, among other things, suspensions, debarments, statutory ineligibility determinations, and other program exclusions. SAM Exclusions are available to view at <https://www.sam.gov>. If SBA imposes a suspension or revocation under 13 CFR Part 103, SBA may post the suspension and revocation decision on its website and an Agency Suspending and Debarment Official (SDO) may exclude or disqualify the person. The exclusion is then placed into SAM Exclusions, or successor system, which is accessible by the general public. A suspension or revocation under 13 CFR Part 103 is SBA specific. A suspension or revocation under 13 CFR Part 103 does not, by itself, prohibit the affected Agent's participation in other Federal government programs.
- l. Action under this provision does not preclude SBA or another Agency from pursuing a suspension or debarment action or taking other action.

Chapter 5: Oversight Fees

1. Fees that SBA may charge 7(a) Lenders for Lender Oversight

7(a) Lenders are required to pay fees to cover the costs of reviews, examinations, and other lender oversight activities. See 15 USC § 634(b)(14) and 13 CFR § 120.1070.

The fees may cover:

- a. The cost of conducting monitoring (e.g., L/LMS related reviews/ monitoring and Lender Portal data-reviews);
- b. The cost of conducting more in-depth 7(a) Lender reviews (e.g., for all 7(a) Lenders Delegated Authority Review, Targeted Review, Full Scope Review, other reviews, and related review activities, such as corrective action assessments. For SBA Supervised Lenders, the list expands to include activities such as the Quarterly Condition and Certification of Capital Compliance Reviews.);
- c. The cost of conducting loan reviews (e.g., Secondary Market Sales Evaluation Loan-by-Loan Reviews);
 - i. 7(a) Lenders are advised to ensure that when submitting a loan for Secondary Market Sales Evaluation Loan-by-Loan Review that the 7(a) Lender has included all needed documentation and considers whether with that documentation the loan complies with SBA Loan Program Requirements such that it can be approved. If the review identifies deficiencies and the loan is not approved for sale, the 7(a) Lender may elect to resubmit the loan after having corrected the deficiencies; however, SBA will assess an additional fee for each subsequent review of that loan. 7(a) Lenders will be invoiced following the review. The review fee is payable even if SBA does not approve the loan for sale.
- d. The cost of conducting safety and soundness examinations of an SBA Supervised Lender and related activities such as corrective action assessments; and
- e. Any additional expenses that SBA incurs in carrying out 7(a) Lender oversight activities (e.g., technical assistance, analytics, and similar costs, salaries and travel expenses of SBA employees, and equipment expenses directly related to 7(a) Lender oversight).

2. How and When SBA Allocates 7(a) Lender Oversight Fees

- a. In general, where the costs that SBA incurs for a review, examination, monitoring, or other 7(a) Lender oversight activity are specific to a particular 7(a) Lender, SBA will charge that Lender a fee for the actual costs of the oversight activity. For

example, for most reviews or examinations conducted under “b”, “c”, and “d” above, SBA will invoice each 7(a) Lender for the amount owed following completion of the review of examination.

- b. In general, where the costs that SBA incurs for the 7(a) Lender oversight activity are not sufficiently specific to a specific 7(a) Lender, SBA will assess a fee based on each 7(a) Lender’s portion of the total dollar amount of SBA guarantees in SBA’s total portfolio or in the relevant portfolio segment being reviewed or examined, to cover the costs of such activity. For these fees, such as the L/LMS related reviews/ monitoring conducted under subparagraph “a” above and certain other 7(a) Lender oversight activity expenses under “e” above, SBA will invoice each 7(a) Lender on an annual basis.

3. How SBA Invoices the Fees

- a. The invoice will state the charges, the date by which payment is due, and the approved payment method(s).
- b. The due date will be no less than 30 calendar days from the invoice date.
- c. SBA may waive the fees assessed under paragraph 2.b. of this Chapter for those 7(a) Lenders owning less than a threshold amount if SBA determines that it is not cost effective to collect the fee.

4. SBA’s Policy Regarding Delinquent Oversight Fees

- a. If the total amount of fees due is not received by the due date specified in the bill, any unpaid amount is considered delinquent and SBA will charge interest, penalties, and other applicable charges on delinquent payments as authorized by 31 USC § 3717.

5. Consequences of Failure to Pay Lender Oversight Fees

- a. A 7(a) Lender’s failure to pay the full fee, or pay any interest, penalties, or other charges due, may result in enforcement actions, including but not limited to, suspension or revocation of a 7(a) Lender’s eligibility to participate in the 7(a) program, limiting a 7(a) Lender’s delegated authority, and/or further collection proceedings.

Appendix 1: Current PARRiS Component Factors

The quantitative and qualitative PARRiS factors currently analyzed for each component include, but are not limited to:

“P” – Portfolio Performance

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • 5-Year Cumulative Net Yield • 12-Month Default Rate • 5-Year Default Rate 	<ul style="list-style-type: none"> • Impact of acquired loans • Local/regional economic conditions • Changes in loan policies and practices • Geographic distribution of SBA Lender’s 7(a) portfolio and the SBA Lender’s management of that distribution • Portfolio composition • Impact of rapid growth on the metrics

“A” – Asset Management

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • High Risk Origination Rate • Early Problem Loan Rate • Stressed Loan Rate 	<ul style="list-style-type: none"> • Credit Administration (e.g., eligibility, credit analysis, compliance with Loan Authorization requirements, etc.) • Servicing (e.g., continued creditworthiness monitoring, tracking and maintaining elements required by the Loan Authorization, etc.) • Liquidation and Resolution Risk (e.g., liquidation plans, timely submission of wrap-up reports, ensuring loans in active default are progressing toward final resolution, etc.) • Mission Risk (e.g., risk associated with a particular lending program)

“R” – Regulatory Compliance

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • Loans in Default Status Over 3 Years Rate • 1502 Reporting Rate • 24-Month Repair/Denial Rate 	<ul style="list-style-type: none"> • Loan Eligibility (e.g., credit is not available elsewhere, use of proceeds, etc. See 13 CFR § 120.101) • Accurate and Complete SBA Form 1502 submissions • Timely and accurate remittances such as guarantee fees, liquidation proceeds via SBA Form 172, and receivables due SBA • Compliance with SBA Form 159 reporting requirements to include ensuring fees, such as packaging and referral fees, assessed comply with SBA Loan Program Requirements. • Compliance with required corrective actions • Compliance with requirements related to Lender Service Providers, where required

“Ri” – Risk Management

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • Forecasted Purchase Rate (FPR) • Primary Federal Financial Institution Regulator Total-Risk Based Capital Rate • Non-Performing Asset Ratio 	<ul style="list-style-type: none"> • Board approved internal control policies and practices, including independent loan review and loan classification system consistent with Federal Financial Institution Regulators • Management and staff capabilities • Day-to-day responsibility for SBA Program management • Oversight and management of Lender Service Providers (LSP) (if applicable) • Operating plan and strategy • Adherence to the Lender’s own credit and operating policies and LSP Agreements (the latter if applicable)

“S” – Special Items

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • Average Portfolio SBPS Score (Weighted) • 5-Year Charge-Off Rate • Public Corrective Action with Regulator/ No Prudential Regulator 	<ul style="list-style-type: none"> • Loan participation and pledges • Fraud, waste, and abuse matters • Evaluation of regulatory orders for impact on SBA portfolio and program risk • Other items of concern

SBA provided definitions for each of the quantitative factors in the Lender Portal.

The PARRiS methodology also features “Indicators” that are intended to highlight additional areas that SBA monitors in identifying risk. Currently, the PARRiS Indicators include: (1) Top Industry Concentration Rate; (2) Franchise Rate; (3) Secondary Market Sale Rate; (4) Acquired Loan Rate; (5) Rapid Portfolio Growth; (6) Loan Agent Count Over 5 Years; (7) Early Default Rate; (8) Last 12 Month New Business Rate; (9) Last 12 Month Small Loan Rate; (10) Last 12 Month Export Loan Rate; and (11) Last 12 Month Accommodation Loan Rate.

The quantitative factors and Indicators are subject to change based on risks identified in the portfolio.

Appendix 2: Current SMART Component Factors

The quantitative and qualitative SMART factors currently analyzed for each component include, but are not limited to:

“S” – Solvency and Financial Condition

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • 5-Year Cumulative Net Yield • 12-Month Default Rate • 5-Year Default Rate 	<ul style="list-style-type: none"> • Reserves for future operations • Liquidity risk management • Balance sheet leverage

“M” – Management and Board Governance

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • Forecasted Purchase Rate • High Risk Origination Rate • Loans in Purchase Status Over 3 Years Rate 	<ul style="list-style-type: none"> • Board-approved internal control policies, including independent loan review and loan classification system • Business strategy and planning • Audit and review programs • IT operations • Management of risk concentrations

“A” – Asset Quality and Servicing

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • Stressed Loan Rate • 5-Year Charge Off Rate • Early Problem Loan Rate 	<ul style="list-style-type: none"> • Credit administration • Servicing and liquidation management • Potential fraud, negligence, or misrepresentation issues on individual 504 loans

“R” – Regulatory Compliance

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none"> • Minimum Level of 504 Loan Activity 	<ul style="list-style-type: none"> • Timely and complete submissions of CDC Annual Report (and PCLP Loan Loss Reserve Report, if required) • Liability insurance minimums

“T” – Technical Issues and Mission

Quantitative Factors	Qualitative Factors
<ul style="list-style-type: none">• Average Small Business Predictive Score (SBPS) (Weighted)• Top Industry Concentration Rate	<ul style="list-style-type: none">• CDC support of “other economic development initiatives”• Job creation and retention documentation and reporting• Professional services contracts• Franchise concentration rate

Appendix 3: Sample PARRiS Scorecard with Benchmarks and PARRiS Indicators

PARRiS BENCHMARKS					
	Lender Results	Lender Benchmark	Score	Peer Group	Portfolio
Portfolio Performance					
5-Year Cumulative Net Yield	0.3%	Moderate Risk	3	0.5%	0.8%
12-Month Default Rate	0.0%	Lower Risk	1	3.0%	2.5%
5-Year Default Rate	1.8%	Moderate Risk	3	2.0%	1.8%
Asset Management					
High Risk Origination Rate	6.6%	Lower Risk	1	12.8%	11.5%
Early Problem Loan Rate	0.6%	Moderate Risk	3	2.3%	2.2%
Stressed Loan Rate	0.4%	Moderate Risk	3	2.1%	1.7%
Regulatory Compliance					
Loans in Default Status over 3 Year Rate	0.0%	Lower Risk	1	25.8%	25.9%
1502 Reporting Rate	100.0%	Lower Risk	1	99.0%	99.0%
24-Month Repair/ Denial Rate	0.0%	Lower Risk	1	2.5%	4.4%
Risk Management					
Forecasted Purchase Rate	0.72%	Moderate Risk	3	1.55%	1.4%
Total Risk-Based Capital Rate	16.2%	Lower Risk	1	14.5%	15.7%
Non-Performing Asset Ratio	5.7%	Lower Risk	1	11.6%	9.0%
Special Items					
Average Portfolio SBPS Score	185	Moderate Risk	3	185	186
5-Year Charge-Off Rate	4.0%	Moderate Risk	3	7.0	6.0%
Public Corrective Action with Regulator/ No Prudential Regulator	No	Lower Risk	1		

PARRiS Indicators				
	Lender Results	Flag (Yes/ No)	Peer Group	Portfolio
Top Industry Concentration Rate	16.3%	No	26.6%	22.7%
Franchise Rate	21.4%	Yes	23.8%	17.8%
Secondary Market Sale Rate	81.4%	Yes	68.4%	53.3%
Acquired Loan Rate	68.6%	Yes	16.5%	11.8%
Rapid Portfolio Growth	34.7%	Yes	22.5%	13.5%
Loan Agent Count Over 5 Years	71	Yes	59	38
Early Default Rate	0.0%	No	1.1%	1.1%
Last 12 Month New Business Rate	72.8%	Yes	57.8%	53.6%
Last 12 Month Small Loan Rate	0.7%	No	16.6%	19.6%
Last 12 Month Export Loan Rate	1.7%	No	3.7%	3.9%
Last 12 Month Accommodation Loan Rate	27.2%	Yes	16.4%	9.3%

Appendix 4: Sample SMART Scorecard with Benchmarks

SMART Benchmarks					
	Lender Results	Lender Benchmarks	Score	Peer Group	Portfolio
Solvency and Financial Condition					
5-Year Cumulative Net Yield	1.1%	Lower Risk	1	1.1%	1.2%
12-Month Default Rate	0.0%	Lower Risk	1	1.0%	0.8%
5-Year Default Rate	0.2%	Moderate Risk	3	0.8%	0.7%
Management					
Forecasted Purchase Rate	3.3%	Higher Risk	5	2.9%	2.0%
High Risk Origination Rate	1.6%	Moderate Risk	3	8.9%	8.3%
Loans in Purchase Status over 3 Years Rate	100.0%	Higher Risk	5	26.6%	26.7%
Asset Quality					
Stressed Rate	13.2%	Higher Risk	5	8.3%	4.8%
5-Year Charge Off Rate	2.1%	Lower Risk	1	3.8%	2.5%
Early Problem Loan Rate	0.0%	Lower Risk	1	2.1%	2.0%
Regulatory Compliance					
Minimum Level of 504 Activity	23	Lower Risk	1	26	58
Technical Issues					
Average Portfolio SBPS (\$ Weighted)	192	Moderate Risk	3	193	194
Top Industry Concentration Rate	16.8%	Moderate Risk	3	18.5%	14.4%