

Proposed Rule for Small Business Administration

Announced 9.14.23 | Deadline 11.14.23

[Federal Register Link](#)



Brief:

The Small Business Administration has determined the need to update regulations to reduce barriers to participation in assistance programs for equitable support for small business entrepreneurs with criminal history records. These updates will apply to the 7(a), 504, Microloan, ILP, SBG and Disaster Loan Program regulations and include the following:

For ILP Loans remove the restrictions on Associates of an Applicant who are on probation, parole, or who have been indicted but not convicted of a felony or crime of moral turpitude;

For Surety Bonds remove restrictions on a Principal bidding for a contract the who is under indictment but not convicted, or previously convicted of a felony or received civil judgment regarding business transactions;

For 7(a) and 504 Loans remove restrictions on businesses with an Associate who is on probation, on parole, or is under indictment but not convicted of a felony or any crime involving or relating to financial misconduct or a false statement

For Microloans remove restrictions on businesses with an Associate who is currently on probation or parole for an offense involving fraud or dishonesty

For Immediate Disaster Assistance Programs to remove restrictions for businesses with an Associate who is presently under indictment but not convicted, on parole or probation; that has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted)

For Economic Injury Disaster Loans to remove restrictions regarding principal owners of damaged property who are on probation or parole following conviction for a serious criminal offense.

Other Details and Resources:

Throughout the proposed rule, the SBA is maintaining the prohibition against “only those businesses with an Associate who is *currently incarcerated* at the time of application or *any time thereafter*, and *between the time of application and disbursement of loan proceeds*.”

Throughout this proposed rule, “currently incarcerated” means “a person who is currently serving a sentence of imprisonment imposed upon an adjudication of guilt. It does not include a person who is detained but not convicted, such as people in jails.”

SBA's proposed rule also streamlines SBA's lending criteria by reducing the number of factors that are required to be applied in determining eligibility based on criminal history records of small business owners. Lenders, CDCs, and Microloan Intermediaries make risk-based lending decisions and may continue to background check as part of their policy.

Potential Shortcomings and Consequences

While indeed the proposed rule would eliminate a wide array of funding barriers for directly impacted entrepreneurs, the application of the ‘currently incarcerated’ term may have potential consequences for those who experience a short-term period of incarceration as part of a parole sanction and, as such, are considered “currently incarcerated...upon an adjudication of guilt” in states where post-release supervision is considered an administrative extension of a sentence. Clarity is needed. Additionally, educating entrepreneurs on ECOA resources and standards is necessary to ensure their rights are not violated in discretionary background checking still allowed by intermediaries in this rule.