

## Chapter 208-556 WAC

# SMALL BUSINESS ADMINISTRATION 7(A) LOAN GUARANTY PROGRAM NONDEPOSITORY LENDERS— LICENSING AND REGULATION

(Formerly chapter 50-56 WAC)

### WAC

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**WAC 208-556-010 Purpose.** The purpose of this chapter shall be to provide guidelines for application for a license to operate a nondepository small business lending venture under the auspices of the federal Small Business Administration (SBA) guaranty program known as the 7(a) loan guaranty program. Specifics of the program are set forth in section 7(a) of the federal "Small Business Investment Act of 1958," 15 U.S.C., part 636(a). These rules also establish other regulatory oversight guidelines and provide for fees. These rules are promulgated under the general rule-making authority of the state director of the department of financial institutions, and are required under legislation passed by the legislature (section 3(1), chapter 212, Laws of 1989.)

[Statutory Authority: RCW 30.04.030 and 43.320.040, 00-17-141, amended and recodified as § 208-556-010, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-010, filed 12/7/89, effective 1/7/90.]

**WAC 208-556-020 Application procedures.** An application for state license to operate a nondepository small business lending venture to qualify for participation in the SBA 7(a) program shall be filed with the director of the department of financial institutions and shall include such fees as established elsewhere in these rules. As a matter of general procedure, it is recommended that interested parties visit the office of the director prior to submitting their application to review statutory and other requirements for this action.

[Statutory Authority: RCW 30.04.030 and 43.320.040, 00-17-141, amended and recodified as § 208-556-020, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-020, filed 12/7/89, effective 1/7/90.]

**WAC 208-556-030 Application format.** Applicants may use the same documentation as required by the SBA for their approval of the lender to the extent that such documentation meets the requirements of statute and these rules unless waived by the director. The application must contain the following:

- (1) Applicant's name, address, and telephone number.
- (2) A statement that the applicant is incorporated under the Washington Business Corporation Act or the Washington

Nonprofit Corporation Act and a copy of applicant's Articles of Incorporation and Bylaws, properly certified.

(3) A list of officers, directors, associates, and all holders of ten or more percent of any class of the applicant's capital stock.

(4) A statement of personal history of all those listed in subsection (3) of this section. SBA Form 1081 or its equivalent may be used.

(5) A copy of the most recent audited financial statement of any entity other than a natural person holding ten or more percent of any class of stock of the applicant.

(6) An organizational chart showing the relationship of the applicant to its affiliates, as well as the applicant's internal organizational structure.

(7) Copies of the last three audited financial statements of the applicant, and supporting tax returns.

(8) Applicant's business plan which should include at a minimum:

(a) A detailed pro forma financial projection for at least three years of operations.

(b) A market study of the intended geographical area of operations.

(c) An explanation of applicant's method of funding loans, including the unguaranteed portion.

(d) An outline of loan servicing procedures proposed.

(e) Copies of written policies and procedures to be used, which must include policies requiring disclosure of conflicts of interest of affiliates, directors, officers, and employees; prohibiting false statements or representations to the director; and preventing fraud or undue influence by the licensee.

(9) Certified copy of a resolution by the applicant's board of directors designating the person(s) authorized to act on behalf of applicant.

(10) An opinion of independent counsel that the applicant is in compliance with applicable state and federal laws in the formation and organization of the company, with applicable securities laws, and is chartered to conduct its business in the proposed operating area.

(11) Such marketing materials as may have been prepared that portray the nature of applicant's operations.

(12) Copies of all bonds in effect for directors, officers, and employees.

(13) Other such information as the director may require.

[Statutory Authority: RCW 30.04.030 and 43.320.040, 00-17-141, amended and recodified as § 208-556-030, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-030, filed 12/7/89, effective 1/7/90.]

**WAC 208-556-040 Continuing operations.** Licensees shall maintain an adequate financial condition.

(1) Minimum capital (unimpaired paid-in capital, surplus, and undivided profits) shall be in the amount of five hundred thousand dollars or five and one-half percent of total assets, whichever is greater, or a greater amount should the director determine that applicant's business plan or economic conditions require a greater amount to conduct the business of a 7(a) lender. The director may consider and include the net worth of any corporate shareholder of the applicant if the shareholder agrees to unconditionally guarantee the liabilities of the applicant and that shareholder agrees to the reporting requirements set forth in WAC 208-556-060.

(2) Capital below the required amount precludes the presentation of additional loans to the SBA for guaranty without the written consent of the director.

(3) Licensees shall maintain a reserve for anticipated loan losses appropriate to its needs, based on the following factors:

(a) The volume and mix of the existing loan portfolio, including the volume and severity of nonperforming loans and adversely classified credits, as well as an analysis of net charge-offs experienced on previously classified loans.

(b) The extent to which loan renewals and extensions are used to maintain loans on a current basis and the degree of risk associated with such loans.

(c) The trend in loan growth, including any rapid increase in loan volume within a relatively short time period.

(d) General and local economic conditions affecting the collectibility of the licensee's loans.

(e) Previous loan loss experience by loan type, including net charge-offs as a percent of average loans over the past several years.

(f) The relationship and trend over the past several years of recoveries as a percent of previous year's charge-offs.

(g) Available outside information of a comparable nature regarding the loan portfolios of other such lenders.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-040, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-040, filed 12/7/89, effective 1/7/90.]

**WAC 208-556-050 Records.** Licensees shall maintain records in a fashion consistent with a financial institution and shall have them at all times readily accessible to the director. Records shall be preserved under the following schedule:

(1) Preserve permanently:

(a) All general and subsidiary ledgers reflecting asset, liability, capital stock and surplus and income and expense accounts.

(b) All general and special journals or other records forming the basis for entries in such ledgers.

(c) Articles of incorporation, bylaws, stock registers, licenses, and minutes of board of directors meetings.

(2) Preserve for at least six years following final disposition of the related loan:

(a) All applications for financing.

(b) Financing instruments.

(c) Lending participation agreements.

(d) Escrow agreements.

(e) All other documents and supporting material relating to such loans, including correspondence.

Records and other documents in subsections (1) and (2) of this section may be preserved by reproduction. Provided, however, that the licensee shall prepare a duplicate reproduction which shall be stored separately from the original for the time required. If such reproductions are used, the licensee shall maintain at all times facilities for the projection and reproduction of such records.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-050, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-050, filed 12/7/89, effective 1/7/90.]

**WAC 208-556-060 Reports.** Licensees shall submit the following reports to the director:

(1) Annual audits prepared in accordance with generally accepted accounting principles which shall be certified unless the director makes other provision in writing in advance.

(2) Quarterly financial reports which shall include a balance sheet and income and expense statement for both the period and year to date.

(3) A notification of any suit or proceeding involving fraud or dishonesty where the licensee or an employee may be a party, or where an adverse judgment could contribute materially to the impairment of the licensee's capital. Such notification must be forwarded with copies of the complaint within thirty days of the filing of such action.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-060, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-060, filed 12/7/89, effective 1/7/90.]

**WAC 208-556-070 Examinations.** The director will conduct examinations of licensees as provided by statute and will forward a report of examination to the licensee's board of directors for information and action as appropriate. These examination reports and all subsequent and related correspondence are the property of the director and will be subject to the same confidentiality requirements as established for financial institutions regulated by the division of banks.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-070, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-070, filed 12/7/89, effective 1/7/90.]

**WAC 208-556-080 Fees.** The cost of regulation of non-depository lenders licensed under Title 31 RCW, shall be borne by the licensees under the following schedule:

(1) Application fee. A fee of two thousand dollars must accompany an application for this license to cover the cost of investigation.

(2) Acquisition of control approval fee. A fee of two thousand dollars must accompany any request for acquisition of control of a licensee to cover the cost of investigation which will be conducted to the same degree as an initial application approval.

(3) Business combination fee. Other business combinations must be approved by the director. Costs of investigation will be borne by the licensee and will be based on actual staff costs of the division of banks, which are fifty dollars per hour per examiner assigned.

(4) Examination and supervision fees. Examination and supervision fees shall be billed based on rates charged commercial banks for examination costs and semiannual asset charges in chapter 208-544 WAC.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-556-080, filed 2/27/01, effective 3/30/01; 00-17-141, amended and recodified as § 208-556-080, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-080, filed 12/7/89, effective 1/7/90.]