



# SBA Procedural Notice

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**TO:** All Employees, SBA Lenders, and Microloan and Intermediary Lending Pilot Program Intermediaries      **CONTROL NO.:** 5000-1401

**SUBJECT:** Revised Procedures for SBA Forms 912 and 1081, and Fingerprint Cards (FD 258) for SBA Business Loan Programs      **EFFECTIVE:** December 14, 2016

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The purpose of this Notice is to announce that effective December 15, 2016, the Office of Personnel Security (OPS) within SBA's Office of the Chief Operating Officer (COO) will be responsible for processing fingerprint checks for all SBA Forms 912 (Statement of Personal History) and 1081 (Statement of Personal History (For Use By Lenders)) for the SBA business loan programs, including the SBA Advantage Loan Program (7(a)) (including the Community Advantage Pilot Program), the SBA Grow Loan Program (504), the Microloan Program, and the Intermediary Lending Pilot Program. After December 14, 2016, the Office of the Inspector General/Office of Security Operations (OIG/OSO) will no longer accept SBA Forms 912 and 1081 and Fingerprint Cards (FD 258) for SBA business loan programs.

This Notice also revises and streamlines the procedures for review and consideration of "Businesses with an Associate of Poor Character" for SBA Advantage and SBA Grow Loans. While SBA has not changed the requirements surrounding who must complete SBA Form 912, SBA has changed the types of offenses that will require a background check. The revised procedures set forth below will be incorporated into SOP 50 10, the Community Advantage Participant Guide, and relevant forms prior to the expiration of this notice.

Complete SBA Form 912/1081 packages will ensure timely processing of OPS fingerprint checks and character determinations. OPS will not conduct follow-up inquiries for additional information and will not hold incomplete forms or packages. Incomplete forms and packages will be returned unprocessed to the submitting source (Delegated Lender/SBA Field Office/SBA Processing Center).

## **Procedures for SBA Form 912 for the SBA Advantage Loan Program (7(a))**

As set forth in current SBA Loan Program Requirements, to be eligible for an SBA Advantage loan, every proprietor, general partner, officer, director, managing member of a limited liability company (LLC), owner of 20% or more of the equity of the Applicant, Trustor (if the Small Business Applicant is owned by a trust), and any person hired by the Applicant to manage day-to-day operations ("Subject Individual") must be of good character. Part of the character evaluation process involves answering Questions 1, 2, and 3 on SBA Form 1919, "Borrower Information Form" or question C.2.e. on the EIB/SBA Joint Form 84-1 (for Export Working Capital Loans).

- If all Subject Individuals respond “No” to Questions 1, 2, and 3 on SBA Form 1919 or question C.2.e. on the EIB/SBA Joint Form 84-1, then the SBA Advantage loan can be processed with no SBA Form 912 required.
- If a Subject Individual responds “Yes” to Question 1 on SBA Form 1919 or indicates in response to Question C.2.e. on the EIB/SBA Joint Form 84-1 that the Subject Individual is currently under indictment, etc., the Small Business Applicant is not eligible for an SBA Advantage loan.
- If a Subject Individual’s response to Question 3 on SBA Form 1919 or Question C.2.e. on the EIB/SBA Joint Form 84-1 reveals that he/she is currently on parole or probation (including probation before judgment), the Small Business Applicant is not eligible for an SBA Advantage loan. In addition, a Subject Individual with a deferred prosecution is treated as if the Subject Individual is on probation or parole; such an applicant also is not eligible for an SBA Advantage loan.
- If a Subject Individual responds “Yes” to Questions 2 or 3 on SBA Form 1919 or Question C.2.e. on the EIB/SBA Joint Form 84-1<sup>1</sup>, **a character determination will be required using the following revised procedures:**
  - A. The Subject Individual must provide the lender with:
    - i. a complete SBA Form 912, Statement of Personal History; and
    - ii. a written explanation about the details of any “Yes” response that includes the following:
      - (a) Date of the offense(s);
      - (b) City and state or the county and state where the offense(s) occurred;
      - (c) The specific charge(s) (DUI, assault, forgery, etc.) **AND** the level of the charge (either a misdemeanor or felony);
      - (d) Disposition of the charge(s) (including court documentation). This may include but is not limited to the following:
        - (i) Any fines imposed, specifying whether the fines were paid or remain unpaid;
        - (ii) Any class or workshop to be attended;
        - (iii) Any jail time served;
        - (iv) If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation); or
        - (v) Any other court conditions (such as registration as a sex offender);
      - (e) Assuming the court’s conditions have been met, the applicant must state that all conditions of the court have been satisfied in his/her explanation along with court documents evidencing that these conditions

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<sup>1</sup> NOTE: A “Yes” response by the Subject Individual is required even when the applicant believes the record is sealed, expunged or otherwise unavailable. This information must be kept private and confidential. There are no exceptions to or waivers of this requirement that the individual must complete, sign, date, and submit SBA Form 912 to the Lender for processing.

were met. (If sentencing and other conditions of the court have not been met, then the Small Business Applicant is ineligible until satisfied); and (f) The Subject Individual must sign, date, and certify that the explanation in the documentation provided to the Lender and SBA includes full disclosure of all criminal offenses.

- iii. If the Lender determines upon review of the court's disposition that the case(s) resulted in one or multiple misdemeanor convictions whose conditions were met more than six months prior to receipt of the application, then the Lender will retain the supporting information and court documentation, including the original SBA Form 912 in the file and proceed to process the loan under normal procedures with no further 912 review.
- iv. If the Subject Individual discloses any misdemeanor convictions within six months of receipt of the loan application, or if the Subject Individual discloses any misdemeanor convictions, for crime(s) against a minor (for example, child abuse or endangerment, possession of child pornography, etc.), then a background check must be completed by SBA and the Lender must submit a copy of the complete SBA Form 912, the Subject Individual's written explanation, supporting information, court documentation, and a Fingerprint Card (FD 258) to SBA. The Lender may not disburse the loan until formal clearance from SBA is received in writing. OPS will conduct a background check that will include a Fingerprint Check via submission of the FD 258 to the Federal Bureau of Investigation (FBI) or the FBI's Electronic Fingerprint Submission, if available.<sup>2</sup> Local law enforcement agencies will usually assist the individual with the fingerprinting. Lenders may obtain the FD 258 from their local SBA Field Office or the FBI's website at [www.fbi.gov](http://www.fbi.gov).
- v. When a Subject Individual discloses a felony conviction, a background must be completed by SBA and the Lender must submit a copy of the complete SBA Form 912, the Subject Individual's written explanation, supporting information, court documentation, and FD 258 to SBA. **The Lender may not disburse the loan until formal clearance from SBA is received in writing.** OPS will conduct a background check that will include a Fingerprint Check via submission of the FD 258 to the FBI or Electronic Fingerprint Submission, if available. (See footnote 2 for discussion of Electronic Fingerprint Submission.)

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<sup>2</sup> "Electronic Fingerprint Submission" means fingerprints taken and reproduced in a machine-readable format by a fingerprint capture system that complies with the FBI's Electronic Biometric Transmission Specifications. An Electronic Fingerprint Submission must be compatible with the FBI's Automated Fingerprint Identification System, or any successor system in place for biometric identification. The Electronic Fingerprint Submission will generally be a piece of paper produced by the fingerprint capture system, which an individual may attach to SBA Form 912 to expedite fingerprint check procedures.

- vi. For felony convictions, Lenders must submit to SBA the complete and detailed Form 912 package signed by the Subject Individual within 90 calendar days prior to submission to SBA that includes the items listed in paragraph ii above, the FD 258 or Electronic Fingerprint Submission, and the name and address of the originating Lender. The Lender also must include either the local SBA Field Office or the LGPC for notification of the Agency clearance decision.
  - (a) Delegated Lenders may submit complete 912 packages directly to the Office of Personnel Security, SBA, 409 3<sup>rd</sup> Street, S.W., Washington, D.C. 20416 or [oca912@sba.gov](mailto:oca912@sba.gov), or to their local SBA Field Office for forwarding to OPS.
  - (b) Non-delegated Lenders may submit complete 912 packages to their local SBA Field Office or the LGPC for forwarding to OPS.

B. Upon receipt of the complete Form 912 package, OPS will request the fingerprint check from the FBI. The FBI generally takes 30 days to process fingerprint checks. Once OPS receives a report back from the FBI, OPS will refer the matter to the SBA Director/Office of Financial Assistance (D/OFA) or designee to make the character determination as follows:

1. On receipt of the OPS referral, OFA will issue a character determination in the form of a memorandum to the SBA Field Office or LGPC, as identified by the Lender in the 912 package.
2. OFA will determine either that the Subject Individual has good character, or that an applicant is not eligible for an SBA Advantage loan due to the Subject Individual's lack of good character based on the Form 912 package and the information received from the FBI, including any failure to disclose offenses.
3. OFA transmits its memorandum with the character determination to the SBA Field Office or LGPC, as identified by the Lender in the 912 package, via email. OFA will not provide information directly to delegated lenders or non-delegated lenders.
4. The SBA Field Office or LGPC will advise the Lender in writing of the Agency's clearance decision.
5. The OFA memorandum and the FBI reports are deliberative and confidential, and also contain information protected by the Privacy Act. As a result, this information must not be released outside of SBA.

Lenders must retain the original signed SBA Form 912, the original signed written explanation, all supporting information, court documentation, and a copy of the Agency's clearance decision in their loan file.

C. Reconsiderations<sup>3</sup>. The Agency will consider a request submitted by a Subject Individual for reconsideration of a determination of lack of good character. The Subject Individual, either directly or through the Lender, should send a written request for reconsideration to the D/OFA at SBA Headquarters, 409 3<sup>rd</sup> Street, S.W., 8<sup>th</sup> Floor, Washington, D.C. 20416. OFA generally processes a request for reconsideration within ten business days. Factors that may contribute to a favorable reconsideration include:

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<sup>3</sup> The procedures for reconsideration of a determination of lack of good character remain unchanged.

1. Additional information provided by the applicant that satisfactorily explains the circumstances of the prior offenses; and/or
2. The passage of time between the date of the prior offenses and the date of loan application, during which the Subject Individual has not committed additional offenses and has generally led a responsible life and made a contribution to the community.

D. Reducing Ownership to Avoid Submitting SBA Form 912.<sup>4</sup> A Subject Individual may not reduce his or her ownership in a Small Business Applicant for the purpose of avoiding completion of Form 912.

### **Procedures for SBA Form 912 for the SBA Grow Loan Program (504)**

As set forth in current SBA Loan Program Requirements, to be eligible for an SBA Grow Loan, every proprietor, general partner, officer, director, managing member of a limited liability company (LLC), owner of 20% or more of the equity of the Applicant, Trustor (if the Small Business Applicant is owned by a trust), and any person hired by the Applicant to manage day-to-day operations (“Subject Individual”) must be of good character. Part of the character evaluation process involves completing SBA Form 912, Statement of Personal History.

- If a Subject Individual responds “Yes” to Question 7 on SBA Form 912, the Small Business Applicant is not eligible for an SBA Grow loan.
- If a Subject Individual’s response to Question 8 on SBA Form 912 reveals that he/she is currently on parole or probation (including probation before judgment), the Small Business Applicant is not eligible for an SBA Grow loan. In addition, a Subject Individual with a deferred prosecution is treated as if the Subject Individual is on probation or parole; such an applicant also is not eligible for an SBA Grow loan.
- If a Subject Individual responds “Yes” to Questions 8 or 9 on SBA Form 912<sup>5</sup>, **a character determination will be required using the following revised procedures:**

A. The Subject Individual must provide the CDC with:

- i. a complete SBA Form 912, Statement of Personal History; and
- ii. a written explanation about the details of any “Yes” response that includes the following:
  - (a) Date of the offense(s);
  - (b) City and state or the county and state where the offense(s) occurred;

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<sup>4</sup> The procedures for reducing ownership to avoid submitting Form 912 remain unchanged.

<sup>5</sup> NOTE: A “Yes” by the Subject Individual is required even when the applicant believes the record is sealed, expunged or otherwise unavailable. This information must be kept private and confidential. There are no exceptions to or waivers of this requirement and that individual must complete, sign, date, and submit SBA Form 912 to the CDC for processing.

- (c) The specific charge(s) (DUI, assault, forgery, etc.) AND the level of the charge (either a misdemeanor or felony);
  - (d) Disposition of the charge(s) (including court documentation). This may include but is not limited to the following:
    - (i) Any fines imposed, specifying whether the fines were paid or remain unpaid;
    - (ii) Any class or workshop to be attended;
    - (iii) Any jail time served;
    - (iv) If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation); or
    - (v) Any other court conditions (such as registration as a sex offender);
  - (e) Assuming the court's conditions have been met, the applicant must state that all conditions of the court have been satisfied in his/her explanation and provide court documents evidencing that these conditions were met (If sentencing and other conditions of the court have not been met, then the Small Business Applicant is ineligible until satisfied); and
  - (f) The Subject Individual must sign, date, and certify that the explanation in the documentation provided to the CDC and SBA includes full disclosure of all criminal offenses.
- iii. If the CDC determines upon review of the court's disposition that the case(s) resulted in one or multiple misdemeanor convictions whose conditions were met more than six months prior to receipt of the application, then the CDC will retain the supporting information and court documentation, including the original SBA Form 912 in the file and proceed to process the 504 loan application under normal procedures with no further 912 review.
- iv. If the Subject Individual discloses any misdemeanor convictions within six months of the submission of the application, or if the Subject Individual discloses **any** misdemeanor convictions for crime(s) against a minor (for example, child abuse or endangerment, possession of child pornography, etc.), then a background check must be completed by SBA and the CDC must submit SBA Form 912, written explanation, supporting information, court documentation, and an FD 258 to the SLPC for transmission to the OPS. **The SLPC will not approve the loan until formal clearance is received in writing from the D/OFA or designee.** OPS will request a background check that will include a Fingerprint Check via submission of an FD 258 or Electronic Fingerprint Submission, if available from the FBI.<sup>6</sup> Local law enforcement agencies will usually assist the individual with the fingerprinting. CDCs may obtain FD 258 from their local SBA Field Office or the FBI's website at [www.fbi.gov](http://www.fbi.gov).

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<sup>6</sup> "Electronic Fingerprint Submission" means fingerprints taken and reproduced in a machine-readable format by a fingerprint capture system that complies with the FBI's Electronic Biometric Transmission Specifications. An Electronic Fingerprint Submission must be compatible with the FBI's Automated Fingerprint Identification System, or any successor system in place for biometric identification. The Electronic Fingerprint Submission will generally be a piece of paper produced by the fingerprint capture system, which an individual may attach to SBA Form 912 to expedite fingerprint check procedures.

- v. When a Subject Individual discloses a felony conviction, the CDC must submit the SBA Form 912, the Subject Individual's written explanation, supporting information, court documentation, and an FD 258 or Electronic Fingerprint Submission, if available, to the SLPC for transmission to OPS. **The SLPC will not approve the loan until formal clearance is received in writing from the D/OFA or designee.** OPS will request a background check that will include a Fingerprint Check via submission of an FD 258 or Electronic Fingerprint Submission, if available from the FBI. (See footnote 5 for discussion of Electronic Fingerprint Submission.)
- vi. The CDC must submit to the SLPC a complete and detailed Form 912 package signed by the Subject Individual within 90 calendar days of the submission to SLPC that includes the items listed in ii above, the FD 258 or Electronic Fingerprint Submission, and the name and address of the CDC. The SLPC will transmit the complete SBA Form 912 package to OPS.

B. Upon receipt of the complete Form 912 package, OPS will request a fingerprint check from the FBI. The FBI generally takes 30 days to process fingerprint checks. Once OPS receives a report back from the FBI, OPS will refer the matter to the D/OFA or designee to make a character determination as follows:

1. On receipt of the OPS referral, OFA will issue a character determination.
2. OFA will determine either that the Subject Individual has good character, or that an applicant is not eligible for an SBA Grow loan due to the Subject Individual's lack of good character based on the Form 912 package and the information received from the FBI, including any failure to disclose offenses.
3. OFA transmits its memorandum with the character determination to the SLPC via email.
4. The SLPC will advise the CDC in writing of the Agency's clearance decision.
5. The OFA memorandum and the FBI reports are deliberative and confidential, and also contain information protected by the Privacy Act. As a result, this information must not be released outside of SBA.

CDCs must retain the original signed SBA Form 912, the original signed written explanation, all supporting documentation, court documentation, and a copy of the Agency's clearance decision in their loan file.

C. Reconsiderations<sup>7</sup>. The Agency will consider a request submitted by a Subject Individual for reconsideration of a determination of lack of good character. The Subject Individual, either directly or through the CDC, should send a written request for reconsideration to the D/OFA. OFA generally processes a request for reconsideration within ten business days. Factors that may contribute to a favorable reconsideration include:

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<sup>7</sup> The procedures for reconsideration of a determination of lack of good character remain unchanged.

1. Additional information provided by the applicant that satisfactorily explains the circumstances of the prior offenses; and/or
2. The passage of time between the date of the prior offenses and the date of application, during which the applicant has not committed additional offenses and has generally led a responsible life and made a contribution to the community.

D. Reducing Ownership to Avoid Submitting Form 912.<sup>8</sup> A Subject Individual may not reduce his or her ownership in a Small Business Applicant for the purpose of avoiding completion of Form 912.

### **Procedures for SBA Form 1081**

The SBA Form 1081 (Statement of Personal History (For Use By Lenders)) is required to be submitted to SBA in connection with all applications by Non-Federally Regulated Lenders (NFRLs) and Small Business Lending Companies (SBLCs) to participate in the SBA Advantage Program (7(a)), all applications by eligible organizations to participate in the Community Advantage Pilot Program, all applications by CDCs to participate in the Grow Loan Program (504), and all applications by Microloan Intermediaries to participate in the Microloan Program.

Additionally, NFRLs, SBLCs, CA Lenders, CDCs, Microloan Intermediaries, and ILP Intermediaries are required to submit the SBA Form 1081 for certain organizational changes, such as new officers, directors or key personnel.

Further, CDCs applying for Local Economic Area Expansion or Multi-State Expansion are required to submit the SBA Form 1081 in certain circumstances. NFRLs, SBLCs, CA Lenders, CDCs, Microloan Intermediaries and ILP Intermediaries should follow current procedure and continue to submit all SBA Form 1081s (and FD 258s, if required) to the SBA office identified in SOP 50 10 5 (H), Community Advantage Participant Guide, SOP 52 00 A, or ILP Program Procedural Guide, as applicable. That SBA office will then submit the SBA Form 1081, FD 258, and any supporting documentation to OPS to conduct a background check that will include a Fingerprint Check via submission of an FD 258 to the FBI. The address is: SBA/OPS, 409 3<sup>rd</sup> Street SW, Washington, DC 20416.

***Requests for status of background checks*** - After 30 calendar days from the date that a complete Form 912/1081 package has been submitted to OPS, SBA Field Offices and/or processing centers may request the status of background checks from OPS by submitting a request via email to [suitability@sba.gov](mailto:suitability@sba.gov), and indicating "Status Request" in the Subject Line.

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<sup>8</sup> The procedures for reducing ownership to avoid submitting Form 912 remain unchanged.



Questions regarding this Notice may be directed to Justine Alston in the Office of Financial Assistance via email at [justine.alston@sba.gov](mailto:justine.alston@sba.gov) or Mary Frias via email at [mary.frias@sba.gov](mailto:mary.frias@sba.gov).

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