CORPORATE LAW ALERT
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Part 2 of 2: Buying a Business with SBA Financing? Size the Loan Before Setting the Price

Part 1 addressed how the United States Small Business Administration's ("SBA") new Standard Operating Procedure ("SOP") 50 10 8.1 affects sellers in transactions financed with SBA 7(a) loans. This Part 2 addresses the changes that most directly affect buyers. Several changes discussed in Part 1 also bear directly on buyers, including the universal independent valuation requirement, the quality of earnings report for larger deals, mandatory full underwriting, ban on earnouts, and the requirement that coverage be met on historical earnings rather than projections.

For buyers, the key change is one of sequence. Under the prior rules, a buyer could often agree on price first and work out the financing later. Under the new rules, the amount a buyer can borrow, and the amount of its own cash it must bring, should be determined before price is negotiated.

As noted in Part 1, with the exception of the citizenship requirement discussed below, these changes apply only to SBA 7(a) loans that receive an SBA loan number on or after October 1, 2026 and not to conventional bank financing or other SBA programs. SBA 7(a) loans numbered before September 30, 2026 generally remain under the prior SOP 50 10 8, even if they close later.

What Has Changed

1. **The type of buyer now sets the cash flow test.**

Before: Most acquisition loans had to meet a single debt service coverage minimum of 1.15x, no matter who the buyer was. In other words, the business had to earn at least $1.15 for every $1.00 of annual loan payments.

Now: The SBA sorts every purchase into one of four categories: (1) initial acquisition, (2) business expansion, (3) owner buyout, or (4) ESOP or cooperative transaction. Initial acquisitions and owner buyouts must meet a higher 1.25x minimum. An established company buying a business in the same industry (the same four-digit NAICS code) may qualify as a business expansion, which keeps the 1.15x minimum. As a result, the buyer's category controls how much the lender can lend. A first-time buyer must meet the higher 1.25x test, and must meet it using the business's actual past earnings, not projections (*see* Part 1, Item 6). As a result, first-time buyers can generally borrow less, than under the old rules.

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2. **Whether the buyer's cash down payment can be reduced depends on the buyer's category.**

Before: Buyers generally had to contribute an "equity injection" (essentially a down payment) of at least 10% of the total project cost.

Now: For an initial acquisition, the 10% minimum is firm and cannot be reduced. For a business expansion, the lender may reduce or waive it, but only if the buyer shows strong liquidity and a positive net worth. Under the new rules, first-time buyers should have at least 10% of the total project cost available before signing, because the lender cannot lower that amount. Strategic buyers that qualify as a business expansion have more room to negotiate.

3. **Real estate no longer guarantees a 25-year term.**

Before: Certain mixed-purpose SBA loans could receive a 25-year maturity when at least 51% of the loan proceeds were used for qualifying commercial real estate.

Now: Lenders may split the financing into separate loans or blend the terms into a single weighted-average maturity. For example, if a $5 million purchase includes $3 million of commercial real estate (eligible for a 25-year term) and $2 million of business acquisition financing (eligible for a 10-year term), the blended maturity would be approximately 19 years. A shorter term means higher annual payments, which can reduce the price the business's cash flow can support. As such, buyers of businesses that include real estate should not assume a 25-year amortization when sizing debt service. The blended or split structure should be confirmed with the lender before the price is agreed.

4. **Buyer ownership must meet the citizenship requirement.**

Before: Businesses owned in part by lawful permanent residents could qualify for SBA loans.

Now: Effective March 1, 2026, and now part of SOP 50 10 8.1, SBA loans are available only to businesses owned by U.S. citizens or U.S. nationals whose principal residence is in the United States. Lawful permanent residents are no longer eligible. The rule applies to direct and indirect owners and to guarantors, and, unlike the other changes in this alert, it applies to all SBA loans, not just 7(a) loans (*see* Part 1, Item 5). Buyers should confirm that every direct and indirect owner and guarantor is eligible before signing a letter of intent.

5. **A low valuation can create problems later.**

Before: On smaller transactions ($250,000 or less), lenders could forgo an independent valuation and rely on their own internal analysis.

Now: Every purchase requires an independent valuation covering the full purchase price. In addition, for initial acquisitions and business expansions with a business purchase price of $3 million or more (not counting owner-occupied real estate), the lender must order a quality of earnings report (*see* Part 1, Items 1 and 2). If the valuation comes in below the agreed price, the lender cannot finance the difference. The buyer must then cover the gap with its own cash, renegotiate the price, or walk away. Buyers should include valuation and quality of earnings protections in the letter of intent and purchase agreement.

Practical Steps for Buyers

A buyer in a transaction that began before October 1, 2026 should ask its lender which SOP will govern and whether the loan number was issued before October 1, 2026, and should not assume that a signed letter of intent or a submitted application locks in the prior rules. Before making an offer, a buyer should confirm that every direct and indirect owner and guarantor meets the citizenship requirement, confirm its acquisition category with the lender, and test the target's verified historical cash flow against the required coverage.

In the purchase agreement, the buyer should negotiate a financing contingency and outside date that reflect the longer timeline created by full underwriting, the independent valuation, and, for initial acquisitions and business expansions of $3 million or more (excluding owner-occupied real estate), a lender-ordered quality of earnings report. Where the seller will stay involved after closing, the buyer should address early with the seller and the lender the consulting or employment arrangement, which must fall within the 24-month limit (*see* Part 1, Item 3).

If you are considering acquiring a business with SBA financing, please contact Ruskin Moscou Faltischek, P.C. Our attorneys can help you evaluate a target, structure the financing and other deal key terms, and negotiate a transaction that works under the new SBA rules.

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