

Publications

Small Business Administration Guidance Streamlines Process for Loans to ESOPs

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PUBLISHED

05/30/2023

SOURCE

Groom Publication

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In August of 2018, the [Main Street Employee Ownership Act](#) (“MSEOA”) became law as part of the John S. McCain National Defense Authorization Act. The intent behind the MSEOA was to promote the establishment of employee stock ownership plans (“ESOPs”) by small employers through the removal of requirements that historically made it difficult to attain loans from the Small Business Administration (“SBA”) to finance an ESOP.

In keeping with the policy goals for the MSEOA, the SBA has recently released guidance helpful for ESOPs seeking loans from the SBA. Two separate pieces of guidance have been released: (1) [Procedural Notice 5000-846607](#) and (2) [SOP 50 10, Version 7](#).

As background, the SBA may guarantee a loan to an ESOP for two purposes: (1) the purchase of a controlling interest (at least 51 percent) in the employer small business; or (2) the purchase of qualified employer securities. Loans to an ESOP are subject to detailed rules issued by the SBA, which the guidance revises in a manner favorable for ESOPs.

Procedural Notice 5000-846607 amends the SBA’s Standard Operating Procedure Summary (“SOP Summary”) to remove the requirement of an “equity injection of at least 10 percent of total project costs” applicable to loans to ESOPs for the purpose of purchasing a controlling interest of an employer. This change is effective May 11, 2023.

This change, as well as other changes addressed in Procedural Notice 5000-846607, will be incorporated into a new edition of the SOP Summary (SOP 50 10, Version 7). Notably, the new SOP Summary permits loans to an ESOP or eligible small business owned or controlled by an ESOP to be issued through the SBA’s Preferred Lenders Program (“PLP”). PLP allows for a more streamlined loan application process and potentially an expedited approval by SBA. Loans to ESOPs are also no longer listed in the latest SOP Summary as ineligible for SBA Express processing, Export Express processing and PLP-EWCP processing.

The new SOP Summary will not become effective until August 1, 2023, and will thus only apply to applications received by SBA on or after that date. Lenders must continue to use the current SOP Summary (SOP 50 10, Version 6), until July 31,

2023.

If you have questions, please reach out to the authors or your regular Groom attorney.