

funds were more than adequate. For that reason, the requester suggested that the increased assessment rate has become unnecessary.

The third handler commenter also suggested that the proposed assessment rate of \$14.00 per ton was higher than necessary and offered a counter proposal of \$8.25 per ton.

At the time the committee made the recommendation for an increased assessment rate, they submitted a budget of expenses contingent upon the proposed assessment rate. If new information since that recommendation resulted in the need for a revised budget and accompanying assessment rate, the committee may recommend and submit a new budget and revised assessment rate for the Secretary's review. In fact, the committee may provide a new budget and assessment recommendation any time conditions affecting the budget and assessment rate change enough to warrant a new recommendation. In the absence of an alternative recommendation from the committee regarding a revised budget and assessment rate proposal, the USDA has determined that issuing this final rule as recommended by the committee is appropriate.

In addition, it should be noted that the marketing order provides a remedy in § 989.81(a) in the event the committee collects more assessment funds than are needed in a crop year: A handler may be credited his share of excess assessments collected against operations of the following crop year, or the handler may request a refund of such excess assessments. Moreover, the proposed budget and the accompanying increased assessment rate were unanimously approved at the July 22, 2010, and October 5, 2010, committee meetings. Representatives of all three handler commenters attended at least one of the meetings and added their vote to the unanimous recommendations.

The fourth comment was from a member of the public, who stated that assessment rates against raisin producers should be reduced rather than nearly doubled. First, the assessment is collected from handlers, rather than producers. Also, as noted previously, the members of the committee are producers and handlers of California raisins. They are familiar with the committee's needs and with costs for goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting in the production area, and therefore, all directly affected persons

have an opportunity and are encouraged to participate and provide input. Finally, the producers and handlers who comprise the committee made their recommendation to increase the assessment rate by unanimous vote.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2010–11 crop year raisins and the assessment rate applies to all raisins received during the crop year and subsequent crop years. In addition, the committee needs the additional revenue generated by this assessment rate to meet its financial obligations for this crop year. Further, handlers are aware of this rule, which was unanimously recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

#### **PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 989.347 is revised to read as follows:

#### **§ 989.347 Assessment rate.**

On and after August 1, 2010, an assessment rate of \$14.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: March 28, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–7759 Filed 3–31–11; 8:45 am]

**BILLING CODE 3410–02–P**

## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 109**

**[Docket No. SBA–2011–0002]**

**RIN 3245–AG18**

#### **Intermediary Lending Pilot Program**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements section 1131 of the Small Business Jobs Act of 2010, which requires SBA to establish an Intermediary Lending Pilot (ILP) program. The ILP program is a three-year pilot program in which SBA will make direct loans of up to \$1 million at an interest rate of 1 percent to up to 20 nonprofit lending intermediaries each year, subject to availability of funds. Intermediaries will then use the ILP loan funds to make loans of up to \$200,000 to startup, newly established, or growing small business concerns.

**DATES:** *Effective date:* April 1, 2011.

*Comment date:* Comments must be received on or before May 31, 2011.

**ADDRESSES:** You may submit comments, identified by docket number [SBA–2011–0002] by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.
- Hand Delivery/Courier: Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

All comments will be posted on [www.Regulations.gov](http://www.Regulations.gov). If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at [www.Regulations.gov](http://www.Regulations.gov) and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Grady Hedgespeth, Director of Financial

Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its sole discretion, of whether the information is CBI and, therefore, will be published or not.

**FOR FURTHER INFORMATION CONTACT:** Grady Hedgespeth, Director of Financial Assistance, at (202) 205-7562 or [Grady.Hedgespeth@sba.gov](mailto:Grady.Hedgespeth@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

Section 1131 of the Small Business Jobs Act of 2010, Public Law 111-240, enacted September 27, 2010 (the Act), requires SBA to implement a three year Intermediary Lending Pilot (ILP) program. Under the ILP program, SBA will provide loans to selected nonprofit intermediaries for the purpose of providing loans to small businesses. Eligible intermediaries, which include private, nonprofit community development corporations, must have at least one year of experience making loans to startup, newly established, or growing small businesses. SBA will use a competitive selection process to select ILP Intermediaries to participate in the program and will make ILP Loans of up to \$1 million to no more than 20 in each of fiscal years 2011, 2012, and 2013 (depending on availability of funds). ILP Loans have a 20 year term and an interest rate of 1%, with the first payment deferred for two years from the date of the first disbursement. SBA collects no fees on the loan and requires no collateral. An ILP Intermediary must use the ILP Loan proceeds to make loans of up to \$200,000 to startup, newly established, or growing small businesses. An ILP Intermediary will deposit the principal portion of all payments received on loans made to small businesses under the program into an ILP Relending Fund; the ILP Intermediary will then be required to lend 100% of the ILP Loan proceeds within two years of the date of the ILP Note. In addition, the ILP Intermediary will be required to continue making loans to small businesses from the ILP Relending Fund for as long as its loan from SBA remains outstanding.

In order to implement this new loan program, SBA is adding a new part 109 to the Agency's regulations. Many provisions, such as ILP Intermediary reporting requirements, fees charged to small business borrowers, and restrictions on types of businesses

eligible to receive loans under the ILP program, are based on existing requirements in SBA's other business loan programs under Part 120 of SBA's regulations.

**II. Section by Section Analysis**

*Sections 109.10 and 109.20* describe the ILP program and define the terms used in Part 109. The definitions for Affiliate, Associate, Close Relative, ILP Program Requirements, and Native American Tribal Government are based on similar or identical terms used in other SBA programs. In addition, the definitions for the various reports (ILP Program Activities Report, Portfolio Identification Report, and Portfolio Status Report) and the Intermediary Lending Program Electronic Reporting System (ILPERS) are based on similar reports used in SBA's Microloan program. The remaining definitions describe terms unique to the ILP program.

*Sections 109.100 through 109.220* describe the qualifications for the ILP program, the application process, and the evaluation and selection of ILP Intermediaries. Section 109.100 sets forth the eligibility and continuing participation requirements for ILP Intermediaries. An applicant must meet these requirements in order to be eligible to become an ILP Intermediary and, if selected, must maintain compliance with these requirements. Under the Act, an applicant must be a private, nonprofit entity with not less than one year of experience making loans to startup, newly established, or growing small businesses to be eligible to become an ILP Intermediary. At time of application, the applicant must have a minimum of one year of internal experience making loans to startup, newly established, or growing small businesses. The applicant must have directly funded the loans and not simply provided referrals to, or guarantees against, loans made by another entity. If an applicant is made up of a consortium of organizations, each member of the consortium must be individually eligible or the entire consortium will be considered not eligible. The Act further defines an eligible private, nonprofit entity to include a private, nonprofit community development corporation, a consortium of private, nonprofit organizations or community development corporations, and an agency or nonprofit entity established by a Native American tribal government. Examples of nonprofit community development corporations include certified nonprofit Community Development Fund Institutions (CDFIs) participating in Treasury's CDFI Fund

program and Certified Development Companies (CDCs) participating in SBA's 504 lending program. Intermediaries that currently participate in SBA's Microloan program, as described in subpart G of part 120, are not eligible to become ILP Intermediaries; however, affiliates of Microloan intermediaries may apply. SBA is requiring that a Microloan intermediary establish an affiliate organization (or use an existing affiliate organization) for participation in the ILP program in order to maintain separation between SBA program funds and activities, as well as to facilitate adequate and proper oversight of both programs. The Act requires that applicants to the ILP Intermediary program have at least one year of experience making loans to startup, newly established, or growing small businesses. Therefore, newly established affiliates will not be eligible to apply for the ILP program for fiscal year 2011; however, such affiliates may apply for the second round of ILP Intermediary selections in fiscal year 2012 after they have established the one year of required lending experience.

Paragraph (c) of *section 109.100* includes additional requirements relating to an ILP Intermediary's management and operations. SBA modeled these requirements on existing lender participation requirements in its guaranteed loan programs.

*Section 109.200* describes the ILP Intermediary application process. There is a limited amount of funds available to make loans to ILP Intermediaries; therefore SBA will run a competition to select the most qualified applicants to become ILP Intermediaries and receive an ILP Loan of up to \$1,000,000. SBA has authority to make ILP Loans to no more than 20 ILP Intermediaries in each of fiscal years 2011, 2012, and 2013, for a maximum total of 60 ILP Intermediaries. SBA will select 20 ILP Intermediaries through a competitive application process in fiscal year 2011 and another 20 ILP Intermediaries through a second competitive application round in fiscal year 2012, for a total of 40 ILP Intermediaries. SBA currently has funding to make ILP Loans only in fiscal years 2011, and 2012. If additional funds are appropriated for the ILP program, SBA will select another 20 ILP Intermediaries in fiscal 2013 for a total of 60 ILP Intermediaries.

As stated in § 109.200(a), SBA will publish a Notice of Funds Availability (NOFA) in the **Federal Register** to advise potential applicants of when they may begin submitting applications to become an ILP Intermediary. SBA will only accept applications during the

specific application period set forth in the NOFA. *Section 109.200(b)* lists the contents of the ILP Intermediary application. As required by the Act, an applicant must describe the type of small businesses it will assist; the size and range of loans it will make; the interest rate and terms of the loans it will make; the geographic area to be served and the economic, poverty, and unemployment characteristics of the area; and the status of small businesses in the area to be served and an analysis of the availability of credit. SBA will provide further details regarding the contents of the application in the NOFA.

*Section 109.210* describes the evaluation and selection of ILP Intermediaries by SBA. SBA will consider only completed applications. Each complete application will be evaluated and scored based on the criteria stated in the NOFA. In general, eligible applications with the highest scores will be granted ILP Intermediary status. SBA reserves the right to select less than the maximum authorized number of ILP Intermediaries and to select ILP Intermediaries in such a way as to diversify geographic areas served. By allowing geographic diversity to serve as a possible selection criterion, SBA hopes to expand the impact of the ILP program.

As required by the Act, *Section 109.220* provides that no ILP Intermediary (including affiliates) may receive more than \$1,000,000 in ILP Loans. Although SBA has authority to make ILP Loans of less than \$1 million, SBA anticipates making ILP Loans of \$1 million to each ILP Intermediary in order to fully utilize all available loan funds. Each ILP Intermediary will only be eligible to receive one ILP Loan.

*Sections 109.300 through 109.360* describe the requirements of the ILP program. As stated in *Section 109.300*, an ILP Intermediary must maintain compliance with ILP Program Requirements until it has repaid its ILP Loan to SBA. In addition, ILP Intermediaries are subject to certain provisions in 13 CFR Part 120 that are applicable to all lenders that participate in SBA loan programs: *Section 120.140, What ethical requirements apply to participants?*, describes the ethical requirements of lenders participating in SBA programs and any associates of such lenders; *§ 120.197, Notifying SBA's Office of Inspector General of suspected fraud*, requires lenders to notify the SBA Office of Inspector General of any information which indicates that fraud may have occurred in connection with a loan made under the ILP program; *§ 120.412, Other services Lenders may*

*provide Borrowers*, provides that lenders and associates of lenders may provide services to and contract for goods with a borrower only after full disbursement of the loan, and *§ 120.413, Advertisement of relationship with SBA*, describes how a lender may refer to SBA in its advertising.

*Section 109.310* provides the terms of SBA's ILP Loan to an ILP Intermediary. An ILP Loan must be fully repaid within 20 years from the date of the ILP Note. An ILP Intermediary may draw down ILP Loan funds as needed to fund loans to Eligible Small Business Concerns. SBA may place restrictions on disbursement, including the amount that may be disbursed to an ILP Intermediary at one time or conditions on subsequent disbursements. If SBA, in its sole discretion, finds that an ILP Intermediary is not complying with ILP Program Requirements, it may withhold any remaining disbursements of the ILP Loan until the ILP Intermediary comes into compliance.

*Sections 109.310 (c) and (d)* provide that the interest rate on an ILP Loan will be fixed at 1%, and that payments of principal and interest must be made to SBA on a quarterly basis. SBA will defer the first payment on an ILP Loan for two years from the date of the first disbursement of ILP Loan proceeds, as required by the Act. Interest will accrue on all disbursed funds during the deferment period. Accrued interest will be added to the outstanding principal balance at the end of the deferment period and amortized over the remaining life of the loan. An ILP Intermediary may prepay an ILP Loan at any time without penalty. As required by the Act and set forth in *§ 109.310(e) and (f)*, SBA will not require an ILP Intermediary to provide any collateral for an ILP loan, nor will SBA charge an ILP Intermediary any fees.

*Section 109.320* states that ILP Loan funds must only be used to provide direct loans to Eligible Small Business Concerns. An ILP Intermediary may not use ILP Loan funds for any other purpose, including maintenance of loan loss reserves or payment of administrative costs or expenses. SBA believes that these restrictions are appropriate in order to maximize the funds available for loans to Eligible Small Business Concerns. An ILP Intermediary may recoup the costs of making and servicing loans under this program from the interest spread between its ILP Loan and the loans to Eligible Small Business Concerns and from reasonable fees, as described in *§ 109.420(e)*.

*Section 109.330* provides that an ILP Intermediary must establish an ILP

Relending Fund in an account separate and distinct from its other assets and financial activities, and maintain it for as long as its ILP Loan from SBA is outstanding. All ILP Loan funds disbursed from SBA to the ILP Intermediary must be deposited into the ILP Relending Fund, as well as all payments received from Eligible Small Business Concerns on loans made under this program. SBA does not require the ILP Intermediary to retain the interest portions of payments received from Eligible Small Business Concerns in the ILP Relending Fund. The ILP Intermediary must not commingle funds from any other public programs in this account. An ILP Intermediary must use the ILP Relending Fund to disburse loans made to Eligible Small Business Concerns under this program and to make payments to SBA on its ILP Loan, and may not use the ILP Relending Fund for any other purpose.

*Section 109.340* sets forth SBA's lending requirements for ILP Loan funds. In paragraph (a), SBA requires that an ILP Intermediary commit 100% of its ILP Loan funds to Eligible Small Business Concerns within two years of the date of the ILP Note, unless it receives an extension from the Associate Administrator of Capital Access (AA/CA) or designee. SBA designed this requirement to prevent ILP Loans from remaining idle for extended periods of time, while also allowing an ILP Intermediary sufficient time to relend its ILP Loan funds in a prudent manner.

After meeting the initial lending requirement, the ILP Intermediary must relend the funds in its ILP Relending Fund so that the total principal balance of loans outstanding to Eligible Small Business Concerns does not fall below 75% of the outstanding principal balance of the ILP Loan at any time. SBA based this relending model on current practices of intermediaries participating in similar programs, such as SBA's Microloan program and USDA's Intermediary Relending Program, which are referenced in the Act's legislative history as bases for the ILP program. Requiring ILP Intermediaries to relend ILP Loan funds maximizes the impact of the ILP program, and is consistent with statutory intent. SBA anticipates that an ILP Intermediary will relend its ILP Loan proceeds approximately 2.5 times over the 20 year term.

*Section 109.350* provides that the ILP Intermediary must maintain a reasonable loan loss reserve appropriate for the quality of the ILP Intermediary's portfolio in a federally insured depository account established by the ILP Intermediary at a well-capitalized

financial institution. The loan loss reserve must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities. The loss reserve may be established using the ILP Intermediary's own funds, interest income from loans made to Eligible Small Business Concerns, or proceeds from the application or origination fees described in § 109.420(e). ILP Relending Fund proceeds may not be used to establish the loss reserve. In order to provide some protection against default, SBA will require an ILP Intermediary to maintain the loss reserve at not less than 5% of the principal balance of all outstanding loans to Eligible Small Business Concerns made from the ILP Relending Fund. The 5% requirement is intended as a floor. SBA recognizes that the appropriate level of reserves will vary depending on the ILP Intermediary's portfolio and current economic conditions; therefore SBA will allow ILP Intermediaries to determine their appropriate individual levels of reserves above the required 5%. If the AA/CA or designee determines that an ILP Intermediary's loss reserve level is potentially inadequate to protect SBA from loss, the AA/CA or designee may require the ILP Intermediary to maintain a larger loss reserve.

Section 109.360 details the recordkeeping and reporting requirements for the ILP program. Section 109.360(a) states that the ILP Intermediary must maintain accurate and current financial records and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program. Section 109.360(b) lists the required reports the ILP Intermediary must submit: (1) Portfolio Identification Reports containing information on each loan made to Eligible Small Business Concerns that must be submitted within seven days of closing a loan; (2) quarterly Portfolio Status Reports that update payment and balance information on the ILP Intermediary's ILP portfolio; (3) quarterly ILP Program Activities Reports (with accompanying bank statements) that demonstrate the use and management of ILP program funds; (4) audited financial statements; and (5) reports of any changes in the ILP Intermediary's organization or financing. SBA based these reporting requirements on the reports required in the Microloan program. The Portfolio Identification Reports and Portfolio Status Reports will be submitted electronically through SBA's web-based Intermediary Lending Program Electronic Reporting System (ILPERS).

Annually, the ILP Intermediary must submit audited financial statements prepared by an independent certified public accountant, except that ILP Intermediaries that are subject to the Single Audit Act under OMB Circular A-133 must instead submit audits prepared in accordance with that circular. SBA will provide further guidance on the application of the Single Audit Act and OMB Circular A-133 in the procedural guidance developed to administer the ILP program. An ILP Intermediary must submit its audited financial statements (or A-133 audit, as applicable) within four months after the close of the ILP Intermediary's fiscal year. SBA based this requirement on existing requirements in the Microloan program. The AA/CA or designee may provide extensions to the filing deadline.

Sections 109.400 through 109.440 describe the requirements for the loans an ILP Intermediary makes to small businesses. Section 109.400 provides the requirements a borrower must meet in order to receive a loan from an ILP Intermediary under this program. By statute, an ILP Intermediary must provide loans to startup, newly established, or growing small business concerns. In addition to these statutory requirements, paragraph (a) includes basic eligibility requirements that SBA requires for all of its business loans: the business must be organized for profit and located in the United States; it must meet SBA size standards; it must not have credit available elsewhere; and it must be creditworthy and demonstrate reasonable assurance of repayment of the loan. The business must be a small business as defined under the size requirements applicable to 7(a) business loans. The ILP Intermediary must also document that the small business borrower does not have credit available elsewhere and that the borrower demonstrates reasonable assurance or repayment. SBA will provide further guidance on the credit elsewhere test and what is required to demonstrate repayment ability in the procedural guidance developed to administer the ILP program.

Paragraph (b), which lists the types of businesses that are not eligible for loans under the ILP program, is also based on the eligibility requirements applicable to SBA's existing business loan programs. (See 13 CFR 120.110)

The Act provides that the maximum amount of a loan from an ILP Intermediary to a small business is \$200,000. SBA has interpreted this restriction in § 109.410 to mean that the total amount of all loans received by a small business under this program must not exceed \$200,000 at any one time.

Section 109.420 describes the terms of a loan from an ILP Intermediary to an Eligible Small Business Concern. The term of a loan to an Eligible Small Business Concern must be the shortest appropriate term. The maximum loan term is 10 years, unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years, in which case the maximum term is 25 years. SBA modeled these loan maturity limits on the terms used in SBA's 7(a) guaranteed loan program. The maximum rate will depend on the size of the loan: Loans less than or equal to \$50,000 have a maximum interest rate of 8.75 percent; loans greater than \$50,000 have a maximum interest rate of 7 percent.

SBA chose to differentiate between smaller and larger loan sizes because smaller loans generally carry more risk. SBA may adjust the maximum interest rates from time to time, and will publish any such change by Notice in the **Federal Register**. Changes to the maximum interest rate do not apply to loans made to Eligible Small Business Concerns prior to publication of the change in the **Federal Register**. SBA will publish these maximum rates in the **Federal Register** from time to time. Finally, paragraph (f) provides that an ILP Intermediary may not charge any fees on loans made under the program except for the reasonable direct costs of liquidation, necessary out-of-pocket expenses such as filing or recording fees, a late payment fee not to exceed 5 percent of the scheduled loan payment, and reasonable application and origination fees. The provisions on late payment fees, out-of-pocket expenses, and direct costs of liquidation are consistent with permissible fees in SBA's 7(a) guaranteed loan program. SBA decided to allow optional reasonable application and origination fees so that an ILP Intermediary may recoup some of its loan processing costs. The total amount of application and origination fees charged to an Eligible Small Business Concern must not exceed the maximum total fee cap, currently set at 1 percent of the amount of the loan to the Eligible Small Business Concern. SBA will publish a Notice in the **Federal Register** prior to implementing any changes to this fee cap.

Section 109.430 describes the eligible purposes for loans from ILP Intermediaries, as required by the Act. An Eligible Small Business Concern may only use the proceeds of a loan received under this program for working capital; real estate; and the acquisition of materials, supplies, furniture,

fixtures, or equipment. Loan proceeds must not be used to acquire real estate held primarily for sale, lease or investment. This restriction is consistent with SBA's policies against speculative uses of proceeds in its other business loan programs.

Section 109.440 describes requirements of ILP Intermediaries imposed under other laws and orders. These requirements apply government-wide to all programs that provide Federal financial assistance, and are applicable to all of SBA's loan programs. Section 120.170 (Flood insurance) states that a loan recipient must obtain flood insurance if any building, machinery, or equipment acquired, installed, improved, constructed, or renovated with the proceeds of SBA financial assistance is located in a special flood hazard area. ILP Intermediaries are responsible for notifying borrowers that flood insurance must be maintained. Section 120.172 (Flood-plain and wetlands management) details the steps an ILP Intermediary must follow if the location for which financial assistance is proposed is in a floodplain or wetland. Section 120.173 (Lead-based paint) states that if loan proceeds are for the construction or rehabilitation of a residential structure, lead-based paint may not be used on any interior surface, or on any exterior surface that is readily accessible to children under the age of seven. Section 120.173 (Earthquake hazards) provides that when loan proceeds are used to construct a new building or an addition to an existing building, the construction must conform with the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings. Finally, ILP Intermediaries must comply with the civil rights laws in parts 112, 113, 117, and 136 of this chapter prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age.

As required by the Act, section 109.450 provides that SBA will not review a loan made under this program prior to approval of the loan by the ILP Intermediary. An ILP Intermediary is responsible for all loan decisions regarding eligibility (including size). If SBA discovers that an ILP Intermediary has made a loan under this program to an ineligible business or for an ineligible purpose, SBA will require the ILP Intermediary to refinance the ineligible loan with non-ILP program funds and to deposit into its ILP Relending Fund an amount equal to the outstanding principal balance on the ineligible loan.

Section 109.460 provides that an ILP Intermediary may not sell all or any portion of a loan made to an Eligible Small Business Concern without prior written consent from the AA/CA or designee. SBA wants to prevent small business loans made under the ILP program from being sold to entities that have not been vetted and approved by SBA. SBA anticipates approving loan sales only in unusual circumstances.

Finally, Sections 109.500 to 109.530 set forth SBA's oversight of ILP Intermediaries. Section 109.500 requires the ILP Intermediary to allow SBA access to its files to review, inspect, and copy all records and documents relating to loans made from the ILP Relending Fund or as requested for SBA oversight. Section 109.510 states that SBA may conduct off-site reviews and monitoring of ILP Intermediaries and on-site reviews as needed. SBA may require an ILP Intermediary to take corrective actions to address findings from on-site or off-site reviews. Failure to take required corrective actions may constitute an event of default, as described in § 109.520(c). Any reports and other SBA prepared review related documents generated as a result of such reviews are subject to the confidentiality requirements of § 120.1060. These provisions are based on SBA's lender oversight regulations applicable to its other business loan programs. Reviews may include analysis of ILP Intermediaries' quarterly Portfolio Status Reports and ILP Program Activities Reports, annual audited financial statements, and loan information entered electronically into ILPERS. In addition, SBA may conduct on-site reviews of ILP Intermediaries at SBA's discretion. SBA may also review selected ILP loan files of those ILP Intermediaries that receive on-site reviews as part of their participation in other SBA programs (e.g., SBA's 504 program) as a part of those reviews. Loans made under the ILP program will not affect a lender's risk rating in other SBA programs.

Section 109.520 describes events of default on an ILP Loan and SBA's remedies for an ILP Intermediary's noncompliance with ILP Program Requirements. This section provides three categories of events of default: automatic events of default, events of default with notice, and events of default with opportunity to cure. SBA based this provision on default provisions used in its Small Business Investment Company (SBIC) and New Markets Venture Capital (NMVC) programs. Finally, § 109.530 provides that SBA may debar or suspend an ILP Intermediary or any participant in the

affairs of an ILP Intermediary's SBA operations in accordance with the government-wide nonprocurement debarment and suspension provisions in 2 CFR Parts 180 and 2700. SBA will provide further guidance on its oversight of ILP Intermediaries in the procedural guidance developed to administer the ILP program.

### III. Justification for Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553 and SBA regulations at 13 CFR 101.108. The APA provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting prior public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without prior public participation. SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to help small businesses during this economic downturn and the short-term nature of the funding for this new pilot program. The ILP program will offer a significant opportunity for nonprofit intermediaries to provide loans to startup, newly established, or growing small businesses. In order to select the 20 most qualified participants for the ILP program, SBA must run a competition. Under current appropriations, SBA can provide loans to 20 ILP Intermediaries in each of fiscal years 2011 and 2012; however, the 2011 appropriations for the ILP program are only available for loans made in fiscal year 2011. Furthermore, SBA must run a competition to select the ILP Intermediaries that will receive loans in fiscal year 2011. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would probably delay the delivery of the ILP program until fiscal year 2012 and prevent the Agency from maximizing the funds available for loans in fiscal year 2011. In addition, the Act included a deadline to publish regulations by March 26, 2011. In order to meet this statutory deadline and to maximize the use of available program funds, SBA needs to implement this

program without advance solicitation of comments.

SBA invites comments from all interested members of the public. These comments must be received on or before the close of the comment period noted in the **DATES** section of this interim final rule. SBA may then consider these comments in making any necessary revisions to these regulations.

#### **IV. Justification for Immediate Effective Date**

The APA requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as \* \* \* otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect.

Under current appropriations, SBA can provide loans to 20 ILP Intermediaries in each of fiscal years 2011 and 2012; however, the 2011 appropriations for the ILP program are only available for loans made in fiscal year 2011. As stated above, SBA must run a competition to select the most qualified applicants to become ILP Intermediaries and receive ILP Loans. An immediate effective date is necessary to ensure that there is sufficient time to select ILP Intermediaries and make ILP Loans before the end of this fiscal year; therefore, SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. While this rule is effective immediately upon publication, the SBA is inviting public comment on the rule during a 60-day period and will consider comments in developing a final rule.

#### **Compliance With Executive Orders 12866, 12988, 13132, 13175, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)**

##### **Executive Order 12866**

The Office of Management and Budget has determined that this rule constitutes a “significant regulatory action” under Executive Order 12866, thus requiring a Regulatory Impact Analysis, as set forth below.

##### *A. Regulatory Objective of the Proposal*

Under the ILP program, SBA will provide direct loans of up to \$1,000,000 to eligible nonprofit intermediaries. These direct loans will enable the nonprofit intermediaries to provide

loans of up to \$200,000 to startup, newly established, or growing small business concerns for working capital, real estate, or the acquisitions of materials, supplies, furniture, fixtures, or equipment. The ILP program addresses current financing gaps including the limited availability of commercial loans of \$200,000 or less.

##### *B. Benefits of the Rule*

The Eligible Small Business Concerns that receive loans from ILP Intermediaries directly benefit from the ILP program. In monetary terms, these direct benefits total approximately \$150 million, as described below. An ILP Intermediary must use the proceeds of an ILP Loan to make loans to Eligible Small Business Concerns, and must continue to relend the principal portion of payments received on those loans while the ILP Loan remains outstanding to SBA. SBA anticipates that each ILP Intermediary will relend its ILP Loan proceeds approximately 2.5 times before it has fully repaid its ILP Loan to SBA. SBA is authorized to make loans of \$1 million to 20 ILP Intermediaries in each of fiscal years 2011, 2012, and 2013, subject to the availability of appropriations (current appropriations allow SBA to make \$20 million in ILP Loans in each of fiscal years 2011 and 2012). Therefore, each ILP Intermediary will make approximately \$2.5 million in loans to Eligible Small Business Concerns. Assuming that SBA receives the same funding for the ILP program in fiscal year 2013, SBA anticipates that the total benefit of the ILP program to Eligible Small Business Concerns will be approximately \$150 million (60 ILP Intermediaries at \$2.5 million in loans to Eligible Small Business Concerns per ILP Intermediary).

The ILP Intermediaries will also benefit from the ILP program because the favorable ILP Loan terms will enable an ILP Intermediary to participate in the ILP program at little to no cost to the ILP Intermediary. By statute, an ILP Loan has a 20 year term, no collateral, no fees, a 2 year payment deferral, and a 1% fixed interest rate. In addition, the regulations would permit ILP Intermediaries to charge Eligible Small Business Concerns a reasonable interest rate, application and origination fees and closing costs for loans made under the ILP program. SBA anticipates that most ILP Intermediaries will be able to fund the operations of their ILP programs through these fees and the interest spread on loans to Eligible Small Business Concerns.

##### *C. Costs of the Rule*

The bulk of the immediate costs of the ILP program are borne by the U.S. taxpayers due to the current subsidy appropriations of \$8 million for fiscal years 2011 and 2012. Based on current subsidy models, however, SBA anticipates using only \$6,115,129 in FY 2011 and \$5,145,704 in FY 2012 to carry out the ILP program. In addition to the subsidy costs, the SBA and U.S. taxpayers will incur costs associated with launching and operating the ILP program, for which Congress has appropriated \$6.5 million. The agency will use this funding for program development, implementation and support.

The small business borrowers that receive loans from ILP Intermediaries will have some costs associated with the loan. As stated above, the regulations would permit ILP Intermediaries to charge a reasonable interest rate, application fee, origination fee and closing costs for loans to Eligible Small Business Concerns. These fees are necessary to cover the ILP Intermediaries' administrative costs of running the ILP program. In addition, the regulations would allow ILP Intermediaries to charge the Eligible Small Business Concerns for direct costs of liquidation and a late payment fee of less than 5 percent of the scheduled loan payment. These fees safeguard the ILP Intermediary in the case of default or delinquency by an Eligible Small Business Concern.

Finally, ILP Intermediaries will incur some costs of administering this program. For instance, ILP Intermediaries must maintain the ability to administer, monitor, and service the small business loans through adequate staffing, capital, and other resources. Also, the regulations mandate certain reporting requirements: ILP Intermediaries must report each loan transaction in an electronic reporting system; submit quarterly reports; and annual audited financial statements. In addition, ILP Intermediaries will incur costs to maintain required loan loss reserves. The regulations would require ILP Intermediaries to maintain a loan loss reserve fund of not less than 5 percent of the principal balance of outstanding loans to Eligible Small Business Concerns under the program. While the loan loss reserve fund and reporting requirements represent a cost to ILP Intermediaries, SBA finds these costs necessary to facilitate the ILP program and to ensure prudent lending practices.

#### D. Alternatives

Given that the program is the result of a Congressional mandate, SBA had little leeway in providing alternatives for the basic programmatic structure. However, SBA did consider various alternative ways of implementing the specific statutory requirements. For example, SBA considered prohibiting loans to Eligible Small Business Concerns of less than \$50,000 in order to avoid any risk of overlap with SBA's Microloan program, but decided that such a restriction would unduly restrict the ILP program and possibly lead to artificial inflation of loan amounts to meet program requirements. Furthermore, SBA plans to select ILP Intermediaries with demonstrated experience in making loans between \$50,000 and \$200,000; therefore, SBA anticipates that the majority of loans made to small businesses through the ILP program will exceed \$50,000.

SBA also considered restricting the application and origination fees an ILP Intermediary can charge to a nominal amount. SBA decided that it will allow ILP Intermediaries to charge reasonable application and origination fees totaling up to 1% of the amount of the loan to the small business borrower in order to recoup some of the administrative costs associated with making loans under the ILP program. In addition, SBA considered requiring monthly payments on the ILP Loan and submission of monthly reports. However, SBA decided that while more frequent loan payments and reporting would benefit the agency, quarterly payments and reporting imposed a less stringent requirement for the ILP Intermediaries without adding much additional risk.

Having considered these alternatives, SBA believes that this rule is SBA's best available means for achieving its regulatory objective of implementing the ILP program and incorporating the provisions of the Small Business Jobs Act of 2010.

#### Executive Order 12988

For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in sections 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or pre-emptive effect.

#### Executive Order 13132

For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

#### Executive Order 13175

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with tribal officials in the development of Federal policies that have tribal implications. As defined in the order, policies that have tribal implications refers to regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

In these regulations, SBA has defined Native American Tribal Governments to include the governing body of any Native American tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans. This definition is based on the definition of "qualified Indian tribe" in the Small Business Act (15 U.S.C. 632), which is in turn based on the definition of "Indian tribe" in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

As set forth in section 1131 of the Act, the ILP program provides an opportunity for agencies of a Native American Tribal Government or nonprofit entities established by a Native American Tribal Government to apply to become ILP Intermediaries. SBA welcomes the opportunity to discuss the ILP program with the tribal and ANC communities during the public comment period.

#### Executive Orders 12866 and 13563

A description of the need for this regulatory action and benefits and costs associated with this action is included above in the Regulatory Impact Analysis under Executive Order 12866.

As further described above, SBA needs to implement this program without advance solicitation of comments in order to maximize the use of available program funds. Under current appropriations, SBA can provide loans to 20 ILP Intermediaries in each of fiscal years 2011 and 2012; however, the 2011 appropriations for the ILP program are only available for loans made in fiscal year 2011.

The requirements imposed on ILP Intermediaries are designed to maximize

net benefits of the ILP program. In order to minimize the burdens on the ILP Intermediaries while also ensuring protection of taxpayer dollars, SBA compared requirements in similar programs (such as SBA's Microloan program and USDA's Intermediary Relending Program) and conducted market research. For example, SBA sought information from several nonprofit lenders currently participating in similar lending programs regarding their average loss reserve rates and their experiences in relending loan funds. SBA used this information in formulating the relending and loss reserve requirements for the ILP program.

In addition, SBA sought to use flexible approaches in designing ILP program requirements. For example, ILP Intermediaries may use their own forms and underwriting processes for selecting small business borrowers.

As the ILP program is a new lending program, retrospective analyses of existing significant regulations is not applicable to this program.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this rule imposes new reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This new information collection requires that interested nonprofit intermediaries submit an application and exhibits to SBA to facilitate an application selection process. This new information collection also requires certain reporting requirements that selected ILP Intermediaries must fulfill to maintain participation in the ILP Program. SBA is submitting this set of information collections as described below to OMB for review and approval together with the interim final rule.

#### 1. Title and Description: Recordkeeping requirements.

*Purpose:* Section 109.360(a) requires the ILP Intermediary to maintain accurate and current financial records, including books of accounts, and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program, including files on loan made to Eligible Small Business Concerns. Records may be preserved electronically if the original is available for retrieval within 15 calendar days.

*OMB Control Number:* New collection.

*Description of, and Estimated Number of Respondents:* All ILP Intermediaries will be required to maintain records of their activities in the ILP program.



Given the current appropriated funds, SBA anticipates making loans to 20 ILP Intermediaries in fiscal year 2011 and 20 additional ILP Intermediaries in fiscal year 2012, for a total of 40 ILP Intermediaries.

*Estimated Number of Responses:* No responses are required.

*Estimated Response Time:* No responses are required.

*Estimated Annual Hour Burden:* The annual hour burden is de minimis, because ILP Intermediaries would maintain such records in the ordinary course of business.

**2. Title and Description of Information Collection:** SBA Form XX: Intermediary Lending Pilot Program Application—Part I, Management Assessment Questionnaire and Part II, Exhibits.

*Purpose:* Part I of this form collects identifying information regarding the intermediary applicant and its Officers, the loan request, lending history, projected lending activity, information regarding current or previous government financing, and the intermediary's financial health and viability. Part II of this form collects supplemental information from the intermediary applicant and its principals such as resumes, organizational charts, loan policies and procedures, one year of financial statements, and Employer Identification Number documentation.

*OMB Control Number:* New collection.

*Description of, and Estimated Number of Respondents:* SBA anticipates 200 ILP Intermediary Applicants will respond to this information collection.

*Estimated Number of Responses:* 200 estimated responses.

*Estimated Response Time:* 35 hours estimated response time per applicant.

*Total Estimated Annual Hour Burden:* 7,000 hours estimated annual hour burden.

**3. Title and Description:** SBA Form XX: ILP Program Activities Report.

*Purpose:* This electronic form collects quarterly account activity information in the ILP Program Relending Fund and the ILP loan loss reserve account. ILP Intermediaries must use this account to receive ILP loan proceeds from the SBA and to disburse small business loan proceeds to the small business borrower, and to maintain adequate loan loss reserves. The form collects information such as principal repayment from borrowers, interest paid by borrowers, interest earned, disbursements to small business borrowers, and repayments to SBA. Intermediaries must also submit accompanying bank statements (3

months) to support the data reported in the ILP Relending Fund and the ILP loan loss reserve account.

*OMB Control Number:* New collection.

*Description of, and Estimated Number of Respondents:* SBA anticipates 40 ILP Intermediaries to respond to this information collection per quarter.

*Estimated Number of Responses:* One response per intermediary per quarter, or 160 total estimated responses.

*Estimated Response Time:* 1 hour estimated response time per quarter.

*Estimated Annual Hour Burden:* 160 hours estimated annual hour burden.

**4. Title and Description:** Intermediary Lending Program Electronic Reporting System (ILPERS), Portfolio Identification Reports.

*Purpose:* This electronic submission collects identifying information on each small business borrower such as demographic information, use of proceeds, payment terms, and jobs created and retained.

*OMB Control Number:* New collection.

*Description of, and Estimated Number of Respondents:* SBA anticipates 40 ILP Intermediaries to respond to this information collection.

*Estimated Number of Responses:* 6 estimated annual responses per intermediary, or 240 total estimated responses.

*Estimated Response Time:* 15 minutes estimated response time.

*Estimated Annual Hour Burden:* 60 hours estimated annual hour burden.

**5. Title and Description:** Intermediary Lending Program Electronic Reporting System (ILPERS), Portfolio Status Report.

*Purpose:* This form collects the payment status and outstanding principal balance of loans to small business borrowers on a quarterly basis.

*OMB Control Number:* New collection.

*Description of, and Estimated Number of Respondents:* SBA anticipates 40 ILP Intermediaries to respond to this information collection per quarter.

*Estimated Number of Responses:* One response per intermediary per quarter, or 160 total estimated responses.

*Estimated Response Time:* 30 minutes estimated response time.

*Estimated Annual Hour Burden:* 2 hours per intermediary annually, or 80 total hours estimated annual hour burden.

**7. Title and Description:** Audited Financial Statements.

*Purpose:* ILP Intermediaries are required to submit audited financial statements as prepared by an independent certified public

accountant. ILP Intermediaries subject to OMB Circular A-133 must submit audits in accordance with that circular.

*OMB Control Number:* New collection.

*Description of, and Estimated Number of Respondents:* SBA anticipates 40 ILP Intermediaries to respond to this information collection.

*Estimated Number of Responses:* 40 estimated responses.

*Estimated Response Time:* 80 hours estimated response time per intermediary per year. SBA believes that this burden will be reduced to the extent that many intermediaries already maintain this information for other purposes, and thus any costs resulting from this requirement may be de minimis.

*Estimated Annual Hour Burden:* 3,200 hours estimated annual hour burden.

**8. Title and Description:** Reports of Changes.

*Purpose:* ILP Intermediaries must submit ad hoc summaries of any changes in the ILP Intermediary's organization or financing (within 30 calendar days of the change).

*OMB Control Number:* New collection.

*Description of, and Estimated Number of Respondents:* SBA anticipates 40 ILP Intermediaries to respond to this information collection.

*Estimated Number of Responses:* 40 estimated responses, based on an assumption that, on average, each intermediary will need to submit one Report of Changes in any given year.

*Estimated Response Time:* 30 minutes estimated response time per intermediary per year.

*Estimated Annual Hour Burden:* 20 hours estimated annual hour burden.

SBA invites comments on the ILP program information collections, particularly on: (1) Whether the proposed collection of information is necessary for the proper performance of the program, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503



and to Grady B. Hedgespeth, Director of Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Regulatory Flexibility Act 5 U.S.C. 601–612

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires administrative agencies to consider the economic impact of their actions on small entities, which includes small businesses, small nonprofit businesses, and small local governments. The RFA requires agencies to prepare a regulatory flexibility analysis, which describes the economic impact that the rule will have on small entities, or certify that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. Rules are exempt from the APA notice and comment requirements when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. As detailed above, SBA has determined that there is good cause to adopt this rule without prior public participation; therefore, the rule is also exempt from the RFA requirements. SBA invites comments on this determination.

#### List of Subjects in 13 CFR Part 109

Community development, Loan program—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR Chapter I by adding part 109 to read as follows:

### PART 109—INTERMEDIARY LENDING PILOT PROGRAM

#### Subpart A—Introduction

Sec.

- 109.10 Description of the Intermediary Lending Pilot program.  
109.20 Definitions.

#### Subpart B—ILP Intermediary Application and Selection Process

- 109.100 ILP Intermediary eligibility and continuing participation requirements.  
109.200 Application to become an ILP Intermediary.  
109.210 Evaluation and selection of ILP Intermediaries.  
109.220 Loan limits—loans to ILP Intermediaries.

#### Subpart C—ILP Program Requirements

- 109.300 General.  
109.310 Terms of loans to ILP Intermediaries.  
109.320 ILP Loan purposes.

- 109.330 ILP Relending Fund.  
109.340 Lending requirements.  
109.350 Maintenance of loan loss reserve.  
109.360 Recordkeeping and reporting requirements.

#### Subpart D—Requirements for ILP Intermediary Loans to Small Businesses

- 109.400 Eligible Small Business Concerns.  
109.410 Loan limits—loans to Eligible Small Business Concerns.  
109.420 Terms of Loans from ILP Intermediaries to Eligible Small Business Concerns.  
109.430 Loan purposes.  
109.440 Requirements imposed under other laws and orders.  
109.450 SBA Review of ILP Intermediary loans to Eligible Small Business Concerns.  
109.460 Prohibition on sales of ILP Intermediary loans to Eligible Small Business Concerns.

#### Subpart E—Oversight

- 109.500 SBA access to ILP Intermediary files.  
109.510 On-site and off-site reviews.  
109.520 Events of default and revocation of authority to participate in the ILP program.  
109.530 Debarment and Suspension.

**Authority:** 15 U.S.C. 634(b)(6), (b)(7), and 636(l).

#### Subpart A—Introduction

##### § 109.10 Description of the Intermediary Lending Pilot program.

The Small Business Intermediary Lending Pilot program (ILP program) provides direct loans to ILP Intermediaries to make loans of up to \$200,000 to startup, newly established, or growing small businesses. ILP Intermediaries continue to relend a portion of the payments received on small business loans made under the program until they have fully repaid their loans to SBA.

##### § 109.20 Definitions.

*Affiliate* has the meaning set forth in § 121.103 of this chapter.

*Associate.* (1) An Associate of an ILP Intermediary is:

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the ILP Intermediary or its debt instruments, or an agent involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraph (1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent;

(2) An Associate of an Eligible Small Business Concern is:

(i) An officer director, owner of more than 20 percent of the equity, or key employee of the Eligible Small Business Concern;

(ii) Any entity in which one or more individuals referred to in paragraphs (2)(i) of this definition owns or controls at least 20 percent; and

(iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company (SBIC) licensed by SBA).

(3) For the purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the ILP Note or the loan to the Eligible Small Business Concern is outstanding:

(i) For an ILP Intermediary, the date of the ILP Note;

(ii) For an Eligible Small Business Concern, the date of the loan application to the ILP Intermediary.

*Close Relative* is a spouse; a parent; a child or sibling, or the spouse of any such person.

*Eligible Small Business Concern* is a small business that meets the requirements of § 109.400.

*ILP Intermediary* means a private, nonprofit entity that has applied for and been selected by SBA to receive an ILP Loan through the competitive application process described in this Part.

*ILP Loan* means a direct loan made by SBA to an ILP Intermediary under this program.

*ILP Note* means the instrument that represents the obligation of the ILP Intermediary to repay the ILP Loan to SBA.

*ILP Program Activities Report* means the quarterly report that identifies the use and management of ILP program funds.

*ILP Program Requirements* are requirements imposed upon an ILP Intermediary by statute, SBA regulations, any agreement executed between SBA and the ILP Intermediary, SBA SOPs, SBA procedural guidance, official SBA notices and forms applicable to the ILP program, any NOFA applicable to the ILP program, and the ILP Note and Loan Authorization, as such requirements are issued and revised by SBA from time to time.

*ILP Relending Fund* means a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution which includes, at a minimum, the ILP Loan proceeds and the principal portion of repayments from Eligible Small Business Concerns.

*Intermediary Lending Program Electronic Reporting System (ILPERS)* means the web-based, electronic reporting system used by the ILP

Intermediary to report each loan made to Eligible Small Business Concerns, to provide aging information on each loan, and to update the outstanding principal balance of each loan until all loans are either paid in full or charged off.

*Native American Tribal Government* means the governing body of any Native American tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans.

*Portfolio Identification Report* means the electronic report that collects identifying information on loans made to Eligible Small Business Concerns, including demographic information, use of proceeds, payment terms, and jobs created and retained.

*Portfolio Status Report* means the quarterly electronic report that summarizes the payment status and outstanding principal balances of an ILP Intermediary's loans to Eligible Small Business Concerns.

## Subpart B—ILP Intermediary Application and Selection Process

### § 109.100 ILP Intermediary eligibility and continuing participation requirements.

(a) *Organization type*: An ILP Intermediary must be a private, nonprofit entity other than an intermediary participating in the SBA Microloan program as described in subpart G of Part 120. Eligible entities include:

- (1) Private, nonprofit community development corporations;
- (2) Consortiums of private, nonprofit organizations or nonprofit community development corporations; and
- (3) Agencies of or nonprofit entities established by Native American tribal governments.

(b) *Prior experience*: An ILP Intermediary must have at least one year of successful experience making and servicing loans to startup, newly established, or growing small businesses.

(c) *Management and operations*. (1) An ILP Intermediary must have paid staff with loan making and servicing experience acceptable to SBA.

(2) An ILP Intermediary must have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans including, but not limited to:

(i) Holding sufficient permanent capital (as determined by SBA) to support lending activities under this program; and

(ii) Maintaining satisfactory SBA performance, as determined by SBA in its discretion.

(3) An ILP Intermediary must meet and maintain the ethical requirements of 13 CFR 120.140.

(4) An ILP Intermediary (and any Affiliates) that participates in other SBA programs must be in compliance with those program requirements.

(5) An ILP Intermediary must be in good standing with its Federal and/or State regulator, as applicable.

(6) An ILP Intermediary must have the ability to comply with the ILP Program Requirements, including reporting requirements, as such requirements are revised from time to time, and maintain compliance with ILP Program Requirements for as long as the ILP Intermediary participates in the ILP program.

### § 109.200 Application to become an ILP Intermediary.

(a) *Notice of Funds Availability (NOFA)*. SBA will periodically publish a NOFA in the **Federal Register**, advising potential applicants of the availability of funds for the ILP program. Any eligible entity may then submit an application to become an ILP Intermediary. When submitting its application, an applicant must comply with both these regulations and any requirements specified in the NOFA, including submission deadlines. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round.

(b) *Contents of application*. The application to become an ILP Intermediary must include:

(1) Documentation that the applicant meets the eligibility and continuing participation requirements for the ILP program set forth in § 109.100;

(2) A completed ILP Intermediary application form provided by SBA;

(3) A description of:

(i) The type of small businesses to be assisted;

(ii) The size and range of loans to be made;

(iii) The interest rate and terms of the loans to be made;

(iv) The geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

(v) The status of small businesses in the area to be served and an analysis of the availability of credit; and

(4) Any additional forms and documentation required by SBA.

### § 109.210 Evaluation and selection of ILP Intermediaries.

(a) *General*. SBA will evaluate and select applicants to participate in the ILP program in accordance with this section and the NOFA. SBA reserves the right, in its discretion, to loan less than all available funds.

(b) *Number of ILP Intermediaries*. SBA will make loans to not more than 20 of the selected ILP Intermediaries in each of the fiscal years for which funding is available.

(c) *Eligibility and completeness*. SBA will not consider any application that is not complete or that is submitted by an applicant that does not meet the eligibility and participation criteria established by SBA. SBA, at its sole discretion, may request from an applicant additional information, including information concerning participation criteria or the application, in order to allow SBA to consider that applicant's application. Failure to provide such additional information may be considered grounds to reject the application.

(d) *Evaluation criteria*. Eligible and complete applications will be evaluated and scored based on the criteria established by SBA, as set forth in the NOFA. In general, eligible applications with the highest scores will be granted ILP Intermediary status, up to the maximum number allowed by statute. SBA reserves the right to select ILP Intermediaries in such a way as to ensure geographic diversity of areas served by ILP Intermediaries.

### § 109.220 Loan limits—loans to ILP Intermediaries.

No ILP Intermediary (including Affiliates) may receive more than \$1,000,000 in ILP Loans.

## Subpart C—ILP Program Requirements

### § 109.300 General.

An ILP Intermediary must maintain compliance with all ILP Program Requirements until the ILP Intermediary has repaid its ILP Loan to SBA. With respect to its activities in the ILP program, the ILP Intermediary is subject to the requirements of §§ 120.140 (What ethical requirements apply to participants?), 120.197 (Notifying SBA's Office of Inspector General of suspected fraud), 120.412 (Other services Lenders may provide Borrowers), and 120.413 (Advertisement of relationship with SBA) of this chapter, in addition to the regulations specifically set forth in this Part. The ILP Intermediary and any contractor(s) it may have are independent contractors that are responsible for their own actions with

respect to small business loans made under this program. SBA has no responsibility or liability for any claim by an Eligible Small Business Concern or other party for any injury as a result of any wrongful action taken by the ILP Intermediary or an employee, agent or contractor of an ILP Intermediary.

**§ 109.310 Terms of loans to ILP Intermediaries.**

(a) *Disbursement.* An ILP Intermediary must be in compliance with ILP Program Requirements in order to draw down its ILP Loan funds. SBA may place restrictions on disbursement, including the amount disbursed to an ILP Intermediary at one time or conditions on subsequent disbursements.

(b) *Term.* An ILP Loan must be repaid within 20 years from the date of the ILP Note.

(c) *Interest rate.* The interest rate for an ILP Loan to an ILP Intermediary is fixed at one percent per annum.

(d) *Repayment.* Payments of principal and interest must be made on a quarterly basis, except SBA will defer the first payment on an ILP Loan for two years from the date of the first disbursement. Interest will accrue on all disbursed funds during the deferment period. Accrued interest will be added to the outstanding principal balance at the end of the deferment period and amortized over the remaining life of the loan. An ILP Intermediary may prepay an ILP Loan at any time without penalty.

(e) *Collateral.* SBA does not require the ILP Intermediary to provide any collateral for an ILP Loan.

(f) *Fees.* SBA does not charge an ILP Intermediary any fees for an ILP Loan.

**§ 109.320 ILP Loan purposes.**

(a) ILP Loan funds must only be used to provide direct loans to Eligible Small Business Concerns for working capital, real estate, or the acquisition of materials, supplies, furniture, fixtures, or equipment.

(b) ILP Loan funds must not be used for any other purpose, including maintenance of loan loss reserves or payment of administrative costs or expenses of the ILP Intermediary.

**§ 109.330 ILP Relending Fund.**

(a) *General.* The ILP Intermediary must establish and maintain an ILP Relending Fund for as long as it has an outstanding balance owed to SBA under this program. The ILP Relending Fund must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities.

(b) *Contents of the ILP Relending Fund.* All ILP Loan proceeds disbursed

from SBA to the ILP Intermediary must be deposited into the ILP Relending Fund. All payments received by the ILP Intermediary on loans made to Eligible Small Business Concerns must also be deposited into the ILP Relending Fund. The ILP Intermediary must not commingle funds from any other public programs (including other SBA programs) in this account.

(c) *Interest earned.* The ILP Intermediary is not required to retain the interest portion of payments received on loans made to Eligible Small Business Concerns in the ILP Relending Fund or to retain the interest earned on the ILP Relending Fund in the ILP Relending Fund.

(d) *Allowable uses of the ILP Relending Fund.* The ILP Intermediary must use the ILP Relending Fund to disburse loans made to Eligible Small Business Concerns under this program and to make payments to SBA on its ILP Loan; it may not use the ILP Relending Fund for any other purposes.

**§ 109.340 Lending requirements.**

(a) *Initial lending requirement.* The ILP Intermediary must commit 100% of its ILP Loan funds to Eligible Small Business Concerns within two years of the date of the ILP Note. The Associate Administrator for Capital Access (AA/CA) or designee may approve extensions to the initial lending requirement on a case-by-case basis.

(b) *Ongoing relending requirement.* After meeting the initial lending requirement, the ILP Intermediary must relend the funds in the ILP Relending Fund so that the total principal balance of loans outstanding to Eligible Small Business Concerns does not fall below 75% of the outstanding principal balance of the ILP Loan at any time while the ILP Loan is outstanding. Exceptions to this requirement will be considered by the AA/CA or designee on a case by case basis based on the particular facts and circumstances of the ILP Intermediary.

**§ 109.350 Maintenance of loan loss reserve.**

The ILP Intermediary must maintain a reasonable loan loss reserve appropriate for the quality of the ILP Intermediary's portfolio in a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution. The loan loss reserve must be in an account separate and distinct from the ILP Intermediary's other assets and financial activities. This reserve must be maintained at not less than 5% of the principal balance of all outstanding loans to Eligible Small Business Concerns made from the ILP

Relending Fund. The AA/CA or designee may require the ILP Intermediary to maintain a larger loss reserve if the AA/CA determines that the ILP Intermediary's loss reserve level is potentially inadequate to protect SBA from loss. ILP Relending Fund proceeds must not be used to establish or maintain the loan loss reserve.

**§ 109.360 Recordkeeping and reporting requirements.**

(a) *Maintenance of records.* The ILP Intermediary must maintain at its principal business office accurate and current financial records, including books of accounts, and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program, including files on loans made to Eligible Small Business Concerns. Records may be preserved electronically if the original is available for retrieval within 15 calendar days.

(b) *ILP Intermediary reporting.* The ILP Intermediary must submit the following to SBA:

(1) *Portfolio Identification Reports.* All loans made by the ILP Intermediary to an Eligible Small Business Concern under this program must be entered into the Intermediary Lending Program Electronic Reporting System (ILPERS) within seven calendar days of closing the loan.

(2) *Quarterly reports.* By the 30th calendar day following the end of each calendar quarter, each ILP Intermediary must submit a Portfolio Status Report via ILPERS to update the payment status and outstanding principal balances of its loans to Eligible Small Business Concerns. Additionally, each ILP Intermediary must submit an ILP Program Activities Report with accompanying bank statements to demonstrate the use and management of ILP program funds.

(3) *Audited financial statements.* Within four months after the close of the ILP Intermediary's fiscal year, the ILP Intermediary must submit to SBA audited financial statements as prepared by an independent certified public accountant, except that ILP Intermediaries subject to OMB Circular A-133 must submit audits prepared in accordance with that circular. The AA/CA or designee may provide extensions to the filing deadline.

(4) *Reports of changes.* An ILP Intermediary must submit to SBA a summary of any changes in the ILP Intermediary's organization or financing (within 30 calendar days of the change), such as:

(i) Any change in its name, address or telephone number;

(ii) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on the form approved by SBA);

(iii) Any material change in capitalization or financial condition; and

(iv) Any change affecting the ILP Intermediary's eligibility to continue to participate in the ILP program.

(5) *Other reports.* Each ILP Intermediary must submit such other reports as SBA may require from time to time.

#### **Subpart D—Requirements for ILP Intermediary Loans to Small Businesses**

##### **§ 109.400 Eligible Small Business Concerns.**

(a) To be eligible to receive loans from an ILP Intermediary under this program, a small business must:

(1) Be organized for profit;

(2) Be located in the U.S.;

(3) Be small under the size requirements applicable to 7(a) business loans (including Affiliates);

(4) Be a startup, newly established, or growing small business;

(5) Together with Affiliates and principal owners, not have credit elsewhere; and

(6) Be creditworthy and demonstrate reasonable assurance of repayment of the loan.

(b) The following types of businesses are not eligible to receive a loan from an ILP Intermediary under this program:

(1) Nonprofit businesses (for-profit subsidiaries are eligible);

(2) Financial businesses primarily engaged in the business of lending;

(3) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds;

(4) Life insurance companies;

(5) Businesses located in a foreign country;

(6) Pyramid sale distribution plans;

(7) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;

(8) Businesses engaged in any illegal activity;

(9) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(10) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(11) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(12) Consumer and marketing cooperatives (producer cooperatives are eligible);

(13) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;

(14) Businesses in which the ILP Intermediary or any of its Associates owns an equity interest;

(15) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;

(16) Businesses which:

(i) Present live performances of a prurient sexual nature; or

(ii) Derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(17) Businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss unless the agreement provides otherwise;

(18) Businesses primarily engaged in political or lobbying activities; and

(19) Speculative businesses (such as oil wildcatting);

(20) Businesses located in a Coastal Barrier Resource Area (as defined in the Coastal Barriers Resource Act);

(21) Businesses owned or controlled by an applicant or any of its Associates who are more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement;

(22) Businesses in which any Associate is an undocumented (illegal) alien; or

(23) Businesses owned or controlled by an applicant or any of its Associates who are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

##### **§ 109.410 Loan limits—loans to Eligible Small Business Concerns.**

No small business (including Affiliates) may have more than \$200,000 outstanding under this program at one time. The provisions of § 120.151 do not apply to loans under this program.

##### **§ 109.420 Terms of loans from ILP Intermediaries to Eligible Small Business Concerns.**

(a) *General.* The terms of a loan made by the ILP Intermediary to an Eligible Small Business Concern must be agreed to by the ILP Intermediary and the Eligible Small Business Concern. The loan terms must be within the limits established by SBA in these regulations.

(b) *Maximum loan size.* The maximum amount of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program is \$200,000.

(c) *Maturity.* The term of a loan by the ILP Intermediary to an Eligible Small Business Concern under this program must be the shortest appropriate term. The maximum loan term is 10 years or less, unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years, in which case the maximum loan term is 25 years.

(d) *Interest rate.* The maximum interest rate the ILP Intermediary may charge for loans less than or equal to \$50,000 is 8.75 percent. The maximum interest rate the ILP Intermediary may charge for loans greater than \$50,000 is 7%. SBA may adjust the maximum interest rates from time to time; SBA will publish any such change by Notice in the **Federal Register**. Changes to the maximum interest rate do not apply to loans made to Eligible Small Business Concerns prior to publication of the change in the **Federal Register**.

(e) *Fees.* The ILP Intermediary must not impose any fees or direct costs on an Eligible Small Business Concern, except for the following allowed fees or direct costs:

(1) Necessary out-of-pocket expenses, such as filing or recording fees;

(2) The reasonable direct costs of any liquidation;

(3) A late payment fee not to exceed 5 percent of the scheduled loan payment; and

(4) Reasonable application and origination fees, subject to a maximum total fee cap of 1 percent of the amount of the loan to the Eligible Small Business Concern. SBA may adjust the maximum total fee cap from time to time; SBA will publish any such change by Notice in the **Federal Register**.

##### **§ 109.430 Loan purposes.**

(a) An Eligible Small Business Concern may only use the proceeds of a loan under this program for the following purposes:

(1) Working capital;

(2) Real estate (except for real estate acquired and held primarily for sale, lease, or investment); and

(3) The acquisition of materials, supplies, furniture, fixtures, or equipment.

(b) Revolving lines of credit are permitted. However, if, at any time, SBA determines that the ILP Intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the AA/CA or designee may terminate the ILP Intermediary's authority to use the ILP Relending Fund proceeds for revolving lines of credit. Such termination will be by written notice and will prevent the ILP Intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

**§ 109.440 Requirements imposed under other laws and orders.**

Loans made by the ILP Intermediary under this program must comply with all applicable laws, including §§ 120.170 (Flood insurance), 120.172 (Flood-plain and wetlands management), 120.173 (Lead-based paint), 120.173 (Earthquake hazards), and the civil rights laws (see parts 112, 113, 117, and 136 of this chapter) prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age.

**§ 109.450 SBA review of ILP Intermediary loans to Eligible Small Business Concerns.**

(a) *Review restrictions.* SBA does not review loans made by an ILP Intermediary under this program before approval of the loan by the ILP Intermediary. The ILP Intermediary is responsible for all loan decisions regarding eligibility (including size).

(b) *Subsequent review.* SBA will periodically review loans made by an ILP Intermediary after approval of the loan by the ILP Intermediary as part of the on-site and off-site reviews described in § 109.510. If SBA discovers that an ILP Intermediary has made a loan under this program to an ineligible business or for an ineligible purpose, SBA will require the ILP Intermediary to refinance the ineligible loan with non-ILP program funds and to deposit into its ILP Relending Fund an amount equal to the outstanding principal balance on the ineligible loan.

**§ 109.460 Prohibition on sales of ILP Intermediary Loans to Eligible Small Business Concerns.**

An ILP Intermediary may not sell all or any portion of a loan made to an Eligible Small Business Concern without prior written consent from the AA/CA or designee.

**Subpart E—Oversight**

**§ 109.500 SBA access to ILP Intermediary files.**

The ILP Intermediary must allow SBA's authorized representatives, including other officers of any other Federal agency and representatives authorized by the SBA Inspector General, during normal business hours, timely access to its facility and files to review, inspect, and copy all records and documents, including electronic and hard copy, relating to the operations of the ILP Intermediary, the ILP Loan, and the loans made from the ILP Relending Fund and other records and documents as requested for oversight of the ILP Intermediary.

**§ 109.510 On-site and off-site reviews.**

(a) *General.* SBA may conduct off-site reviews and monitoring of ILP Intermediaries, including ILP Intermediaries' self-assessments. SBA may also perform on-site reviews of ILP Intermediaries as needed, as determined by SBA in its discretion.

(b) *Corrective actions.* SBA may require an ILP Intermediary to take corrective actions to address findings from on-site or off-site reviews. Failure to take required corrective actions may constitute an event of default, as described in § 109.520(c).

(c) *Confidentiality of reports.* On-site and off-site review reports and other SBA prepared review related documents are subject to the confidentiality requirements of § 120.1060.

**§ 109.520 Events of default and revocation of authority to participate in the ILP program.**

(a) *Automatic events of default.* Upon the occurrence of one or more of the events in this paragraph (a), the ILP Loan balance, including accrued interest, is immediately due and payable to SBA without notice and the ILP Intermediary's authority to participate in the ILP program is revoked.

(1) *Insolvency.* The ILP Intermediary becomes equitably or legally insolvent.

(2) *Voluntary assignment.* The ILP Intermediary makes a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(3) *Bankruptcy.* The ILP Intermediary files a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against the ILP Intermediary and is not dismissed within 60 calendar days.

(b) *Events of default with notice and possible opportunity to cure.* Except as provided in paragraph (c) of this

section, upon receipt of written notice to the ILP Intermediary of the occurrence (as determined by SBA) of one or more of the events in this paragraph (b), the ILP loan balance, including accrued interest, is immediately due and payable to SBA and the ILP Intermediary's authority to participate in the ILP program is revoked.

(1) *Fraud.* The ILP Intermediary commits a fraudulent act.

(2) *Violation of SBA's ethical requirements.* The ILP Intermediary violates 13 CFR § 120.140.

(3) *Non-notification of events of default.* The ILP Intermediary fails to notify SBA in writing as soon as it knows or reasonably should have known that any event of default exists under this section.

(4) *Non-notification of defaults to others.* The ILP Intermediary fails to notify SBA in writing within ten calendar days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness, issued to or held by anyone other than SBA.

(5) *Failure to make timely payment.* Unless otherwise approved by the AA/CA or designee in writing, the ILP Intermediary fails to make timely payment to SBA on its ILP Loan.

(6) *Failure to take adequate corrective actions.* The ILP Intermediary fails to take adequate corrective actions, to SBA's satisfaction, as required by SBA under § 109.510 within the timeframe requested by SBA.

(7) *Violation of ILP Program Requirements.* The ILP Intermediary violates one or more ILP Program Requirement.

(8) *Actions that increase risk.* The ILP Intermediary takes other action which increases the risk of loss to SBA.

(c) *Opportunity to Cure.* SBA may, in its discretion, provide the ILP Intermediary with an opportunity to cure an event of default identified in paragraph (b) of this section. If SBA provides the ILP Intermediary with such a cure opportunity, SBA will issue written notice discussing the relevant facts, and directing the ILP Intermediary to cure the default and provide SBA with documentation to show that the default has been cured within a specified period of time (generally 15 days). SBA will then provide the ILP Intermediary with a final notification advising whether the default has been satisfactorily cured. In the event SBA determines the default has not been cured, the ILP Loan balance, including accrued interest, is immediately due and payable to SBA and the ILP Intermediary's authority to participate

in the ILP program is revoked upon the ILP Intermediary's receipt of this final notification.

(d) *Appeals.* Notification of default without opportunity to cure under paragraph (b) of this section and final notification of uncured default under paragraph (c) of this section are final agency decisions. An ILP Intermediary may appeal a final agency decision only in the appropriate federal district court.

#### § 109.530 Debarment and Suspension.

In accordance with 2 CFR Parts 180 and 2700, SBA may take any necessary action to debar or suspend an ILP Intermediary or any officer, director, general partner, manager, employee, agent or other participant in the affairs of an ILP Intermediary's SBA operations.

Dated: March 28, 2011.

**Karen G. Mills,**  
Administrator.

[FR Doc. 2011-7741 Filed 3-31-11; 8:45 am]

BILLING CODE 8025-01-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0027; Directorate Identifier 2008-NM-204-AD; Amendment 39-16642; AD 2011-07-05]

RIN 2120-AA64

**Airworthiness Directives; Sicma Aero Seat 9140, 9166, 9173, 9174, 9184, 9188, 9196, 91B7, 91B8, 91C0, 91C2, 91C4, 91C5, and 9301 Series Passenger Seat Assemblies; and Sicma Aero Seat 9501311-05, 9501301-06, 9501311-15, 9501301-16, 9501441-30, 9501441-33, 9501311-55, 9501301-56, 9501441-83, 9501441-95, 9501311-97, and 9501301-98 Passenger Seat Assemblies; Installed on Various Transport Category Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Cracks have been found on seat backrest links P/N (part number) 90-000200-104-1 and 90-000200-104-2. These cracks can significantly affect the structural integrity of seat backrests. \* \* \*

Failure of the backrest links could result in injury to an occupant during emergency landing conditions. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 6, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7161; fax (781) 238-7170.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 13, 2010 (75 FR 1731). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Cracks have been found on seat backrest links P/N (part number) 90-000200-104-1 and 90-000200-104-2. These cracks can significantly affect the structural integrity of seat backrests. Therefore a life limit is introduced on the links. On 9g seats also affected by this problem, stronger unlimited life limits have been developed and their installation has been rendered mandatory. However, on 16g seats the affected links have a direct influence on certification dynamic tests and cannot be replaced by similar stronger links without performing again all dynamic tests for each seat part number.

Failure of the backrest links could result in injury to an occupant during emergency landing conditions. The required actions include a general visual inspection for cracking of backrest links, replacement with new links if cracking is found, and eventual replacement of all links with new links. You may obtain further information by examining the MCAI in the AD docket.

#### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

#### Request To Revise Service Bulletin Reference

Boeing requested that we update all references to Sicma Aero Seat Service Bulletin 90-25-012, Issue 4, dated December 19, 2001, to Issue 5, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004. The commenter justified the request by stating that seat series 91C3 (installed on Boeing Model 737 airplanes) was inadvertently included in Issue 4 of that service bulletin in error, and that Issue 5 of that service bulletin corrects the effectivity by limiting it to those installed seats that are affected. The commenter also requested that we revise the "Relevant Service Information" section of the NPRM to refer to Issue 5 of that service bulletin.

We agree to update the service information in the AD for the reason given. We have revised paragraphs (c), (f)(1) through (f)(4), and (h) of this AD to refer to Sicma Aero Seat Service Bulletin 90-25-012, Issue 5, dated March 19, 2004. We also have added Issue 4 of that service bulletin to paragraph (f)(5) of this AD to give credit for actions done before the effective date of this AD in accordance with Issue 4 of that service bulletin.

We have not changed the "Relevant Service Information" section of the NPRM because that section does not appear in this final rule.

#### Request To Remove Series 91C3 Seat From the Applicability

Boeing requested that we revise the Applicability, paragraph (c) of the NPRM, to remove seat series 91C3 for the reason stated in the previous comment.

We agree to correct the Applicability of the AD because Sicma Aero Seat Service Bulletin 90-25-012, Issue 5, dated March 19, 2004, corrects the effectivity, and have removed seat series 91C3 from paragraph (c) of this AD.

#### No Reporting Requirement

We removed paragraph (g)(3) of the NPRM from this final rule because reporting findings is not required.

#### Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on