

## ***SBA SOP 50 10 5 Updates, Reliance Letters, and Related Guidance for Small Businesses Across the US***

***By Derek Ezovski of ORMS, and Dennis P. Firestone of CBRE, Inc.***

The Small Business Administration (SBA) is making access to loans possible for small businesses across the US. The SBA has a program that provides guarantees to lenders, including banks, credit unions and non-bank lenders, which allows for more borrowers to access capital for almost any business purpose; not just working capital and real estate, but even buying another business. The more popular SBA loan programs are the SBA 7(a) loans for general business purposes, and the 504 (“CDC”) loans typically for related equipment and real estate. For underwriting of both the SBA 504 loans and 7A loans, the SBA requires the use of Standard Operating Procedure (SOP) - [SBA SOP 50 10 5\(H\)](#). This SOP regularly gets updated based on changes in the financial markets and feedback from participants in the SBA program. The SOP is anticipated to be updated by the end of the 2016 calendar year, and should include clarification on the environmental due diligence that is required by the SBA in order to secure the loan guarantees. It should be noted that the SBA SOP environmental requirements are often more robust than lenders’ own environmental policies.

The Environmental Bankers Association (EBA) has continually provided guidance to its members about the environmental requirements that are necessary to secure SBA loans and that meet the current SOP. EBA Affiliate Board Member, Derek Ezovski of Outsourced Risk Management Solutions (ORMS), and EBA Co-Chair of the monthly Risk Management Call, Dennis P. Firestone of CBRE, Inc., have regularly hosted panel discussions over the years on the changes related to the environmental risk management requirements of the SOP. The panels have included members of the SBA Environmental Appeals Committee who provide overviews of the SOP, and case studies of recent environmental appeals. The communications assure the EBA members to stay current and provide the best advice to the lenders they support, whether working internally at a lender or as a vender thereto.

In a July 2016 EBA Risk Call, Dennis lead a discussion on: “Reliance Letters and the SBA.” In summary, if a transaction seeks an SBA guarantee, SBA requires use of its own specific form of a Reliance Letter found in the SOP Appendix, even if the Environmental Professional’s report is addressed to the Lender. There are very few circumstances in which SBA will accept a Reliance Letter that deviates from its standard form. It was also discussed that SBA usually will not provide its guarantees for loans on contaminated property, unless certain mitigating factors are established. There is one example of a narrow special circumstance in which the SBA will guarantee loans on contaminated property and accept a modification to its standard Reliance Letter. This involves sites in Michigan. Michigan Law allows exempts a new owner/operator from liability for response activity costs associated with pre-existing contamination, if the new owner/operator conducts a Baseline Environmental Assessment and transmits a copy of the BEA to MDEQ within strict time deadlines. While exempt from liability for response activity cost claims, such a new owner/operator must nonetheless exercise what is called “Due Care” with respect to that pre-existing contamination under related statutory provisions. SBA may guarantee loans on such contaminated property in Michigan, provided: (i) that a proper, qualified BEA is conducted and provided to MDEQ within applicable deadlines; and (ii) a Due Care Plan is approved by MDEQ for the Property.

For more information, please see [www.envirobank.org](http://www.envirobank.org). Dennis can be reached at 602.790.4444, and Derek can be reached at 860.838.5388.