

912 Processing

I. Contents of a 912 Package

A. CDC Processing Submission Package:

- Name of originating CDC;
- Name, address, SSN, date of birth, and telephone number of applicant;
- Loan amount;
- Name, address, and telephone number of lender;
- Date of offense(s), name of offense(s), location of offense(s), and detailed disposition of offenses including any court documentation (i.e., jail time, probation, fines, including dates of each event, etc.), including all available court documentation;
- Signature and date not more than 180 days prior to submission to the Sacramento Loan Processing Center
- Memorandum from lender with loan officer contact name, telephone number, and email address.

Note: It is recommended that court papers that show the full disposition of any offense occurring the last 5 years. Many local jurisdictions do not update the FBI mainframe.

II. Clear for Processing Authority

- A. A Single Minor Offense (Misdemeanor) within the last 10 years
- B. Several (3) Minor Offenses (Misdemeanor) Remote in time (10 or more years)
- C. A Prior Offense that was cleared by the Director/OFA or designee
- D. New Exemption as of August 1, 2008:

If a Subject Individual answers “yes” to question 8 or 9, then that individual must go through a background check and character determination unless the charge resulting in a “yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be attached to the SBA Form 912.)

III. Life of 912

- A. 912 package submitted by CDC to the Sacramento Loan Processing Center (SLPC) at:

**U.S. Small Business Administration
Sacramento Loan Processing Center
6501 Sylvan Road, Suite 111
Citrus Heights, CA 95610-5017**

- B. SLPC forwards the 912 package to the SBA Office of the Inspector General's Office of Security Operations (OSO). Allow 5-7 working days.

- C. OSO sends fingerprint card or name check request to the Federal Bureau of Investigation (FBI)

Note: Fingerprint result receipt usually takes 3-4 weeks
Name Check results

- D. OSO receives FBI fingerprint results and reviews disclosures from the applicant with the FBI results

Note: Review usually takes one week

- E. OSO issues a security clearance or refers to OFA for a character determination.

- F. If a security clearance is made, memo is forwarded to SLPC.

- G. If a character determination is requested of OFA, decision is made within 3 working days unless there are undisclosed offenses or missing documentation to corroborate the disclosures.

- G. Decision memo sent to SLPC

IV. 912 Pitfalls

- a. Pre-trial diversion is considered similar to probation which leaves the offense open.
- b. An applicant who discloses that he was on probation but had it lifted as a means to receive the SBA guaranty is ineligible.

- c. An applicant discloses arrest for a felony but convicted of a misdemeanor is not one to be waived for processing by a local office or processing center.

Questions or clarification: Contact Shawn McKeehan at (202) 205-7729 or via email at christopher.mckeehan@sba.gov

- (c) Each member of the cooperative is small.
- m) Businesses engaged in loan packaging (13 CFR 120.110(m))
A Small Business Applicant that receives more than 1/3 of its gross annual revenue from packaging SBA loans is not eligible.
- n) Businesses Owned by Persons of Poor Character or on Probation or Parole (13 CFR 120.110(n))
- (1) SBA cannot provide financial assistance to businesses with Associates with poor character or who are on probation or parole.
 - (2) An application can be accepted for processing if the individual indicates an arrest record, but was acquitted or the indictment was dismissed and the individual is not incarcerated, on probation or on parole for any offense.
 - (3) An individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an applicant is not eligible.
 - (4) To determine eligibility under this section, the Agency requires that every proprietor, partner, officer, director, and owner of 20% or more of the Applicant ("Subject Individual") must be of good character. The completion of an SBA Form 912, Statement of Personal History ("912"), by each Subject Individual is required as part of the character evaluation process and the form must be completed within 90 days of submission of the application to SBA. Every person completing a 912 must answer each question fully giving details about any "yes" response. NOTE: A "yes" is required even when the record is allegedly sealed, expunged or otherwise unavailable. (This information is kept private and confidential.) There are no exceptions to or waivers of this policy.
 - (a) If every Subject Individual answers questions 7, 8 and 9 as "no," normal loan processing may proceed.
 - (b) If a Subject Individual answers "yes" to question 7, then the Small Business Applicant is not eligible.
 - (c) If a Subject Individual answers "yes" to question 8 or 9, then that individual must go through a background check and character determination unless the charge resulting in a "yes" answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor's office must be attached to the SBA Form 912 and maintained in the CDC's loan file.) If the individual pled guilty to the charges or to lesser charges the background check and character determination must be conducted. Currently, SBA conducts two types of background checks: (1) a Name Check, which requires a search of available records based on a person's name and social security number (SSN); and (2) a Fingerprint Check, which searches available

records based on the person's name and SSN plus a complete and legibly written FD-258 Fingerprint Card.

- (d) If there is a "yes" response, the CDC must take the following actions:
 - (i) The CDC must obtain a complete understanding of the reason(s) for the "yes" response and when necessary for clarification, the CDC must obtain additional written explanation from the Subject Individual to include the following:
 - (a) Date of the offense(s) including month, day and year. If the actual day is not known, include the month and year.
 - (b) City and state or the county and state where the offense(s) occurred.
 - (c) The specific charge(s) (DUI, assault, forgery, robbery etc.) AND the level of the charge (either a misdemeanor or felony).
 - (d) Disposition of the charge(s). This may include but is not limited to the following:
 - (i) Any fines imposed;
 - (ii) Any class or workshop to be attended;
 - (iii) Any jail time served;
 - (iv) If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation); or
 - (v) Any other court conditions (such as registration as a sex offender).
 - (e) Assuming the court's conditions have been met, the applicant should state that all conditions of the court have been satisfied in his explanation and provide court documents evidencing that these conditions were met.
 - (f) The borrower's dated signature on the explanation.
 - (ii) When an applicant discloses a felony arrest a Fingerprint Check is required and a Fingerprint Card (FD 258) must be completed. Local law enforcement agencies will usually assist the individual with the fingerprinting. CDCs may obtain the FD 258 from their local field office.
 - (iii) When an applicant discloses a past offense(s) that was classified as a misdemeanor, the background check may either be a Name Check or a Fingerprint Check.

- (iv) Regardless of whether the past offense was a felony or misdemeanor, the CDC must submit the complete 912 package to the SLPC before loan processing can proceed. Copies of the documents are to be submitted to the SLPC. The CDC must retain the originals in its loan file. SBA recommends that the CDC submit the 912 package as soon as possible.
 - (v) The SLPC will send the complete 912 package to the Office of Inspector General/Office of Security Operations (OIG/OSO) at SBA Headquarters. When a 912 with a “yes” response is forwarded to the OIG/OSO, CDC personnel must not make any statement to anyone outside the SBA about action being taken regarding the 912 information submitted. Exceptions are only permitted when in compliance with the provisions of the Privacy Act. (See SOP 40 04.)
- (e) Decisions Available to the SBA When Processing a 912 with a “yes” response:
- (i) Clear the 912 to permit processing, approval and disbursement;
 - (a) SBA will clear a positive 912 for processing and waive the fingerprint requirement only when the reason for the “yes” response meets the following criteria:
 - (i) A single minor (misdemeanor) offense or arrest; OR
 - (ii) Up 3 minor offenses (arrests and/or convictions at one time or separately), concluded more than 10 years prior to the date of the SBA application; OR
 - (iii) A Prior Offense cleared by the Director, Office of Financial Assistance (D/FA) or designee on a previous application where no other offenses have occurred since the previous application was cleared by the D/FA or designee. This clearance is only valid for six months from date of issuance.
- NOTE: Only the D/FA or designee may authorize the processing center or CDC to process and subsequently disburse a loan when the Form 912 is not cleared.
- (b) The SLPC cannot clear felony arrests or convictions for loan processing.
 - (c) When the SLPC receives the completed 912 package and decides to clear it for processing, it

- will notify the CDC that the application has been cleared for processing and will submit the 912 package to the OIG/OSO for a Name Check.
- (d) When the SLPC clears the 912 and the Name Check corroborates the information on the 912, OIG/OSO will advise the SLPC, which will then notify the CDC.
 - (e) When the Name Check results contradict the disclosure on the 912, or the disclosed criminal history raises a question about the character of the individual, OIG/OSO will refer the matter to the D/FA. If the loan was already processed and approved, the CDC shall be notified of the adverse change. If the loan has not been funded, the CDC will not be permitted to close the loan. If the loan has been funded, the CDC must contact the appropriate CLSC to determine the proper course of action.
 - (f) The D/FA or designee can overrule the clearance by the SLPC in either situation.
- (ii) Place the processing of the application on hold for further investigation;
 - (a) The CDC must obtain from the Subject Individual a Form FD 258, SBA Fingerprint Card, and submit it to the SLPC to forward to OIG/OSO for a Fingerprint Check. The processing of the application will remain on hold until the results of a Fingerprint Check are received at which time the application will either proceed or be declined.
 - (b) If additional criminal activity is revealed, information pertaining to the additional criminal activity will be provided to the D/FA or designee who will notify the field office that an adverse condition exists.
 - (iii) Decline the application because the information supplied on the Subject Individual shows the offense is open and has not been adjudicated or the Subject Individual is on probation or parole.
- (f) 912 Decision Appeals
 - (i) SBA will consider a request submitted by a Subject Individual for reconsideration of a determination of lack of good character. Factors that contribute to a favorable reconsideration include: (1) additional information provided by the Subject Individual that satisfactorily explains the circumstances of the prior offense(s); (2) a

statement from the Subject Individual indicating that he or she understands the significance of the previous offense(s); and/or (3) the passage of time between the date of the prior offense(s) and the date of application, during which the Subject Individual has not committed additional offenses and has generally led a responsible life and made a contribution to the community.

- (ii) The Subject Individual should send a written request for reconsideration through the CDC to: Director, Office of Financial Assistance, U.S. Small Business Administration, Office of Financial Assistance, 409 3rd Street, SW, Suite 8300, Washington, DC 20416.
- (g) PCLP 912 Procedures.
 - (i) If, in connection with a PCLP loan, a Subject Individual answers question 8 or 9 with “yes,” then that individual must go through a background check and character determination unless the charge resulting in a “yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be attached to the SBA Form 912 and maintained in the CDC’s loan file.) If the individual pled guilty to the charges or to lesser charges the background check and character determination must be conducted. The application may be processed using PCLP Procedures after the CDC has requested and received written clearance of the character issue(s) from the SLPC.
 - (ii) To request clearance from the SLPC, the CDC must submit a cover letter with the CDC’s contact information, a brief description of the business along with SBA Form 912 and any required attachments.
- (h) If the 912 is incomplete, it cannot be processed and will be returned to the CDC. The CDC must submit a corrected 912 before processing continues.
- (i) Reducing Ownership to Avoid Submitting Form 912
A Subject Individual may not reduce his or her ownership in a Small Business Applicant for the purpose of avoiding completion of Form 912. Anyone who would have been considered a Subject Individual within 6 months prior to the application must complete Form 912. The only exception to the 6-month rule is when a Subject Individual completely divests his or her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Small Business Applicant (and any associated Eligible Passive

Concern) in any capacity, including being an employee (paid or unpaid).

o) Equity Interest by CDC or Associates in Applicant Concern (13 CFR 120.110(o))

A CDC or any of its associates may not obtain an equity position, either directly or indirectly, in the Small Business Applicant. The only exception is when the associate of the CDC is a Small Business Investment Company (SBIC), in which case the requirements of 13 CFR 120.104 apply. See 13 CFR 120.140 for a list of ethical requirements that apply to CDCs.

p) Businesses Providing Prurient Sexual Material (13 CFR 120.110(p))

(1) A business is not eligible for SBA assistance if:

- (a) It presents live or recorded performances of a prurient sexual nature; or
- (b) It derives more than 5% of its gross revenue, directly or indirectly, through the sale of products, services or the presentation of any depictions or displays of a prurient sexual nature.

(2) By law SBA must consider the public interest in granting or denying financial assistance. The SBA has determined that financing lawful activities of a prurient sexual nature is not in the public interest. The CDC must consider whether the nature and extent of the sexual component causes it, in view of community standards, to be prurient.

q) Prior Loss to the Government (13 CFR 120.110(q))

(1) Unless waived by SBA for good cause, SBA cannot provide assistance to a Small Business Applicant:

- (a) That has previously defaulted on a Federal loan or Federally assisted financing, resulting in a loss to the Federal government; or
- (b) Owned or controlled by a business or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which defaulted) and caused the Federal government to sustain a loss.

(2) A compromise agreement shall also be considered a loss.

(3) "Federal loan or Federally assisted financing" includes any loan made directly or guaranteed/insured by any Federal agency, any unreimbursed advance payments under 8(a) or similar programs operated by any Federal agency, federally-backed student loans and disaster loans (excluding any amount forgiven as a condition of the loan at the time of origination).

(4) "Loss" means the dollar amount of any deficiency which has been incurred and recognized by a Federal agency after it has concluded its write-off and/or close-out procedures for the particular account.