

e. **BUSINESSES OWNED BY NON-US CITIZENS**

SBA can provide financial assistance to businesses that are at least 51 % owned and controlled by persons who are not citizens of the US provided the persons are lawfully in the US. The processing procedures and the terms and conditions will vary, depending upon the status of the owners as assigned by the United States Citizenship and Immigration Services (USCIS).

SBA requires all participating lenders, including SBLCs, to comply with the requirements of the Joint Final Rule on Customer Identification Programs issued by the U.S. Department of the Treasury and various other federal agencies. The Joint Final Rule is found at [31 CFR 103.121](#).

- (1) Businesses owned by Naturalized Citizens are eligible and the naturalized citizens are not subject to any special restrictions or requirements. If an individual's SBA Form 912 reflects s/he is a U.S. Citizen no further verification of status is required.
- (2) Businesses owned by Lawful Permanent Residents (LPRs) are eligible. LPRs are persons who may live and work in the U.S. for life unless their status is revoked through an administrative hearing.
 - (i) The USCIS Form I-551 (551) is evidence of LPR status. USCIS has two versions of the 551:
 - (a) Resident Alien Card; and
 - (b) Permanent Resident Card. (This is the most recent version.)
 - (ii) USCIS requires replacement of the 551 every 10 years to update the photograph and security measures. Replacements may also be necessary if the 551 is lost, the individual changes name, etc. Replacement of the 551 may take more than a year. LPR status is not in jeopardy merely because the 551 document lapses.

Acceptable forms of evidence when the 551 has been submitted to USCIS for replacement or has an expired date include the following:

- (a) A temporary stamp by USCIS on the individual's passport that says "Processed for I-551 – Temporary Evidence of Lawful Permanent Residence;"
- (b) USCIS Form I-327, "Re-entry Permit," issued to LPRs in lieu of a visa, which is valid for only 2 years;

- (c) USCIS Form I-797, “Notice of Action,” a receipt issued to an alien when the 551 is lost or surrendered for renewal or changes (e.g., a name change because of marriage or divorce).
 - (d) SBA requires that the 551 or an acceptable substitute must be current at the time it is submitted with an application or it will be returned and not processed. PLP, SBA Express and Pilot Loan Program lenders must have a copy of the current 551 or acceptable substitute prior to requesting a loan number.
- (3) Businesses owned by the following persons may be eligible:
 - (i) Non-immigrant aliens residing in the US. Non-immigrant (documented) aliens are persons who are admitted to the U.S. for a specific purpose(s) and for a temporary period of time with a current/valid USCIS document, such as a visa.
 - (a) They must have current/valid USCIS documentation permitting them to reside in the U.S. legally; and
 - (b) The documentation/status of each alien must be verified with USCIS.
 - (ii) Asylees and refugees (persons who receive temporary refuge in the United States) with LPR status.
- (4) Businesses owned by aliens who are subject to the Immigration Reform and Control Act of 1986 (IRCA) might be eligible under limited circumstances.
 - (i) IRCA vests USCIS with the authority to grant illegal aliens lawful temporary resident status. IRCA prohibits financial assistance to businesses owned 20 percent or more by such individuals for a period of 5 years after USCIS grants lawful temporary resident status.
 - (ii) This disqualification does not apply to Cuban or Haitian entrants or alien entrants subject to IRCA who are aged, blind or disabled. The definition of blind or disabled is equivalent to SBA’s criteria for determining eligibility for assistance to any small business owned by disabled individuals.
 - (iii) All applicants self-certify that they are eligible under IRCA by signing SBA Form 4 or SBA Form 1919, which includes the “Statements Required by Law and Executive Orders.” This includes a certification that IRCA does not apply to them.
- (5) Documentation to evidence and verify an alien’s status.
 - (i) At time of application:

- (a) [SBA Form 912, “Statement of Personal History,”](#) requires that aliens provide their alien registration number.
- (b) Lenders must obtain a copy of the individual’s USCIS documentation and maintain in the case file.
- (c) The lender submits a USCIS Form G-845 (845), “Document Verification Request,” with supporting information to the nearest USCIS office. USCIS releases information about the status of an alien to lenders or other non-governmental entities ONLY when a signed and dated authorization from the alien is attached to and submitted with the 845 on that alien providing name, address and date of birth.

1. USCIS accepts either of the following authorization statements:
 - (A) I authorize the U.S. Customs and Immigration Service to release information regarding my immigration status to [name of lender], because I am applying for a U.S. Small Business Administration loan.
 - (B) I authorize the U.S. Customs and Immigration Service to release alien verification information about me to [name of lender], because I am applying for a U.S. Small Business Administration loan.
2. USCIS requires a “wet” signature on all Freedom of Information Act requests. Therefore, the Form G-845 and the statement authorizing USCIS to release the status information to the lender should never be faxed to an USCIS office.
3. The authorization statement must not be on SBA or lender stationery.

- (ii) Prior to disbursement, lenders must verify the USCIS status of each alien who is required to submit USCIS documents to determine eligibility. The lender must document the findings in the loan file. This applies in all cases, regardless of the processing method or loan program.

- (6) Businesses owned by Foreign Nationals or Foreign Entities may be eligible.

Businesses listed in Appendix 1 of the SOP, “Restrictions on Foreign Controlled Enterprises,” that are owned and managed by Foreign Nationals, Foreign Entities or Non-Immigrant Aliens are not eligible. If a business is not listed in Appendix 1 it may be eligible.

- (7) Additional requirements for eligibility of businesses owned by non-citizens other than LPRs:

- (a) The application must contain assurance that management is expected to continue in place indefinitely and have U.S. citizenship or verified LPR status.

1. Management must have operated the business for at least 1 year prior to the application date. (This requirement prevents financial assistance to “start-up” businesses owned by aliens who do not have LPR status.)
2. The personal guaranty of management must be considered as a loan condition and if not required, the decision must be explained in the loan file.

(b) The applicant must pledge collateral within the jurisdiction of the U.S. sufficient to pay the loan in full at any time during its life. If the small business applicant owned by foreign nationals, foreign entities or non-immigrant aliens residing in the US does not have sufficient collateral, the applicant is not eligible for a guaranteed loan.

f. THE ELIGIBLE PASSIVE COMPANY RULE

The Eligible Passive Company (EPC) rule is an exception to SBA regulations that prohibit financing assets which are held for their passive income. Because the EPC rule is an exception, it is interpreted strictly.

- (1) Conditions necessary to qualify as an EPC. ([13 CFR 120.111](#))
 - (i) Under SBA regulations, an EPC can take any legal form or ownership structure. A tenancy in common is a form of legal ownership and does not create a new or separate legal entity. If authorized by state law, legal entities can be a tenant in common with individuals.
 - (a) There may be several individuals or entities in a tenancy in common, but the tenancy in common is considered 1 EPC.
 - (b) The loan documents must be signed by all of the members of the tenancy in common, with authorized individuals signing for the entity members.
 - (ii) An EPC must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases to one or more Operating Companies (OC) for conducting the OC’s business.
- (2) Conditions that apply to all legal entities:
 - (i) The OC must be an eligible small business; and
 - (ii) The proposed use of proceeds must be an eligible use as if the OC were obtaining the financing directly;