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one opportunity at a time.

May 14, 2009

Mr. James Hammersley
Acting Assistant Administrator for
Policy and Strategic Planning
U.S. Small Business Administration
Washington, DC 20416

Dear Mr. Hammersley:

On behalf of the International Franchise Association (IFA), I want to thank you for offering us the opportunity to comment on the Small Business Administration's (SBA) recent revision to its Standard Operating Procedure (SOP) on goodwill financing. We appreciate your willingness to consider the alternative solutions proposed in this letter on goodwill financing during the sale or transfer of a franchise small business.

As the largest and oldest franchising trade group, the IFA's mission is to safeguard the business environment for franchising worldwide. IFA represents more than 85 industries, including more than 11,000 franchisee, 1,200 franchisor and 600 supplier members nationwide. According to a 2008 study conducted by PricewaterhouseCoopers, there are more than 900,000 franchised establishments in the U.S. that are responsible for creating 21 million American jobs and generating \$2.3 trillion in economic output.

The value of a small business is based primarily on the cash flow it can generate and to a much lesser extent on the value of the assets it has on its books. Therefore, lenders have traditionally used anticipated cash flow as the key determinant of a borrower's ability to repay the debt. The SBA's 7(a) loan program has allowed lenders to utilize this "goodwill" difference between the value of the business and the value of the book assets in establishing a basis for a guarantee when collateral is an issue. The recent revisions made to the SOP regarding goodwill financing will no longer allow for the transfer of the vast majority of small businesses to otherwise qualified new owners. The consequences of this policy change are far-reaching and likely will lead to a devaluation of small businesses across the nation. This revision is particularly disastrous at a time when our economy is shedding jobs and credit markets are frozen so that capital is hard to access.

The SOP policy on goodwill financing was revised in order for the SBA to collect and review data on these transactions. Unfortunately, the revision has created uncertainty in the lending and borrower community that has already impacted small business transfers. The most constraining component is the cap of \$250,000, which on its own will undermine not only business transfers and sales, but also the ability of the SBA to collect data. Changing the SOP first; and, then collecting data to evaluate whether the change is needed invalidates any meaningful and objective evaluation of loan activity involving goodwill. Any data gathered while this cap is in place will produce skewed results and will have little or no relevance to transactions made prior to the rule change date.

We have taken the liberty of assembling some options for your consideration.

Recommended Option

In order to adequately analyze transactions that involve goodwill financing, the SBA should rescind the newly established cap of \$250,000 on goodwill financing completely and return its guidance to the version in effect prior to March 1, 2009. We recommend that the SBA commence its data gathering exercise related to goodwill.

The data gathering could be accomplished through a mandatory transmission of data, including the allocation of purchase price for all business acquisitions. This could be enforced by requiring this transmission from the PLP lender in order to get a PLP number for funding, or in the case of a CLP loan, would be completed by SBA staff. Anything short of rescinding the rule will continue to undermine the Agency's ability to effectively evaluate goodwill as it relates to transactions financed by SBA loans.

Alternative Options

If overturning the most recent SOP revision to focus solely on data gathering to support future revisions is not practicable, then SBA should immediately provide buyers, sellers, and lenders predictable guidelines on how goodwill transactions will be assessed by the SBA moving forward. Lenders will remain hesitant or unwilling to move forward on any goodwill financing if they do not have a clear understanding of how the SBA will evaluate such loans.

Alternative Option A

During the period of the stimulus guarantee changes, up to 90% of goodwill could be financed, changing back to 75% when the stimulus is no longer in effect. There would be no hard dollar cap on the amount of goodwill that could be financed with an SBA loan. This option will treat all loans the same and will not impact larger service-related businesses in a different manner than smaller businesses.

Alternative Option B

If the buyers equity and/or a standby seller note equals 15% or more of the purchase price (reinforced with a third party valuation), then there would be no cap on goodwill financing for that transaction. Currently, the SOP only calls for 10% equity. This change would be a 50% increase in that parameter. In all cases, a CLP process for a waiver must be in place for any exception transactions.

Goodwill Definition

Underpinning the March 1 SOP change that focuses on goodwill is an assumed common understanding of a goodwill definition. A better definition of goodwill must be adopted by the Agency.

Currently the definition is calculated as follows:

Sale Price	minus
Tangible Assets Fair Market Value	minus
<u>Intangible Assets BOOK Value</u>	equals
Goodwill	

The proper calculation should be as follows:

Sale Price	minus
Tangible Assets Fair Market Value	minus
<u>Intangible Assets FAIR MARKET Value</u>	equals
Goodwill	

Intangible asset fair market value is prevalent in transactions where there is a transactional buyer/seller market for certain types of intellectual property and/or certain types of licenses (such as a liquor license or broadcasting license). If there is such a market-based value for such assets, then those assets should be reflected at fair market value, not at the partially or even fully depreciated value reflected on the books of the seller.

Again, we appreciate your willingness to review our alternative solutions. Please do not hesitate to contact me should you have any questions.

Thank you for your consideration in this matter.

Sincerely,



David French
Vice President, Government Relations

cc: The Honorable Karen G. Mills
The Honorable Mary Landrieu
The Honorable Olympia Snowe
The Honorable Nydia Velazquez
The Honorable Sam Graves