NEWS & INSIGHTS

Greater lending opportunities for franchises as the U.S. Small Business Administration reinstitutes the Franchise Directory

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Earlier this year, the U.S. Small Business Administration (SBA) issued Standard Operating Procedure (SOP) version 50 10 8, bringing sweeping changes to lending policies and procedures under the SBA 7(a) and 504 loan programs. Among these updates is the rebirth of the Franchise Directory, which was temporarily eliminated in May 2023 under a previous SOP. The SBA has once again published the directory and will maintain it, a significant development for franchisors and franchisees seeking streamlined access to SBA loans to grow and expand their networks.

The evolution of the Franchise Directory

Initially launched in 2018, the SBA's Franchise Directory provided a centralized resource for lenders to verify a franchise brand's eligibility for SBA financing. Franchise brands whose franchisees were seeking SBA-backed lending were required to be listed on the Franchise Directory, and each franchisor was required to execute a specific SBA addendum or negotiated addendum with each franchisee obtaining SBA funding, modifying the franchise agreement to comply with SBA loan requirements.

In 2023, the SBA rescinded the Franchise Directory, shifting the responsibility of assessing each franchise's eligibility and compliance with the SBA requirements to lenders. This change led to increased uncertainty and confusion in the loan approval process, with certain lenders enacting company policies to only lend to franchisees from brands that were listed on the directory prior to its dismantling in 2023. This had a disproportionate effect on new and emerging franchise brands, whose franchisees were often not able to access SBA funding. After demands from franchise systems, SBA-affiliated lenders, and franchise associations, the SBA decided to reimplement the Franchise Directory.

How will the Franchise Directory impact franchises across the U.S.?

The reinstatement of the Franchise Directory reestablishes the channel to connect lenders and franchises to determine whether a franchise is eligible for SBA loan programs. Among the impacts include:

1. **Franchise Directory Listing Requirements**. Beginning August 1, franchisors must be listed on the SBA Franchise Directory in order for franchisees to qualify for SBA-backed loans. The SBA's listing requirements include a review of the Franchise Disclosure Document, franchise agreement, and related exhibits. All materials may be submitted directly to franchise@sba.gov. There is no cost for franchisors to be listed on the Franchise Directory.
2. **Deadlines for Previously Listed Brands**. Franchisors previously registered with the SBA and listed in the Directory as of May 2023 have until July 31, to submit the new certification (further described below) to reinstate their previous listing. There is no fee associated with submitting a new certification. Failure to submit the certification will result in removal from the directory, rendering their franchise ineligible for SBA financing options until re-listed through the full process.
3. **SBA Independence and Affiliation Rules**. In addition to other factors, the SBA's review process in determining eligibility for listing, which ultimately determines whether franchisees will have access to SBA-backed loans, includes a review of the independence and affiliation standards. To qualify for SBA-backed loans, franchisees must truly operate as an independent business and not as an extension or agent of the

franchisor. The franchisee must operate independently of the franchisor in certain day-to-day business decisions and be economically dependent form the franchisor.

4. **Elimination of the SBA Addendum**. The previous requirements for franchisees seeking SBA funding to obtain or negotiate an SBA compliant addendum have been dropped. Instead, franchisors registering with the SBA must submit a one-time signed certification affirming compliance with SBA eligibility standards. For brands listed on the prior directory, they will be required to submit a new certificate.

How franchise brands can utilize the Franchise Directory

The SBA's decision to reinstate the Franchise Directory creates a more streamlined and predictable process for franchise lending activities, expanding the options for SBA-backed financing. Franchisors should ensure that their brands are included on the SBA Franchise Directory by promptly taking steps to file for the directory immediately, or preparing to file a new certificate if they were previously registered. Franchisors should also take steps to clarify their franchise agreements to make sure they are in line with the SBA's independence and affiliation standards. Prospective franchisees that may be interested in obtaining SBA funding can more easily verify whether the brand it is interested in is listed on the directory, providing it with access to SBA-backed funding programs.

The reintroduction of the SBA Franchise Directory will provide greater transparency and consistency in the loan approval process, giving franchise systems increased abilities to pursue financing strategies. As a result, franchises will be able to accelerate unit openings, invest in new projects, and fuel long-term development across new and existing markets.

Saxton & Stump's Franchising, Licensing, and Distribution Group is monitoring developments with the reinstatement of the SBA's Franchise Directory and can assist franchises in reviewing their franchise documents to ensure compliance with SBA eligibility standards and guide them through the registration process.

Please fill out the form below with any questions or for help in navigating SOP 50 10 8.

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