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## BLOGS

Practice of Franchise Law

# SBA Establishes Franchise Directory, Allows New Negotiated SBA Addenda, and Eliminates Lender Duties to Independently Determine Whether Business Eligibility Requirements Are Satisfied

On October 13, 2017, the SBA announced a revision to its requirements for franchisors to qualify their franchisees for SBA financing programs. As of January 1, 2018 any franchise listed on the SBA Franchise Directory will be deemed to meet SBA's "affiliation," "business eligibility," and "franchise" definitional requirements. The Directory may be found at [www.sba.gov/partners/lenders](http://www.sba.gov/partners/lenders). SBA does not charge for a Directory listing. The Directory is simple, laid out in seven columns, providing the following information, about which SBA writes either "Yes" or "No."

## Related People

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SBA Franchise  
Identifier Code

Brand  
Franchise

FTC  
Franchise

Is an addendum  
needed?

SBA Addendum –  
Form 2462

SBA Negotiated  
Addendum

Notes

In the initial Directory, most Notes describe the process lenders must follow if a management agreement is used with a franchise.

In the wake of the November 30, 2016 Standard Operating Procedure (“SOP”), limiting franchisors seeking SBA financing assistance for their franchisees to the use of a “Standard Addendum” (“SBA form 2462”), many lenders and many franchisors were unhappy. Lenders worried about not understanding whether SBA’s business eligibility and franchise definitional standards had been met. Because SBA had previously made those determinations, many low-volume franchise lenders backed away from financing franchisees. This new approach is designed to ameliorate their concerns.

Many franchisors were upset by the one-size-fits-all approach of the Standard Addendum, with some announcing that they would abandon using SBA programs to finance their franchisees. In February 2017, SBA re-evaluated its approach and allowed franchisors to qualify if they used a 2015 or 2016 Addendum that they had negotiated with SBA, and certified that no changes had been made to sections of their franchise agreements that were relevant to the Addenda.

Still, many franchisors were unsatisfied. Franchisors using franchise agreements meeting all of SBA’s affiliation standards balked at having to use an Addendum at all. Franchisors that no longer wanted to use a 2015 or 2016 negotiated Addendum or the Standard Addendum, and franchisors that had not previously participated in SBA franchise lending programs, but did not want to use the Standard Addendum, all felt excluded by the 2017 SBA process.

The 2018 approach can resolve these problems, assuming that the franchisor and SBA can successfully negotiate an Addendum. The new approach is intended to simplify the process for everyone involved.

Here are some answers to common questions:

How does a franchise get listed on the Directory?

1. SBA will provide an initial Directory listing all franchisors that have been reviewed by SBA that meet SBA eligibility standards. The initial Directory will contain information about more than 2000 franchisors that either have used the Standard Addendum or an Addendum negotiated with SBA during 2015 or 2016. The Directory will indicate if the Franchisor has negotiated a 2015 or 2016 SBA Addendum or whether it is using the Standard Addendum.
2. Franchisors whose franchise agreements satisfy SBA’s affiliation, business eligibility, and definitional standards without the need for an Addendum also qualify for a Directory listing.
3. Franchisors not initially listed may apply to be listed on the Directory by sending their FDDs, franchise agreements, and any other documents they will require their franchisees to sign to SBA at [franchise@SBA.gov](mailto:franchise@SBA.gov).

How does a franchise remain on the Directory?

1. Once on the Directory, franchisors that use the Standard Addendum will not need to do anything else to remain on the Directory.
2. Franchisors with negotiated Addenda (a 2015 or 2016 Addendum negotiated with SBA, or one negotiated with SBA following the announcement of SBA SOP 50 10 5(J) (October 13, 2017)), or those brands that do not need to have an Addendum, are required to file an Annual Franchisor Certification. The first Certification must be received by April 30, 2018. Additional Certifications will be required before April 30 of each year for franchisors that do not use a Standard Addendum. SBA will no longer require a Franchisor Certification on a loan by loan basis. No Certification is required for franchisors using the Standard Addendum.

If a franchisor that has used a negotiated Addendum wants to switch to using the Standard Addendum, what is the process that should be followed?



- Directory listings for franchisors that have a negotiated Addendum will indicate that they may use either the negotiated Addendum or the Standard Addendum. If they fail to certify the absence of a change by April 30 of any year, they will be limited to using the Standard Addendum.

How can a franchisor either negotiate an Addendum with SBA, or renegotiate an Addendum?

- Franchisors should submit a redlined version of their franchise agreement, related agreements that franchisees will be required to sign, and their FDDs to [franchise@SBA.gov](mailto:franchise@SBA.gov). SBA has designated a staff of five to work with franchisors to get their brands listed on the Directory.

Must a franchisor that uses a negotiated Addendum or an SBA-approved franchise agreement not requiring an Addendum submit the agreements to SBA for approval if the language in the franchise agreement or negotiated Addendum changes?

- Yes, if the changes materially affect either the negotiated Addendum or if the franchise agreement changes materially.

A copy of the SBA Information Notice describing the new process may be found at this [link](#).