



SBA Information Notice

TO: All SBA Employees

CONTROL NO.: 5000-1134

SUBJECT: Recovery Act Loan Documentation
Requirements and Restrictions

EFFECTIVE:
12/9/2009

The American Recovery and Reinvestment Act of 2009 (the "Recovery Act") (P.L. 111-5) provided SBA with the ability to reduce certain loan fees and to increase certain loan guarantee percentages, subject to the requirements and restrictions outlined in the law. SBA has issued policy notices and Federal Register notices to advise its lending and resource partners of these additional requirements and restrictions and included them in SBA's loan application systems.

This Notice serves as a reminder to SBA lenders and Certified Development Companies (CDCs) about documentation requirements for Recovery Act loans. SBA is committed to being fair and transparent with its lending partners, and is issuing this notice to remind lenders and CDCs of their Recovery Act obligations. Lenders and CDCs should be aware that early reviews by SBA's Office of the Inspector General have found documentation related deficiencies when reviewing Recovery Act loans.

In order to properly document Recovery Act loan files, SBA reminds lenders and CDCs to make sure that their loan files contain specific documentation in the following areas:

1. **Borrower certification of hiring practices for 7(a) Loans with the Increased Guaranty:** Prior to first disbursement on a 7(a) loan with the increased guaranty, lenders must require that the Borrower and any Operating Company certify that they have not been determined by the Secretary of Homeland Security or the Attorney General to have engaged in a pattern or practice of hiring an alien, recruiting an alien or referring an alien for a fee for employment in the United States, knowing that the person is an unauthorized alien. This certification is in addition to the existing disclosure requirement on SBA Form 912, Statement of Personal History. (See SBA Policy Notice 5000-1098, effective March 16, 2009 and the notice published in the Federal Register at 74 FR 27199, 27200.) This certification is only required on loans with an increased guaranty and must be retained in the loan file.
2. **Reimbursement of Borrower Fees for 7(a) and 504 Loan Guarantees:** If borrowers had already paid a fee on eligible 7(a) loans approved by SBA on or after February 17, 2009 and before March 16, 2009, lenders were sent fee refunds from SBA, which they must use to reimburse borrowers. Likewise, if a borrower had already paid a CDC for the Processing Fee on eligible 504 loans approved by SBA on or after February 17, 2009 and before March 16, 2009, the CDC was sent a refund from SBA that must be used to reimburse the borrower. Lenders and CDCs must document borrower receipt of the refund and be prepared to produce such documentation to SBA upon request. (See SBA Policy Notice 5000-1097, effective March 16, 2009 and the notice published in the Federal Register at 74

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FR 27196, 27198.) Appropriate forms of documentation regarding fee reimbursement may include wire transfers or cancelled checks. These documents must be included in the loan file.

3. **Allowable Uses of Recovery Act Funds:** The Recovery Act established that no funds could be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool. SBA loan guarantees funded with Recovery Act funds may not be made available to businesses primarily engaged in these activities or to businesses that intend to use guaranteed loans for the acquisition, construction, renovation or other purposes that include restricted uses. (See SBA Policy Notice 5000-1105, effective May 22, 2009, for further guidance on the restricted uses of Recovery Act funds, as well as a listing of NAICS codes for restricted businesses and activities.) Documentation for acceptable uses of Recovery Act funds includes the following items:
 - a. **Certification that no funds will be used for a restricted use:** Lenders and CDCs must certify on the applicable eligibility questionnaires and checklists that no loan proceeds will be used for a restricted use. All applicable eligibility questionnaires and checklists for the 7(a) and 504 programs have been modified to include an additional statement to this effect and must be retained in the lender's or CDC's loan file.
 - b. **Certification of uses for working capital funds:** If an applicant receives a working capital loan, prior to first disbursement, the lender must require the Borrower and any Operating Company to certify that no funds from the working capital loan will be used for restricted purposes. This certification must be retained in the lender's or CDC's loan file.
 - c. **Credit memorandum and certification for projects with restricted uses:** If an applicant will receive a loan to acquire, construct or renovate an existing facility that also has a golf course or swimming pool, for example, then:
 - i. the lender or CDC must document in the credit memorandum that the use of proceeds does not include financing the restricted use and document the other resources that cover the financing of this component; and
 - ii. prior to first disbursement the lender or CDC must require the Borrower and any Operating Company to certify that alternate funding (which may come from the borrower's equity) has been obtained to pay the costs allocable to the acquisition, construction or renovation of the golf course or swimming pool.The credit memorandum and the certification must be retained in the lender's or CDC's loan file.

SBA urges all participants to ensure that their documentation of Recovery Act loans is complete and accurate. SBA will review Recovery Act loans carefully during the purchase process and in the course of lender oversight activities in order to ensure that the requirements set out in the law were fully met.

Questions concerning this Notice should be directed to the lender relations specialist in the local SBA field office. The local SBA field office may be found at www.sba.gov/localresources.

Grady Hedgespeth, Director
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