



SBA Procedural Notice

TO: All SBA Employees

CONTROL NO.: 5000-1161

SUBJECT: Secondary Market Sales by SBA
Lenders

EFFECTIVE:
7/7/2010

This procedural notice is a re-issuance of SBA Information Notice No. 5000-1106 entitled “Secondary Market Sales by SBA Lenders”. (Originally issued on May 22, 2009.) SBA is re-issuing this notice pending its incorporation in the Monitoring Supervision, and Enforcement SOP. Under this notice, when an SBA Lender is subject to a Cease & Desist order or other supervisory action that cites unsafe and unsound banking practices or other items of concern to SBA, or to the extent the SBA learns that an SBA Lender’s auditor issues a Going Concern opinion in the audited financial statements; SBA will evaluate the additional risk associated with the SBA Lender’s secondary market sale in determining whether to provide SBA’s prior written consent.

The text of the original notice follows:

In recent months, Federal financial institution regulators have taken a number of supervisory actions including issuing Cease & Desist orders against financial institutions, including some SBA lenders, for a variety of unsafe and unsound banking practices. Many of these Cease & Desist orders cite banking practices that are detrimental to the SBA Lender and its owners or shareholders. In certain instances the federal financial institution regulator has called into question the institution’s ability to remain financially viable. In addition, auditors of some SBA Lenders have questioned the viability of the SBA Lender by issuing a Going Concern opinion within the Lender’s audited financial statements.

When SBA Lenders subject to supervisory actions, including Cease & Desist orders, sell the guaranteed portion of their loans into SBA’s secondary market, this action can have a significant impact on SBA’s ability to manage program risk. If the SBA Lender is taken over by the Federal Deposit Insurance Corporation, SBA is less likely to receive the full amount of loan recoveries. If, on post-purchase review, SBA denies liability on a loan, either fully or partially, the risk of non-recovery from a lender in receivership becomes even greater. In such a case, SBA is not likely to receive its entitled reimbursement of the portion of the purchase amount denied from the failed institution.

An active secondary market that provides SBA Lenders with liquidity to make new small business loans is an important component of the economic recovery. However, SBA must balance that objective against the need to protect SBA and taxpayers from risk of loss. Consequently, when an SBA Lender is subject to a Cease & Desist order or other supervisory action that cites unsafe and unsound banking practices or other items of concern to SBA, or to the extent the SBA learns that an SBA Lender’s auditor issues a Going Concern opinion in the audited financial statements; SBA will evaluate the additional risk associated with the SBA

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SBA Form 1353.1 (12-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

Lender's secondary market sale in determining whether to provide SBA's prior written consent. In order to conduct that evaluation, SBA may, among other things, conduct an on-site risk-based review of the financial institution and the credit quality of its loans, analyze the SBA lender's financial performance and SBA loan portfolio, and/or request additional information and documentation from the financial institution. Depending on the results of this evaluation, SBA may not approve the sale of loans in the secondary market, or may require an escrow account be established or other financial assurances be provided to cover potential losses resulting from repairs and denials and to mitigate risk.

SBA recognizes that this action may affect the timing of negotiated loan settlements and secondary market sales. Therefore, if an SBA lender is subject to a supervisory action citing unsafe and unsound banking practices, including a Cease and Desist Order, or a Going Concern opinion from its independent financial statement auditor, and wishes to sell loans into the secondary market, it must notify SBA within five business days (or as soon as practicable thereafter) of the issuance of the action or opinion, or immediately if pre-existing, and provide copies of the relevant documents to SBA for review, preferably prior to negotiating secondary market sales. SBA is committed to perform its evaluation as quickly as possible to minimize settlement delays. This evaluation would generally be commenced within 14 days of an SBA Lender notifying SBA of a Cease and Desist order or other supervisory action or if a Going Concern opinion is included in the audited financial statements or the SBA Lender's interest in selling loans in the secondary market.

SBA believes that such evaluations may help reinforce investor confidence in the secondary market. However, the evaluations are solely for SBA's purposes and should not be relied upon by others.

Lenders or SBA Offices with questions on this notice may forward their questions to me via email at janet.tasker@sba.gov.

Janet A. Tasker
Director
Office of Risk Management