



U.S. Small Business Administration  
Office of Inspector General

# Memorandum

To: Eric R. Zarnikow  
Associate Administrator, Office of Capital Access  
**/s/ Original Signed**

Date: December 10, 2009

From: Debra S. Ritt  
Assistant Inspector General for Auditing

Subject: Notice of Finding and Recommendation on Recovery Act Loans Disbursed Without the Required Borrower Immigration Certifications  
ROM-10-05

The OIG is conducting an audit of 7(a) loans disbursed pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act) to determine if the loans made under the Act were originated and closed in compliance with SBA's policies and procedures and to identify any evidence of suspicious activity. This is the second in a series of finding notices related to our ongoing audit and is intended to provide the Agency with early notification of findings and recommendations related to material deficiencies in Recovery Act loans and with the loan approval process. This Notice of Finding and Recommendation (NFR) identifies lender disbursements of Recovery Act loans that were made without obtaining the required borrower immigration certifications. We made four recommendations to the Associate Administrator for Capital Access to: (1) remind lenders of the SBA requirement to obtain borrower certification of compliance with immigration laws prior to loan disbursement; (2) require lenders to obtain the required borrower certifications for the 14 loans listed in this report; (3) flag the 14 loans listed in this report to ensure this deficiency is properly addressed at the time of guaranty purchase should these loans default; and (4) require lenders to submit borrower certifications of compliance with immigration laws at guaranty purchase, and cancel or reduce the SBA loan guaranties where lenders cannot furnish the required certification.

On November 19, 2009, we provided a draft of this NFR to SBA for comment. On December 3, 2009, SBA submitted its formal comments, which are contained in their entirety in Appendix II. Management agreed with the recommendations made in this report and provided dates for final actions. SBA agreed that issuing a notice to lenders was an appropriate course of action and stated that it has drafted an information notice. Additionally, SBA stated that within 30 days, it will contact the lenders of the 14 loans to ensure they are aware of the requirement for borrower certifications, and flag the 14 loans in the Guaranty Purchase System. SBA also plans

to update its 10-tab system to include a section specific to Recovery Act documentation and to reduce the SBA guaranty percentage for loans that were ineligible or not in compliance.

We appreciate the courtesies and cooperation of the Office of Capital Access. If you have any questions concerning this NFR, please call me at 202-205-[FOIA ex. 2], or Debra Mayer, Director, Recovery Oversight Group, at 202-205-[FOIA ex. 2].

Attachment

**U.S. Small Business Administration**

**Office of Inspector General**

**Notice of Finding and Recommendation**

<b>Audit Location/Division</b>	Office of Capital Access
<b>Date</b>	December 10, 2009
<b>Description of Issue</b>	Lenders are not complying with Recovery Act requirements regarding immigration laws.

**BACKGROUND:**

The purpose of this Notice of Finding and Recommendation (NFR) is to advise you of an issue that was identified during our ongoing audit of 7(a) loans disbursed pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act). As part of the audit, we reviewed 30 lender-approved 7(a) Recovery Act loans that received an increased SBA guaranty to verify lender compliance with SBA rules and regulations.

The Recovery Act prohibited SBA from providing increased loan guaranties to entities who engage in a pattern or practice of hiring or recruiting unauthorized aliens for employment in the United States. To ensure compliance with this Recovery Act requirement, SBA modified its 7(a) loan authorization to require lenders to obtain borrower certifications of their compliance prior to loan disbursement. For its pilot loan programs, SBA required lenders to add this requirement to their loan authorizations.

**CONDITION:**

We found that 14, or 47 percent, of the 30 lender-approved loans reviewed did not contain the SBA-required borrower certifications. See Appendix I for a listing of the loans.

**CRITERIA:**

Section 502(c)(2) of the Recovery Act states that no loan guaranty may be made for a loan to any entity found, based on a determination by the Secretary of Homeland Security or the Attorney General, to have engaged in a pattern or practice of hiring, recruiting or referring for a fee, an unauthorized alien for employment in the United States.

SBA Policy Notice 5000-1098, *Implementation of Section 502 of the Recovery Act - Up to a 90 Percent Guaranty on 7(a) Loans*, states that prior to disbursement, the lender must require the borrower and any Operating Company to certify as follows:

**Immigration Laws** — Neither the Borrower nor Operating Company has 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.

**CAUSE:**

Lenders did not obtain the required certifications from borrowers and Operating Companies. Additionally, one lender that issued pilot program loans under Section 502 of the Recovery Act did not properly modify its loan authorization to require certifications from the borrowers.

**EFFECT:**

Without the required borrower certifications, SBA does not have reasonable assurance that the 14 disbursed loans were in compliance with the Recovery Act. Based on a statistical projection of the 14 loans that are valued at \$6.8 million, we estimate that at least \$215 million in SBA Recovery Act loans were approved between February 17, 2009 and May 31, 2009, without obtaining the required borrower certifications of compliance with immigration laws.

**RECOMMENDATIONS:**

We recommend that the Associate Administrator for Capital Access:

1. Remind lenders of the SBA requirement to obtain borrower certification of compliance with immigration laws prior to loan disbursement.
2. Require lenders to obtain the required borrower certifications for the 14 loans listed in Appendix I.
3. Flag the 14 loans listed in Appendix I in the Guaranty Purchase Tracking System to ensure this deficiency is properly addressed at the time of guaranty purchase should the loans default.
4. Upon request for guaranty purchase of SBA Recovery Act loans that received increased SBA guaranties, require lenders to submit borrower certifications of compliance with immigration laws, and cancel or reduce the SBA guaranty for any loan made for which the lender cannot furnish the required certification.

**APPENDIX I. LOANS WITHOUT BORROWER IMMIGRATION CERTIFICATIONS**

<b>Loan Number</b>	<b>Loan Name</b>	<b>Loan Amount</b>
[FOIA ex. 2]	[FOIA ex. 4]	\$420,000
[FOIA ex. 2]	[FOIA ex. 4]	\$1,198,000
[FOIA ex. 2]	[FOIA ex. 4]	\$320,000
[FOIA ex. 2]	[FOIA ex. 4]	\$770,400
[FOIA ex. 2]	[FOIA ex. 4]	\$50,000
[FOIA ex. 2]	[FOIA ex. 4]	\$100,000
[FOIA ex. 2]	[FOIA ex. 4]	\$1,165,000
[FOIA ex. 2]	[FOIA ex. 4]	\$75,000
[FOIA ex. 2]	[FOIA ex. 4]	\$445,000
[FOIA ex. 2]	[FOIA ex. 4]	\$18,000
[FOIA ex. 2]	[FOIA ex. 4]	\$15,000
[FOIA ex. 2]	[FOIA ex. 4]	\$265,000
[FOIA ex. 2]	[FOIA ex. 4]	\$264,200
[FOIA ex. 2]	[FOIA ex. 4]	\$1,660,000
<b>Total</b>		<b>\$6,765,600</b>

## APPENDIX II. AGENCY COMMENTS



**U.S. SMALL BUSINESS ADMINISTRATION**  
WASHINGTON, D.C. 20416

**DATE:** December 3, 2009  
**TO:** Debra S. Ritt  
Assistant Inspector General for Auditing  
**/s/ Original Signed**  
**FROM:** Eric R. Zarnikow  
Associate Administrator for Capital Access  
**SUBJECT:** Draft Notice of Finding and Recommendation on Recovery Act Loans  
Disbursed Without the Required Borrower Immigration Certifications  
Project No. 9512B

Thank you for the opportunity to comment on the Draft Notice of Finding and Recommendation on Recovery Act Loans Disbursed without the Required Borrower Immigration Certifications. We appreciate that the Office of the Inspector General has given us a quick response and feedback on the Recovery Act loan findings.

### **Responses to OIG Recommendations:**

**1. Remind lenders of the SBA requirement to obtain borrower certification of compliance with immigration laws prior to loan disbursement.**

OCA agrees that this is an appropriate course of action and has drafted an information notice reminding lenders to update their files to include additional Recovery Act documentation requirements, including Borrower certification of hiring practices for 7(a) loans with the increased guaranty, reimbursement of borrower fees for 7(a) and 504 loan guarantees, and allowable uses of Recovery Act funds. This notice is currently in Agency review and is expected to be issued by December 15, 2009.

**2. Require lenders to obtain the required borrower certification for the 14 loans listed in Appendix I.**

Within 30 days, SBA will contact the lenders of the 14 loans to ensure that they are aware of the requirement for borrower certifications.

- 3. Flag the 14 loans listed in Appendix I in the Guaranty Purchase Tracking System to ensure this deficiency is properly addressed at the time of guaranty purchase should these loans default.**

Within 30 days OCA will flag these loans in GPTS.

- 4. Upon request for Guaranty purchase of SBA Recovery Act loans that received increased SBA guaranties, require lenders to submit borrower certifications of compliance with immigration laws, and cancel or reduce the SBA guaranty for any loan made for which the lender cannot furnish the required certification.**

Lender files are expected to document eligibility, servicing and liquidation requirements according to SBA policies and procedures for Recovery Act loans. Within 30 days, SBA will update the 10 tab system to include a section specific to Recovery Act documentation. SBA will reduce the SBA guaranty percentage for loans that were not eligible for the higher Recovery Act guarantee percentage where lenders cannot demonstrate through certifications or by other means that the loan complied with this section of the law.