



SBA Information Notice

TO: All SBA Employees

CONTROL NO.: 5000-1160

SUBJECT: Reminder regarding Recovery Act
Loan Documentation Requirements
and Restrictions

EFFECTIVE: 7-06-2010

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.

SBA Information Notice 5000-1134 (effective date December 9, 2009), reminded SBA lenders and Certified Development Companies (CDCs) of these requirements and restrictions. However, early reviews by SBA’s Office of Inspector General and purchase reviews conducted by the National Guaranty Purchase Center have identified deficiencies related to Recovery loan documentation.

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

For 7(a) loans with the increased guaranty, the borrower must certify in writing as follows:

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 the notice published in the Federal Register on June 8, 2009 at 74 FR 27199, 27200.)

For all Recovery loans, the borrower must certify as follows:

1. **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. Documentation for acceptable uses of Recovery Act funds includes the following items:

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SBA Form 1353.2 (12-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

- 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 loans is complete and accurate. The lack of documentation slows the purchase process and can lead to a possible repair if the lender or CDC is unable to produce the required certifications.

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
Office of Financial Assistance

Expires: 7-01-2011