



SBA Policy Notice

TO All SBA Employees

CONTROL

5000-1103

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NO.:

SUBJECT: Recovery Act - Treatment of
cancellations of loans approved prior
to the Recovery Act

EFFECTIVE: 4/10/2009

On March 16, 2009, SBA Policy Notice No. 5000-1097 announced changes in SBA 7(a) and 504 program fees. On the same date, SBA issued Policy Notice No. 5000-1098 to announce changes to the maximum guaranty for 7(a) loans. These fees and maximum guaranty percentages were changed by the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") (P.L. 111-5) (February 17, 2009). The purpose of the Recovery Act is to stimulate new economic activity, and assist in our nation's economic recovery. The fee changes apply to 7(a) loans approved on or after February 17, 2009 and to 504 loans approved or pending approval on or after that date. The guaranty percentage changes apply to 7(a) loan applications (except SBA Express loans) received by SBA on or after March 16, 2009.

The question has arisen from the SBA lending industry as to whether an SBA loan approved before February 17, 2009, may be cancelled and resubmitted to receive the benefit of the change in fees. In addition, the question has arisen as to whether loans approved prior to March 16, 2009 (the implementation date of Section 502 of the Recovery Act), may be cancelled and resubmitted to take advantage of the increase in the maximum guarantee percentage of up to 90 percent.

In both scenarios cancellation and resubmission of the same loan would use the limited appropriations made available under the Recovery Act to provide fee relief and/or an increased guaranty on loans already approved without the need for the provisions of the Recovery Act and would be contrary to the intent of the new law to stimulate new lending.

Therefore, SBA will not permit cancelled 7(a) and 504 loans that were approved by SBA prior to February 17th to be resubmitted as reduced-fee Recovery Act loans, unless the resubmitted loan is not a replacement for the original loan, as determined by SBA on a case by case basis. Similarly, SBA will not permit cancelled 7(a) loans approved prior to March 16, 2009 (the implementation date for Section 502 of the Recovery Act) to be resubmitted as Recovery Act loans eligible for a maximum guaranty of up to 90 percent, unless the resubmitted loan is not a replacement for the original loan as determined by SBA on a case by case basis. Requests for such consideration must be submitted by the lender to the Standard 7(a) Loan Guaranty Processing Center in Citrus Heights, California. The request will be reviewed and a recommendation will be forwarded to the Director/Office of Financial Assistance for approval.

In making a case by case determination on resubmitted loans, the existence of one or more of the following factors will make it more likely that SBA will approve the request: i) the loan was cancelled for reasons other than the passage of the Recovery Act (e.g., the loan was cancelled

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because the location for the new business was not available; subsequently another location became available and a new loan was requested); ii) the new loan is for a different purpose (e.g., the original loan was for working capital but the new loan is for the acquisition of real estate); iii) the new loan is likely to achieve additional economic stimulus (e.g., the previous loan would have preserved jobs but the new loan will also create new jobs); or, iv) the new loan could not be made but for the provisions of the Recovery Act (e.g., the loan was cancelled because the borrower failed to meet a key provision (e.g., appraisal value) in the original loan authorization and, therefore, the lender would not make the loan now but for the higher guaranty level.) Based on past cancellation experience in SBA's loan programs, SBA expects that only a limited number of borrowers with cancelled loans will meet the criteria for a new loan with reduced fees and/or a higher guaranty.

It is possible for a lender to apply for a waiver for one part of the Recovery Act (e.g., 90 percent guaranty) without seeking a waiver for the other. In general, waivers for fee relief, simply to save the borrower the expense, will not be approved.

In addition, changes to all loans approved prior to February 17, 2009, including loan increases, will be processed as changes to the original loan in accordance with SBA's standard practice, and loan fees will be assessed under the rules in effect at the original approval date.

Finally, if limited debt refinancing is added to a project under the 504 Development Company Program as permitted by the Recovery Act, changes will be processed as amendments to the original loan and not as a new loan, in accordance with SBA's standard practice.

Questions should be directed to your local district office. District offices may forward questions, when necessary, to the Office of Financial Assistance for prompt consideration.

Karen G. Mills
Administrator