SBA Policy Notice

TO: All SBA Employees	**CONTROL NO.:**	5000-1098
SUBJECT: Implementation of Section 502 of the Recovery Act - Up to a 90 Percent Guaranty on 7(a) Loans	**EFFECTIVE:**	3/16/2009

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") (P.L. 111-5). Section 502 of the Recovery Act authorizes SBA to guarantee up to 90 percent of a 7(a) loan except for SBA Express. SBA Express remains at a 50 percent guaranty. The purpose of this Notice is to announce the implementation of the increased guaranty percentage on eligible 7(a) loans. A notice on this subject will also be published in the Federal Register.

Prior to the signing of the Recovery Act, with two exceptions, the maximum guaranty percentage for all 7(a) loan programs, including Pilot Loan Programs, ranged from 85 percent for loans of $150,000 or less to 75 percent for loans greater than $150,000. (13 CFR Part 120) (For SBA Express loans, the maximum guaranty is 50 percent. For EWCP loans, Section 7(a)(2)(D) of the Small Business Act permits a 90 percent guaranty.)

Guaranty Percentage and Loan Amount

As of the date of this Notice, a Lender may request up to a 90 percent guaranty for a 7(a) loan submitted under the following programs:

Loan Program	Maximum loan amount	Maximum guarantee amount
Standard 7(a)	$ 2,000,000	$ 1,500,000
CLP	$ 2,000,000	$ 1,500,000
PLP	$ 2,000,000	$ 1,500,000
Small/Rural Lender Advantage	$ 350,000	$ 315,000
Community Express	$ 250,000	$ 225,000
Patriot Express	$ 500,000	$ 450,000
Export Express	$ 250,000	$ 225,000
Gulf Opportunity	$ 150,000	$ 135,000

The Recovery Act did not change the maximum SBA guaranteed amount which remains at $1,500,000. Therefore, for those loan programs that have a maximum loan amount greater than $500,000 (Standard 7(a), CLP, and PLP), in order for the loan to receive a 90 percent guaranty, the loan amount cannot exceed $1,666,666 ($1,500,000 divided by 90 percent).

For loans greater than $1,666,666, the maximum guaranty will be calculated as follows: $1,500,000 (SBA guaranteed amount) divided by the loan amount <u>rounded down</u> to the second

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decimal. For example, if the loan amount is $1,680,000, then the guaranty percentage would be $1,500,000 divided by $1,680,000, which equals 89.2857 percent, rounded down to 89.28 percent.

For loans to borrowers with existing SBA-guaranteed loans, the new loan will also have a guaranty percentage less than 90 percent when necessary to comply with the Small Business Act's limitation of no more than $1,500,000 in guaranteed amount to one borrower (including affiliates). (Section 7(a)(2)(D)(3) of the Small Business Act provides a higher maximum guaranteed amount for certain loans used for export purposes.)

Prohibition on Use of Funds

Section 1604 of the Recovery Act states that none of the funds appropriated or otherwise made available in this Act may 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. Further guidance will be issued on this subject in the near future.

For loans for these Recovery Act prohibited uses, lenders may continue to submit applications in accordance with SOP 50 10 5(A) for the maximum guaranty percentage of 75/85, depending on the loan amount, and pay all applicable fees.

Additional Requirement for the Increased Guaranty

The Recovery Act requires that the Borrower meet an additional requirement for the increased guaranty:

> No loan guarantee under this initiative may be made 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, for employment in the United States an alien knowing the person is an unauthorized alien.

Therefore, prior to first 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.

Version 2009.2 of the 7(a) Loan Authorization, which will be available shortly, will incorporate this certification for standard 7(a), CLP, PLP and Small/Rural Lender Advantage loans. For any Pilot Loan Program loans, the lender will be responsible for adding this requirement to the lender's authorization.

This certification is in addition to the existing disclosure requirement on SBA Form 912, Statement of Personal History.

Lenders and/or borrowers may be subject to additional reporting or recordkeeping requirements in connection with loans under the Recovery Act.

Submission Process

There will be no change to the submission process. E-tran submission is strongly encouraged for all loans processed under a lender's delegated authority. The provisions of the Small Business Act applicable to the 7(a) program and the regulations promulgated thereunder will continue to apply to loans with the higher guaranty percentage.

Expiration Date

The increased guaranty percentage of up to 90 percent is offered in conjunction with the fee eliminations announced today. These terms will be available until the aggregate dollar amount of 7(a) loans made under this authority exhausts the funds dedicated to that purpose. We currently estimate that program level will be approximately $8.7 billion. Depending on loan volume in the 7(a) program, SBA estimates that the increased guaranty percentage will be available through approximately December 31, 2009.

Additional Information

Questions regarding this Notice should be directed to Gail Hepler, Chief 7(a) Program Branch, at (202) 205-7530 or by email at gail.hepler@sba.gov.

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Darryl K. Hairston
Acting Administrator