



SBA Procedural Notice

TO: All SBA Employees

CONTROL NO.: 5000-1205

SUBJECT: Secondary Market Sales by SBA
Lenders - Reserve Agreement

EFFECTIVE: 4/15/2011

In 2009 and 2010, SBA issued SBA Information Notice No. 5000-1106 and SBA Procedural Notice No. 5000-1161 (May 22, 2009 and July 7, 2010, respectively), both entitled “Secondary Market Sales by SBA Lenders”, to assist in notifying stakeholders that SBA was increasing its level of supervision over certain higher risk SBA Lenders that participate in the Secondary Market. Specifically, the Notices covered all SBA Lenders that seek to sell loans into the Secondary Market and that are subject to (i) a Cease & Desist order, (ii) a Consent Agreement affecting capital or commercial lending issues, or (iii) other supervisory action that cites unsafe and unsound banking practices or other items of concern to SBA, or (iv) where the SBA Lender’s auditor issued a Going Concern opinion in the audited financial statements (collectively, the “Actions”). Recently, these Notices were incorporated into SBA Standard Operating Procedure (SOP) 50 53 on Lender Supervision and Enforcement (eff. Oct. 1, 2010).

SBA is responsible for ensuring the integrity of the 7(a) Loan and Secondary Market programs under its supervision, and for managing SBA guaranty exposure. The sale of the portion of 7(a) loans guaranteed by SBA (Guaranteed Portion) into the Secondary Market by these SBA Lenders can have a significant impact on SBA’s ability to manage program risk. More specifically, once the Guaranteed Portion is sold, the guarantee effectively changes from a conditional guarantee to the SBA Lender to an unconditional guarantee to the Registered Holder. If a borrower defaults, SBA generally purchases the Guaranteed Portion from the Registered Holder out of the Secondary Market and, as appropriate, pursues the SBA Lender for any repairs or denials based on a post-purchase review. However, if an SBA Lender is placed in receivership by the Federal Deposit Insurance Corporation (FDIC), SBA may be limited in its ability to receive its entitled reimbursement of the portion of the purchase amount denied or repaired from the failed institution.

Towards mitigating this concern, SBA has been reviewing each individual loan from SBA Lenders that fall into the categories identified above prior to the sale of the Guaranteed

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Portion in the Secondary Market. This process is resource intensive and may result in delays to the SBA Lender in selling the Guaranteed Portion in the Secondary Market. In order to facilitate the process and better manage risks, effective June 30, 2011, SBA will, in general, no longer review each individual loan prior to sale. Instead, SBA Lenders subject to any one or more of the four Actions defined above will be required to enter into a Reserve Account Agreement (“Agreement”) with SBA prior to requesting SBA approval to sell loans into the Secondary Market. The Reserve Account established by the Agreement is necessary to protect SBA and the taxpayer from unnecessary losses, and provide greater assurance of repayment for post-purchase repairs and denials on the Guaranteed Portion of Secondary Market loans by these SBA Lenders.

Under the Agreement, before SBA will approve the sale of any Guaranteed Portion on the Secondary Market, the SBA Lender will be required to establish a Reserve Account at a well-capitalized FDIC insured depository financial institution and fund the account as follows:

- 1) Make an initial deposit in the amount of either:
 - a) Two (2) times an SBA Lender’s average 7(a) loan size (determined by dividing the SBA Lender’s gross dollars outstanding by the number of 7(a) loans outstanding) if the SBA Lender’s gross dollars outstanding for its active loans is \$10 million or greater, or
 - b) One (1) times an SBA Lender’s average 7(a) loan size (determined by dividing the SBA Lender’s gross dollars outstanding by the number of 7(a) loans outstanding) if the SBA Lender’s gross dollars outstanding for its active loans is less than \$10 million.
- 2) In addition to the initial deposit, the SBA Lender will be required to deposit a Reserve Amount for each sale of a Guaranteed Portion in the Secondary Market. The Reserve Amount equals the total gross dollar amount of the Guaranteed Portions to be sold, multiplied by the greater of (a) SBA's overall 7(a) Loan guarantee repair/denial rate as calculated by SBA for the most recent available quarter or (b) the SBA Lender's 7(a) Loan guarantee repair/denial rate as calculated by SBA for the most recent available quarter. Please note, SBA may, on a case by case basis, in its discretion, request a greater Reserve Amount, request other financial assurances or other oversight measures, or not approve Secondary Market sales, given the risk, compliance, or other regulatory concerns of a particular situation.

The SBA Lender may not sell a Guaranteed Portion on the Secondary Market if: (i) any payment of principal or interest has been past due (one payment cycle late) or deferred on the

7(a) Loan during the six month period prior to the sale date; (ii) at the time of the sale, the borrower is not making payments as scheduled under the original terms of the 7(a) Loan note (for the Guaranteed Portion); or (iii) the Guaranteed Portion to be sold is part of a 7(a) Loan that is classified by SBA Lender as special mention, substandard, doubtful or loss or has been restructured.

For any loan with a final disbursement less than six months prior to the date of sale, the SBA Lender may not sell the Guaranteed Portion of that loan on the Secondary Market if the SBA Lender's 7(a) loan portfolio exceeds any two of the following performance indicators (included in the Loan and Lender Monitoring System) by one and one-half (1.5) times the average for the overall 7(a) portfolio. The performance indicators are early default rate, past due rate, delinquency rate, liquidation rate and 12 month purchase rate, as calculated by SBA. On a monthly basis SBA will provide these indicators (both lender-specific and overall 7(a) portfolio) to the SBA Lenders that have entered into Reserve Account Agreements with SBA. If the performance requirement is triggered, the SBA Lender may not sell the Guaranteed Portion of a 7(a) loan on the Secondary Market until at least 180 days from the date of final disbursement of the loan. Once the performance requirement is triggered, it will remain in effect for three months after the date the performance metrics have returned to acceptable levels. Late reporting of loan performance data by the SBA Lender may result in a permanent requirement for 7(a) loans to be seasoned for six months prior to sale or other remedial action as SBA deems appropriate.

SBA recognizes that the establishment of the reserve may affect the timing of negotiated loan settlements and Secondary Market sales. Therefore, if an SBA Lender is subject to any one or more of the four Actions defined above, and seeks 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.

In conclusion, beginning June 30, 2011, each SBA Lender subject to any of the four Actions must have a fully executed Agreement and a Reserve Account established in accordance with the Agreement in order to sell Guaranteed Portions into the Secondary Market. The Office of Credit Risk Management will immediately begin working with SBA Lenders subject to these Secondary Market procedures to put the Agreement and Reserve Account in place. SBA encourages SBA Lenders to begin this process as soon as practicable if they intend to sell a Guaranteed Portion in the Secondary Market in the near future.

Questions on this Notice may be directed to the Office of Credit Risk Management via phone at (202) 205-3049.

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Office of Risk Management