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## Rules and Regulations

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### SMALL BUSINESS ADMINISTRATION

#### 13 CFR Part 120

RIN 3245-AF93

#### American Recovery and Reinvestment Act: America's Recovery Capital (Business Stabilization) Loan Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements section 506 of the American Recovery and Reinvestment Act of 2009, which authorizes SBA to establish a temporary program to guarantee loans to viable small business concerns that have a qualifying small business loan, and are experiencing immediate financial hardship. Loans made under this program, referred to as "America's Recovery Capital Loan Program" (ARC Loan Program) can be used to make principal and interest payments on existing qualifying small business loans.

**DATES:** *Effective Date:* This rule is effective June 9, 2009.

*Comment Date:* Comments must be received on or before August 10, 2009.

**ADDRESSES:** You may submit comments, identified by RIN: 3245-AF93 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Janet A. Tasker, Office of Capital Access, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Janet A. Tasker, Office of Capital Access, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please

submit the information to Janet A. Tasker, Office of Capital Access, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to [ARCLoanprogram@sba.gov](mailto:ARCLoanprogram@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Janet A. Tasker, Office of Capital Access, Small Business Administration, 409 Third Street, SW., Washington, DC 20410 or via e-mail at [ARCLoanprogram@sba.gov](mailto:ARCLoanprogram@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

The American Recovery and Reinvestment Act of 2009 (the Recovery Act), Public Law 111-5, 123 Stat. 115, was enacted on February 17, 2009, to, among other things, promote economic recovery by preserving and creating jobs, and assisting those most impacted by the severe economic conditions facing the nation. SBA is one of several agencies that are intended to play a role in achieving these goals. SBA received funding and authority through the Recovery Act for several actions to help small business lending, including authority to establish a new temporary loan program to help troubled businesses.

One provision included in the Recovery Act is to provide SBA with temporary authority to fully guarantee loans (ARC Loans) to viable small businesses that have a qualifying small business loan(s) and are experiencing immediate financial hardship. In order to implement this change, SBA will amend the business loan regulations in 13 CFR part 120 to add the requirements which must be met by lenders and borrowers participating in the ARC Loan Program. The requirements for the ARC Loan Program will be promulgated under new § 120.398.

##### II. Section by Section Analysis

Sections 120.398(a) and (b) set forth the statutory purpose of the ARC Loan Program and define terms used in the regulation. The purpose of the ARC Loan Program is to enable SBA to guarantee loans to viable small

businesses that are experiencing immediate financial hardship. SBA is applying the rules and other requirements of the 7(a) program to the ARC Loan Program except as specifically set forth in section 120.398 of the regulations. Accordingly, only 7(a) lenders may make ARC Loans. Lenders who are not currently 7(a) lenders may apply to participate in this and the 7(a) program.

The regulation defines an eligible borrower, a going concern, a viable small business, and a qualifying small business loan consistent with the requirements of the Recovery Act. The definition of eligible borrower includes the basic eligibility requirements and ineligibility provisions for small businesses contained in sections 120.100 and 120.110, respectively, of this Part. Section 1604 of the Recovery Act states that no funds appropriated or otherwise made available in the Recovery Act may be used by any private entity for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. Casinos and gambling establishments are currently ineligible for SBA financial assistance under § 120.110. Aquariums, zoos, golf courses and swimming pools are eligible for SBA financial assistance under the Small Business Act and the Small Business Investment Act; however, they are not eligible for assistance under the Recovery Act. For that reason, SBA has determined that small business concerns with the following primary industry North American Industry Classification System (NAICS) codes are ineligible for ARC Loans: (a) 713210 (Casinos (Except Casino Hotels)); (b) 721120 (Casino Hotels); (c) 713290 (Other Gambling Industries); (d) 713910 (Golf Courses and Country Clubs); and (e) 712130 (Zoos and Botanical Gardens). Applications submitted by small business concerns with a primary industry NAICS code of 713940 (Fitness and Recreational Sports Centers), which includes both swimming pools and other types of fitness and recreational centers, will be identified and reviewed by SBA to determine eligibility in accordance with the Recovery Act statutory restriction on assistance to swimming pools. A "going concern" is defined as a small business that is actively engaging in business with the expectation of indefinite continuance.