69 FR 58598-01
69 FR 58598-01, 2004 WL 2187065 (F.R.)
(Cite as: 69 FR 58598)

NOTICES

SMALL BUSINESS ADMINISTRATION

Revision of Privacy Act System of Records

Thursday, September 30, 2004

AGENCY: Small Business Administration.

*58598 ACTION: Notice of revision of Agency's System of Records pursuant to the provisions of the Privacy Act and to open comment period.

SUMMARY: This notice provides for review and comment on a major revision of the Agency's Privacy Act Systems of Records. Four of the former Systems have been eliminated and four new Systems have been developed. The numbers of all of the Systems have also been changed. All Systems now include electronic formats and access and a new routine use which allows for disclosure to Agency volunteers, interns, experts and contractors when necessary for their official duties. The title of System 8 has been changed to Correspondence and Inquires, and there is a new category of records for System 14, Freedom of Information and Privacy Act Records. The title of System 21 has been changed to the Loan System and a new routine use, (j), for the system is included.

DATES: Written comments on the System of Records must be received on or before October 29, 2004. The notice shall be effective as proposed with or without further publication at the end of the comment period, unless comments are received which would require contrary determination.

ADDRESSES: Written comments on the System of Records should be directed to Lisa J. Babcock, Chief, Freedom of Information/Privacy Acts Office, U. S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Lisa J. Babcock, Chief, Freedom of Information/Privacy Acts Office, (202) 401-8203.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act stipulation that Agencies publish their Systems of Records in the Federal Register when there is a revision, change or addition.

Altered Systems of Records; Narrative Statement; U.S. Small Business Administration, Privacy Act System of Records SBA 14, Freedom of Information and Privacy Act Records; Addition of a New Category of Records

A. Narrative Statement

1. The purpose of adding a new category of records to Privacy Act System of Records 14 is to include the Agency's FOI/PA Tracking System that will be used to record and monitor all FOI/PA requests, appeals and inquiries. The Tracking System will be accessed by the FOI/PA Office and their designated contacts in each SBA program and field office. The FOI/PA contacts will have access only to data

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pertaining to the FOI/PA cases assigned to their office. The FOI/PA Office will have access to all data in the Tracking System.

2. Refer to the following citations: 5 U.S.C. 301, 44 U.S.C. 3101, 15 U.S.C. 634(b)6.

3. The effect on the individual FOI/PA requester and appellant will be minimal. The information contained in the FOI/PA files will be viewed only by Agency personnel, contractors, experts, consultants or volunteers in the line of their official duties. These individuals must comply with the requirements of the PA of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

4. Access and use of FOI/PA files is limited to specified individuals who have a need to know to accomplish their duties. The FOI/PA Tracking System will be accessed via restricted passwords and user identifications.

5. The new proposed category of records use satisfies the compatibility requirement of subsection (a)(4) of the Act as the FOI/PA Tracking System is a "collection, or grouping of information about an individual that is maintained by an agency" and "contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual."

6. This is an internal information collection. The Agency deems the OMB approved information collection requirements unnecessary.

Altered Systems of Records; Narrative Statement; U.S. Small Business Administration, Privacy Act System of Records SBA 21, Loan System; Change of System Name and the Addition of a New Routine Use

B. Narrative Statement

1. The name of the former Privacy Act System of Records 21, Loan Monitoring System is changed to the Loan System. The purpose of adding a new routine use to Privacy Act System of Records 21 is to allow for the disclosure of records from this System to 7(a) and 504 lenders and/or participating contractors for purposes of the Agency's Loan and Lender Monitoring System.

2. Refer to the following citations: Public Law 85-536, 15 U.S.C. 631 et seq. (Small Business Act, all provisions relating to loan programs); 44 U.S.C. 3101 (Records Management by Federal Agencies); and Public Law 103-62 (Government Performance and Results Act).

3. The effect on the individual is minimal because the information collected is already being collected by the Department of Treasury Financial Management Service, by the SBA under previously approved manual form and by the SBA's previously established and published Privacy Act System or Records 170, Loan Monitoring System. The information contained in the System will be viewed only by Agency personnel, participating contractors and lenders in the line of their official duties. All of these individuals must comply with the requirements of the PA of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

4. Access and use of Lender System records is limited to Agency officials acting in their official capacities, with a need-to-know, and to SBA Resource Partners and participating contractors. Access and use by SBA Resource Partners and participating contractors will generally be via the Internet, with restricted password(s)/passcode(s).

SBA 21

SYSTEM NAME:

Loan System--SBA 21.

SYSTEM LOCATION:

Headquarters (HQ), Regional Offices, District Offices, Branch Offices, Processing Centers, and Servicing Centers. See Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (i.e., borrowers, guarantors, principals of businesses named in loan records), throughout the life of SBA's interest in a loan, under all of the Agency's business (non-disaster) loan programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and commercial information (i.e., credit history, financial information, identifying number or other personal identifier) on individuals named in business loan files, throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 85-536, 15 U.S.C. 631 et seq. (Small Business Act, all provisions relating to loan programs); 44 U.S.C. 3101 (Records Management by Federal Agencies); and Public Law 103-62 (Government Performance and Results Act).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:

a. To the SBA Resource Partner, its successors or assigns, (i.e., participating lender, certified development company, micro lender) who initially collected the individual's information for the purpose of making and servicing loans.

b. To a Congressional office from an individual's record when the office is inquiring on the individual's behalf. The Member's access rights are no greater than the individual's.

c. To the Federal, state, local or foreign agency or organization which investigates, prosecutes, or enforces violations, statues, rules, regulations, or orders issued when an agency identifies a violation or potential violation of law, arising by general or program statute, or by regulation, rule, or order.

d. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. To qualified investors who have signed a confidentiality agreement related to review of files for the purpose of evaluating, negotiating and *58618 implementing the purchase of loans from the Agency as a part of the Agency's Asset Sales program.

f. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

g. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

h. To request information from a Federal, State, local agency or a private credit agency maintaining civil, criminal or other information relevant to determining an applicant's suitability for a business loan. This applies to individuals involved in business loans.

i. To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

j. To 7(a) and 504 lenders and/or participating contractors for purposes of the Loan and Lender Monitoring System (L/LMS).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Electronic Records are in a secured server and paper records are in files. Loan files are in a secured area in either locked files or locked file rooms.

RETRIEVABILITY:

Electronic Records: By individual name, personal identifier, SBA Identifier, Participating Lender Identifier, Participating Lender Name, business name, and business identifier.

Paper Records: By individual name, personal identifier and SBA Identifier.

SAFEGUARDS:

Electronic Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know, and to SBA Resource Partners. Access and use by SBA Resource Partners will generally be via the Internet, with restricted password(s)/ passcode(s). SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner.

Information contained in files will be available only to potential asset sale purchasers who have executed a confidentiality agreement. Only SBA employees in the performance of their official duties, who are granted access to the records by Agency issuance of User ID and/or passcode, may amend or review the records.

Paper Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know. SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner. Information contained in loan files will be available only to potential asset sale purchasers who have executed a confidentiality agreement. Only those SBA employees in the performance of their official duties may amend or review the records.

RETENTION AND DISPOSAL:

In accordance with SBA Standard Operating Procedure 00 41 2, Item Nos. 50:04, 50:08, 50:09, 50:10, 50:11, 50:12, 50:13, 50:19, 50:22, 55:02. Records are retained for the life of SBA's interest in the business loan and are disposed of according to the reference in the SOP that pertains to a particular type of record; retention period varies according to the type of record.

SYSTEM MANAGERS AND ADDRESSES:

Associate Administrator for Capital Access, Associate Administrator for Lender Oversight, Associate Administrator for Financial Assistance, Regional Administrators, District Directors, Branch Managers, Loan Service Center Director and Loan Processing Centers Directors. See Appendix A.

NOTIFICATION PROCEDURE:

An individual may submit a written record inquiry to the appropriate Systems Manager or PA Officer.

RECORDS ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING RECORD PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

RECORD SOURCE CATEGORIES:

Subject individuals and businesses, financial institutions, credit reporting agencies, law enforcement agencies and SBA resource partners.

evidence to support or document compliance with these laws, including reports required by applicable statutes or the regulations in this chapter.

ENFORCEABILITY DESPITE RULE CHANGES

§ 120.180 Are rules enforceable if they are changed later?

Regulations and contractual provisions in effect at the time of a transaction govern an SBA loan financing transaction, notwithstanding subsequent rule or contract changes. SBA may conduct an enforcement action regarding any violation of provisions of regulations or contracts applicable at the time, but no longer in effect or in use.

LOAN APPLICATIONS

§ 120.190 Where does an applicant apply for a loan?

An applicant for a business loan should apply to:

(a) A Lender for a guaranteed or immediate participation loan;

(b) A CDC for a 504 loan;

(c) An Intermediary for a Microloan; or

(d) SBA for a direct loan.

§ 120.191 The contents of a business loan application.

For most business loans, SBA requires that an application for a business loan contain, among other things, a description of the history and nature of the business, the amount and purpose of the loan, the collateral offered for the loan, current financial statements, historical financial statements (or tax returns if appropriate) for the past three years, IRS tax verification, and a business plan, when applicable. Personal histories and financial statements will be required from principals of the applicant (and the Operating Company, if applicable).

§ 120.192 Approval or denial.

Applicants receive notice of approval or denial by the Lender, CDC, Intermediary, or SBA, as appropriate. Notice of denial will include the reasons. If a loan is approved, an Authorization will be issued.

§ 120.193 Reconsideration after denial.

An applicant or recipient of a business loan may request reconsideration of a denied loan or loan modification request within 6 months of denial. Applicants denied due to a size determination can appeal that determination under part 121 of this chapter. All others must be submitted to the office that denied the original request. To prevail, the applicant must demonstrate that it has overcome all legitimate reasons for denial. Six months after denial, a new application is required. If the reconsideration is denied, a second and final reconsideration may be considered by the Associate Administrator for Financial Assistance (AA/FA), whose decision is final.

COMPUTERIZED SBA FORMS

§ 120.194 Use of computer forms.

Any Applicant or Participant may use computer generated SBA application forms, closing forms, and other forms designated by SBA if the forms are exact reproductions of SBA forms.

REPORTING OF FEES

§ 120.195 Disclosure of fees.

An Applicant for a business loan must identify to SBA the name of each Agent as defined in part 103 of this chapter that helped the applicant obtain the loan, describing the services performed, and disclosing the amount of each fee paid or to be paid by the applicant to the Agent in conjunction with the performance of those services.

Subpart B—Policies Specific to 7(a) Loans

BONDING REQUIREMENTS

§ 120.200 What bonding requirements exist during construction?

On 7(a) loans which finance construction, the Borrower must supply a 100 percent payment and performance bond and builder's risk insurance, unless waived by SBA.

amounts as the Administration determines to be necessary to fully protect the interest of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term "seller" does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and "Seller."

(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.

(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates. The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

§ 6. (a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by this Act. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent. Depositaries of funds. 15 USC 635.

(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 4(c) of this Act. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

§ 7. (a)[91] LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.—The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to Business loar 15 USC 636.

[91]Section 7(a) was completely rewritten by Title XIX, § 1902, of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). Title XIX of PL 97-35 may be cited as the "Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981", per § 1901. New § 7(a) consolidated several former categorical programs into the § 7(a) regular business loan program to unify interest rates and loan terms. The new heading for § 7(a) was added by § 231(1) of P.L.105-135, approved Dec. 2, 1997 (111 Stat. 2606).

any qualified small business concern, including those owned by qualified Indian tribes,[92] for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.[93]

Credit elsewhere.

(B) BACKGROUND CHECKS.[94]—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

Background checks.

(2)[95] LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

SBA participation.

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[92]The inclusion of Indian-owned small business concerns was made by § 231 of PL 95-507, approved Oct. 24, 1978 (92 St 1757) to create an exception to the longstanding policy that governmental entities may not receive SBA assistance. See 10 O.D. 107, p. 1349. See § 3(d) which defines the term "qualified Indian tribe," previously defined at this point.

[93]The substance of this subsection was originally in prior §§ 7(a)(1) and 7(a)(2). The term "credit elsewhere" is defined in § 3(h). Former § 7(a)(1) used phrase "from non-Federal sources", which was added by § 112(c) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

[94]New subparagraph 7(a)(1)(B) added by § 231(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606).

[95]Section 7(a)(2) was rewritten by § 2 of P.L. 104-36, approved Oct. 12, 1995, (109 Stat. 295). Section 8 of P.L. 104-36 provides:

> (a) IN GENERAL.--Except as provided in subsection (b), the amendments made by this Act do not apply with respect to any loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act.
>
> (b) EXCEPTIONS.--The amendments made by this Act apply to a loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act, if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act.

For legislative history of former § 7(a)(2), see prior versions of this Handbook. Text of former § 7(a)(2) is set out below:

> (2) In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration, except as provided in paragraph (6), shall be:
>
> (A) not less than 90 percent of the balance of the financing outstanding at the time of disbursement if such financing does not exceed $155,000: Provided, That the percentage of participation by the Administration may be reduced below 90 percent upon request of the participating lender ; and

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I. INTRODUCTION

Management has a fundamental responsibility to develop and maintain effective internal control. The proper stewardship of Federal resources is an essential responsibility of agency managers and staff. Federal employees must ensure that Federal programs operate and Federal resources are used efficiently and effectively to achieve desired objectives. Programs must operate and resources must be used consistent with agency missions, in compliance with laws and regulations, and with minimal potential for waste, fraud, and mismanagement.

Management is responsible for developing and maintaining effective internal control. Effective internal control provides assurance that significant weaknesses in the design or operation of internal control, that could adversely affect the agency's ability to meet its objectives, would be prevented or detected in a timely manner.

Internal Control -- organization, policies, and procedures – are tools to help program and financial managers achieve results and safeguard the integrity of their programs. This Circular provides guidance on using the range of tools at the disposal of agency managers to achieve desired program results and meet the requirements of the Federal Managers' Financial Integrity Act (FMFIA) of 1982. The FMFIA encompasses accounting and administrative controls. Such controls include program, operational, and administrative areas as well as accounting and financial management.

The importance of internal control is addressed in many statutes and executive documents. The FMFIA establishes overall requirements with regard to internal control. The agency head must establish controls that reasonably ensure that: "(i) obligations and costs are in compliance with applicable law; (ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized use or misappropriation; and (iii) revenues

and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets."[1] In addition, the agency head annually must evaluate and report on the control and financial systems that protect the integrity of Federal programs (Section 2 and Section 4 of FMFIA respectively). The three objectives of internal control are to ensure the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. The safeguarding of assets is a subset of all of these objectives.

Instead of considering internal control as an isolated management tool, agencies should integrate their efforts to meet the requirements of the FMFIA with other efforts to improve effectiveness and accountability. Thus, internal control should be an integral part of the entire cycle of planning, budgeting, management, accounting, and auditing. It should support the effectiveness and the integrity of every step of the process and provide continual feedback to management.

Federal managers must carefully consider the appropriate balance between controls and risk in their programs and operations. Too many controls can result in inefficient and ineffective government; agency managers must ensure an appropriate balance between the strength of controls and the relative risk associated with particular programs and operations. The benefits of controls should outweigh the cost. Agencies should consider both qualitative and quantitative factors when analyzing costs against benefits.

A. Agency Implementation. Internal control guarantees neither the success of agency programs, nor the absence of waste, fraud, and mismanagement, but is a means of managing the risk associated with Federal programs and operations. Managers should define the control environment (e.g., programs, operations, or financial reporting) and then perform risk assessments to identify the most significant areas within that environment in which to place or enhance internal control. The risk assessment is a critical step in the process to determine the extent of controls. Once significant areas have been identified, control activities should be implemented. Continuous monitoring and testing should help to identify poorly designed or ineffective controls and should be reported upon periodically. Management is then responsible for redesigning or improving upon those controls. Management is also responsible for communicating the objectives of internal control and ensuring the organization is committed to sustaining an effective internal control environment.

Appropriate internal control should be integrated into each system established by agency management to direct and guide its operations. As stated earlier in this document, internal control applies to program, operational, and administrative areas as well as accounting and financial management.

Generally, identifying and implementing the specific procedures necessary to ensure effective internal control, and determining how to assess the effectiveness of those controls, is left to the discretion of the agency head. While the procedures may vary from

[1] The quoted text is from the Federal Managers' Financial Integrity Act (FMFIA) of 1982.

agency to agency, management should have a clear, organized strategy with well-defined documentation processes that contain an audit trail, verifiable results, and specify document retention periods so that someone not connected with the procedures can understand the assessment process.

To ensure senior management involvement, many agencies have established their own senior management council, often chaired by the agency's lead management official, to address management accountability and related issues within the broader context of agency operations. Relevant issues for such a council include ensuring the agency's commitment to an appropriate system of internal control; actively overseeing the process of assessing internal controls, including non-financial as well as financial reporting objectives; recommending to the agency head which control deficiencies are material to disclose in the annual FMFIA report; and providing input for the level and priority of resource needs to correct these deficiencies. (See also Section IV.C. Role of a Senior Management Council.)

II. STANDARDS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.[2]

Internal control, in the broadest sense, includes the plan of organization, methods and procedures adopted by management to meet its goals. Internal control includes processes for planning, organizing, directing, controlling, and reporting on agency operations.

The three objectives of internal control are:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

[2] Internal control standards and the definition of internal control are based on GAO, Standards for Internal Control in the Federal Government, November 1999, "Green Book".

POLICIES FOR FEDERAL CREDIT PROGRAMS AND NON-TAX RECEIVABLES

CIRCULAR NO. A-129 (REVISED)

(November 2000)

POLICIES FOR FEDERAL CREDIT PROGRAMS AND NON-TAX RECEIVABLES

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B. MANAGEMENT OF GUARANTEED LOAN LENDERS AND SERVICERS

REFERENCES:

Guidance	Treasury/FMS "Managing Federal Receivables"

1. Lender Eligibility.

a. *Participation Criteria.* Federal credit granting agencies shall establish and publish in the Federal Register specific eligibility criteria for lender participation in Federally guaranteed loan programs. These criteria should include:

(1) Requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;

(2) Qualification requirements for principal officers and staff of the lender;

(3) Fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee, where appropriate, for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs;

(4) Financial and capital requirements for lenders not regulated by a Federal financial institution regulatory agency, including minimum net worth requirements based on business volume.

b. *Review of Eligibility.* Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3) or other required reviews, such as renewal of a lender agreement (see B.2). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, guarantor agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

c. *Fees.* When authorized and appropriated for such purposes, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.

d. *Decertification.* Guarantor agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:

(1) Significant and/or continuing non-conformance with agency standards; and/or

(2) Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility for Federal guaranteed loan programs.

e. *Loan Servicers.* Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the Federal guarantor agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

2. Lender Agreements. Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards and other applicable requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender eligibility for continued participation in the program.

a. *General Participation Requirements.*

(1) Requirements for lender eligibility, including participation criteria, eligibility reviews, fees, and decertification (see *Section 1*, above);

(2) Agency and lender responsibilities for sharing the risk of loan defaults (see *Section II.3. a.(1)*); and, where feasible

(3) Maximum delinquency, default and claims rates for lenders, taking into account individual program characteristics.

b. *Performance Standards.* Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures and litigation to enforce loan contracts.

Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claim payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

c. *Reporting Requirements.* Federal credit granting agencies should require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance and satisfy OMB, Treasury, and other reporting requirements

which include the <Treasury Report on Receivables (TROR)>. Examples of these data which agencies must maintain include:

(1) *Activity Indicators* -- number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) *Status Indicators* -- a schedule showing the number and amount of past due loans by "age" of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should require lenders to report necessary information on a quarterly basis (or other reporting period based on the level of lending and payment activity).

d. *Loan Servicers.* Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.

3. Lender and Servicer Reviews. To evaluate and enforce lender and servicer performance, agencies should conduct on-site reviews. Agencies should summarize reviews findings in written reports with recommended corrective actions and submit them to agency review boards. (See Section I.4.b.(1).)

Reviews should be conducted biennially where possible; however, agencies should conduct annual on-site reviews all lenders and servicers with substantial loan volume or whose:

a. Financial performance measures indicate a deterioration in their guaranteed loan portfolio;

b. Portfolio has a high level of defaults for guaranteed loans less than one year old;

c. Overall default rates rise above acceptable levels; and/or

d. Poor performance results in collecting monetary penalties or an abnormally high number of reduced or rejected claims.

Agencies are encouraged to develop a lender/servicer classification system which assigns a risk rating based on the above factors. This risk rating can be used to establish priorities for on-site reviews and monitor the effectiveness of required corrective actions.

Reviews should be conducted by guarantor agency program compliance staff, Inspector General staff, and/or independent auditors. Where possible, agencies with similar programs should coordinate their reviews to minimize the burden on lenders/servicers and maximize use of scarce resources. Agencies should also utilize the monitoring efforts of GSEs and similar organizations for guaranteed loans that have been <"pooled">.

4. Corrective Actions. If a review indicates that the lender/servicer is not in conformance with all program requirements, agencies should determine the seriousness of the problem. For minor non-compliance, agencies and the lender or servicer should agree on corrective actions. However, agencies should establish penalties for more serious and frequent offenses. Penalties may include loss of guarantees, reprimands, probation, suspension, and decertification.

III. CREDIT MANAGEMENT AND EXTENSION POLICY

A. CREDIT EXTENSION POLICIES

REFERENCES:

Statutory	**31 U.S.C. § 3720B, 18 U.S.C. § 1001, 31 U.S.C. § 7701(d)**
Regulatory	**31 C.F.R. Part 285.13, Executive Order 13,109, 61 Federal Register 51,763**
Guidance	**Treasury/FMS "Managing Federal Receivables," "Treasury Report on Receivables (TROR)," and "Guide to the Federal Credit Bureau Program"**

1. Applicant Screening.

a. *Program Eligibility.* Federal credit granting agencies and private lenders in guaranteed loan programs, shall determine whether applicants comply with statutory, regulatory, and administrative eligibility requirements for loan assistance. If it is consistent with program objectives, borrowers should be required to certify and document that they have been unable to obtain credit from private sources. In addition, application forms must require the borrower to certify the accuracy of information being provided. (False information is subject to penalties under <18 U.S.C.§ 1001>.)

b. *Delinquency on Federal Debt.* Agencies should determine if the applicant is delinquent on any Federal debt, including tax debt. Agencies should include a question on loan application forms asking applicants if they have such delinquencies. In addition, agencies and guaranteed loan lenders, shall use credit bureaus as a screening tool. Agencies are also encouraged to use other appropriate databases, such as the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System <CAIVRS> to identify delinquencies on Federal debt.

Processing of applications shall be suspended when applicants are delinquent on Federal tax or <non-tax debts, including judgment liens against property for a debt to the Federal Government, and are therefore not eligible to receive Federal loans, loan guarantees or insurance. (See <31 U.S.C. § 3720B> regarding non-tax debts.) This provision does not apply to disaster loans. Agencies should review and comply with <31 U.S.C. § 3720B> and <31 C.F.R. 285.13> before extending credit. Processing should continue only when the debtor satisfactorily resolves the debts (e.g., pays in full or negotiates a new repayment plan).

c. *Creditworthiness.* Where creditworthiness is a criterion for loan approval, agencies and private lenders shall determine if applicants have the ability to repay the loan and a satisfactory history of repaying debt. Credit reports and

supplementary data sources, such as financial statements and tax returns, should be used to verify or determine employment, income, assets held, and credit history.

d. *Delinquent Child Support.* Agencies shall deny Federal financial assistance to individuals who are subject to administrative offset to collect delinquent child support payments. See <Executive Order 13,109, 61 Federal Register 51,763 (1996)>. The Attorney General has issued <Minimum Due Process Guidelines: Denial of Federal Financial Assistance Pursuant to Executive Order 13,109>, which agencies shall include in their procedures or regulations promulgated for the purpose of denying Federal financial assistance in accordance with Executive Order 13,109.

e. *Taxpayer Identification Number.* Pursuant to <31 U.S.C. § 7701(d)>, agencies must obtain the taxpayer identification number (TIN) of all persons doing business with the agency. All agencies and lenders extending credit shall require the applicant or borrower to supply a TIN as a prerequisite to obtaining credit or assistance.

2. Loan Documentation. Loan origination files should contain loan applications, credit bureau reports, credit analyses, loan contracts, and other documents necessary to conform to private sector standards for that type of loan. Accurate and complete documentation is critical to providing proper servicing of the debt, pursuing collection of delinquent debt, and in the case of guaranteed loans, processing claim payments. Additional information on documentation requirements is available in the supplement to the *Treasury Financial Manual* <Managing Federal Receivables>.

3. Collateral Requirements. For many types of loans, the Government can reduce its risk of default and potential losses through well managed collateral requirements.

a. *Appraisals of Real Property.* Appraisals of real property serving as collateral for a direct or guaranteed loan must be conducted in accordance with the following guidelines:

(1) Agencies should require that all appraisals be consistent with the <Uniform Standards of Professional Appraisal Practice>, promulgated by the Appraisal Standards Board of the Appraisal Foundation. Agencies shall prescribe additional appraisal standards as appropriate.

(2) Agencies should ensure that a State licensed or certified appraiser prepares an appraisal for all credit transactions over $100,000 ($250,000 for business loans). (This does not include loans with no cash out and those transactions where the collateral is not a major factor in the decision to extend credit). Agencies shall determine which of these transactions, because of the size and/or complexity, must be performed by a State licensed or certified appraiser. Agencies may also designate direct or

guaranteed loan transactions under $100,000 ($250,000 for business loans) that require the services of a State licensed or certified appraiser.

b. *Loan to Value Ratios.* In some credit programs, the primary purpose of the loan is to finance the acquisition of an asset, such as a single family home, which then serves as collateral for the loan. Agencies should ensure that borrowers assume an equity interest in such assets in order to reduce defaults and Government losses. Federal agencies should explicitly define the components of the loan to value ratio (LTV) for both direct and guaranteed loan programs. Financing should be limited by not offering terms (including the financing of closing costs) that result in an LTV equal to or greater than 100 percent. Further, the loan maturity should be shorter than the estimated useful economic life of the collateral.

c. *Liquidation of Real Property Collateral for Guaranteed Loans.* In general, it is not in the Federal Government's financial interest to assume the responsibility for managing and disposing of real property serving as collateral on defaulted guaranteed loans. Private lenders should be required to liquidate, through litigation if necessary, any real property collateral for a defaulted guaranteed loan before filing a default claim with the credit granting agency.

d. *Asset Management Standards and Systems.* Agencies should establish policies and procedures for the acquisition, management, and disposal of real property acquired as a result of direct or guaranteed loan defaults. Agencies should establish inventory management systems to track all costs, including contractual costs, of maintaining and selling property. Inventory management systems should also generate management reports, provide controls and monitoring capabilities, and summarize information for the Office of Management and Budget and the Department of the Treasury. (See <Treasury Report on Receivables>).