

FEDERAL REGISTER NOTICE

Billing Code
8025-01

U.S. SMALL BUSINESS ADMINISTRATION

Dealer Floor Plan Pilot Initiative

AGENCY: U.S. Small Business Administration (SBA)

ACTION: Notice and request for comments.

SUMMARY: SBA is introducing a guaranty loan pilot initiative to make available 7(a) loan guaranties for lines of credit that provide floor plan financing to support that sector of the Nation's retail community that traditionally requires floor plan financing in order to acquire titleable inventory. SBA is creating this pilot initiative to help address the significant decline in the number of lenders that have provided the majority of this type of financing in recent years. In the automobile industry, this often included affiliates of the manufacturers themselves. Under the Dealer Floor Plan Pilot Initiative, which will be available through September 30, 2010, SBA will guarantee up to 75 percent of a floor plan line of credit between \$500,000 and \$2,000,000 to eligible dealers of titleable assets, including but not limited to automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes).

DATES: Effective Date: The Dealer Floor Plan Pilot Initiative will be effective on July 1, 2009, and will remain in effect through September 30, 2010. SBA will begin accepting applications on July 1, 2009 and begin reviewing and approving applications the week of July 6, 2009.

Comment Date: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SBA docket number SBA-2009-0009 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Dealer Floor Plan Pilot Initiative Comments – Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Suite 8300, Washington, DC 20416.
- Hand Delivery/Courier: Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please submit the information to Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, or send an email to dealerfloorplancomments@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 whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Sloan Coleman, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (202) 205-7737; w.coleman@sba.gov.

SUPPLEMENTARY INFORMATION:

1. Background Information

America's financial crisis has created adverse conditions that are affecting small businesses, including reduced liquidity in the lending system, a reluctance of many lenders to extend new loans, tightened credit standards and weaker finances at small businesses. This has been especially true in the area of the financing of dealer floor plans for automobiles,

motorcycles, boats, recreational vehicles and similar titled vehicles. In the case of the estimated \$100 billion in auto floor plan lending, for example, the big three U.S. auto manufacturers, which previously provided roughly one-third of the lending, have stopped accepting new requests for floor plan financing. Banks are not able to meet the remaining financing needs and four major lenders representing approximately \$2 billion of the market have recently issued 90-120 day closing notices to their dealers with existing financing. The National Automobile Dealers Association (NADA) estimates that 30% of its membership (or approximately 5,000 dealers) have inventories less than \$2 million and could thus be potential beneficiaries of a new SBA offering.

In addition, these retailers have been especially hard hit by the recent financial difficulties of several manufacturers coupled with a fall off in sales and longer cycle times for their inventory turnover. When the shortage of available financing is coupled with the decline in sales, even relatively strong dealers who could normally weather the current recession are facing challenges. This, in turn, has a serious deleterious affect on local communities as these dealers are often critical contributors to local economies and civic institutions.

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") (Pub.L. 111-5, 123 Stat. 115) to promote economic recovery by preserving and creating jobs, and to assist those most affected by the severe economic conditions facing the nation. The SBA received funding and authority through the Recovery Act to modify existing loan programs and establish new loan programs to significantly stimulate small business lending.

Current SBA regulations and policy prohibit dealer floor plan financing; however, it is not statutorily prohibited. In the early history of SBA lending, the Agency had a role in the

underwriting and servicing of most, if not all, of its loan portfolio. The Agency historically did not make or guarantee floor plan financing arrangements because such credit was deemed to be widely available from conventional sources and because the Agency did not have the capabilities to maintain servicing for such lines of credit in the event it was called upon to service the loan.

With requirements now in place for the lender to perform most servicing functions, even after a default and guaranty purchase, and because there is evidence that there are a diminishing number of lenders willing to provide floor plan financing to smaller dealers, the historic reasons for the restrictions against floor plan financing have become less of a concern, particularly in the current economic climate. In addition, SBA believes that in this recession it is appropriate to ensure that guaranties are available for the widest possible types of small business financial assistance, including the guaranty of floor plan lines of credit, while maintaining risk within prudent levels.

The SBA has always been able to guarantee loans made to eligible small businesses that utilize floor plan financing in order to help them acquire or repair their facility, purchase machinery and equipment used in their operation, or provide working capital. Dealers needing floor plan financing had to obtain it separately without SBA support. By adding the ability to guarantee floor plan lines through this pilot program, SBA will enable its lending partners to be in a better position to offer a full array of financing to those businesses that need such financing arrangements during the current economic environment.

This pilot initiative is intended to complement the provisions of the Recovery Act and is, therefore, set to expire on September 30, 2010. When the initial pilot phase is concluded, SBA will evaluate the initiative to determine if the pilot will be extended, certain aspects made a permanent part of SBA's lending programs, or terminated. A key determinate in that review will

be the extent to which floor plan financing is available from the private market, and whether there is a sufficient need for further government support.

Loans approved under this pilot initiative will qualify for the borrower fee eliminations implemented on March 16, 2009 under the temporary authority provided in section 501 of the Recovery Act, while funds for fee eliminations are available. Funds available for fee relief under the Recovery Act may be exhausted prior to the expiration date of the pilot (September 30, 2010). Loans approved under this pilot, however, will not be subject to the higher guaranty provisions of section 502 of the Recovery Act. SBA is limiting the guaranty percentage to the maximum allowed in the Small Business Act as opposed to the higher guaranty percentage allowed temporarily under the Recovery Act in part to ensure that the data collected during the pilot phase provides a meaningful basis for which to determine if the pilot should be extended, made a permanent part of SBA's lending programs, or terminated. In addition, SBA is limiting the maximum guaranty percentage to 75 percent so that the pilot will be neutral from a credit subsidy standpoint and therefore not require an additional appropriation of subsidy cost, as required under the Federal Credit Reform Act (2 U.S.C. 661-661f).

2. Comments

The intent of the Dealer Floor Plan Pilot Initiative is to complement SBA's other efforts under the Recovery Act to ensure credit is available to America's small businesses. Although the pilot initiative and this Notice are effective immediately, comments are solicited from interested members of the public on all aspects of the Notice including the formal guidance set forth in the section below. These comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The SBA will consider these comments and the need for making any revisions as a result of these comments.

3. Dealer Floor Plan Pilot Initiative

Overview

Under the Dealer Floor Plan Pilot Initiative, SBA is implementing a 7(a) loan guaranty product targeted to retail dealers of titleable assets, including but not limited to automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes).

Eligibility

In addition to standard 7(a) eligibility requirements, the eligibility of applicants for a floor plan line of credit guaranteed under the Dealer Floor Plan Pilot Initiative will be limited to retail dealers of titleable inventory (both new and used) that require licensing and/or registration by a state authority after acquisition. Eligible small businesses include, but are not limited to, dealers of automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes).

SBA size regulations, including those pertaining to affiliation set out in 13 CFR Part 121, apply to the Dealer Floor Plan Pilot Initiative. These regulations include the recently added alternative 7(a) size standard as published in the *Federal Register* on May 5, 2009 (74 FR 20577).

Loan Amount, Maximum Guaranty Percentage and Maturity

Loans under the Dealer Floor Plan Pilot Initiative will have a minimum loan amount of \$500,000 and a maximum loan amount outstanding at any one time of \$2,000,000.

The maximum guaranty percentage will be up to 75 percent of the outstanding loan. As noted above, the increased guaranty percentage of up to 90 percent allowed under section 502 of the Recovery Act will not be available for loans approved under this pilot initiative.

The maximum maturity on lines of credit approved under this pilot initiative will be limited to five (5) years.

Use of Proceeds and Repayment

Floor plan lines of credit guaranteed by SBA will be revolving lines of credit. The proceeds must be used either for the acquisition of titleable inventory for retail sales or to refinance existing floor plan lines of credit with another lender. Repayment of these lines will occur as the acquired inventory is sold. Proceeds may not be used for any other purpose, including to refinance any existing same-institution floor plan line of credit.

Interest Rates

The maximum interest rates for loans under the Dealer Floor Plan Pilot Initiative are the same as those allowed under SBA regulations at 13 CFR 120.213-120.214 for the 7(a) program.

Collateral

Collateral must include a first perfected security interest in all titleable inventory acquired with any portion of the proceeds from the SBA-guaranteed floor plan line of credit. The floor plan line of credit which SBA guarantees does not have to be the sole floor plan line. However, if more than one floor plan line exists to any one business, then the inventory supported by each line is to be separately accounted for and the sale proceeds (or at least the percentage of the sale proceeds equal to the percentage of the cost financed under the line) of any inventory acquired with any portion of the floor plan line guaranteed by SBA must be used to reduce the balance on that line. In addition, dealers with multiple floor plan lines for multiple product lines (manufacturers or new/used) with multiple floor plan creditors will be required to have appropriate delineated inter-creditor agreements to enable proper security interest perfection.

Allowable Fees

The SBA guaranty fee and the lender's annual servicing fee (SBA "On-Going Guaranty Fee") set forth in 13 CFR 120.220 apply to loans approved under this pilot initiative. As noted above, loans approved under the Dealer Floor Plan Pilot Initiative are eligible for the borrower fee elimination implemented under the temporary authority provided in section 501 of the Recovery Act, to the extent such appropriations for the cost of fee reductions remains available.

For loans approved under this pilot initiative, lenders may charge the borrower the same fees allowed under SBA's 7(a) loan program with the exception of the extraordinary servicing fee. For loans approved under this pilot initiative, SBA will allow lenders to charge an extraordinary servicing fee that is higher than the 2 percent allowed by Agency regulations at 13 CFR 120.221(b) provided that the fee charged is reasonable and prudent based on the level of extraordinary effort required to adequately service the floor plan line. In addition, if the lender currently provides floor plan financing to its customers, the lender may not charge higher fees for its SBA-guaranteed floor plan lines of credit than it charges for its similarly-sized, non-SBA guaranteed floor plan lines of credit. SBA's guaranty does not extend to extraordinary servicing fees and, at time of guaranty purchase, SBA will not pay any portion of such fees.

Maximum Advance Rates

Lenders will be allowed a maximum advance rate of 90% on new automobile inventory and 80% on all other inventory for purposes of establishing the maximum SBA guaranty. Lenders may establish an advance rate higher than this; however, the maximum SBA guaranty will be no more than 75% of 90% for new automobile inventory or 75% of 80% for all other inventory. For example, if a lender has an advance rate of 100% for all inventory, the maximum SBA guaranty will be 67.5% for new automobile inventory and 60% for all other inventory financed by the lender. The lender will need to identify the advance rate and calculate the

maximum allowable guaranty percentage for each loan on the Lender's Application for Guaranty (SBA Form 4-I). (The SBA Form 4-I can be found at

<http://www.sba.gov/tools/Forms/smallbusinessforms/fsforms/index.html>.)

Secondary Market and Participating Lender Financings or Other Conveyances

SBA loan guaranties made under this pilot initiative may not be sold under Agency regulations at 13 CFR Part 120, Subpart F – Secondary Market. In addition, SBA loan guaranties approved under this pilot initiative may not be included in any participating lender financings or other conveyances, including securitizations, participations and pledges, as described in Agency regulations at 13 CFR 120.420 through 120.435.

Eligible Lenders

All SBA lenders with an executed Loan Guaranty Agreement (SBA Form 750) may participate in this pilot initiative. Lenders participating in the pilot initiative must have designated personnel who are responsible for making and servicing floor plan lines of credit. In addition, if a lender has less than \$15 million in floor plan lines of credit in its current portfolio or has been making floor plan lines of credit for less than 5 years (“Less Experienced Floor Plan Lenders”), the lender may only approve lines under the pilot initiative to customers with which it has a banking relationship that existed prior to the effective date of this pilot initiative and must submit all Dealer Floor Plan applications to the Standard 7(a) Loan Guaranty Processing Center (LGPC) for approval over the life of the pilot. It will be the responsibility of the lender to document the existing relationship with the borrower in the credit memorandum, which will be required to be submitted to SBA as part of any guaranty purchase request.

Lenders with existing floor plan financing operations must administer their SBA-guaranteed floor plan financing operation in conformance with the existing policies and

procedures used for their similarly-sized, non-SBA guaranteed floor plan lines, including risk management policies and procedures. Lenders who have not participated in floor plan financing must develop policies and procedures specific to floor plan financing, including risk management policies and procedures.

When developing policies and procedures specific to floor plan financing, lenders may follow guidance provided by their primary Federal regulator or, if none is available, lenders may follow the guidance on floor plan financing provided by the Office of the Comptroller of the Currency (OCC) in Section 210 of its Examiner's Handbook. (The OCC Examiner's Handbook can be found at <http://www.occ.treas.gov/handbook/floorplan1.pdf>.) At a minimum, the policies and procedures of all lenders participating in this pilot initiative must address the following: (1) the personnel who will be responsible for making and servicing floor plan loans; (2) the collateral monitoring procedures, which must include floor checks (physical inventories) conducted at least monthly and on a random surprise basis; (3) a requirement that the borrower provide to the lender copies of its monthly manufacturer's dealership financial statement (for dealers of new inventory) or monthly financial statements (for dealers of used inventory) no later than 7 days after the end of the previous month; (4) the procedures in place to ensure prompt payment on the line upon the sale of inventory; (5) all policies and procedures specific to liquidation that are unique to floor plan financing; and (6) the fees the lender will charge to service these loans. Lenders may use contracted services and/or available software programs to assist with monitoring and tracking the collateral.

Application Forms and Authorization

Each lender participating in the pilot initiative must submit its first application under the pilot following Standard 7(a) procedures to the LGPC. SBA will begin accepting applications

under the Dealer Floor Plan Pilot Initiative on July 1, 2009 and will begin reviewing and approving the applications the week of July 6, 2009.

After the initial application submitted under the pilot initiative is approved by the LGPC, lenders may submit applications for loan guaranties under the Dealer Floor Plan Pilot Initiative through Standard 7(a), Certified Lender Program (CLP) or Preferred Lender Program (PLP) processing methods using the existing SBA forms applicable to the processing method, except for Less Experienced Floor Plan Lenders. These lenders will continue to submit their floor plan applications to the LGPC for the life of the pilot. In order to submit an application for guaranty under this pilot initiative through PLP procedures, PLP lenders must ensure that the application for a floor plan line of credit meets the requirements for delegated processing as well as the requirements specified in this Notice. SBA will issue instructions for lenders on how to complete existing SBA application forms to include floor plan lines of credit.

SBA will incorporate into the Standard 7(a) Authorization Boilerplate applicable provisions related to floor plan financing.

In addition to SBA's existing servicing and liquidation requirements as set forth in Agency regulations and Standard Operating Procedures (SOPs) 50 50 and 50 51, lenders will be required to service any floor plan line of credit guaranteed by SBA with the requirement that as any item of inventory acquired with the line is sold the proceeds from the sale (or at least the percentage of the sale proceeds equal to the percentage of the cost financed under the line) must be submitted to the lender to reduce the balance on the line pursuant to the sold inventory item. (SOPs 50 50 and 50 51 can be found at

<http://www.sba.gov/tools/resourcelibrary/sops/index.html>.)

Lenders will be required to periodically report on disbursement and collection activity in addition to their 1502 reporting, to allow SBA to conform to accounting and budgeting requirements under credit reform, as well as to evaluate and monitor portfolio performance. SBA will provide further information on this additional reporting requirement in the coming weeks.

Guaranty Purchase

In addition to the standard purchase documentation required by SBA, with any guaranty purchase request under the pilot initiative lenders will be required to provide copies of the floor check reports and the monthly manufacturer's dealership financial statements (for dealers of new inventory) or monthly financial statements (for dealers of used inventory) for the twelve (12) months prior to default. Also, as stated above, Less Experienced Floor Plan Lenders may only approve lines under the pilot initiative to customers with which it has a banking relationship that existed prior to the effective date of this pilot initiative. It will be the responsibility of the lender to document the existing relationship with the borrower in the credit memorandum, which will be required to be submitted to SBA as part of any guaranty purchase request. Further, as part of the guaranty purchase review, SBA will review the lender's policies and procedures specific to floor plan financing and the lender's compliance with those policies and procedures. In addition to the grounds set forth in 13 CFR 120.524, the lender's failure to comply with its policies and procedures or the terms and procedures set forth in this Federal Register notice may result in denial of SBA's guaranty on the loan, in full or in part.

Lender Oversight

As part of its ongoing lender oversight activities, SBA's Office of Credit Risk Management (OCRM) will review the lender's policies and procedures specific to floor plan

financing, including risk management policies and procedures, and the lender's compliance with those policies and procedures. Upon receipt of a lender's initial application under the pilot initiative, the Standard 7(a) LGPC will notify OCRM who will request a copy of the lender's policies and procedures governing floor plan financing as an initial step in its oversight of this pilot initiative. In addition, once a lender has processed 15 loans under this pilot initiative, the Office of Financial Assistance will alert OCRM to that fact for possible additional lender oversight, such as an off-site review of the lender's SBA-guaranteed floor plan portfolio and/or inclusion of the lender's floor plan loans in a targeted review or as part of the lender's next scheduled on-site review.

Pursuant to the authority provided to SBA under 13 CFR 120.3 to waive certain regulations in establishing and testing pilot loan initiatives for a limited period of time, SBA will waive the following regulations, which otherwise apply to 7(a) loans, for loans made under the Dealer Floor Plan Pilot Initiative only: (1) 13 CFR 120.130(c), which prohibits floor plan financing or other revolving lines of credit as an allowable use of proceeds, is waived so this type of financing can be guaranteed by SBA under the Dealer Floor Plan Pilot Initiative; (2) 13 CFR 120.221(b), which limits extraordinary servicing fees to 2% of the outstanding balance on an annual basis, is being waived so lenders can charge more than 2% on loans approved under this pilot initiative as long as the fees are not higher than those charged on the lender's similarly-sized, non-SBA guaranteed floor plan lines of credit and as long as the fees are reasonable and prudent based on the level of extraordinary effort required to adequately service the floor plan line; (3) 13 CFR 120.390, the regulation that covers all Revolving Credit other than EWCP loans, is waived so the Dealer Floor Plan Pilot Initiative can be carried out without having these loans classified as CAPLines loans; (4) 13 CFR Part 120, Subpart F – Secondary

Market, is being waived because loans approved under the Dealer Floor Plan Pilot Initiative cannot be sold on the secondary market; and (5) 13 CFR 120.420 through 120.435 are being waived because loans approved under the Dealer Floor Plan pilot initiative cannot be included in any participating lender financings or other conveyances, including securitizations, participations and pledges.

All other provisions of the Small Business Act applicable to the 7(a) program and the regulations promulgated thereunder that are not superseded by any provision of this Notice will continue to apply to loans made under this pilot initiative.

Lenders must use prudent lending practices in the making and servicing of SBA-guaranteed floor plan lines of credit and must comply with all SBA Loan Program Requirements that are not superseded by any provisions of this Notice.

In accordance with section 7(a)(25) of the Small Business Act (15 USC 636), loans approved under this pilot initiative are limited to not more than 10 percent of the total number of 7(a) loans approved in any fiscal year.

SBA may provide further guidance, if needed, through SBA notices published on SBA's website, www.sba.gov.

Questions on the Dealer Floor Plan Pilot Initiative may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at <http://www.sba.gov/localresources/index.html>.

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Date:

Grady B. Hedgespeth
Director, Office of Financial Assistance