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EDR Insight

RESEARCH NOTE – October 3, 2011

**New SBA Environmental Policy in Effect Today, Banks Vow to Increase Small Business Lending**

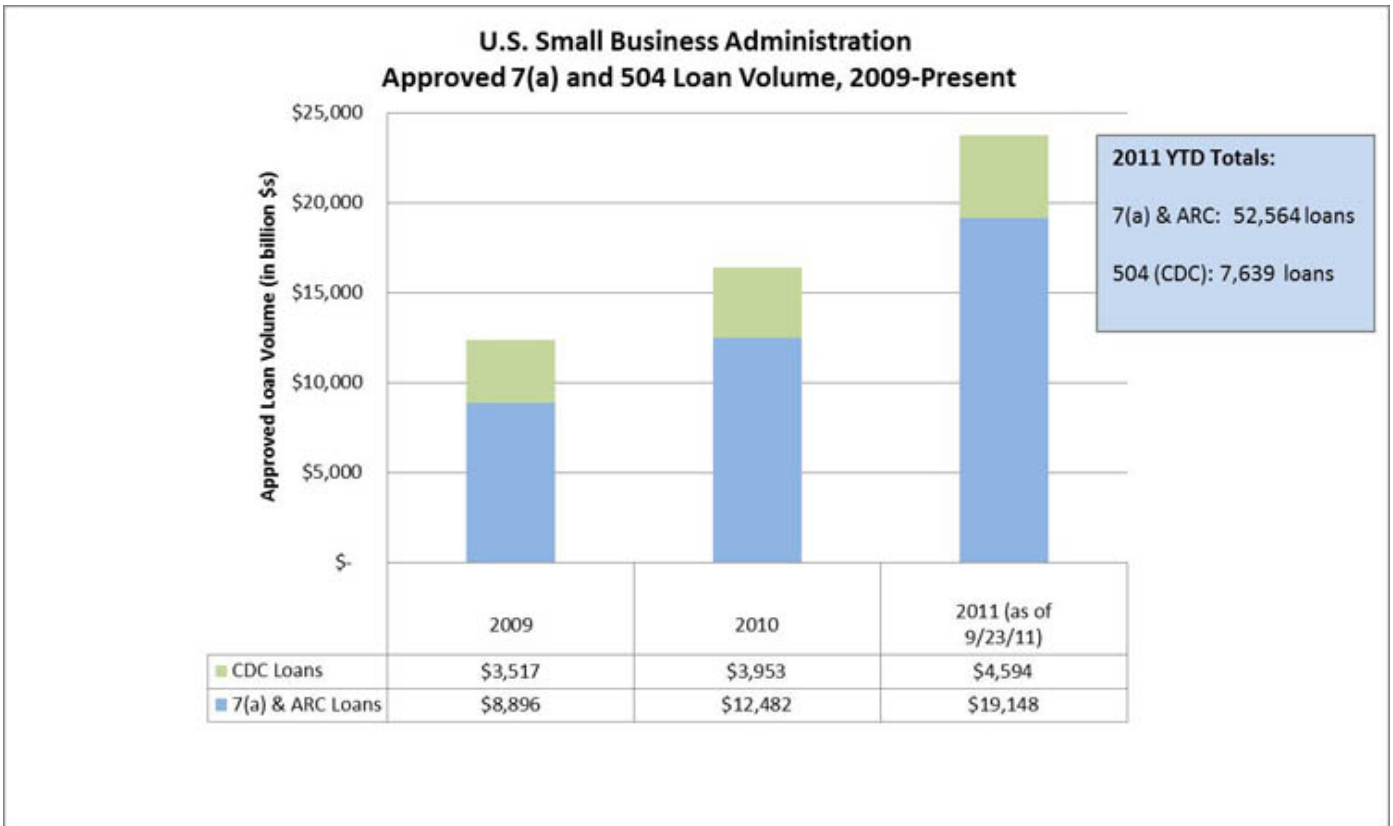
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The U.S. Small Business Administration issued a revision to the environmental due diligence requirements of the agency's 7(a) and Certified Development Company (CDC) loan programs, effective as of Saturday, October 1, 2011. Many of the changes were in response to questions and comments from the SBA's lending partners and the environmental professionals who support work under these two lending programs. The modifications are a testament to the strength of the policy, which has been widely adopted by lenders, particularly regional banks. One of the key findings of EDR's latest Benchmark Survey of Financial Institutions was that 54% of respondents had adopted the SBA's environmental due diligence protocol not just for SBA lending, but for other types of lending as well.

The new effective data coincides with two other significant developments in the world of SBA lending:

1. The SBA closed out its fiscal year with record loan volume under the 7(a) and 504 programs. As of September 24, with only one week remaining in its fiscal year, the SBA approved a record \$19.1 billion, up significantly from \$12.4 billion in 2010, guaranteeing more than 50,000 7(a) and ARC loans. Another 7,600 loans were approved under the CDC program in FY11.
2. Thirteen of the nation's biggest banks, including Bank of America, JP Morgan Chase, Citigroup, and Wells Fargo, just pledged to increase their small business lending by an extra \$20 billion over the next three years. SBA lending has been one of the few bright spots in small business lending this year. All of the top SBA lenders have higher SBA loan figures this year compared with last, and an estimated 1,200 community banks that turned to the SBA loan program during the recession are still using it today.



SOP 50 10 5(D): Revisions to Environmental Due Diligence Policy

Any lenders participating in the 7(a) or CDC loan programs—or environmental consultants performing due diligence on these types of loans—must follow the new requirements under SOP 50 10 5(D). As of today, all documentation submitted in support of SBA loans needs to be updated to reflect SOP 50 10 5 (D), not its predecessor, SOP 50 10 5(C).

The modifications to the SBA's environmental due diligence requirements under SOP 50 10 5(D) (see Chapter 4, Section III. Environmental Policies and Procedures) include, but are not limited to:

- The only change to the NAICS code list of environmentally sensitive industrial classifications (Appendix 4) is for 8111 Automobile Repair and Maintenance. All loans under this NAICS code must start with an AAI-complaint Phase I environmental site assessment with the exception of "car wash only" facilities, which can start with a Transaction Screen.
- If the Property is a unit in a multi-unit building (defined as any non-industrial, multi-unit building that is comprised of four or more individual units), the investigation must proceed as follows:
  1. For loans \$150,000 and below, the Environmental Investigation may begin with an Environmental Questionnaire.
  2. For loans more than \$150,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and a Records Search with Risk Assessment.
- Within the unique requirements for gas station loans (outlined in Appendix 5), the SBA:
  - expanded the definition of gas station loans to also include "commercial fueling facilities;" and
  - replaced the previous requirement for UST testing with a requirement that the environmental professional ensure compliance with all state requirements pertaining to tank and equipment testing.
- The provisions for conducting a lead risk assessment for lead based paint and testing for lead in drinking water for certain "special use facilities" (e.g., day cares, nursery schools) were expanded to include "residential care facilities occupied by children."
- To the definition of Environmental Questionnaire, the SBA allows for:
  - The EP to assist with the responses to the questionnaire.
  - Use of the ASTM's questionnaire for Transaction Screens ( ASTM E1528-06) as a protocol for the Environmental Questionnaire.
- To the definition of "Phase I ESA," the SBA added language from the EPA's AAI rule that allows a person who is not a qualified EP to assist in an AAI-compliant Phase I, provided the person works under the supervision or responsible charge of a qualified EP and the EP reviews and signs the report.

Notably, the SBA did not make any changes to the qualifications required of environmental professionals or to the Reliance Letter language.

Given the October 1, 2011 effective date, lenders who participate in the SBA's 7(a) and CDC programs are advised to immediately review the new requirements, make any necessary changes to their environmental policies and ensure they are working with environmental professionals who meet the SBA's professional qualifications. Environmental consultants working with SBA lenders and CDCs are advised to change any report templates to reflect the new version (D) and ensure that their lender clients are aware of the new requirements.

More information on the new SOP is posted at [www.edrnet.com/sba](http://www.edrnet.com/sba) including:

- The final SOP 50 10 5(D);
- An updated flow chart that diagrams the steps of an SBA environmental investigation;
- The latest NAICS code reference for environmentally sensitive industries;
- The agency's most recent environmental guidelines for liquidated loans (a policy that took effect in November 2010);
- EDR's tip sheet based on outreach to environmental consultants and SBA lenders (and reviewed by members of the SBA's Environmental Committee) that addresses some of the challenges faced in implementing the SOP.

This revision to the SOP reflects the SBA's efforts to continually review its environmental policy and make clarifications, as necessary. Anyone with feedback on the SOP is invited to contact SBA via email at [environmentalappeals@sba.gov](mailto:environmentalappeals@sba.gov)

#### Any Questions or Comments?

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