

U.S. SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

Docket No. SBA-2010-0015

Dealer Floor Plan Pilot Program

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

**ACTION:** Program implementation with request for comments. **SUMMARY:** SBA is introducing a new Dealer Floor Plan Pilot Program to make available 7(a) loan guaranties for lines of credit that provide floor plan financing. This new Dealer Floor Plan Pilot Program was created in the Small Business Jobs Act of 2010. Under the new Dealer Floor Plan Pilot Program, which will be available through September 30, 2013, SBA will guarantee 75 percent of a floor plan line of credit between \$500,000 and \$5,000,000 to eligible dealers of new and used titleable inventory, 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 Program will be effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and will remain in effect through September 30, 2013.

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-2010-0015 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Dealer Floor Plan Pilot Program Comments – Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Suite 8300, Washington, DC 20416.
- Hand Delivery/Courier: Patrick Kelley, Senior Advisor to the Associate Administrator, Office of Capital Access, U.S. 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 Patrick Kelley, Senior Advisor to the Associate Administrator, Office of Capital Access, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, or send an email to [dealerfloorplancomments@sba.gov](mailto: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: Patrick Kelley, Senior Advisor to the Associate Administrator, Office of Capital Access, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (202) 205-0067; [patrick.kelley@sba.gov](mailto:patrick.kelley@sba.gov).

**SUPPLEMENTARY INFORMATION:**

On September 27, 2010, President Obama signed the Small Business Jobs Act of 2010 (“Small Business Jobs Act”) (Pub. L. 111-240). Section 1133(a) of the Small

Business Jobs Act authorized a new, expanded Dealer Floor Plan (DFP) Pilot Program, which will remain available until September 30, 2013.

1. Comments

Although the new DFP Pilot will be effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER], comments are solicited from interested members of the public on all aspects of the new DFP Pilot. These comments must be submitted on or before the deadline for comments listed in the DATES section. The SBA will consider these comments and the need for making any revisions as a result of these comments.

2. Dealer Floor Plan Pilot Program

Overview

Under the DFP Pilot, SBA is implementing a 7(a) loan guaranty product targeted to retail dealers of new and used titleable inventory, including but not limited to automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes). Key features of the new DFP Pilot are set forth below. More detailed guidance on the new DFP Pilot will be provided in a procedural guide (“DFP Procedural Guide”) that will be available on SBA’s website.

Eligibility

In addition to standard 7(a) eligibility requirements set forth in 13 CFR Part 120 and SBA’s Standard Operating Procedure (SOP) 50 10 5(C), Subpart B, Chapter 2, the eligibility of applicants for a floor plan line of credit guaranteed under the DFP Pilot will be limited to retail dealers of titleable inventory (both new and used) that is required to be licensed and/or registered in at least one State after acquisition. The inventory does not

need to be licensed and/or registered in the state where it is sold, but it does need to be a type of inventory that could be licensed and/or registered in at least one state of the United States, as “state” is defined in the Small Business Act.

SBA sets size standards that establish which businesses are considered small for certain government programs. Size standards have been established for types of economic activity or industry and, depending on the type of industry, are based on number of employees or revenues. In addition, SBA has established an alternative size standard based on the applicant’s tangible net worth and net income. The Small Business Jobs Act established a temporary alternative size standard of a maximum tangible net worth of the applicant of not more than \$15,000,000 and an average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application that is not more than \$5,000,000. SBA’s size regulations, including those pertaining to affiliation, are set out in 13 CFR Part 121 and apply to the DFP Pilot. The applicant can qualify for a DFP line of credit using either the industry-based size standards (set forth in 13 CFR 121.201) or the alternative size standard set forth in the Small Business Jobs Act.

#### Maximum Advance Rates and Guaranty Percentage

Lenders will be allowed a maximum advance rate of 100% on new or used inventory. The maximum SBA guaranty will be no more than 75% of 100% of the cost (manufacturer’s invoice) for new inventory and 75% of 100% of the cost or industry based wholesale book value, whichever is less, for used inventory.

#### Loan Amount and Maturity

Loans under the DFP Pilot will have a minimum loan amount of \$500,000 and a maximum loan amount outstanding at any one time of \$5,000,000.

The minimum maturity on DFP lines of credit will be 1 year. The maximum maturity on lines of credit approved under the DFP Pilot will be limited to five (5) years. The DFP Pilot is scheduled to expire on September 30, 2013. The expiration of the Pilot will have no effect on any DFP line of credit approved by SBA on or before September 30, 2013.

#### Use of Proceeds and Repayment

Floor plan lines of credit guaranteed by SBA will be revolving lines of credit. The proceeds may be used for the acquisition of titleable inventory for retail sales, to refinance existing floor plan lines of credit with another lender or to replace existing floor plan lines of credit with the participating lender. Proceeds also may be used to pay the guaranty fee. Proceeds may not be used for any other purpose. If proceeds are used to replace a same institution floor plan line of credit and the borrower defaults on the SBA-guaranteed DFP line of credit within 90 days of initial disbursement, SBA may deny liability on its guaranty of the DFP line.

Repayment of these lines will occur as the acquired inventory is sold. The payment of interest will be due monthly.

#### Interest Rates

DFP lines of credit may have either a fixed or variable interest rate. The maximum interest rates for loans under the DFP Pilot are the same as those allowed by 13 CFR 120.213-120.214 for the standard 7(a) loan program.

#### Collateral

Collateral must be secured by a first lien on all titleable inventory acquired with proceeds of the DFP line of credit. This lien may be perfected by obtaining either (i) the title to the inventory reflecting no prior liens, or (ii) 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 dealer, then the inventory supported by each line is to be separately accounted for and the sale proceeds of any inventory acquired with any portion of the floor plan line guaranteed by SBA must be used to directly 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. The lender may take additional collateral in accordance with its policies and procedures governing its similarly-sized, non-SBA guaranteed floor plan lines of credit.

#### Allowable Fees

The SBA guaranty fee and the lender's annual service fee set forth in 13 CFR 120.220 apply to loans approved under this pilot program. For loans approved under the DFP Pilot, 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 the DFP Pilot, SBA will allow lenders to charge an extraordinary servicing fee that is higher than the 2 percent allowed in 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.

#### Secondary Market and Participating Lender Financings or Other Conveyances

SBA loan guaranties made under the DFP Pilot may not be sold under Agency regulations at 13 CFR Part 120, Subpart F – Secondary Market.

SBA loan guaranties approved under the DFP Pilot may be included in any participating lender financings or other conveyances, including securitizations, participations and pledges, provided the lender complies with 13 CFR 120.420 through 120.435.

#### Eligible Lenders

All SBA lenders with an executed Loan Guaranty Agreement (SBA Form 750) may participate in the DFP Pilot. Any delegated authority the lender has as a 7(a) lender, such as Preferred Lender Program (PLP) or SBA Express authority, will not apply to the DFP Pilot.

If a lender has at least \$1 billion in floor plan lines of credit in its current portfolio, the lender may qualify for delegated authority under the DFP Pilot. The process for requesting delegated authority will be set forth in the DFP Procedural Guide. Lenders that are approved for delegated authority under the DFP Pilot will be required to execute a separate Supplemental Guaranty Agreement. Lenders with delegated authority must have existing policies and procedures governing floor plan financing, including risk

management policies and procedures, and must administer their SBA-guaranteed floor plan lines of credit in conformance with the existing policies and procedures used for their similarly-sized, non-SBA guaranteed floor plan lines.

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.gov/static/publications/handbook/floorplan1.pdf>.)

Lenders participating in the pilot initiative must have trained and/or experienced personnel who are responsible for making, servicing and liquidating floor plan lines of credit.

#### Application Forms, Authorization and Reporting Requirements

Each lender participating in the DFP Pilot must submit its first application under the pilot following Standard 7(a) procedures to the LGPC. SBA will begin accepting applications under the DFP Pilot on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

After the initial application under the DFP Pilot is approved by the LGPC, a lender with delegated authority may submit subsequent applications for DFP lines of credit using its delegated authority. After OCRM has approved the lender's policies and procedures governing floor plan financing, non-delegated lenders may submit subsequent



applications for DFP lines of credit to the LGPC. SBA will provide instructions for lenders on how to complete existing SBA application forms to include floor plan lines of credit in the DFP Procedural Guide.

SBA will incorporate into the Standard 7(a) Authorization Boilerplate applicable provisions related to floor plan financing. Lenders with delegated authority may use the Standard 7(a) Authorization Boilerplate or the Authorization for SBA Express and Patriot Express loans. If the delegated lender uses the Authorization for SBA Express and Patriot Express loans, the lender is responsible for ensuring all applicable provisions related to floor plan financing are included in the Authorization.

In addition to SBA's servicing and liquidation requirements set forth in 13 CFR 120.535 and 120.536 and 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 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 [www.sba.gov/about-sba-services/7481](http://www.sba.gov/about-sba-services/7481).)

In addition to their 1502 reporting on all SBA-guaranteed loans, lenders will be required to report quarterly on disbursement and collection activity on DFP lines of credit using SBA Form 1502R. (SBA Form 1502R can be found at [http://archive.sba.gov/idc/groups/public/documents/sba\\_homepage/lender\\_creditresol\\_for\\_m1502.pdf](http://archive.sba.gov/idc/groups/public/documents/sba_homepage/lender_creditresol_for_m1502.pdf).) OCRM will review these reports as part of its regular oversight of lenders participating in the DFP Pilot.

#### Guaranty Purchase

Under the DFP Pilot, SBA will allow the lender to make demand on SBA to honor its guaranty if the borrower is in default on any financial covenant for more than 30 calendar days and the default has not been cured. Also, under the DFP Pilot, if a lender discovers that the borrower is in a sold out of trust (SOT) situation, the lender may request that SBA honor its guaranty 30 calendar days after discovery of an SOT situation that has not been cured during the 30 day period. In addition, if a lender discovers an adverse change in the financial condition, organization, management, operation, or assets of the Borrower, the lender may request that SBA honor its guaranty 30 calendar days after discovery of the adverse change if it has not been remedied during the 30 day period. While non-compliance with any non-financial loan covenant other than SOT situations could trigger the lender discontinuing disbursements and placing the account into a payment only status, non-compliance with such non-financial covenants will not trigger SBA's obligation to purchase the guaranteed portion of the DFP line of credit.

In order to be consistent with industry practice, liquidation of all business personal property, while preferred, will not be required prior to the lender making demand on SBA to honor its guaranty. Prior to making demand on SBA to honor its guaranty, the titleable inventory securing the DFP lines of credit must be fully accounted for and liquidated, with all net proceeds applied to net balance of the loan in accordance with SOP 50 51 3. If any additional collateral has been taken to secure the DFP line, the lender will not necessarily have to fully liquidate such collateral prior to making demand on SBA, but the lender will be required to obtain all necessary valuations and make a determination as to whether the additional collateral will be liquidated or, with proper justification, abandoned.

In addition to the standard purchase documentation required by SBA, with any guaranty purchase request under the DFP Pilot lenders will be required to provide copies of the floor check reports, the monthly manufacturer's dealership financial statements (for dealers of new inventory) or monthly financial statements (for dealers of used inventory), and the monthly reconciliations of lender's floor plan inspection reports with the dealer's financials for the twelve (12) months prior to default. Delegated lenders also will need to provide a copy of the lender's credit memo with any purchase request. Also, as part of the guaranty purchase review, SBA will review the lender's compliance with its existing policies and procedures governing floor plan financing. 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 or the DFP Procedural Guide may result in denial of SBA's guaranty on the loan, in full or in part. Also, if proceeds of a DFP line of credit are used to replace a same institution floor plan line and the borrower defaults on the DFP line within 90 days of initial disbursement, SBA may deny liability on its guaranty of the DFP line.

#### Lender Oversight

As part of its ongoing lender oversight activities, OCRM will review, evaluate and approve the floor plan lending policies and procedures of each lender participating in the DFP Pilot. The timing of the review of the lender's policies and procedures will be set forth in the DFP Procedural Guide.

Additionally, for lenders participating in the DFP Pilot, OCRM will follow its typical oversight practices utilizing a combination of off-site monitoring and on-site reviews depending on the size and risk assessment of the lender's DFP portfolio. OCRM

also will monitor the usage and performance of lender DFP loan portfolios which may include reviews of lender loan files and reports provided to SBA by the lender on its dealer floor plan activities to monitor and assess how lenders are managing their DFP portfolios.

### Regulatory Waivers

Pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, waive or modify certain regulations in establishing and testing pilot loan initiatives for a limited period of time, SBA will waive or modify, as appropriate, the following regulations, which otherwise apply to 7(a) loans, for the DFP Pilot only: (1) 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; (2) 13 CFR Part 120, Subpart F – Secondary Market, is being waived because loans approved under the DFP Pilot cannot be sold on the secondary market; (3) 13 CFR 120.520(a) is being waived to allow lenders to make demand on SBA to honor its guaranty on a DFP line of credit if the borrower is in default on any financial covenant for more than 30 calendar days and the default has not been cured, if a borrower is in an SOT situation which has not been cured for more than 30 calendar days after lender discovers it, and if a borrower experiences an adverse change in its financial condition, organization, management, operation, or assets which has not been remedied for more than 30 calendar days after lender discovers it; and (4) 13 CFR 120.524, which

describes when SBA is released from liability on its guaranty, is being modified because, in addition to the grounds stated in this regulation, the lender's failure to comply with its policies and procedures governing floor plan financing or the terms and procedures set forth in this Federal Register notice or the DFP Procedural Guide may result in denial of SBA's guaranty on the loan, in full or in part. In addition, if the proceeds of the DFP line of credit are used to replace a same institution floor plan line and the borrower defaults on the DFP line of credit within 90 days of initial disbursement, SBA may deny liability on its guaranty of the DFP line. The regulation at 13 CFR 120.520(a) is also being waived to allow lenders to make demand on SBA to honor its guaranty in the above situations without being required to liquidate all business personal property securing the line of credit first.

The statutory language creating this DFP Pilot overrides the regulatory prohibition against floor plan financing or other revolving line credit (except under 120.390) found in 13 CFR 120.130(c).

All other provisions of the Small Business Act applicable to the 7(a) loan program apply to loans made under the DFP Pilot. Unless waived or modified by this Notice, all the regulations applicable to the 7(a) loan program apply to loans made under the DFP Pilot. All standard operating procedures applicable to the 7(a) loan program that are not superseded by any provision of this Notice or the DFP Procedural Guide apply to loans made under this pilot.

Lenders must use prudent lending practices in the making, servicing and liquidating 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 or the DFP Procedural Guide.

SBA will provide more detailed guidance in the form of a procedural guide which will be available on SBA's website, [www.sba.gov](http://www.sba.gov). SBA may also provide additional guidance, if needed, through SBA notices, which will also be published on SBA's website, [www.sba.gov](http://www.sba.gov).

Questions on the DFP Pilot 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)(34) and 13 CFR 120.3.

Date: February 3, 2011

Karen G. Mills,  
Administrator.

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