

the location of the needle in the prostate cannot be verified with certainty.

*NRC*—On July 11, 2008, NRC issued a Notice of Violation related to this event.

\* \* \* \* \*

**NRC08-05 Medical Event at Bon Secours Virginia Health Source in Midlothian, Virginia**

*Date and Place*—May 1, 2008, Midlothian, Virginia.

*Nature and Probable Consequences*—Bon Secours Virginia Health Source reported that a medical event occurred during a high dose-rate (HDR) treatment for breast cancer using an iridium-192 source with an activity of 165.4 GBq (4.47 Ci). The authorized user physician prescribed 10 fractions of 340 cGy (340 rad) each to be administered using a balloon catheter technique. The licensee calculated that a portion of the target volume received a dose in the range of 86 cGy (86 rad). In addition, a small volume of skin, at the catheter entrance into the patient, received a dose in the range of 1,142 cGy (1,142 rad). The patient and the referring physician were informed of this event.

During the check source run for the first fraction, an HDR alarm interrupted the run. Rather than investigate the cause of the alarm, the physicist concluded that a 2 mm error had been made in the measurement of the catheter length and the alarm occurred because the check source hit the end of the catheter. The physicist adjusted the catheter length value at the treatment console from 1300 mm to 1280 mm, believing this to be a change of 2 mm, and the treatment was administered. Immediately following the first treatment, it was determined that the original catheter length measurement of 1300 mm was correct and the length change made at the treatment console was 20 mm rather than 2 mm. As a result, the source dwell positions were 20 mm from the intended locations and were closer than intended to the skin entry point of the HDR catheter.

Subsequent HDR treatment fractions were administered as intended, with adjustments to the final two treatment fractions to assure that all areas of the target volume received an adequate dose over the course of the treatment. An NRC medical consultant concluded that no significant adverse health effect to the patient is expected.

*Cause(s)*—The cause of the medical event was human error in (1) failing to investigate the cause of the HDR alarm and (2) adjusting the catheter length value at the console by 20 mm instead of the intended 2 mm.

#### Actions Taken To Prevent Recurrence

*Licensee*—The licensee's corrective actions taken to prevent recurrence included updating procedures to define steps that will be taken to resolve HDR device alarms.

*NRC*—NRC performed a reactive inspection at the facility and issued a Notice of Violation for three violations of regulatory requirements on October 10, 2008.

\* \* \* \* \*

**AS08-05 Medical Event at Lehigh Valley Hospital in Allentown, Pennsylvania**

*Date and Place*—July 17, 2008, Allentown, Pennsylvania.

*Nature and Probable Consequences*—Lehigh Valley Hospital (the licensee) reported that a patient was prescribed a dose of 740 MBq (20 mCi) of iodine-131, for treatment of a thyroid condition, but instead was administered 2,775 MBq (75 mCi). The licensee discovered the event within an hour of the administration and gave the patient 130 mg of potassium iodide, a blocking agent, to prevent the uptake of iodine-131 in the thyroid. As a result of the administration, next day measurements indicated that the patient had a 74 MBq (2 mCi) uptake to the thyroid and 370 MBq (10 mCi) whole body retention, resulting in an approximate thyroid dose of 26 Gy (2,600 rad) and whole body effective dose equivalent of 8.7 cGy (8.7 rad). The patient and the referring physician were informed of this event. The licensee determined that as a result of giving the patient 130 mg of potassium iodide, no significant adverse health effect to the patient is expected.

*Cause(s)*—The cause of the medical event was human error because the technologist accidentally switched the doses between two patients.

#### Actions Taken To Prevent Recurrence

*Licensee*—The licensee implemented corrective measures by modifying current procedures involving the administration of radiopharmaceuticals.

*State*—The State conducted a follow-up inspection on August 21, 2008, to ensure that the licensee's actions taken to prevent recurrence had been implemented and issued a Notice of Violation.

Dated at Rockville, Maryland, this 29th day of May 2009.

For the U.S. Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E9-13300 Filed 6-5-09; 8:45 am]

**BILLING CODE 7590-01-P**

#### SMALL BUSINESS ADMINISTRATION

##### Business Loan Program Temporary Eliminations/Reductions in Fees

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

**ACTION:** Notice and request for comments.

**SUMMARY:** This Notice formalizes the implementation of Section 501 of the American Recovery and Reinvestment Act of 2009. Section 501 authorizes SBA to temporarily reduce or eliminate certain SBA business loan program fees in the 7(a) Loan Program and the 504 Certified Development Company Program. These fee changes are intended to promote economic recovery by providing economic relief to America's small businesses and encouraging lenders to make small business loans. While these changes have been implemented and are underway, this Notice contains the key provisions of SBA's implementation of Section 501 in formal guidance and requests public comment.

**DATES:** *Effective Date:* This Notice is effective June 8, 2009.

*Applicability Dates:* This Notice applies to 7(a) loans approved by SBA or issued loan numbers for delegated lender loans by SBA, on or after February 17, 2009 and to 504 loans approved by SBA, pending approval at SBA, or issued loan numbers for delegated CDC loans by SBA, on or after February 17, 2009, until funds appropriated for Section 501 are exhausted.

*Comment Date:* Comments must be received on or before July 8, 2009.

**ADDRESSES:** You may submit comments, identified by SBA docket number SBA-2009-0001 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Recovery Act Comments—Office of Financial Assistance, U.S. Small Business Administration, Suite 8300, 409 Third Street, SW., 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](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 Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small

Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to [recovery.act@sba.gov](mailto:recovery.act@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:** The SBA district office nearest you; the list of offices can be found at <http://www.sba.gov/localresources/index.html>.

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

America's financial crisis has created adverse conditions that are affecting small businesses, including a lack of liquidity in the lending system, a reluctance of many lenders to extend new loans, tightened credit standards, weaker finances at small businesses, and uncertainty about taking on new debt on the part of many entrepreneurs.

As a result, lending by SBA program participants has significantly declined and SBA's ability to ensure small business access to capital has been limited.

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 (February 17, 2009)) 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. It is expected that SBA's actions will increase access to affordable credit for small businesses through the Agency's 7(a) and 504 loan programs, unfreeze the secondary market for SBA guaranteed loans, help small businesses struggling with existing debt, and allow greater investment in high-growth small businesses.

To this end, Section 501 of the Recovery Act provides for the temporary reduction or elimination of certain loan fees in the 7(a) and 504 loan guarantee programs. The Recovery Act contemplates that these fee eliminations/reductions will flow to both borrowers and SBA's lending partners, consistent with an order of priority set forth in the Recovery Act. Relief from some borrower fees will make SBA guaranteed loans more affordable for small businesses hesitant to seek a loan during these difficult

economic times. Relief from some lender fees will provide incentives to lenders to expand their SBA lending and make loans to America's small businesses with confidence.

**II. Comments**

The intent of Section 501 of the Recovery Act is that SBA provide relief to America's small businesses effective immediately. This along with the current economic conditions provided good cause for SBA moving forward prior to receiving public comments. Although Section 501 has been implemented and this Notice is 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 July 8, 2009. The SBA will consider these comments and the need for making any revisions as a result of these comments.

**III. Business Loan Temporary Elimination/Reduction in Fees**

*Overview*

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the Recovery Act). (Pub. L. 111–5, 123 Stat. 115). The Recovery Act was enacted to promote economic recovery by preserving and creating jobs, and assisting those most impacted by the severe economic conditions facing the nation. Among the SBA provisions contained in the Recovery Act are provisions authorizing SBA to temporarily eliminate or reduce certain loan fees for borrowers and/or lenders in SBA's 7(a) guaranteed loan program and the 504 Certified Development Company (CDC) loan program. The following outlines the key guidance of the Recovery Act Section 501 as implemented.

*Applicability Date of Fee Relief Provisions*

Section 501 fee relief applies to 7(a) loan applications with a term greater than one year that are approved, or issued loan numbers for delegated lender loans, by SBA on or after February 17, 2009. This includes delegated authority loans, including but not limited to, SBA Express Loans. For SBA's 504 program, the fee relief applies to loan applications approved by SBA, loans issued loan numbers for delegated CDC loans by SBA, and loans pending approval at SBA, on or after February 17, 2009. The Recovery Act provides that fee relief will sunset on the earlier of September 30, 2010, or

such date as appropriated funds are exhausted. Depending on the loan volume, SBA estimates that it will be able to eliminate the fees on loans approved through approximately December 31, 2009. SBA will notify the public when appropriated funds are exhausted.

*7(a) Program Fees*

Section 501 of the Recovery Act authorizes SBA to temporarily eliminate or reduce certain 7(a) program loan fees, including all Small Business Act Section 7(a)(18)(A) fees (guaranty fees) to the extent such cost is offset by appropriations. Accordingly, SBA is eliminating such Section 7(a)(18)(A) guaranty fees, including clause (i) through (iv) fees, until funds set aside for this purpose are exhausted. While Section 7(a)(18)(A)(iv) fees are not specifically enumerated in the funding priority provision of Recovery Act Section 501(c), SBA is eliminating this fee consistent with its inclusion in Recovery Act Section 501(a) and with subsection 501(c) priority on borrower relief. With the elimination of Section 7(a)(18)(A) guaranty fees, there will be no guaranty fees that a lender might retain under 13 CFR 120.220(d) for loans with a maturity of more than twelve months where the total loan amount is no more than \$150,000. The Recovery Act, however, does not cover SBA's ¼ point guaranty fee for loans with maturities of 12 months or less. 13 CFR 120.220(a). Therefore, the ¼ point fee for loans with maturities of 12 months or less is still effective. The fee relief provisions in this Notice temporarily supersede any provisions that conflict in 13 CFR 120.220.

While the Recovery Act also allows for the potential elimination/reduction of Section 7(a)(23)(A) annual fees which are paid by the lender, SBA is unable to reduce these fees within the constraints of the Recovery Act. This is due to the Recovery Act's 7(a) loan program provisions that establish a clear priority for borrower relief. In addition, the Recovery Act fee elimination/reduction provisions are only available to the extent offset by appropriations. Finally, SBA in consultation with OMB determined that there was no periodic allocation methodology between the 7(a) fees that could be implemented without significant operational challenges. These challenges would be further complicated by the difficulty differentiating between small and large lenders on an ongoing basis as required by the statutory provision for "waterfall of benefits."

#### 504 Program Fees

Section 501 of the Recovery Act also authorizes SBA to temporarily eliminate two 504 program fees: (i) Small Business Investment Act Section 503(d)(2) fees (Third-Party Participation Fees), codified at 13 CFR 120.972(a) and (ii) 13 CFR Section 120.971(a)(1) fees (CDC Processing Fees). To implement this provision, SBA is eliminating these two 504 program fees. Consistent with the Recovery Act's temporary elimination of CDC Processing Fees and until further notice, CDCs will no longer be allowed to collect processing fee deposits from small business borrowers that would have gone towards payment of the CDC Processing Fee upon loan approval on or after February 17, 2009 under 13 CFR 120.935. However, the Recovery Act provides for SBA reimbursement to CDCs for the waived CDC Processing Fees. Therefore, SBA will pay CDCs two-thirds of the estimated CDC Processing Fee at the time of loan approval and the remainder upon funding of the loan. The CDC Processing Fee reimbursed will be equal to 1.5% of net debenture proceeds for which a CDC does not collect the CDC Processing Fee. SBA, however, will not reimburse CDCs the CDC Processing Fee if the CDC had collected such a fee from the borrower on a prior 504 loan approved before February 17, 2009 and cancelled before disbursement. Fee relief provisions in this Notice temporarily supersede any provisions that conflict in 13 CFR 120.971 and 120.972.

#### Fee Refunds

If fees have already been paid to SBA on eligible loans, SBA will refund to lenders the eligible fees. If borrowers have already paid lenders for the fees, lenders must refund the borrowers from the SBA refund within 14 days of the date that SBA forwards the refund to lender's account or the date of the SBA refund check. If, however, lenders have received the refunds before the date of publication of the Notice, lenders must refund the fees to the borrowers within 14 days from the publication date of this Notice. In addition, if lender retained any fees under 13 CFR 120.220(d) (loans with a maturity of more than 12 months that are \$150,000 or less) on an eligible loan, lender must similarly return those fees to borrowers. Lenders must document borrower receipt of the refund and be prepared to produce such documentation to SBA upon request. Failure to produce such documentation may result in SBA taking any action available under law. SBA has already processed most refunds. The Agency moved quickly to reimburse all fees

waived as a result of the Recovery Act ensuring that it could adequately modify systems and account for and report on these funds.

#### *Conversion of Short-Term Loans Approved After 2/17/09 to Long-Term Loans*

If a borrower seeks to convert a short-term loan approved after February 17, 2009 to a Recovery Act eligible long-term loan, the borrower will have to cancel that loan and resubmit the loan as a new long-term loan to be eligible for the Recovery Act guaranty fee reduction. In these cases, SBA will not be able to refund the original short-term loan  $\frac{1}{4}$  point fee.

#### *Loan Cancellations for Approvals Prior to 2/17/09*

SBA will not allow loans approved prior to 2/17/09 to be cancelled and then resubmitted as a new loan for approval under the Recovery Act to avoid fees, unless the resubmitted loan is not a replacement for the original loan, as determined by SBA on a case by case basis. The intention of the fee elimination/reduction is to stimulate new lending. A loan cancelled and then resubmitted to avoid fees does not stimulate new lending and, therefore, is ineligible for Recovery Act treatment. Requests for such case by case consideration must be submitted by the lender to the Standard 7(a) Loan Guaranty Processing Center in Citrus Heights, California. The request will be reviewed and a recommendation forwarded to the Director/Office of Financial Assistance for approval.

In making a case by case determination on resubmitted loans, the existence of one or more of the following factors will make it more likely that SBA will approve the request: (i) The loan was cancelled for reasons other than the passage of the Recovery Act (e.g., the loan was cancelled because the location for the new business was not available, subsequently another location became available and a new loan was requested); (ii) the new loan is for a different purpose (e.g., the original loan was for working capital but the new loan is for the acquisition of real estate); (iii) the new loan is likely to achieve additional economic stimulus (e.g., the previous loan would have preserved jobs but the new loan will also create new jobs); or (iv) the new loan would not be made but for the provisions of the Recovery Act (e.g., the loan was cancelled because the borrower failed to meet a key provision (e.g., appraisal value) in the original loan authorization and, therefore, the lender would not

make the loan now but for the higher guaranty level). Based on past cancellation experience in SBA's loan programs, SBA expects that only a limited number of borrowers with cancelled/resubmitted loans will meet the criteria for a new loan with reduced fees and/or a higher guaranty.

In general, changes to loans approved prior to February 17, 2009, including loan increases, will be processed as changes to the original loan in accordance with SBA's standard practice, and loan fees will be assessed under the rules in effect at the original approval date. For 504 loans approved prior to 2/17/09 that seek to add allowable refinancing under the Recovery Act, a servicing provision will be created that will accommodate this modification without the need to cancel the original loan.

#### *Funding*

Under the Recovery Act, Congress appropriated \$375,000,000 for reimbursements, loan subsidies and loan modifications for 7(a) and 504 loans as described in Section 501 of the Recovery Act. In addition, these funds also support the higher guaranty levels (up to 90% on qualifying 7(a) loans) in Section 502 of the Recovery Act. The Recovery Act does not provide an allocation of the funds between the 7(a) and 504 programs. SBA has decided to allocate the funds so as to result in fee eliminations for roughly the same period of time for the two programs. This allocation will support a program level of approximately \$8.7 billion for the 7(a) program and approximately \$3.6 billion for the 504 program with fee elimination/reduction under the Act.

#### *Use of Proceeds Restriction*

Finally, the Recovery Act provides that none of the funds appropriated or otherwise made available in the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. For otherwise eligible loans to these small businesses or for these uses, lenders and CDCs may continue to submit applications in accordance with SOP 50 10 5(A); however, all regular fees will apply. For Recovery Act loan guaranties, it will be the responsibility of the lender or CDC to document in the credit memorandum that the borrower's use of proceeds does not include a restricted use or, if there is a restricted use component, the lender must document the other resources that the borrower has obtained to pay the costs allocable to the restricted use component.

Lenders and CDCs also will be expected to certify on the applicable eligibility checklist that no loan proceeds will be used for a restricted use. In addition, on 7(a) Recovery Act loan guaranties it will be the responsibility of the borrower to certify that it will not use any working capital loan proceeds for any restricted use. For all Recovery Act loan guaranties for the construction, acquisition or renovation of any business that has a restricted use, it will be the responsibility of the borrower to certify that it has obtained alternate funding which may come from the borrower's equity injection to pay the costs reasonably and in good faith estimated to be allocable to the restricted use. Failure by a lender to accurately identify a restricted use for a Recovery Act loan and remit appropriate fees within 90 days of loan approval or within 90 days of publication of this Notice, whichever is later, may result in SBA's denial of liability on the loan. Please refer to SBA Policy Notice 5000-1105 for further guidance on restricted uses of Recovery Act loan proceeds.

For 7(a) loans, the eligibility questionnaire and checklists for the Standard 7(a), Small/Rural Lender Advantage, PLP, SBA Express and Pilot Loan Programs have been modified to include an additional statement that, for loans made under the Recovery Act, no proceeds will be used for a restricted use. (The Standard 7(a) Eligibility Questionnaire can be found at <http://www.sba.gov/aboutsba/sbaprograms/elending/lgpc/forms/index.html>. The Small/Rural Lender Advantage (S/RLA) eligibility checklist (SBA Form 2301-C) can be found at <http://www.sba.gov/tools/Forms/smallbusinessforms/fsforms/index.html>.)

The PLP Eligibility Checklist can be found at [http://www.sba.gov/idc/groups/public/documents/sba\\_program\\_office/bank\\_plpchecklist.pdf](http://www.sba.gov/idc/groups/public/documents/sba_program_office/bank_plpchecklist.pdf). The SBA Express and Pilot Loan Program checklists (SBA Form 1920SX, Part C) can be found at <http://www.sba.gov/tools/Forms/smallbusinessforms/fsforms/index.html>.) In addition, for eligibility authorized SBA Express loans, SBA Form 2238 has been modified to include an additional statement that, for loans made under the Recovery Act, no proceeds will be used for a restricted use. (SBA Form 2238, SBA Express/Patriot Express Guarantee Request (Eligibility Authorized) can be found at [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/sba\\_forms\\_2238.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/sba_forms_2238.pdf).)

For 504 loans, the 504 and PCLP eligibility checklists have been modified

to include an additional statement that, for loans made under the Recovery Act, no proceeds will be used for a restricted use. (The 504 Eligibility Checklist can be found at [http://www.sba.gov/idc/groups/public/documents/sba\\_program\\_office/bank\\_504checklist\\_submission.pdf](http://www.sba.gov/idc/groups/public/documents/sba_program_office/bank_504checklist_submission.pdf). The PCLP Eligibility Information (Form 2234) can be found at [http://www.sba.gov/idc/groups/public/documents/sba\\_program\\_office/bank\\_pclpchecklist2234c.doc](http://www.sba.gov/idc/groups/public/documents/sba_program_office/bank_pclpchecklist2234c.doc).)

#### Additional Requirements

All other provisions of the Small Business Act and the Small Business Investment Act applicable to the 7(a) and 504 programs and the regulations promulgated thereunder that are not superseded by the relevant provisions of the Recovery Act will continue to apply to loans made under the Recovery Act.

Lenders, CDCs, and/or borrowers may be subject to additional reporting or recordkeeping requirements in connection with loans under the Recovery Act. Lenders completing Form 1086 for the sale of Recovery Act loans on the secondary market are advised to use the loan approval date for the guaranty fee "paid on" date.

SBA may provide further guidance, if needed, through SBA notices published on SBA's Web site, [www.sba.gov](http://www.sba.gov).

**Authority:** Public Law 111-5, Div. A, Title V, Section 501, 123 Stat. 115.

**Karen G. Mills,**

Administrator.

[FR Doc. E9-13306 Filed 6-5-09; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Business Loan Program Temporary Increased Guaranty Percentage

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

**ACTION:** Notice and request for comments.

**SUMMARY:** This Notice formalizes the implementation of Section 502 of the American Recovery and Reinvestment Act of 2009. Section 502 temporarily permits SBA to guarantee up to 90 percent of qualifying small business loans. The increase in maximum guaranty percentage is intended to promote economic recovery by encouraging lenders to make small business loans by reducing their exposure to risk. While these changes have been implemented and are under way, this Notice contains the key provisions of SBA's implementation of

Section 502 in formal guidance and requests public comment.

**DATES:** *Effective Date:* This Notice is effective June 8, 2009.

*Applicability Date:* This Notice applies to 7(a) loan applications (or requests for loan numbers submitted through delegated lender processes, except SBA Express) received by SBA on or after March 16, 2009 until funds made available for this purpose are exhausted.

*Comment Date:* Comments must be received on or before July 8, 2009.

**ADDRESSES:** You may submit comments, identified by number SBA-2009-0004 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Recovery Act 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](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 Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to [recovery.act@sba.gov](mailto:recovery.act@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:** The SBA district office nearest you; the list of offices can be found at <http://www.sba.gov/localresources/index.html>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

America's financial crisis has created adverse conditions that are affecting small businesses, including a lack of liquidity in the lending system, a reluctance of many lenders to extend new loans, tightened credit standards, weaker finances at small businesses, and uncertainty about taking on new debt on the part of many entrepreneurs. As a result, lending by SBA program participants has significantly declined and SBA's ability to ensure small