

SBA Loan Agent/Broker Fraud: Let's Talk About It

Loan agent fraud: It's time to talk about it.

If you attended NAGGL's Spring Lending Technical Conference, you got the latest low-down on the increasing incidence of loan agent and borrower fraud from the source, Glenn Harris, Counsel to the Inspector General, in the SBA Office of the Inspector General. The OIG is an independent office within the SBA which employs auditors and criminal investigators to fulfill their statutory mission of deterring and detecting waste, fraud, abuse and inefficiencies in SBA programs. We gained additional perspective from Glenn Harris in a recent phone conversation. Here's a recap of our discussion.

"The OIG remains very concerned about fraud by loan agents, including brokers and packagers, in the 7(a) program," says Harris. "While most brokers are honest businesses, we're concerned about the few - but nonetheless impactful - incidence of agent/broker and borrower fraud. Over the past decade alone, the OIG has conducted criminal investigations in cases cumulatively totaling almost \$300 million in loans involving fraud by loan agents.

"Our focus is on detecting agent and borrower fraud, and referring wrongdoers to the DOJ for prosecution and conviction and/or to the SBA for administrative corrective action at the regulatory level. Lenders and the government are their victims. SBA lenders can be our first line of defense."

As an SBA lender, what are you required to do?

SBA regulation 13.C.F.R. [120.197](#) requires all lenders, CDCs, borrowers and others to notify the OIG of any information indicating that fraud may have occurred in connection with a 7(a) or 504 loan. This would include reporting possible fraud by loan agents.

New procedures issued in October 2010 make it clear that the SBA is serious about cracking down on loan agent misconduct. These new provisions in the Lender Enforcement [SOP 50.53](#) contain procedures for the director of the Office of Credit Risk Management to "... exercise authority under [13 C.F.R. Part 103](#) to suspend or revoke an agent's privilege of any agent to conduct business with the SBA ... for unlawful or unethical activity."

It has been a longstanding SBA policy that lenders must complete a 159 7(a) Form for every agent/broker involved in their 7(a) loans. This form requires full disclosure of all fees paid the agent/broker (by the borrower or the lender) and certification by the lender that all parties know the fee amount, that the fees are reasonable, and the information provided is accurate.

The SBA recently issued [SBA Procedural Notice 500-1177](#) requiring that all lenders submit 159 Forms to Colson, the SBA's Fiscal Transfer agent, and [Information Notice 5000-1200](#) which helps explain these new requirements. The OIG has taken additional steps, encouraging the SBA to step up its tracking and enforcement.

The OIG's [Report No. 11-01](#) issued in October 2010 details "... the Most Serious Management and Performance Challenges Facing the Small Business Administration." The Report's Challenge 7 focuses on the need for more effective tracking and enforcement by the SBA to reduce financial losses from loan agent fraud. Challenge 7 notes that the SBA has made progress, yet states clearly that more proactive action is needed: "... However the Agency also needs to establish a more effective enforcement program to deter fraudulent loan agent activity."

"At the OIG, we want to work with lenders in detecting and reporting suspected improper conduct and criminal fraud - and further - to encourage the SBA to have an even greater enforcement focus," says Harris.

The change requiring submission of the 159 Form requiring full disclosure is an important first step. How else can you help stem the tide?

Thoroughly vetting all potential brokers will help cut off fraud before it begins. Ongoing portfolio management, rigorous documentation, and regulatory compliance to regulations will protect your SBA portfolio - and your PLP status. At the same time, be on the look-out for fraud! *The regulation requires SBA lenders, borrowers and other parties to notify the SBA OIG of any information indicating fraud in connection with a 7(a) or 504 loan. Reports can be made anonymously, and confidentiality can be requested, yet Harris noted that knowing the source of the report will greatly assist the OIG's investigation.*

Here are ways you can report suspected fraud and/or criminal wrongdoing:

- Go to www.sba.gov and click on "Report Waste, Fraud, and Abuse," which will take you to the online OIG complaint submission form.
- Email the OIGHotline@sba.gov
- Call the OIG Hotline, 1.800.767.0385

Watch for our upcoming series of J.R. Bruno & Associates eBulletins detailing key "Red Flag" fraud indicators and case studies of criminal fraud activity!

SBA lending can be an important and profitable part of your business. You can't afford to have your program affected by agent/broker and/or borrower regulatory misconduct or criminal fraud. At J.R. Bruno, we're an approved SBA Lender Service Provider and expert at every facet of SBA lending, with special expertise on portfolio management. Call us. We can help!

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