



*Your Presenters –
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SBA Loan Guarantees: Current Purchase Issues and Complexities

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EHJ
Engel, Hairston & Johanson, P.C.
Time Proven Service and Solutions

Preliminaries

- Please silence/moot your phone
- Grab cup of coffee, tea or beverage of preference and sit back for the journey
- Submit your questions when they come up.
During the presentation I will be reviewing these and may answer them during the presentation or at the end

Enjoy

THE HANDOUTS

The following Handouts for this Webinar are available either from the Lorman website or at www.ehjlaw.com

- This PowerPoint presentation
- An overview handout entitled:

Realizing on your SBA 7(a) Loan Guaranty – Recovery is not Always Guaranteed

(Navigating the storms of recovering on SBA 7(a) loan guarantees)

- Several SBA publications (please make sure you always check the SBA website for latest version)

THE SBA PUBLICATIONS

- A. HELPFUL HINTS For Navigating the National Guaranty Purchase Center
- B. Regular 7(a) Guaranty Purchase Package Tabs (the 10-Tab)
- C. SBA 1979 Liquidation Plan Format
- D. Litigation Plan Tabs
- E. Care and Preservation of Collateral (CPC) Tabs
- F. Offer in Compromise (OIC) Tabs
- G. Charge-Off Tabs
- H. Servicing and Liquidation Actions 7(a) Lender Matrix

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- H. Servicing and Liquidation Actions 7(a) Lender Matrix**



Servicing and Liquidation Actions

7(a) Lender Matrix

Disclaimer: The Office of Financial Program Operations (OFPO) develops and distributes tools, such as this loan action matrix, which are designed to make it easier for SBA lending partners to find and comply with Agency Loan Program Requirements. OFPO makes every effort to ensure that each tool is accurate at the time it is developed and updated whenever there is a relevant change. Use of these tools, however, is not a substitute for keeping up-to-date with SBA Loan Program Requirements or complying with them. In the event of a conflict between a tool relied upon by a Lender and the applicable Loan Program Requirement, the Loan Program Requirement will prevail.

Words beginning with a capital letter in this Matrix have the same definition as they have in SOP 50 57.

Prior to final disbursement, actions that require prior SBA notification and requests for prior SBA approval Must be sent to the Standard 7(a) Loan Guaranty Processing Center (LGPC) in accordance with SOP 50 10 5, Subpart B. After final disbursement, actions that require prior SBA notification and requests for prior SBA approval Must be sent to the appropriate Commercial Loan Servicing Center (CLSC). Actions requiring prior SBA notification will receive an acknowledgment stating that the notification was received. Actions that do not require prior SBA notification or approval will not receive an acknowledgement. Lenders are encouraged, but not required to use E-Tran servicing for the actions marked with an X in the E-Tran column of the table below. If a lender makes a change using E-Tran servicing, a separate notification to SBA is not required. Click here to access the [E-Tran Fact page](#).

Please see Footnotes at end of document. All lender actions Must comply with SBA loan program requirements.

	Unilateral Action			Requires Prior SBA Approval	Form 2237 ¹¹
	E-Tran	Center	N/A		
Approved Loans Prior to Final Disbursement - See SOP 50 10 5, Subpart B					
Changes to Loan Authorization within loan program guidelines:					
Loan approved under delegated authority ¹			X		
Loan approved by the Standard 7(a) Loan Guaranty Processing Center				X	
Increase loan amount or SBA's Guaranty percentage				X	
Decrease loan amount or SBA's Guaranty percentage				X	
Change interest rate prior to initial disbursement ²	X				
Change interest rate after initial disbursement ³ E-tran Functionality Coming Soon!		X			
Change an obligor EIN or SSN for loan approved under delegated authority		X			
Change loan maturity date	X				
Extend final disbursement date			X		
Change Obligor's address or legal/trade name of business	X				
Cancel SBA Guaranty prior to initial disbursement	X				
Cancel SBA Guaranty after initial disbursement		X			
Reinstatement of SBA Guaranty				X	
Loans in Servicing & Liquidation (after final disbursement)					
<i>See SOP 50 57 and 13 CFR 120.535 and 120.536</i>					
Increase loan amount or SBA's Guaranty percentage				X	X
Confere a Preference ⁵ onto lender or engage in activity that creates conflict of interest				X	
Release Borrower or Guarantor				X	
Compromise principal balance owed ⁴				X	
Assumption of loan with release of original Borrower / Guarantor				X	
Take title to any property in the name of SBA				X	
Take title to Contaminated property, or take over operation or control of a business that handles Hazardous Substances or is located on Contaminated property.				X	
Emergency Purchase from secondary market				X	
Determination of involuntary prepayment / subsidy recoupment fee				X	
Reinstatement of SBA Guaranty				X	
Extraordinary servicing fee per 13 CFR 120.221(b)				X	
Transfer, sell or pledge more than 90% of a loan				X	
Transfer, sell or pledge 90% or less of a loan		X			
Decrease SBA's Guaranty percentage E-tran Functionality Coming Soon!		X			X
Terminate SBA Guaranty prior to Guaranty Purchase E-tran Functionality Coming Soon!		X			
Extend maturity prior to stated maturity date for loans in Regular Servicing	X				
Extend maturity prior to stated maturity date for loans in Liquidation E-tran Functionality Coming Soon!		X			
Reamortize / restructure loan ⁸ E-tran Functionality Coming Soon!		X			
Change interest rate within loan program guidelines ^{5,4} E-tran Functionality Coming Soon!		X			
Change EIN or SSN		X			
Change Obligor's address or legal/trade name of business	X				
Transfer loan into liquidation status ⁷	X				
Return loan to regular servicing status E-tran Functionality Coming Soon!		X			
Change a loan to PIF status ⁶	X				
Assumption of loan without release of original Borrower / Guarantor		X			
Change loan from revolving to non-revolving	X				

The Matrix

The Matrix provides a quick cheat sheet as to everything we need to know post application/approval

- Is SBA consent required
- Can we just notify SBA
- Can we use E-Tran
- Liquidation Information
- Workout Information
- Secondary Market issues

But don't forget the footnotes. They are just as important as the grid

[http://www.sba.gov/sites/default/files/Unilateral%20Action%20Matrix%20for%207\(a\)%20Loan%20Servicing-Liquidation%2020130430.5.pdf](http://www.sba.gov/sites/default/files/Unilateral%20Action%20Matrix%20for%207(a)%20Loan%20Servicing-Liquidation%2020130430.5.pdf)

Version 9 4/30/13

*Please check the SBA Website for the most up to date version.

So lets begin at the end

What to do When the Rejection/Denial Letter Comes

(When a Guaranty is Not a Guaranty)

But before we get into the weeds, who are we?

A poll to tell us who is participating on this webinar

Are you a:

A – Person who has never handled a 7(a) repurchase

B – Person who has handled several 7(a) repurchases

C – Person who supervises 7(a) repurchases but never actually done one.

D – Attorney who assists and gives guidance with 7(a) repurchase

E – Attorney who actually prepares the 10-Tabs and handles the 7(a) repurchase\

F – Person who has been involved in a Repair or

G – Recipient of a Denial Letter

[If you fit into several categories, pick what you feel is the most appropriate]

What this Webinar will Teach You

- Issues that cause the “Letter” to be sent
- Why you received the “Letter”
- The process that got us to this point
- How to keep from getting the “Letter”
- Issues to consider in dealing with Secondary Market issues

Our Outline for this Webinar

- A. Some Legal Background
- B. Difference in “repair” versus “denial”
- C. Denial Issues
- D. Repair Issues
- E. The process
- F. Secondary Market issues

Legal Background – What is the SBA Guaranty?

- “SBA Guaranty” is a term of art that conveys special meaning
- The SBA authorization is not an actual “guaranty.”

A potential borrower cannot force a lender to make a loan to a borrower merely because SBA has issued a loan authorization. The making of the loan remains a credit decision of the lender.

- The SBA loan authorization is an agreement between SBA, as an agency of the United States Government, and the lender.

The borrower is not a party to the loan authorization or a third party beneficiary.

- SBA has Standard Operating Procedures (SOPs) - practical requirements for lenders based on sound lending practices for each step of the loan process.

Legal Background – Repair vs Denial

General Policy

SBA's general policy for guaranty purchases is to reach a fair decision based on a thorough review of lender's purchase request and all relevant documentation.

Legal Background – Repair vs Denial

Repair

If a lender has been deficient in its handling of a loan, the SBA office processing the purchase will attempt to reach an equitable resolution with the lender, which may involve the lender agreeing to a monetary adjustment in the amount of SBA's guaranty (referred to by SBA as a "repair").

Legal Background – Repair vs Denial

Denial

However.....SBA may consider a denial of its liability under its guaranty or litigation to recover funds SBA already paid under its guaranty to the lender (or secondary market holder) if:

- the lender is not negotiating in good faith,
- the lender is unwilling to agree to a repair that reflects the harm caused to the SBA, or
- the lender's actions are sufficiently serious that a repair would be inappropriate.

Legal Background – Repair vs Denial

Denial

SBA regulations at 13 CFR §120.524 describe when SBA will be released from liability on a loan guaranty.

Lender also should consult the guaranty purchase procedures in SOP 50 50 4A, Chapters 9 and 10, and SOP 50 51 2A, Chapter 13.

Legal Background – Repair vs Denial

“Denial”

SBA does not have to honor a guaranty purchase request in full or in part on a 7(a) loan if the lender failed to comply materially with a loan program requirement; failed to make, close, service, liquidate or litigate the loan in a prudent manner; placed SBA at risk through improper action or inaction; failed to disclose a material fact to SBA in a timely manner; or misrepresented a material fact to SBA regarding the loan. 13 C.F.R. § 120.524(a)

- Often occurs in Early Default issues
- Often occurs in Loan Eligibility issues

In lieu of issuing a “Denial” SBA may contact you to see if you desire to cancel the guaranty or withdraw the application

“Repair”

Agreement reached between SBA and Lender which repairs a violation of the 7(a) program (other than those for which a “denial” is issued)

Top Reasons for Repair & Denial

1. Lien and Collateral Issues that Result in Missed Recoveries (Generally a Repair)

- Failure to obtain required lien position
- Failure to properly perfect security interest
- Failure to fully collateralize loan at origination when additional collateral was available

Top Reasons for Repair & Denial

2. Unauthorized Use of Proceeds

- Proceeds disbursed for purpose(s) inconsistent with the loan authorization or subsequent modifications without a business justification. (Could be a Denial if early default and improper use of proceeds caused the failure of the business)
- Same lender Non-SBA loan paid with PLP loan proceeds (preference)

Top Reasons for Repair & Denial

- 3. Liquidation Deficiencies (Generally a Repair unless harm is the full value of the outstanding balance)**
 - Failure to conduct Site Visit which resulted in missed recoveries
 - Improper safeguarding or disposition of collateral which resulted in missed recoveries
 - Misapplication of recoveries to lender's loan when SBA-guaranteed loan has lien priority

Top Reasons for Repair & Denial

4. Undocumented Servicing Actions (Generally a Repair)

- Liens not properly renewed during servicing on worthwhile collateral
- Release or subordination of collateral without documented business justification
- Allowing hazard insurance to lapse on major collateral and collateral was subsequently destroyed
- Failure to maintain life insurance on principal and principal subsequently dies

Top Reasons for Repair & Denial

- 5. Early Defaults (Denial if determined to be reason for business failure)**
 - Missing or unsupported verification of required equity injection (includes verification of source in some cases)
 - Missing or unsupported documentation of verification of borrower financial information with IRS when financial information was relied on in lender's credit analysis

Top Reasons for Repair & Denial

6. SBA Loan Eligibility (Denial)

- Ineligible franchise
- Ineligible loan purpose
- Ineligible loan recipient (loan to an associate of lender)

Early Default Issues

Early default can result in a denial if it is determined to be the reason for business failure under the following circumstances:

- ❖ Missing or unsupported verification of required equity injection, which will include verification of source in certain cases; and/or
- ❖ Missing or unsupported documentation of verification of borrower financial information with IRS when financial information was relied on in lender's credit analysis.

What is an Early Default

What is an early default?

- (a) Default occurred within 18 months of the initial disbursement of proceeds.
- (b) If the final disbursement occurred more than 6 months after the initial disbursement, the 18 months will begin to run from the date of final disbursement.
- (c) If the borrower cures the default and makes scheduled loan payments for 12 consecutive months after the initial 18-month period (30 months), the loan is not considered to be in early default.
- (d) Early default issues often occur in the following circumstances if the events occur within the required 18 month period:
 - (i) The borrower failed to make one or more scheduled loan payments;
 - (ii) The borrower funded the scheduled loan payments from the sale of collateral rather than from business operations;
 - (iii) The lender deferred more than three consecutive schedule payments; and/or
 - (iv) An issue occurred which required the loan to be liquidated, such as the filing of the bankruptcy petition

Curable Examples of Early Default

The borrower defaults on the loan or fails to make one or more scheduled loan payments during the first 18 months of the loan and borrower fails to cure the default and continues to makes scheduled loan payments for 12 consecutive months after the initial 18-month period (30 months), the loan is not considered to be in early default

Non-Curable

Examples of Early Default

- A. The borrower funded the scheduled loan payments from the sale of collateral rather than from business operations;
- B. The lender deferred more than three consecutive schedule payments; and/or
- C. An issue occurred which required the loan to be liquidated, such as the filing of the bankruptcy petition

Are these “early defaults” able to be “cured” by borrower curing the default and continuing to make scheduled loan payments for 12 consecutive months after the initial 18-month period (30 months)?

Unauthorized Use of Proceeds Issue

Recovery can be repaired or denied when proceeds are disbursed for purposes inconsistent with the loan authorization or subsequent modifications without a business justification.

Typically, if proceeds are distributed in a manner not consistent with authorization, the guaranteed amount may be repaired.

However, a complete denial will result when early default and improper use of the proceeds cause the failure of the business.

Prohibited Use of Proceeds

If loan proceeds are used for the following purposes, there may be a denial of the guaranty:

- Effecting a partial change of business ownership or a change that will not benefit the business;
- Permitting the payments, distributions or loans to be paid to associates of the applicant (except for ordinary compensation for services rendered);
- Investing in real or personal property acquired and held primarily for sale, lease, or investment;
- Refinancing existing debt when the lender is in a position to sustain a loss, and SBA would take over the loss by refinancing;
- Repaying delinquent state or federal withholding taxes or any other funds that should be held in trust or escrow; and/or
- Paying for a non-sound business purpose.

Eligibility Issues

If there is an issue with the borrower's eligibility under the loan eligibility requirements, the lender may be denied recovery on the guaranty if it did not investigate and monitor with due diligence.

The following are common examples, but all SBA loan eligibility requirements must be complied with:

- + Ineligible franchise;
- + Ineligible loan purpose; and/or
- + Ineligible loan recipient (i.e. loan to an associate of lender).

Expiration of Guaranty after Maturity

If the lender does not request purchase within 180/120 days after loan maturity or liquidation of collateral, SBA is not obligated to purchase the guaranty.

Expiration of Guaranty after Maturity

Expiration of guaranty after maturity: If the lender fails to request purchase within 180 days after loan maturity (for loans approved after 5/14/07, and 120 days for loans approved prior to 5/14/07), SBA is not legally obligated to purchase the guaranty. 13 C.F.R. § 120.524. Under certain circumstances, SBA may permit reinstatement of the guaranty and extension of the maturity (thereby extending the period during which the lender may request purchase). For example, reinstatement may be appropriate if the lender was actively servicing or liquidating the account with SBA knowledge or concurrence, and inadvertently failed to timely request purchase or extend the loan maturity.

Matrix Footnotes

5. Lender's Purchase demand Must be made within 180 days after loan maturity or completion of liquidation / litigation actions, or SBA may be released of its liability on the loan Guaranty.

Matrix Footnotes

6. Lenders are also reminded that requests for extensions of maturity on short-term loans (less than a year) require payment of the additional Guaranty fee associated with loans with a maturity of more than one year, within 30 days of SBA approval or Lender's change in E-Tran, unless the additional Guaranty fee owed or an explanation that the extension is solely for purposes of orderly repayment (subject to determination by SBA). For a loan not sold in the secondary market, lenders may extend the maturity up to a maximum of 10 years beyond the loan's original maturity if the extension will aid in the orderly repayment of the loan.

The 120 Day Rule

After the first unresolved payment default for 60 days, SBA is liable for the interest rate on the loan (minus in some cases 1% for the guaranteed portion to the lender) for a period of up to 120 days. Therefore, it is advisable for the lender to submit the purchase request within 120 days to take advantage of the rule.

Specifically, if the SBA receives the package within 120 days of default, all interest is payable to the date of purchase payment. This includes interest during the period of time that SBA was processing the purchase and from the interest-paid-to-date until the date of default. If the SBA does not receive the package within 120 days of default, the interest will still be payable for only 120 days. **If the lender has already liquidated the loan, a lender may deduct 120 days of accrued interest from liquidation proceeds.**

Payment of Interest

- If SBA receives a lender's complete purchase package within 120 days of default, then all interest is payable to the date of the purchase payment, including interest during the time SBA is processing the purchase, and also from the interest-paid-to-date until the date of default.
- If SBA does not receive lender's complete purchase package within 120 days from the date of default, only 120 days of interest is payable.
- If lender has liquidated the loan prior to requesting purchase, lender is allowed to recover up to 120 days of accrued interest from liquidation proceeds. The rate of interest is the rate in effect on the day that the loan went into default. These interest days should begin with the interest-paid-to date up to 120 days maximum. SBA will then purchase the guaranteed principal balance remaining. Late charges are not covered under SBA's guaranty agreement with a lender and therefore lender cannot recover such fees from liquidation proceeds.

Due to legislative changes, for loans that were approved between September 28, 1996 and September 30, 2000, SBA will pay the lender the rate of interest indicated in 13 C.F.R. § 120.122 less one percent. SOP 50 50 4A, Ch. 9, Para. 8.b. Congress eliminated this requirement for loans approved after September 30, 2000. See SBA Procedural Notice 5000-703 (Dec. 2000).

Liquidation Proceeds and Payment of Interest

“If a lender applies liquidation proceeds to interest, the interest recovered by the lender will be deducted from the interest SBA pays at the time of guaranty purchase. If a lender applies liquidation proceeds to interest in an amount in excess of the interest payable at purchase (up to 120 days in most cases), the excess must be reapplied as a principal reduction on the transcript.”

Lien and Collateral Issues

Lien and collateral issues may result in a missed recovery.

Examples of lien and collateral issues that may arise are as follows:

- Failure to obtain required lien position;
- Failure to properly perfect security interest; and/or
- Failure to fully collateralize loan at origination when additional collateral was unavailable.

Release of Lien Issues

“No Consideration: You may release liens for no consideration if and only if your analysis clearly and convincingly shows that there is no likelihood of recovery from the collateral. The analysis must also conclude that the borrower is cooperating fully with regard to full disclosure and access to the collateral and assisting lender with the orderly liquidation of the loan without having to resort to litigation. Absent cooperation, your conclusion must indicate that there is no leverage or value added to using your lien to obtain reasonable and acceptable cooperation absent litigation or additional expense now or in the future. The file must clearly be documented with this analysis and information supporting such a decision.”

Release of Lien Issues

“Appraisals and Valuation of Real Estate. SBA expects lenders to make valuation and pricing decisions using current appraisals. The fact that a property has been listed but not sold for many months is not a reason to reduce or otherwise dispose of the property. There are many reasons why a property may not sell, such as asking price and efforts of realtor. The listed price must be determined by a comprehensive analysis of all factors, such as appraised value, cost to support and care for the property in order to retain value, and local market considerations. The decision to reduce the sale price is within your delegated authority, but the decision must be fully justified and supported with documentation of the analysis.”

Release of Lien Issues

“Abandonment – As you do recovery analysis on the collateral, you may find situations where there is no equity, nor is recovery expected from foreclosure, replevin, or similar recovery action. In these cases, abandonment may be prudent. However, you must base any abandonment decisions on current third party fee appraisals and prudent analysis that clearly and convincingly justifies the action. It is also extremely important that your analysis of the holding costs, out of pocket expenses and other action expenses associated with the recovery and disposal of the particular collateral be reasonable and fully supported by the requisite level of factual analysis and third party appraisal. While we recognize that abandonment is frequently the proper course of action, we are obliged to ensure that full and adequate analysis existed to fully support the actions taken. Abandoning collateral doesn’t equate to release of lien or mortgage. They should be retained to account for future value during sale, disposal, or negotiation with borrower in an Offer in Compromise or workout.”

Release of Lien Issues

“Environmental Issues expected to eliminate net recovery: If the environmental costs are projected to negate any equity or recovery, then it makes no sense to move forward. Abandonment is appropriate provided you document the file with information that leads to a clear, convincing, and compelling conclusion that abandonment or no action is the most prudent action for the property.”

“Short Sale: You may not release any borrower, guarantor, or obligor without SBA prior written approval. A “short sale” is considered a release of collateral for fair and adequate consideration. The acceptance of the “short sale” proceeds does not authorize the release of obligors, or debtors. Such releases can only be handled through our Offer in Compromise process.”

Other Issues

“Obtaining property (REO) prior to purchase: If a lender deems it appropriate to acquire real property collateral prior to purchase, the agreed value/fair market value of the property must be added to the borrowers account to reduce the principal balance owed. SBA will purchase the guaranty at the reduced balance. When the REO is sold, SBA will share in the gain or loss at that time. Do not release the borrower from their personal liability at the time of the transaction. Release of the liability needs to be presented as an Offer in Compromise that must be approved by SBA prior to action.”

“Receivers: The cost of using a receiver should be equal to or less than the cost of the normal foreclosure process. The cost must be inclusive of the value of time. If adequate justification and documentation is not supplied and there is a significant loss to the Agency as a result of the decision to use a receiver, SBA will likely decline to share in the expenses. If you choose to use a receiver, great care must be made to control all of the cash, revenues, and expenses, as the lender is fully responsible for the errors and omissions of the contractor. Any expense by the receiver should clearly be reasonable, add material value, and be open and auditable.”

Compromising Amount Due

Matrix Footnote

4. Compromise with Borrower or Guarantor of all or a portion of accrued interest is permitted as a unilateral action.

OIC TABS

For non-interest compromise, the Lender must obtain SBA's approval. This approval is obtained following the submission of mandatory OIC Tabs.



Offer In Compromise (OIC) Tabs

Version Dated 10/2011

In order for SBA to process your request for an Offer In Compromise, the following tabs must be completed. Please be sure to complete all information requested and provided the supporting documentation as noted. If any information is not provided, please provide a detailed explanation. Once your package is received it will be assigned to a loan specialist for review and consideration. If the loan specialist reviewing your case needs any additional information they will contact you directly. If you would like a status update please email the Center at loanresolution@sba.gov

When it appears likely that the borrower does not have the ability to pay in full the deficiency balance after liquidation of all worthwhile collateral, it may be appropriate to settle for less than the full amount due. The amount being offered must bear a reasonable relationship to the estimated net present value of the projected amount of recovery available through enforced collection. Therefore, when the liability of the borrower is clear and the SBA can collect fully without protracted litigation or large unrecoverable expenses, there is little basis to settle for less than what is owed. To process an Offer in Compromise, we must receive the following:

TAB 1	OIC Information Sheet
TAB 2	Obligors/Collateral Worksheet
TAB 3	Recovery Worksheet
TAB 4	Summary
TAB 5	Financial Analysis
TAB 6	SBA Required Documentation
TAB 7	Asset Valuations
TAB 8	Litigative Risks

Express and 504 Loan Packages should be forwarded to:
Fresno: fsc.504liquidations@sba.gov or fsc.servicing@sba.gov
Little Rock: lrcs.504liquidations@sba.gov or lrcs.servicing@sba.gov

7a Commercial Loans Packages should be forwarded to: loanresolution@sba.gov

Submit Electronically: Send This File
(Select Loan Resolution @sba.gov as recipient)
Fax: (202) 481-4674
Mail: U.S. Small Business Administration
Attn: OIC Department
1145 Herndon Parkway
Herndon, VA 20170

Offer in Compromise.

“An OIC is a monetary offer (typically at the end of the liquidation of all business and other worthwhile assets) in exchange for the release of a personal guaranty on the loan. SBA must approve all OICs. When the borrower does not have the ability to pay the loan in full after liquidation of all worthwhile collateral, it may be appropriate to settle for less than the full amount due. The amount being offered must bear a reasonable relationship to the estimated net present value of the projected amount of recovery available through enforced collection. Accordingly, when the liability of the borrower is clear and the SBA can collect fully without protracted litigation or large unrecoverable expenses, there is little basis to settle for less than what is owed. If your lending institution would like SBA to consider an OIC, you may submit your request using the mandatory OIC Tabs.

www.sba.gov/sites/default/files/OIC_TABS_NGPC_nl.pdf”

Excessive Legal Fees

10. If the foreclosure proceeding is considered Non-routine or will exceed a budget of \$10,000, then the lender Must submit a Litigation Plan to SBA.

*[**No Prior Approval.** SBA's prior approval is not required for Routine Litigation, such as uncontested litigation, non-adversarial matters in bankruptcy, and undisputed foreclosure actions, having estimated legal fees not exceeding \$10,000.]*

11. Routine Litigation means uncontested litigation (such as non-adversarial matters in bankruptcy and undisputed foreclosure actions) having estimated legal fees not exceeding \$10,000. If you anticipate that your legal budget will exceed \$10,000, or that issues may arise that are non-routine, please provide SBA with an amended or updated Litigation Plan and budget via the loanresolution@sba.gov in-box. Lenders Should consult additional litigation requirements in SBA's regulations at 13 CFR 120.540. Lenders are cautioned not to incur legal fees or other costs on loans where recovery cannot reasonably be expected.

Matrix Footnotes

12. Non-routine Litigation includes:

- 1) All litigation where factual or legal issues are in dispute and require resolution through adjudication;
- 2) Any litigation where legal fees are estimated to exceed \$10,000;
- 3) Any litigation involving a loan where a lender has an actual or potential conflict of interest with SBA;
- 4) Any litigation involving a 7(a) loan where the lender has made a separate loan to the same Borrower which is not a 7(a) loan

Submit by Email

Print Form

Litigation Plan Tabs

In order for SBA to process your request for approval of a Litigation Plan, the following tabs must be submitted. Please complete all information and provide the supporting documentation as noted. If more space is needed, please add additional sheets. When properly prepared and approved, a Litigation Plan ensures that the litigation is cost-effective, necessary, and reasonable.

No expenses will be approved or paid during the litigation plan approval process. Please review SOP 50 57, Chapter 22 (*Expenses and Recoveries*) and Chapter 21 (*Litigation*), to learn more about the expense reimbursement process.

TAB 1	Contact Information
TAB 2	Attorney Information
TAB 3	Collateral Information
TAB 4	Proposed Actions
TAB 5	Proposed Budget
TAB 6	Legal Invoices
TAB 7	Receiverships

Submit Electronically: Send This File
(Select 'sballitigation@sba.gov' as recipient)

U.S. Small Business Administration
Attn: Legal Department/Litigation Plans
1145 Herndon Parkway
Herndon, VA 20170

Litigation Plans.

“Lenders are encouraged to prepare a litigation plan based on the facts known and reasonable assumptions. The plan must include the work to be performed and the fees to be charged. Depending on the nature and anticipated cost of the work, SBA may need to approve the plan prior to implementation.
www.sba.gov/content/litigation-plan”

Matrix Footnotes

PREFERENCES

3. Lenders are reminded not to engage in any action that could create a Preference.

- "Preference is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making, servicing, or liquidation of a business loan with respect to such things as repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a certificate of deposit or acceptance of a separate or companion loan, without SBA's consent." 13 CFR 120.10
- Especially problematic would be a lender's actions in connection with a non-monetary default on its own loan that may adversely affect an SBA guaranteed loan to the same Borrower.

Lender Preference - Cross Collateral Proceeds

“If the lender has any non-SBA-guaranteed loans to the borrower or its principals/guarantors, whether those loans are secured by any of the same collateral that secures the SBA-guaranteed loan or not, you must not take any action that will confer a preference in terms of recovery on your own loan as compared to the recovery on the SBA-guaranteed loan.”

“The lender’s recoveries on each loan from collateral securing both generally will be based by lien priority, although SBA expects the lender to diligently pursue recovery of both liens.”

“When lender takes collection action against borrower’s other assets or other assets of principals/guarantors, SBA expects the lender to prudently pursue a “global” recovery on both loans. SBA also expects that all recoveries the lender realizes from such action will be divided pro rata (based on the comparative balances outstanding on the two loans & lien priority) between the SBA-guaranteed loan and the lender’s own loan.”

“SBA also expects that prudent and reasonable liquidation-related expenses be allocated, by lien priority, if the expenses can be so identified and broken out. However, if not practical, expenses to pursue actions affecting multiple loans can be shared pro rata between both such loans (although SBA would generally not agree to share in expenses exceeding its pro-rata share of recoveries).”

Competing Non-SBA liens

“If Lender has any non-SBA loans to the borrower or its principals/guarantors, or has liens from any such loans against collateral securing the SBA loan, be aware that proceeds from sale of collateral should be applied based on relative lien position, as required by the SBA Loan Authorization. Our general rule is “First in Line – First in Right.”

“SBA also would expect that prudent and reasonable liquidation-related expenses be allocated by lien priority. SBA will only recognize other lender priority liens, such as purchase money liens, if the lender has properly perfected and received SBA’s prior written concurrence.”

Liquidation Deficiency Issues

Liquidation deficiency will generally result in a repair.

However, a denial may occur when harm is the full value of the outstanding balance.

The following situations are examples of liquidation deficiencies:

- Failure to conduct a “Site Visit” which resulted in a missed recovery;
- Improper safeguarding or disposition of collateral which resulted in missed recoveries; and/or
- Misapplication of recoveries to lender’s loan when SBA-guaranteed loan has lien priority.

Site Visit Report Requirements

“SBA requires all lenders to make site visits and prepare a detailed report containing an inventory of remaining assets and an assessment of their condition and value. Site visits must be performed within 60 days of an unremedied payment default or sooner if there are assets with significant value that could easily be moved or depleted. If a payment default does not exist, but an event has occurred which would cause the loan to be placed in liquidation (i.e., bankruptcy filing, business shutdown, or foreclosure by a prior lienholder), a site visit must be done within 15 days of that event.

Undocumented Servicing Actions Issues

An undocumented servicing action will generally result in a repair of recovery under the following situations:

- ✓ Liens not properly renewed during servicing on worthwhile collateral;
- ✓ Release or subordination of collateral without documented business justification;
- ✓ Allowing hazard insurance to lapse on major collateral when collateral is subsequently destroyed; and/or
- ✓ Failure to maintain life insurance on principal when principal subsequently dies.

The Matrix



Servicing and Liquidation Actions 7(a) Lender Matrix

Disclaimer: The Office of Financial Program Operations (OFPO) develops and distributes tools, such as this loan action matrix, which are designed to make it easier for SBA lending partners to find and comply with Agency Loan Program Requirements. OFPO makes every effort to ensure that each tool is accurate at the time it is developed and updated whenever there is a relevant change. Use of these tools, however, is not a substitute for keeping up-to-date with SBA Loan Program Requirements or complying with them. In the event of a conflict between a tool relied upon by a Lender and the applicable Loan Program Requirement, the Loan Program Requirement will prevail.

Words beginning with a capital letter in this Matrix have the same definition as they have in SOP 50 57.

Prior to final disbursement, actions that require prior SBA notification and requests for prior SBA approval Must be sent to the Standard 7(a) Loan Guaranty Processing Center (LGPC) in accordance with SOP 50 10 5, Subpart B. After final disbursement, actions that require prior SBA notification and requests for prior SBA approval Must be sent to the appropriate Commercial Loan Servicing Center (CLSC). Actions requiring prior SBA notification will receive an acknowledgment stating that the notification was received. Actions that do not require prior SBA notification or approval will not receive an acknowledgement. Lenders are encouraged, but not required to use E-Tran servicing for the actions marked with an X in the E-Tran column of the table below. If a lender makes a change using E-Tran servicing, a separate notification to SBA is not required. Click here to access the [E-Tran Fact page](#).

Please see Footnotes at end of document. All lender actions Must comply with SBA loan program requirements.

Unilateral Action			Requires Prior SBA Approval	Form 2237 ¹³
E-Tran	Center	N/A		

Approved Loans Prior to Final Disbursement - See SOP 50 10 5, Subpart B

	E-Tran	Center	N/A	Requires Prior SBA Approval	Form 2237 ¹³
Changes to Loan Authorization within loan program guidelines:					
Loan approved under delegated authority ¹			X		
Loan approved by the Standard 7(a) Loan Guaranty Processing Center				X	
Increase loan amount or SBA's Guaranty percentage				X	

[http://www.sba.gov/sites/default/files/Unilateral%20Action%20Matrix%20for%207\(a\)%20Loan%20Servicing-Liquidation%2020130430.5.pdf](http://www.sba.gov/sites/default/files/Unilateral%20Action%20Matrix%20for%207(a)%20Loan%20Servicing-Liquidation%2020130430.5.pdf)

Version 9 4/30/13

*Please check the SBA Website for the most up to date version.

Engel, Hairston & Johanson, P.C.
Time Proven Service and Solutions

Unilateral Action			Requires Prior SBA Approval	Form 2237 ¹³
E-Tran	Center	N/A		

Approved Loans Prior to Final Disbursement - See SOP 50 10.5, Subpart B

Changes to Loan Authorization within loan program guidelines:				
Loan approved under delegated authority ¹			X	
Loan approved by the Standard 7(a) Loan Guaranty Processing Center				X
Increase loan amount or SBA's Guaranty percentage				X
Decrease loan amount or SBA's Guaranty percentage				X
Change interest rate prior to initial disbursement ²	X			
Change interest rate after initial disbursement ² E-tran Functionality Coming Soon!		X		
Change an obligor EIN or SSN for loan approved under delegated authority		X		
Change loan maturity date	X			
Extend final disbursement date			X	
Change Obligor's address or legal/trade name of business	X			
Cancel SBA Guaranty prior to initial disbursement	X			
Cancel SBA Guaranty after initial disbursement		X		
Reinstatement of SBA Guaranty				X

Loans in Servicing & Liquidation (after final disbursement)

See SOP 50 57 and 13 CFR 120.535 and 120.536

SBA Approval Required	Increase loan amount or SBA's Guaranty percentage				X	X
	Confer a Preference ³ onto lender or engage in activity that creates conflict of interest				X	
	Release Borrower or Guarantor				X	
	Compromise principal balance owed ⁴				X	
	Assumption of loan with release of original Borrower / Guarantor				X	
	Take title to any property in the name of SBA				X	
	Take title to Contaminated property, or take over operation or control of a business that handles Hazardous Substances or is located on Contaminated property.				X	
	Emergency Purchase from secondary market				X	
	Determination of involuntary prepayment / subsidy recoupment fee				X	
	Reinstatement of SBA Guaranty				X	
E-tran Update or SBA Notification Required	Extraordinary servicing fee per 13 CFR 120.221(b)				X	
	Transfer, sell or pledge more than 90% of a loan				X	
	Transfer, sell or pledge 90% or less of a loan		X			
	Decrease SBA's Guaranty percentage E-tran Functionality Coming Soon!		X			X
	Terminate SBA Guaranty prior to Guaranty Purchase E-tran Functionality Coming Soon!		X			
	Extend maturity prior to stated maturity date for loans in Regular Servicing	X				
	Extend maturity prior to stated maturity date for loans in Liquidation E-tran Functionality Coming Soon!		X			
	Reamortize / restructure loan ⁶ E-tran Functionality Coming Soon!		X			
	Change interest rate within loan program guidelines ^{2,4} E-tran Functionality Coming Soon!		X			
	Change EIN or SSN		X			
	Change Obligor's address or legal/trade name of business	X				
	Transfer loan into liquidation status ⁷	X				
Return loan to regular servicing status E-tran Functionality Coming Soon!		X				
Change a loan to PIF status ⁷	X					
Assumption of loan without release of original Borrower / Guarantor		X				
Change loan from revolving to non-revolving	X					

Page 1
continued



Servicing and Liquidation Actions 7(a) Lender Matrix

	Unilateral Action			Requires prior SBA Approval	Form 2237 ^{1,2}
	E-Tran	Center	N/A		
No Approval or Notification	Change in Borrower's legal structure ⁸		X		
	Subordinate / release lien ³		X		
	Defer payments ⁶		X		
	Release / substitute collateral ⁷		X		
	Accept prepayments (subsidy recoupment fee may apply)		X		
	Changes to Loan Authorization, including changes to use of proceeds		X		
	Correct typographical errors in loan documents		X		
	Make loan that does not adversely affect collateral position of SBA guaranteed loan		X		
	Change flood, life or hazard insurance requirements ⁹		X		
<i>Liquidation Actions</i>					
Liquidation Plans and amendments for loans approved under CLP procedures (Liquidation Plans are encouraged for other loans as an aid to recovery)				X	
Sale of collateral or acquired collateral to the Lender, an Associate of Lender, employee of Lender or Close Relative of an employee of the Lender				X	
Private sale of collateral or acquired collateral to an Obligor, or Close Relative or Associate of an Obligor				X	
Public, private or negotiated sale of collateral (other than those above)			X		
Initiate foreclosure proceeding ¹⁰			X		
Obtain Phase I or Phase II environmental audit (may be needed for possible acquisition of property or other reason)			X		
Deed in lieu of foreclosure that will not prevent recovery from Borrower / Guarantors			X		
Enter Protective Bid at foreclosure sale			X		
Purchase or pay prior lien			X		
Site visit			X		
Obtain current Appraisal			X		
Pay real estate taxes			X		
Hire auctioneer or appraiser			X		
Postpone liquidation action if necessary			X		
Abandon collateral when justified			X		
<i>Litigation Actions</i>					
Litigation Plan and budget (for Routine Litigation ¹¹ and legal fees under \$10,000)			X		
Litigation Plan and budget (if legal fees exceed \$10,000 or Non-routine Litigation ¹² ; or if Routine Litigation becomes non-routine)				X	
Amendments to Litigation Plans where material changes arise that were not addressed in the original plan				X	
Any amendments to an approved Litigation Plan if fees increase by more than 15%				X	

Lenders Should direct their actions, requests and questions to the following email addresses:

National Guaranty Purchase Center

General liquidation actions and questions: loanresolution@sba.gov

Expense reimbursement submission and questions: sbacpc@sba.gov

Wrap up submission and questions: sbachargeoff@sba.gov

General Purchase questions: sbaPurchase@sba.gov

Questions regarding in process Purchases: Purchasestatus@sba.gov

Secondary market questions: secondarymarketliq@sba.gov

Please visit the [National Guaranty Purchase Center Website](#) for all Liquidation and Purchase (non-SBAExpress) related questions.

Commercial Loan Service Centers

Lenders Should direct their servicing action/request and SBA Form 2237 checklist to:

[Fresno Service Center at fsc.servicing@sba.gov](mailto:fsc.servicing@sba.gov)

[Little Rock Service Center at lrrsc.servicing@sba.gov](mailto:lrrsc.servicing@sba.gov)

Please visit the [Commercial Loan Service Centers' Website](#) for all Servicing and SBAExpress Purchase related questions.

Lenders may contact their District Office Lender Relations Specialists or Brand Managers if they have questions regarding the use of this matrix.

[For the most recent version of this matrix, click here!](#)

Footnotes

- ¹ After closing a PLP loan, the lender *Must* send to the appropriate CLSC (Ft. Smith or Little Rock) a copy of the executed Authorization, including any modifications. (SOP 30 10 5, subpart B, chapter 7)
- ² SBA defines a fixed rate loan as one that bears the same interest rate for the entire term of the loan. After loan approval and prior to first disbursement, the lender may change the initial Note rate, including changing the base rate, the spread over the base rate, or from a fixed rate to a variable rate or from a variable rate to a fixed rate, provided the new interest rate does not exceed the maximum allowable interest rate at the time of the loan application. The lender *Must* obtain the Borrower's written agreement and *Must* notify the LOPC of the change or make the change through E-Trans servicing. After the loan is disbursed, on a variable rate loan, the lender may change the base rate or the spread over the base rate as long as the new base rate or the spread is based on a method permitted when the loan was approved and is consistent with the interest rate regulations at the time the loan was approved. The lender *Must* obtain the Borrower's written agreement and *Must* notify the appropriate CLSC of the change or make the change through E-Trans servicing. If SBA changes the permissible maximum interest rates for a specific 7(a) program, the new rates apply only to loans approved on or after the effective date of the change.
- ³ Lenders are reminded not to engage in any action that could create a Preference. (See definition in 13 CFR 120.10 - "Preference is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making, servicing, or liquidation of a business loan with respect to such things as repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a certificate of deposit or acceptance of a deposit or comparison loan, without SBA's consent.") Especially problematic would be a lender's actions in connection with a non-monetary default on its own loan that may adversely affect an SBA guaranteed loan to the same Borrower.
- ⁴ Compromise with Borrower or Guarantor of all or a portion of accrued interest is permitted as a unilateral action.
- ⁵ Lender's Purchase demand *Must* be made within 180 days after loan maturity or completion of liquidation / litigation actions, or SBA may be released of its liability on the loan Guaranty.
- ⁶ For loans that have been sold in the secondary market, any payment modifications, interest rate changes, extensions of maturity and deferrals over 90 days (cumulative) *Must* have investor approval. Lenders *Should* send these Servicing Requests directly to the FTA, with notification of investor approval forwarded to the SBA CLSC. Lenders are also reminded that requests for extensions of maturity on short-term loans (less than a year) require payment of the additional Guaranty fee associated with loans with a maturity of more than one year, within 30 days of SBA approval or Lender's change in E-Trans, unless the additional Guaranty fee owed or an explanation that the extension is solely for purposes of orderly repayment (subject to determination by SBA). For a loan not sold in the secondary market, lenders may extend the maturity up to a maximum of 10 years beyond the loan's original maturity if the extension will aid in the orderly repayment of the loan.

Matrix Footnotes

1. After closing a PLP loan, the lender Must send to the appropriate CLSC (Fresno or Little Rock) a copy of the executed Authorization, including any modifications. (SOP 50 10 5, subpart B, chapter 7)
2. SBA defines a fixed rate loan as one that bears the same interest rate for the entire term of the loan. After loan approval and prior to first disbursement, the lender may change the initial Note rate, including changing the base rate, the spread over the base rate, or from a fixed rate to a variable rate or from a variable rate to a fixed rate, provided the new interest rate does not exceed the maximum allowable interest rate at the time of the loan application. The lender Must obtain the Borrower's written agreement and Must notify the LGPC of the change or make the change through E-Tran servicing. After the loan is disbursed, on a variable rate loan, the lender may change the base rate or the spread over the base rate as long as the new base rate or the spread is based on a method permitted when the loan was approved and is consistent with the interest rate regulations at the time the loan was approved. The lender Must obtain the Borrower's written agreement and Must notify the appropriate CLSC of the change or make the change through E-Tran servicing. If SBA changes the permissible maximum interest rates for a specific 7(a) program, the new rates apply only to loans approved on or after the effective date of the change.

Footnotes

7. Lenders Should use SBA Form 1502 to transfer loans to liquidation status and report loans as PIF prior to Guaranty Purchase. Lenders may use E-Tran to correct 1502 reporting errors and Should use E-Tran where it is listed as an option in the Matrix. If a permitted change is made in E-Tran, a duplicate notice for the change Should not be sent to a CLSC. After Guaranty Purchase, Lender's Must use pay.gov to remit SBA's share of any recovery or payment, including payments that result in PIF.
8. SBA Must be notified if a change in Borrower legal structure involves changing legal name, trade name, EIN or SSN.
9. SBA considers it to be a prudent lending practice for lenders to maintain insurance on worthwhile collateral.

Miscellaneous Issues

- ✓ Payment of Guaranty Fee
- ✓ 1502 monthly reporting “On a monthly basis, all SBA loans are reported on the SBA 1502 report”
- ✓ servicing fee
- ✓ Inspections
- ✓ Insurance
- ✓ Verification that Taxes are Paid
- ✓ Review of Financial Records

How to turn a Denial into a Repair

- When there is a problem – Anticipate it
- Don't Ignore (SBA will find it)
- Best to address up front with 10 Tab submission
- Address and Handle Excess legal fees.

When to Request Purchase

“A lender first may request payment on the SBA guaranty for loans made under most SBA loan programs following a 60-day uncured delinquency. However, in all loan programs SBA strongly encourages lenders to fully liquidate the loan prior to requesting purchase.”

“The process at NGPC begins when you notify the appropriate CLSC that workout is not feasible and liquidation is necessary. The loan is then shipped to the NGPC and classified as in liquidation.”

“Also note that SBA requires all lenders to make timely site visits to assess the value and take an inventory of loan collateral in order to assess workout possibilities and to develop a meaningful liquidation plan.”

When to Request Purchase (Special Rule for LowDoc Loans)

Special rules for certain loan programs:

LowDoc Loans (SOP 50 50 4A Ch. 6, Para. 6.c.)

A Lender can request purchase when:

- (a) Lender has liquidated all personal property, except in bankruptcy situations, and
- (b) Lender has indicated in writing how it will pursue all other sources of recovery.
- (c) SBA will pay a maximum of 120 days of accrued interest.
- (d) SBA will share in the reasonable and necessary expenses on a pro-rata basis up to its share of total recoveries.

When to Request Purchase (Special Rule for SBAExpress)

Special rules for certain loan programs (Continued):

SBAExpress loans (SBAExpress Program Guide, Sec. 8)

Express Loans are handled by either the Little Rock or Fresno Commercial loans Centers – whichever is appropriate for your institution.

Lender can request purchase when it has fully liquidated all collateral and pursued all avenues of collection. Exceptions:

- (a) SBA will immediately process the purchase request of all Export Express Loans; and
- (b) SBA will immediately process the purchase request of any SBAExpress loan that:
 - (a) Has a principal balance of \$50,000 or less at the time of the purchase request or Involves, regardless of the loan balance, bankruptcy, judicial foreclosure, litigation or other unusual liquidation circumstances likely to extend the liquidation process more than 90 days past the earliest date that the lender could request purchase. (Generally, the earliest date a lender could request SBA to purchase is when there has been an uncured default exceeding 60 days.)
 - (b) When requesting the purchase of an SBAExpress loan with a balance of \$50,000 or less, the lender generally will not be required to substantiate the liquidation of business assets, although the lender must document the liquidation of all business assets in its wrap-up report. SBA will pay up to 120 days of interest.

Request Liquidation Transfer Status

How to request liquidation status transfer

“The process begins when you notify SBA to reclassify a loan into liquidation status. Therefore, before any action can be done at the NGPC the loan will have to be transferred into liquidation status. The SBA will acknowledge your notification and authorize you to accelerate the maturity of the defaulted loan, if appropriate. In addition, you will also be authorized to continue servicing this account and, should liquidation and/or litigation become necessary, completely liquidate or sue upon any loan instrument. Please note that you are required to pursue the entire indebtedness regardless of the guaranteed percentage or any purchase thereof.”

When the loan is transferred into liquidation status, remember to change the status code on your monthly 1502 status report to “5” for in-liquidation status.

1. Justification for transfer to "liquidation" status: (e.g., Non-Payment, Bankruptcy [attach 341 Notice - Meeting of Creditors], Property Abandoned, 3rd Party Litigation/Foreclosure by Prior Lienholder, Business Closed, other)
 2. Cause of business breakdown & workout attempts: Include comments on management assistance offered and/or given, and attach copy of the most recent field visit report or memo. SBA requires a site visit to the borrower's business premises and the site of any other worthwhile collateral within 60 days of an unremedied default in payment, or as soon as possible if there are assets of significant value that could be removed or depleted. Whether or not a payment default exists, a site visit must be conducted within 15 days of any event which causes a loan to be placed into liquidation status.
 3. Describe any "non-SBA" loans lender has with any borrower, guarantor or principal: if none, so state. If yes, please attach copies of loan documentation (e.g., Note, Security Agreement, UCC filings, Deed of Trust, Mortgage, etc.) and a proposal as to how you will allocate and share expenses and funds recovered.
 4. List name, address, SSN and Tax ID# for all obligors and guarantors: Include copies of demand letters if sent, and whether life insurance is still in force if it was required.
 5. Complete the attached Litigation Plan if court action is necessary and any of the following are present: (1) the litigation will be contested; (2) you have any non-SBA loans to the borrower, guarantors or principles; or (3) the litigation expenses are expected to exceed \$5,000.00.
 6. General Recovery Plan: Briefly describe the proposed liquidation process and the estimated time. Discuss actions to be taken to dispose of all collateral (e.g., voluntary sale, abandonment, judicial or non-judicial foreclosure, public auction, compromise settlement, deed in lieu, etc.). It is important to comment on any potential environmental/toxic concerns, whether hazard insurance is in effect or if purchase of insurance is recommended, and if there are any significant items of collateral missing. If it appears the liquidation value of all collateral is insufficient to fully repay the loan, include discussion of what other options are considered feasible compared with the estimated costs to pursue (e.g., litigation against guarantors). SBA procedures require that business assets be liquidated first and compromise alternatives be explored, if feasible, prior to foreclosure against a personal residence.
7. See Following Page

Liquidation Plan.

“Prior to initiating recovery actions, SBA encourages lenders to prepare a liquidation plan based on the facts known and reasonable assumptions. As a guide, you may use SBA Form 1979 to prepare your plan. Only liquidation plans for loans authorized under the Certified Lender Program must be approved by SBA.”

www.sba.gov/sites/default/files/bank_sb_a1979.pdf

How to Request Purchase

“SBA requires that lenders use the NGPC provided Tab Pages to separate their purchase package. Tabbed separated packages deliver a highly organized and more efficient package that may result in a faster processing time.”

“Purchase requests, along with all documents required for processing, should be submitted to the National Guaranty Purchase Center (NGPC). If the loan is in regular servicing status in either the SBA Fresno or Little Rock Commercial Loan Service Center request the appropriate center to send the SBA loan file to the National Guaranty Purchase Center (NGPC). If your loan is in liquidation status and already assigned to the Herndon center, send your guaranty purchase request directly to the (NGPC).”

“The submission of the guaranty purchase package to the NGPC in Virginia and the request to have the file shipped from the applicable servicing center to the NGPC should be done simultaneously to assure quicker processing of your request in the NGPC.”

Sending electronic files to SBA

“We encourage all lenders to send purchase packages and other requests electronically. We now have a very useful tool available that allows lenders to send in large documents electronically without worrying about the email server size limits. The following link will take you to the Send This File system (www.sba.gov/content/send-file). After clicking on it, find the National Guaranty Purchase Center (NGPC) link, then simply click on “Send a file to the NGPC”. From here you will be able to send a large document to a specific team (see the drop down menu).”

The SBA Mandatory 10 Tab

Regular 7(a) Guaranty Purchase Package Tabs

Version dated 10/2011

Print Form

This page and the following Tab Pages were designed to help you assemble your guaranty purchase request package. The use of the following Tab Pages is mandatory for all guaranty purchase packages. Please read and follow instructions provided on each tab sheet. Failure to meet the requirements outlined in these instructions could result in unnecessary delays and/or possible return of the purchase package. If you are unable to provide required documents, please explain in advance to expedite processing. We recommend using bright colored paper or numerical dividers. Please ensure that all documents are clearly labeled, stapled or clipped, and presented in the order outlined on this page behind the appropriate tab.

Thank you for your cooperation!

For streamlined purchase of loans where SBA's share of the remaining balance is under \$10,000 and loan is not an early default, please go to Tab 10.

Click here to see if you're using the most current version of the [Tab Pages](#).

Tab 1 - Demand Letter

- Reason for Business Failure

Tab 2 - Loan Authorization

Tab 3 - Eligibility

- PLP Loan Eligibility Checklist OR LowDoc Loan Eligibility Checklist
- Eligibility Statement for STAR Loan Program
- Recovery Act Loans of 2009
- Franchise Agreement

Tab 4 - Legal Documentation

- Note
- Guaranties
- Security Agreements
- UCC Lien Searches showing SBA's lien
- Title Insurance and Recorded Deeds of Trust/Mortgages
- Purchase/Sale Agreement
- Legal Pleadings
- SSN or EIN for borrowers and guarantors
- Statement of Personal History (Form 912)
- FDIC Bank Transfer

Tab 5 - Disbursements

Tab 6 - Transcript of Account

Tab 7 - Early Default

- IRS Income Tax Verification
- Evidence of Equity/Asset Injection
- Standby Agreement and Note
- Credit Memorandum
- Change of Ownership Information

Tab 8 - Reconciliation of Business Personal Property Collateral

Tab 9 - Collateral Disposition

- Appraisals
- Site Visit Report
- Report of Sale or Release of Collateral
- Liquidation Wrap-Up Report

Tab 10 - General Information

- Wire Transfer Form
- Environmental Questionnaire/ Phase I and Phase II Environmental Report
- Assumption Agreement, Compensation Agreement
- Streamline Purchase
- CPC Tabs

- the SBA Mandatory 10 Tab

- Different but similar 10 Tab for Express Loans

<http://www.sba.gov/content/10-tab-express-purchase-demand-kit>

<http://www.sba.gov/content/10-tab-express-purchase-demand-kit-with-arc-loan-provisions>

- This 10-Tab is the detail of what is needed to realize on the SBA Guaranty

<http://www.sba.gov/content/7a-guaranty-purchase-package-tabs>

Under 13 CFR 120.520(b), SBA is not obligated to purchase the guaranteed portion of a loan unless a Lender has submitted to SBA documentation that SBA deems sufficient to allow SBA to determine whether purchase of the guaranty is warranted. Additionally, under 13 CFR 120.520(c), a lender's failure to provide sufficient post-purchase documentation may lead to an initiation of an action for recovery from the lender for moneys paid by SBA to a registered holder on a guaranty. For these reasons, SBA has the right to request additional documentation other than the items listed on this index, and the Lender must comply with SBA's request.

U.S. Small Business Administration National Guaranty Purchase Center, Herndon, Virginia 20170

Purpose of the 10 Tab

The Purpose of the 10 Tab is to convey all the information SBA needs to determine if the Lender:

- A. Made an eligible loan
- B. Disbursed loan proceeds in accordance with the terms of the authorization
- C. Closed the loan in accordance with the terms of the authorization
- D. Handled and serviced the loan in accordance with prudent lending practices
- E. Did not create a preference for itself
- F. Fully liquidated and litigated the loan in accordance with prudent lending practices
- G. Make sure the lender has made a site visit and kicked the tires
- H. Properly accounted for all payments and recoveries
- I. Did not violate the 120 day rule.

“Primary oversight of your SBA portfolio will be centered around the guaranty purchase review process, timely quarterly status updates, and through the thorough review of liquidation wrap-up reports which Lenders must submit to SBA at the completion of liquidation.”

Common Errors found in Purchase Packages

1. There are no tabs or the package is not organized in order of the checklist or authorization. (Please note that as of August 1, 2007, the new executed tabs are required. Packages without them will be returned.)
2. The transcript is not signed and/or is not in the SBA 1149 format. All transcripts must minimally include the following:
 - (a) SBA loan name and 10-digit loan number
 - (b) Method used for interest computation (360 day or 365 day)
 - (c) Date and amount of each disbursement
 - (d) Date and amount of each payment showing principal and interest applications
 - (e) Date to which interest is paid (which should be the same date payment was received)
 - (f) Interest rate changes (for variable rate loans)
 - (g) Next payment due date (defined as the "default date," at which point the interest rate becomes fixed; no changes to the rate should be reflected thereafter)
 - (h) If applicable, amount of Lender's successful bid at foreclosure sale (reflected on the transcript as a credit to the principal balance)

Common Errors found in Purchase Packages

3. Early default issues
4. Evidence of equity injection is missing
5. Settlement sheets are incorrect or do not have supporting documentation to evidence disbursements
6. Post default UCC's are missing or are incorrect.
7. If the loan is an early default by a PLP lender, the credit memo and/or SBA Form 912 are often missing.
8. IRS Income Tax Verification is often missing or incorrect.
9. If you are submitting a Low Doc loan for purchase, the liquidation of all non-real estate assets must be completed before the purchase request may be submitted unless the borrower has filed bankruptcy.

Common Errors found in Purchase Packages

10. For all loans, in situations where liquidation has occurred at the time that purchase is being requested, the Report of Sale and Appraisal(s) (or some other satisfactory valuation of collateral), or final wrap up report are often missing. The Site Visit Reports are often missing.
11. Wire Transfer Information is Missing
12. Environmental Questionnaire/Phase I, II is not provided when required
13. Risk Management Database information is missing
14. LowDoc Eligibility Checklist (if LowDoc Loan) is not provided when required

Overview of the 10 Tab

Tab 1. – Lender's demand to SBA

Tab 2. – Loan Authorization (and other loans)

Tab 3. – Eligibility

Tab 4. – Legal documents

Tab 5. – Settlement Sheet and Use of Proceeds

Tab 6. – Certified Transcript

Tab 7. – Early Default Information

Tab 8. – Reconciliation of business personal property

Tab 9. – Verification of collateral disposition

Tab 10. – Wire Information and other required documents

Tab 1

Lender's demand letter to SBA on SBA's preformatted form

- (a) The demand letter should be sent with a memo explaining the reason for the business failure and/or the loan default.
- (b) The lender must liquidate all business personal property before requesting the SBA to honor the guaranty.
 - (i) Business personal property does not have to be liquidated if: (1) the borrower has filed for bankruptcy, or (2) the loan has been sold in the secondary market, and the lender declined to purchase.
 - (ii) An explanation should be sent to the SBA if business personal property has not yet been liquidated and does not fall within the above-referenced exceptions.
- (c) Must be submitted within 180 days of maturity of the loan, completion of liquidation, or debt collection litigation in connection with a matured loan.
- (d) Indication that the Streamlined Program will be used (under \$10,000)

Tab 2

Lender must meet the requirements in the Loan Authorization

- (a) Send copies of the Loan Authorization and any amendments to the SBA.
- (b) In addition to the Loan Authorization and any amendments, the lender should include any loan modification documents as well as deferments, workout agreements, interest rate adjustments, and payment revisions.
- (c) At this point in the process, the lender should pay particular attention to collateral taken, guarantors, lien positions, and use of proceeds because these items are crucial later in the process.
- (d) In addition to the Loan referenced in the Loan Authorization, Lender must inform SBA of all other SBA Guaranteed (with loan information) and non-SBA Guaranteed loans originated by lender to the same borrower.

Tab 3

Evidence of eligibility

- The lender should submit the required eligibility checklist.
- If the business was a franchise or dealership, the lender must certify that the business is on the Franchise Registry and provide a Certification of No-Material Change. If the business is not on the Franchise Registry, the lender should provide a copy of the Franchise Agreement to ensure that it was an eligible franchise.

“If the business is a franchise, it will be eligible unless the franchiser retains power to control operations to the extent that it is equivalent to an employment contract. To be eligible, the franchisee must have the right to profit from labors proportionate with ownership.”

- If the business sold fuel or gasoline, the lender should provide a copy of the Fuel Supply Agreement or Jobber Agreement.

Tab 4

All mandatory legal documentation.

- (a) This tab outlines the documentation required for the Legal Review.
- (b) Copy of the original Note (SBA Form 147) in addition to any Note Modifications, Amendments, Deferments, and Workout Agreements.
- (c) Statement of Personal History (Form 912) and a Social Security Number or EIN for each guarantor.
- (d) Based on review the Loan Authorization, submit the following required documents if applicable:
 - 1) Guaranties (SBA Form 148)
 - 2) Security Agreements (SBA Form 1059, use of the form is optional)
 - 3) UCC Lien Searches with the date of post default UCC Search
 - 4) Title Insurance and Recorded Deeds of Trust/Mortgages
 - 5) Purchase/Sale Agreements
 - 6) Legal Pleadings & Schedules, Bankruptcy Filings and Court Motions
 - 7) Other potentially applicable documents, such as a Certificate of Ownership and/or Certificate of Title of Vehicles or Manufactured Homes, Assignment of CDs or Stock, Assignment of Life Insurance, Landlord's Subordination, and/or the Lease Agreement

Tab 5

Settlement Sheet (SBA Form 1050).

- ✓ SBA will review the Settlement Sheet and disbursements to analyze whether the loan proceeds were used in accordance with the Loan Authorization and for eligible business purposes.
- ✓ The lender must submit documentary evidence to support proper disbursements. Documentary evidence can include a copy of cleared joint payee checks, paid invoices, and executed contracts.
- ✓ SBA requires that SBA Form 1050 be executed by borrower. Many closers use the HUD-1 (Settlement Sheet) in documenting the disbursements of loans. The HUD-1 (Settlement Sheet) can be attached to SBA Form 1050, as evidence of these disbursements; and the borrower can execute SBA Form 1050.

Evidence of Use of Proceeds

“A key element in the process is reviewing each disbursement to determine that loan proceeds were used in accordance with the Loan Authorization and for eligible business purposes. For loans made on or after 8/1/08, only one settlement sheet is required; however, documentary evidence is required for all disbursements. For loans made prior to 8/1/08, all settlement sheets must be included with evidence.

Documentary evidence

Copies of the cleared joint payee checks, Paid Invoices, and Final & Executed Bills of Sale as applicable for each disbursement must be itemized. Include totals for each disbursement category.

Did loan proceeds payoff lender's interim loan?

If Yes, please provide a copy of the interim loan's Note and evidence of use of proceeds.

Did any of the loan proceeds (other than working capital) go directly to the borrower?

If Yes, please provide supporting documents verifying these funds were used according to the Loan Authorization (copies of checks, paid invoices, receipts, etc).

****Supporting documentation must be itemized and organized**”**

Tab 6

Certified Transcript of Account with all required information.

This a document that accounts for disbursement of loan proceeds and applications of payments.

SBA prefers that lender use SBA Form 1149, but lenders can use their own transcript if it contains all of the information required by Form 1149

- SBA loan name and 10 digit loan number (SBA loan number, not lender's number);
- Method used for interest computation (360 days or 365 days);
- Date and amount of each disbursement;
- Date and amount of each payment showing principal and interest applications;
- Provide interest paid "from" and "to" dates for all payments;
- Date interest rate changes occurred;
- Next payment due date ("default date");
- Record of recoveries and expenses;
- Indicate all deferments with dates with principal and interest or interest only;
- Note source of funds if payment was applied to principal;
- Indicate if your ending balance coincides with 1502 report; and
- If applicable, provide amount of lender's successful bid at foreclosure sale.

Transcript of Account

“For purposes of transcript analysis in the guaranty purchase review process, **SBA will consider the date of default to be the first day on which the full amount of a regular installment payment was due and was not paid in full.** The default date will not advance after a loan exceeds 90 days past due unless the loan meets one of the following criteria for restoration to performing status:

1. A workout arrangement with regular payments is in effect that provides for payments in an amount less than the stated payment amount required by the note. The lender must document its loan file with respect to the terms of the workout. A deferment followed by regular loan payments may qualify as a workout.
2. The borrower makes sufficient payments to bring the loan payment status to less than 60 days past due and continues to maintain this status of less than 60 days past due by making regular payments.

If a loan is not restored to performing status, borrower payments received by the lender more than 90 days after the default date may be applied by the lender to loan interest and/or principal according to the terms of the note. However, collections that derive from collateral liquidation, insurance proceeds, distributions from the estate of the debtor, or other third party sources of funds must be applied as principal reductions. Guarantor payments may be applied to interest and/or principal.”

Tab 7

Early Default Information

If the loan is not in early default, the lender must so indicate and then skip this tab.

If the loan is in early default, the lender must provide

- **IRS Income Tax Verification,**
- **Credit Memorandum,**
- **Standby Agreement (if applicable),**
- **Copy of the business valuation (if change of ownership), and**
- **evidence of cash equity or asset injection.**

Evidence of Cash Equity/Asset Injection

“Lender must provide evidence that cash or assets were injected into the business. All evidence must be dated prior to loan disbursement. Evidence must be itemized and organized and show the purpose, breakdown, and totals for multiple paid bills and checks. Examples of Evidence:

- Credit card receipts indicating item purchased;
- Paid invoices with vendor receipts or corresponding cancelled checks; or
- Processed checks (must show back of check with bank processing stamp; Borrower bank statement that shows beginning and ending balances prior to loan disbursement. Dated within 2 months of disbursement.
- Settlement Statement such as HUD 1 or closing agent's settlement statement dated and signed by borrower and closing agent.

Tab 8

Reconciliation of business personal property collateral

- The lender must itemize all original collateral with a unit value of \$5,000 or more specified in the Loan Authorization. Lender must include a brief description of collateral and serial number if applicable.

- If applicable, the lender must provide proof of perfection of a required security interest on motor vehicles or manufactures homes. The lender should provide a copy of the certificate of ownership and/or any titles on a vehicle.

- Then, the lender must reconcile all original collateral against list of post-default collateral. Any discrepancies between the two lists must be resolved.

Tab 9

Verification of collateral disposition.

- ❖ Copy of the appraisals of the collateral property at origination and prior to liquidation. The origination appraisal must be dated prior to closing. The post-default appraisal should be less than 120 days old but no more than one year old.
- ❖ Site visit report preformed within 15 days of an adverse event that causes the loan to be placed into liquidation status or within 60 days of payment default. The lender must put forth every effort to secure and safeguard collateral and provide a post-default Site Visit Report.
- ❖ Report of Sale of collateral or any other disposition activity relating to the collateral. If collateral has been abandoned, lender must document and justify the basis for the decision.
- ❖ Wrap-Up report if the loan is ready for Charge-Off or a Quarterly Status Report which describes the status of liquidation to date.

Tab 10

Wire information and other required documentation.

- The lender must submit the SBA's Wire Transfer Form to ensure prompt and accurate payment.
- This tab should also include any other documents that are required by the Loan Authorization or relevant to the guaranty purchase.
- If applicable, lender should submit Environmental Questionnaire, Phase 1 and 2 Environmental Reports, Assumption Agreements, and Compensation Agreements.
- Source of Equity Injection is to be attached here
- Streamlined Purchase (under \$10,000) is to be attached here
- Care and Preservation of Collateral (CPC) Tabs
- Itemization (along with support) for routine legal expenses (under \$10,000)

Care and Preservation of Collateral (CPC) Tabs

Requirements

In order for SBA to process your request for reimbursement of expenses the following tabs must be completed. Please be sure to complete all information requested and provided the supporting documentation as noted.

Recoverable Expenses are SBA approved, necessary, reasonable, and customary costs incurred to collect amounts due under the Note, to enforce the terms of the Loan Documents, or to preserve or dispose of collateral, which according to the terms of the Note can be added to the principal balance of the loan.

Non-Recoverable Expenses are the costs associated with the liquidation or litigation of an SBA Loan that cannot be added to the principal balance of the Note because, for example, the costs are not related to collection of amounts due under the Note, enforcement of the terms of the Loan Documents, preservation or disposal of the collateral for the loan; were not necessary, reasonable or customary; or were not incurred in accordance with prudent lending practices or Loan Program Requirements.

SBA requires copies of detailed invoices to support all reimbursements and expenses deducted from liquidation proceeds. Copies of invoices should clearly identify what service was provided, date of service, by whom, at what location (at the Commercial or Residential Real Estate or other site) and the costs involved. SBA will not be able to reimburse expenses using Lender's internal memos, spreadsheets, accounting records, or other internal documents. Lenders must submit actual invoices on vendor/service provider letterhead detailing service location, service provided, and billing total.

NOTE: Please limit expense reimbursement requests to quarterly or \$5000 or more.

Please be sure to explain any unusual services or unusually high fees or expenses. If you are reimbursed for expenses that are then refunded by the vendor, please be sure to refund SBA's share to SBA.

The attached tabs have been provided to facilitate an efficient process to review and process requests for reimbursements. If more space is needed to provide information, please attach additional sheets.

TAB 1	CPC Information Sheet
TAB 2	Collateral Worksheet
TAB 3	Recovery Documentation
TAB 4	Legal Fees
TAB 5	Valuations
TAB 6	Asset/Lien Searches
TAB 7a	Preservation of Collateral Expenses
TAB 7b	Miscellaneous Expenses

Submit Electronically: Send This File

(Select 'sbacpc@sba.gov' as recipient)

Fax: (202) 481-4599

Mail: U.S. Small Business Administration

Attn: CPC Department
1145 Herndon Parkway
Herndon, VA 20170

CPC and Legal Expense Reimbursement.

“Lenders must use the CPC Tabs to request reimbursement of care and preservation of collateral (liquidation and legal) expenses and to submit documentation to support those already deducted from recoveries www.sba.gov/sites/default/files/CPC_Tabs_0.pdf The Tab system defines exactly what is required in order to have your expenses reviewed and reimbursed in a timely fashion. Expenses cannot be reimbursed until the guaranty has been honored. However, expenses can be considered during the guaranty purchase process if you include a CPC Tab package with your 10 Tab Guaranty Purchase Package.”

“Legal fees over \$10,000 cannot be considered during the guaranty purchase process. Please prepare those packages for review after the purchase is complete. Additionally, please note that we often run into problems when a lender sends us general billings that do not show hourly fees and work performed by counsel. The invoices should itemize costs and hourly fees. SOP 50 51 3 discusses recoverable versus non-recoverable expenses. Please refer to the SOP for guidance on expenses that SBA will reimburse.”

SBA's 10 Tab Review Process

Once the ten tab package has been received, an SBA official will review the package for completeness. Then the package will be sent for review. The major components of a guaranty purchase review are:

- A. **Origination:** SBA will determine whether the loan was originated in accordance with 120 of Title 13 of the C.F.R. and the SOPs.
- B. **Closing:** SBA will analyze whether the loan was closed in the manner required by the Loan Authorization.
- C. **Servicing:** SBA will evaluate whether the lender's servicing of the loan complied with the Loan Authorization, the regulatory requirements, and prudent lending practices. Another inquiry into the servicing facet is whether the actions by the lender caused harm to the SBA.
- D. **Liquidation and Litigation.** Finally, SBA will review whether the liquidation and collection of the defaulted loan followed all program guidelines and was handled prudently.

SBA CHARGE OFF PROCEDURES SUMMARY & SUGGESTED WRAP-UP REPORT

What is SBA's Policy Regarding Charge Off Accounts?

Charge off is the process by which SBA recognizes a loss and removes the uncollectible loan account from its active receivable accounts. The SBA's policy is to be diligent and thorough in collection of debt and to promptly charge off all uncollectible accounts to more accurately reflect the status of the individual account and the Agency's entire portfolio. It should be noted that a charge off is merely an administrative determination that does NOT affect SBA's rights against any obligor nor reduce the SBA's (or a participant lender's) ability to proceed with any available remedy. Please keep in mind that the SBA does NOT provide for a partial charge off and if any portion of the debt is collectible in the near future without excessive costs, the charge off action must be delayed.

When is a Charge Off Justified?

A charge off is justified when you have complied with all requirements of collection and liquidation and further collection of any substantial portion of the debt is doubtful. The determination to justify a charge off may be based on one or more of the following:

- a) You must have exhausted all efforts in cost-effective recovery from:
 - Voluntary payments from the borrower;
 - Liquidation of collateral;
 - Compromise with obligor leaving only a deficiency balance; and
 - Consideration has been given to any legal remedies available so that no further reasonable expectation of recovery remains.
- b) Estimated costs of future collection exceed any anticipated recovery;
- c) Obligor cannot be located or is judgment proof;
- d) The Lender/SBA's rights have expired (e.g., statute of limitations, restrictions of State law, Agency policy);
- e) Debt is legally without merit;
- f) Adjudication of a Chapter 7 Bankruptcy as a no asset case, or completion of Chap 11/13 case;
- g) The inability of the Lender to effect further worthwhile recovery.

When Can't You Charge Off a Loan?

If you are receiving regular loan payments as outlined in the note or a workout Plan and/or there is additional collateral for liquidation, you **cannot** charge off an account.

What Are the Procedures for Charge Off?

You must evaluate the status of all collateral and each obligor, which includes debtor, guarantor, and cosigner, before you can charge off a loan. You must also document the file that a compromise offer was solicited if applicable and that any further collection costs would likely exceed recovery. If so, you may then prepare a Wrap-up and Charge-Off summary for submission to SBA. A suggested format and description is provided below.

Final Wrap Up /Charge-off Report

Date: _____ Borrower Name: _____

SBA Loan Number _____ Principal Balance _____

1. An appropriately detailed narrative identifying how and when collateral was liquidated and the gross recovery, expenses and net amount applied on the loan. Identify any remaining items of collateral which are being recommended for abandonment and provide justification. (If this includes a lien on a primary residence, provide a statement outlining attempts to compromise the debt.) Include copies of the summary sections of any appraisals made on any loan collateral to include executive summaries of any environmental reports/Phase1/2/3.
2. A detailed summary of all disbursements, payments, recoveries, and expenses during the liquidation process. In addition, you will need to submit a summary explanation with copies of invoices on all CPC expense that have NOT already been reimbursed.
3. All recoveries from liquidation, compromise, or any other sources must either have been shown on transcript of account when SBA guaranty purchased or have been sent to SBA Denver Finance Center along with copy of SBA Transmittal Form 172. Please provide copies of all Forms 172.
4. If a life insurance policy had cash value, the lender should document the efforts to collect the cash value.
5. If not already provided, a copy of site visits reports or waivers.
6. Identify remaining obligors and/or guarantors who are legally liable for the remaining deficiency balance of the loan and provide TIN's (EIN or SSAN - this is important for Treasury referrals). If obligors/guarantors are no longer liable, provide the basis for release and uncollectibility (compromised, discharged in bankruptcy, operation of law, etc.). For obligors/guarantors that remain liable, provide their most current addresses if these are different from those in the Liquidation Plan and a summary of their financial condition (based on credit reports, financial statements, real property searches, etc.), and an estimate of collectibility and the consideration given to compromising the debt. If guarantors cannot be located, outline what steps were taken to locate. Include copies of demand letters sent to obligor/guarantors. **
7. Lender name, telephone number, and email address.

*** The purpose of gathering this information on loan principals is to provide SBA the data necessary for post-charge off activities conducted by SBA which may include: a) referral to DOJ Central Intake Facility (CIF) for litigation, b) referral to Treasury private collection agencies for continued collection activities, c) referral to Treasury for offset of any tax refund or other payments due the obligor, d) potential Federal salary/retirement offset, e) reporting deficiency balances to the IRS as income, f) reporting to Credit Bureaus, or, g) inclusion on the federal debarment register (CAIVRS).*

To expedite handling, please include your name, telephone number, and email address and we would greatly prefer that you submit your Wrap-up reports in either of the following methods:

Email: SBACHargeoff@sba.gov

[To Send using Send this file](#)

Fax: 202-292-3789

Charge Off.

“Once all liquidation is complete and no further recoveries are expected, the loan can be charged off. This is done by the lender submitting a final wrap-up report to SBA.”
www.sba.gov/sites/default/files/bank_final_wrapup_report.pdf

Referral to the US Treasury Offset Program.

- ✓ Once the loan has been charged off by SBA, if there are any parties that are eligible (provided they have not been discharged from bankruptcy and/or they were not released as part of an Offer in Compromise) they will be referred to the U.S. Treasury Offset Program for further collection.
- ✓ Once this takes place the servicing of the loan shifts from the lender to Treasury or their fee agents.
- ✓ If any recoveries are received they will be shared with the lender, based on the guaranty rate, and the lender's share will be forwarded to them (less any expenses incurred by Treasury).

Secondary Market Issues

Handling Secondary Market purchasers of the Guaranteed Portion of the 7(a) Loan

“Secondary Market: If a loan has been sold on the secondary market and becomes more than 60 days delinquent, and no feasible workout agreement is expected, the loan must be purchased from the secondary market to avoid excessive interest charges. SBA strongly encourages lenders to purchase directly from the secondary market holder. If the lender refuses to purchase directly, SBA will purchase from the secondary holder. To request SBA purchase the loan, the lender must provide a demand letter, the loan authorization, and a copy of the transcript of account, to SecondaryMarketLIQ@SBA.gov. If a post purchase package is not submitted with the demand, the lender must submit a post purchase package using the mandatory 10 Tab Purchase Package format within 45 days of the purchase. It is preferred that lenders send the post purchase package to the SBA at the time the request is made to purchase from the secondary market. Please be aware that SBA will purchase a loan from the secondary market without the lender’s request, if the loan is determined to be delinquent or if the investor requests that the guaranty be honored.”

Matrix Footnotes

- 6 For loans that have been sold in the secondary market, any payment modifications, interest rate changes, extensions of maturity and deferments over 90 days (cumulative) Must have investor approval. Lenders should send these Servicing Requests directly to the FTA, with notification of investor approval forwarded to the SBA CLSC. Lenders are also reminded that requests for extensions of maturity on short-term loans (less than a year) require payment of the additional Guaranty fee associated with loans with a maturity of more than one year, within 30 days of SBA approval or Lender's change in E-Tran, unless the additional Guaranty fee owed or an explanation that the extension is solely for purposes of orderly repayment (subject to determination by SBA) For a loan not sold in the secondary market, lenders may extend the maturity up to a maximum of 10 years beyond the loan's original maturity if the extension will aid in the orderly repayment of the loan.

Matrix Notes

Lender Reporting after Guaranty Purchase (Liquidation Status Reports)

- (1) Lenders Must submit a loan status report within 15 business days of Purchase by SBA from the secondary market. The report Should address the status of the Borrower, Guarantors, collateral, workout or restructuring plans, liquidation activities including sale of collateral, foreclosures and litigation. The report Should be accompanied by documentation needed for SBA to conduct a post-Purchase review.
- (2) Quarterly after Guaranty Purchase by SBA (from the secondary market or directly from the lender), lenders Must submit a liquidation status report addressing the issues in (1) above.
- (3) Lenders Must submit a Wrap-up Report for each loan once all requirements for collection and liquidation are satisfied, and further recovery actions are not cost-effective. Lenders Must notify SBA if they will continue recovery actions since loans cannot be sent to Treasury for further collection if the lender is still servicing the loan. [Click here for the suggested wrap-up format.](#)

Secondary Market Purchase

SBA strongly encourages lenders to purchase directly from the secondary market holder those defaulted loans that lenders had sold in the secondary market after loan closing. Should the primary lender refuse to purchase SBA will purchase from the secondary holder upon receipt of the documentation described below. If the primary lender purchases from the secondary market, and subsequently requests an SBA purchase, pre-purchase review submission instructions should be followed.

Documentation for secondary market purchase by SBA:

- Written notice and request for transcripts: The lender must advise SBA in writing that it will not purchase from the secondary market. SBA will then notify both Colson Services Corp. and the lender that SBA will purchase the guaranteed portion. The lender must send any future loan collections to SBA's Denver Finance Center using SBA Form 172.
- Transcript of Account: It is strongly suggested the primary lender use SBA Transcript Form 1149. Failure to provide all of the required transcript information may result in a delay of the purchase and an invoice to the primary lender for the interest expense associated with that delay.
- Executed Copy of the Loan Authorization
- Executed Copies of all Payment Modifications: Enclose copies of all deferment and other payment/terms modifications.
- Investor Approval of all Payment/Term Modifications: As required, (refer to the 1086 and applicable SOP).
- Email address to which a copy of the purchase transaction summary should be sent

The above should be sent to the Herndon Center (via regular or over-night mail only) and be clearly marked as a secondary market purchase request.

Post Purchase Review:

- Within 15 days of purchase the primary lender will submit a Post Purchase Review (PPR) documents package. Instructions for preparation of the PPR package are the same as those for submitting a guaranty purchase request for a loan not sold into the secondary market (Pre-Purchase Review). Please use the new 10 Tab System to organize your Purchase Package.

Questions?



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For more information on this topic, please see
the handouts which are available at
www.ehjlaw.com