912 Processing

I. Contents of a 912 Package

A. Field Office/Processing Center Submission Package:

- Name of originating field office/processing center;
- Name, address, SSN, date of birth, and telephone number of applicant;
- Loan amount;
- Name, address, and telephone number of lender;
- Date of offense(s), name of offense(s), location of offense(s), and detailed disposition of offenses including any court documentation (i.e., jail time, probation, fines, including dates of each event, etc.), including all available court documentation;
- Signature and date not more than 180 days prior to submission to OSO; and,
- Memorandum from originating field office/processing center with staff contact name and telephone number

B. SBA*Express* Lender Package

- Name of lender
- Name, address, SSN, date of birth. and telephone number of applicant;
- Loan amount;
- Name, address, and telephone number of lender;
- Date of offense(s), name of offense(s), location of offense(s), and detailed disposition of offenses including any court documentation (i.e., jail time, probation, fines, including dates of each event, etc.), including all available court documentation;
- Signature and date not more than 180 days prior to submission to OSO; and,
- Memorandum from lender with loan officer contact name and telephone number

Note: It is recommended that court papers that show the full disposition of any offense occuring the last 5 years. Many local jurisdications do not update the FBI mainframe.

II. Clear for Processing Authority

A. A Single Minor Offense (Misdemeanor) within the last 10 years

B. Several (3) Minor Offenses (Misdemeanor) Remote in time (10 or more years)

C. A Prior Offense that was cleared by the Director/OFA or designee

D. New Exeption as of August 1, 2008:

If a Subject Individual answers "yes" to question 8 or 9, then that individual must go through a background check and character determination unless the charge resulting in a "yes" answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor's office must be attached to the SBA Form 912.)

III. Life of 912

A. 912 package submitted by SBA*Express* lender, local field office, or Processing center to IG Office of Security Operations (OSO) at:

Angeline Williams
Office of Inspector General
Office of Security Operations
U.S. Small Business Administration
409 3rd Street, SW, Suite 5600
Washington, DC 20416

B. OSO sends fingerprint card or name check request to the Federal Bureau of Investigation (FBI)

Note: Fingerprint result receipt usually takes 3-4 weeks
Name Check results

C. OSO receives FBI fingerprint results and reviews disclosures from the applicant with the FBI results

Note: Review usually takes one week

E. OSO issues a security clearance or refers to OFA for a character determination.

F. If a security clearance is made, memo is forwarded to submitting office.

G. If a character determination is requested of OFA, decision is made within 3 working days unless there are undisclosed offenses or missing documentation to corroborate the disclosures.

Note: Missing documentation is information on undisclosed offenses including disposition of offenses not provided by the applicant or the FBI.

IV. 912 Pitfalls

a. Pre-trial diversion is considered similar to parole/probation which leaves the offense open.

b. An applicant who discloses that he was on probation but had it lifted as a means to receive the SBA guaranty is ineligible.

c. An applicant discloses arrest for a felony but convicted of a misdemeanor is not one to be waived for processing by a local office or processing center.

Questions or clarification: Contact Shawn McKeehan at (202) 205-7729 or via email at christopher.mckeehan@sba.gov

Lenders may seek the advice and assistance of the Bureau of Indian Affairs (BIA) personnel when dealing with loans collateralized by Indian lands held in trust.

k) Businesses Engaged in Promoting Religion (13 CFR 120.110 (k))

(1) A Small Business Applicant is not eligible if it is principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting.

(2) A Small Business Applicant is not ineligible merely because it offers religious books, music, ceremonial items and other religious articles for sale. The lender must consider the overall activities and business environment of the Small Business Applicant. SBA has a worksheet to assist with this process. (Religious Eligibility Worksheet in SOP 70 50 3)

l) Cooperatives (13 CFR 120.110(l))

(1) Consumer and marketing cooperatives are not eligible.

(2) Producer Cooperatives.

A producer cooperative is eligible if:

(a) It is engaged in a business activity;

(b) The purpose of the cooperative is to obtain financial benefit for itself as an entity AND its members in their capacity as businesses; and

(c) Each member of the cooperative is small.

m) Businesses Engaged in Loan Packaging (13 CFR 120.110(m))

A Small Business Applicant that receives more than 1/3 of its gross annual revenue from packaging SBA loans is not eligible.

n) Businesses Owned by Persons of Poor Character or on Probation or Parole (13 CFR 120.110 (n))

(1) The SBA cannot provide financial assistance to businesses with Associates with poor character or who are on probation or parole.

(2) An application can be accepted for processing if the individual indicates an arrest record, but was acquitted or the indictment was dismissed and the individual is not incarcerated, on probation or on parole for any offense.

(3) An individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an applicant is not eligible.

(4) To determine eligibility under this section, the Agency requires that every proprietor, partner, officer, director, and owner of 20% or more of the Applicant ("Subject Individual") must be of good character. The completion of an SBA Form 912, Statement of Personal History ("912"), by each Subject Individual is required as part of the character evaluation process and the form must be completed within 90 days of submission of the application to SBA.

Every person completing a 912 must answer each question fully giving details about any "yes" response. NOTE: A "yes" is required even when the applicant believes the record is sealed, expunged or otherwise unavailable. (This information must be kept private and confidential.) There are no exceptions to or waivers of this policy.

(a) If every Subject Individual answers questions 7, 8 and 9 as "no," normal loan processing may proceed.

(b) If a Subject Individual answers "yes" to question 7, then the Small Business Applicant is not eligible.

(c) If a Subject Individual answers "yes" to question 8 or 9, then that individual must go through a background check and character determination unless the charge resulting in a "yes" answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor's office must be attached to the SBA Form 912 and maintained in the lender's loan file.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. Currently, SBA conducts two types of background checks: (1) a Name Check, which requires a search of available records based on a person's name and social security number (SSN); and (2) a Fingerprint Check, which searches available records based on the person's name and SSN plus a complete and legibly written FD-258 Fingerprint Card.

(d) If there is a "yes" response, the lender must take the following actions:

(i) The lender must obtain a complete understanding of the reason(s) for the "yes" response and when necessary for clarification, the lender must obtain additional written explanation from the Subject Individual to include the following:

(a) Date of the offense(s) including month, day and year. If the actual day is not known, include the month and year.

(b) City and state or the county and state where the offense(s) occurred.

(c) The specific charge(s) [DUI, assault, forgery, robbery etc.] AND the level of the charge; (either a misdemeanor or felony).

(d) Disposition of the charge(s). This may include but is not limited to the following:

(i) Any fines imposed;

(ii) Any class or workshop to be attended;

(iii) Any jail time served;

(iv) If applicable, the terms of probation (including evidence and dates of successful conclusion of the probation); or

(v) Any other court conditions (such as registration as a sex offender).

(e) Assuming the court's conditions have been met, the applicant should state that all conditions of the court have been satisfied in his explanation and provide court documents evidencing that these conditions were met.

(f) The borrower's dated signature on the explanation.

(ii) When an applicant discloses a felony arrest a Fingerprint Check is required and a Fingerprint Card (FD 258) must be completed. Local law enforcement agencies will usually assist the individual with the fingerprinting. Lenders may obtain the FD 258 from their local District Office.

(iii) When an applicant discloses a past offense(s) that was classified as a misdemeanor, the background check may either be a Name Check or a Fingerprint Check.

(iv) Regardless of whether the past offense was a felony or a misdemeanor, the lender must submit the complete 912 package to the local field office before loan processing can proceed. Copies of the documents are to be submitted to the field office. The lender must retain the originals in its loan file. SBA recommends that the lender submit the 912 package as soon as possible.

(v) The field office will send the complete 912 package to the Office of Inspector General/Office of Security Operations (OIG/OSO) at SBA Headquarters. When a 912 with a "yes" response is forwarded to the OIG/OSO), lender personnel must not make any statement to anyone outside the SBA about action being taken regarding the 912 information submitted. Exceptions are only permitted when in compliance with the provisions of the Privacy Act. (See SOP 40 04.)

(e) Decisions Available to the SBA When Processing a 912 with a "yes" response:

(i) Clear the 912 to permit processing, approval and disbursement;

(a) SBA will clear a positive 912 for processing and waive the fingerprint requirement only when the reason for the "yes" response meets one of the following criteria:

(i) A single minor (misdemeanor) offense or arrest; OR

(ii) Up to three minor offenses (arrests and/or convictions at one time or separately), concluded more than 10 years prior to the date of the SBA application; OR

(iii) A Prior Offense cleared by the Director, Office of Financial Assistance (D/FA) or designee on a previous application where no other offenses have occurred since the previous application was cleared by the D/FA or designee. This clearance is only valid for six months from date of issuance.

NOTE: Only the D/FA or designee may authorize the processing center or lender to process and subsequently disburse a loan when the Form 912 is not cleared.

(b) The field office cannot clear felony arrests or convictions for loan processing.

(c) When the field office receives the completed 912 package and decides to clear it for processing, it will notify the lender that the application has been cleared for processing and will submit the 912 package to the OIG/OSO for a Name Check.

(d) When the Name Check corroborates the information on the 912, OIG/OSO will advise the field office, which will then notify the lender.

(e) When the Name Check results contradict the disclosure on the 912, or the disclosed criminal history raises a question about the character of the individual, OIG/OSO will refer the matter to the D/FA. If the loan was already processed and approved, the lender shall be notified of the adverse change and directed to immediately cease further loan disbursements and seek immediate repayment of the loan proceeds from the borrower.

(f) The D/FA or designee can overrule the clearance by the field office.

(g) The lender is responsible for any funds that are uncollected in the event that the Name Check reveals additional undisclosed offenses or fraud.

(ii) Place the processing of the application on hold for further investigation;

(a) The lender must obtain from the Subject Individual a Form FD 258, SBA Fingerprint Card, and submit it to the field office to forward to OIG/OSO for a Fingerprint Check. The processing of the application will remain on hold until the results of a Fingerprint Check are received at which time the application will either proceed or be declined.

(b) If additional criminal activity is revealed, information pertaining to the additional criminal activity will be provided to the D/FA or designee who will notify the field office that an adverse condition exists.

(iii) Decline the application because the information supplied on the Subject Individual shows the offense is open and has not been adjudicated or the Subject Individual is on probation or parole.

(f) 912 Decision Appeals

(i) SBA will consider a request submitted by an applicant for reconsideration of a determination of lack of good character. Factors that contribute to a favorable reconsideration include: (1) additional information provided by the applicant that satisfactorily explains the circumstances of the prior offense(s); and/or (2) the passage of time between the date of the prior offense(s) and the date of application, during which the applicant has not committed additional offenses and has generally led a responsible life and made a contribution to the community.

(ii) The applicant should send a written request for reconsideration through the lender to: Director, Office of Financial Assistance, U.S. Small Business Administration, Office of Financial Assistance, 409 3rd Street, SW, Suite 8300, Washington, DC 20416.

(g) CLP and PLP 912 Procedures.

(i) If, in connection with a CLP or a PLP loan, a Subject Individual answers question 8 or 9 with "yes," then that individual must go through a background check and character determination unless the charge resulting in a "yes" answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor's office must be attached to the SBA Form 912.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. The application may be

processed using CLP or PLP procedures, as applicable, after the lender has requested and received written clearance of the character issue(s) from the district office.

(ii) To request clearance from the district office, the lender must submit a cover letter with the lender's contact information, a brief description of the business along with SBA Form 912 and any required attachments.

(h) SBA Express and Patriot Express 912 Procedures.

(i) Generally, loans submitted under SBA Express and Patriot Express may be made only if questions 1, 2, and 3 on SBA Form 1919 are all answered "no." If a Subject Individual answers "yes" to question 1, then the Small Business Applicant is not eligible. If a Subject Individual answers "yes" to question 2 or 3, then that individual must go through a background check and character determination unless the charge resulting in a "yes" answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor's office must be attached to the SBA Form 1919 and maintained in the lender's loan file.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. When there is a "yes" response on questions 2 or 3, the lender may elect to process, submit, and disburse the loan under SBA Express and Patriot Express, only when the subject's affirmative activity meets the criteria set forth above for SBA to clear an application for processing (a single minor offense or up to three minor offenses more than 10 years prior to the date of the application or a prior offense that was cleared by the D/FA or designee on a previous application and no additional offenses have occurred since the date the prior application was cleared [the D/FA or designee's clearance is only valid for 6 months from date of issuance]). If the affirmative activity does not meet the criteria set forth above and the lender cannot clear the application for processing, the Form 912 and any supporting documentation must be sent to the local field office which will forward it to the OIG/OSO for processing. OIG/OSO will notify the field office, and the field office will notify the lender that the applicant is or is not eligible on a character basis for an SBA loan. The lender must document its loan file with SBA's notification. The application may be processed using SBA Express or Patriot Express procedures, as applicable, <u>after</u> the lender has received OIG/OSO's

written clearance of the character issue(s) from the field office.

(ii) In using this authority, SBA Express and Patriot Express lenders must secure and submit a completed 912 to SBA using the following procedure:

(a) The Subject Individual must complete and sign the 912. The lender must ensure that the following items are completed correctly, as incomplete Forms 912 will be returned to the lender:

(i) Applicant's Social Security number;

(ii) Applicant's date of birth;

(iii) Applicant must provide specific information about each charge including the date, city and state where charged;

(iv) Applicant must be very specific on the disposition of each charge. For example, if probation was the disposition, specify for which charge(s) and for how long;

(v) Signature Block: Must be signed and dated within 90 days of the submission to SBA;

(b) Lender must insert the SBA Servicing Office that will service the loan after it is processed by the SLPC;

(c) Include the lender's address, telephone number, and contact person;

(d) Lender must check, sign, and date the "Fingerprints waived" box and the "Clear For Processing" box;

(e) Lender must submit one copy of the 912 to the OIG/OSO at 409 3rd Street, SW, Washington DC 20416 and retain the original copy of the 912 in the loan file.

NOTE: An SBA Express or Patriot Express lender choosing not to exercise its authority to clear a 912 with a "yes" response must submit a standard 7(a) loan application to the Standard 7(a) Loan Guaranty Processing Center to be processed under standard 7(a) loan procedures.

(i) For all Form 912s submitted, SBA's OIG/OSO will request a "Name Check" (a/k/a background check) from the FBI.

Note: Incomplete Form 912s cannot be processed and will be returned to the lender. The lender must submit a corrected 912 before processing can continue.

(i) If the information from the FBI Name Check is consistent with the information provided on the 912, OIG/OSO will notify the appropriate SBA Servicing Office, and the SBA Servicing Office will document its file and notify the lender that the applicant is eligible on a character basis for an SBA loan. The lender must document its loan file with SBA's notification that the applicant is eligible.

(ii) If the information from the FBI Name Check contradicts the information provided on the SBA Form 912, OIG/OSO will notify OFA and the D/FA or designee will evaluate the discrepancy and determine if the discrepancy warrants a denial of the loan on the basis of character. If the loan warrants a denial, the D/FA or designee will notify the SBA Servicing Office and the SBA Servicing Office will notify the lender that the applicant is not eligible on a character basis. If the loan has been disbursed, the Agency will cancel its guaranty.

(j) Reducing Ownership to Avoid Submitting Form 912

A Subject Individual may not reduce his or her ownership in a Small Business Applicant for the purpose of avoiding completion of Form 912. Anyone who would have been considered a Subject Individual within 6 months prior to the application must complete Form 912. The only exception to the 6-month rule is when a Subject Individual completely divests his or her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Small Business Applicant (and any associated Eligible Passive Concern) in any capacity, including being an employee (paid or unpaid).

o) Equity Interest by Lender or Associates in Applicant Concern (13 CFR 120.110(o))

A lender or any of its associates may not obtain an equity position, either directly or indirectly, in the Small Business Applicant. The only exception is when the Associate of the lender is a Small Business Investment Company (SBIC), in which case the requirements of 13 CFR 120.104 apply. See also 13 CFR 120.140 for a list of ethical requirements that apply to lenders.

p) Businesses Providing Prurient Sexual Material (13 CFR 120.110 (p))

A business is not eligible for SBA assistance if:

(1) It presents live or recorded performances of a prurient sexual nature; or