

U.S. Small Business Administration



Your Small Business Resource

SBA Express Liquidation and Purchase Process July 8, 2009

Presented by: Gary Wamhof,
Supervisor Loan Specialist for Express
Purchases

Fresno Commercial Loan Servicing
Center

559-487-5136 ext 212
gary.wamhof@sba.gov

U.S. Small Business Administration



Contact Information:

Fresno Commercial Loan Service Center

2719 N Air Fresno Drive, Suite 107

Fresno, CA 93727

Tel. (559) 487-5136 - Fax (202) 481-0663

General e-mail: fsc.purchasing@sba.gov

Gary Wamhof, Supervisory Loan Specialist

Tel. (559) 487-5136 x. 227

gary.wamhof@sba.gov



Loan Authorization

A good purchase package begins before first disbursement:

For Express, the lender completes the loan authorization without SBA review and signs it on behalf of SBA.

The lender must obtain all required collateral and must meet all required conditions before disbursement.

U.S. Small Business Administration



Your Small Business Resource

Loan Servicing Issues

Know what servicing actions require the SBA's formal approval and which can be approved under lenders' delegated unilateral servicing authority.

U.S. Small Business Administration



Your Small Business Resource

Loan Servicing Regulations

Agency regulations set forth at 13 CFR 120.535 and 120.536 provides the new standards for the lender loan servicing.



Loan Servicing Standards

As set forth at 13 CFR 120.535, lenders must service their loans based upon the following standards:

Service using prudent lending standards.

Lenders must service 7(a) loans in their portfolio no less diligently than their non-SBA portfolio, and in a commercially reasonable manner, consistent with prudent lending standards and in accordance with Loan Program Requirements. Those lenders that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a government guarantee.



Servicing and Liquidation Actions

7(a) Lender Matrix

Use E-Tran	Unilateral Actions Notify SBA?		Requires prior SBA Approval	Form 2237 ⁹
	Yes	No		

Prior to Initial Disbursement

See SOP 50 10 5(A), Subpart B, Chapter 7

Increase / decrease loan amount				X	X
Increase / decrease guaranty percentage				X	X
Change initial disbursement date		X			X
Change maturity date	X	X			X
Change interest rate within loan program guidelines	X	X			X
Other changes to loan authorization			X		
Change EIN or SSN, legal/trade name of business or borrower's address	X	X			X
Cancel loan	X	X			X



Servicing and Liquidation Actions
7(a) Lender Matrix

Use E-Tran	Unilateral Actions Notify SBA?		Requires prior SBA Approval	Form 2237 ⁹
	Yes	No		

Actions after Initial Disbursement - Loans in Servicing or Liquidation Status

SBA Approval Required					
				X	
				X	
				X	
				X	
				X	
				X	
				X	
				X	X
				X	X
				X	X



Servicing and Liquidation Actions 7(a) Lender Matrix

		Use E-Tran	Unilateral Actions Notify SBA?		Requires prior SBA Approval	Form 2237 ⁹
			Yes	No		
SBA Notification Required	Transfer or sell 90% or less of a loan		X			
	Decrease principal loan amount		X			X
	Extend final disbursement date		X			X
	Cancellation of SBA guaranty before guaranty purchase		X			X
	Extend maturity (action done prior to stated maturity) ^{2, 3}	X	X			X
	Reamortize / restructure loan ³		X			
	Change interest rate within loan program guidelines ³	X	X			X
	Change EIN or SSN, legal/trade name of business or borrower's address	X	X			X
	Transfer loan into liquidation status		X			
	Return loan to regular servicing status		X			
	Change a loan to PIF status		X			
	Assumption of loan without release of original borrower / guarantor		X			
Change loan from revolver to non-revolver	X	X				



Servicing and Liquidation Actions

7(a) Lender Matrix

	Use E-Tran	Unilateral Actions Notify SBA?		Requires prior SBA Approval	Form 2237 ⁹
		Yes	No		
<i>No Approval or Notification</i>	Change in borrower's legal structure ⁴		X		
	Subordinate / release lien		X		
	Defer payments ³		X		
	Release / substitute collateral		X		
	Accept prepayments (subsidy recoupment fee may apply)		X		X
	Changes to loan authorization		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 ⁵		X		



Servicing and Liquidation Actions
7(a) Lender Matrix

Use E-Tran	Unilateral Actions Notify SBA?		Requires prior SBA Approval	Form 2237 ⁹
	Yes	No		

Liquidation Actions

Liquidation plans and amendments for loans approved under CLP procedures (liquidation plans are <i>encouraged</i> for other loans as an aid to recovery)				X	
Sale of collateral to associates of lender				X	
Private sale of collateral to associates of borrower				X	
Public, private or negotiated sale of collateral (other than those above)			X		
Initiate foreclosure proceeding ⁶			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		



Servicing and Liquidation Actions
7(a) Lender Matrix

Use E-Tran	Unilateral Actions Notify SBA?		Requires prior SBA Approval	Form 2237 ⁹
	Yes	No		

Litigation Actions

Litigation plan and budget (for routine litigation ⁷ and legal fees under \$10,000)			X		
Litigation plan and budget (if legal fees exceed \$10,000 or non-routine litigation ⁸ ; 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	

Current version of this matrix is located on the Commercial Loan Service Center website:

http://www.sba.gov/idc/groups/public/documents/sba_program_office/unilateral_action_matrix.pdf



As set forth in 13 CFR 120.536, the following servicing actions require SBA's prior written consent:

1. Increases to the principal amount of a loan.
2. Any action that confers a preference on the lender or engages in an activity that creates a conflict of interest.
3. Compromises on the principal balance of a loan.
4. Taking title to any property in the name of SBA.
5. Taking title to environmentally contaminated property, or taking over operating and control of a business that handles hazardous substances.
6. Transfers, sells or pledges more than 90% of a loan.
7. Action for which prior written consent is required by a Loan Program Requirement.

U.S. Small Business Administration



Your Small Business Resource

SBA Form 1502 reporting

Colson Customer Service

www.colsonservices.com

Telephone: 1-877-245-6159

E-mail: info@colsonservices.com

Fresno contact on 1502 issues/corrections:

Theresa Pike (**theresa.pike@sba.gov**) (559)

487-5771 x243

Janet Shelley (**janet.shelley@sba.gov**) (559)

487-5771 x207

Call or e-mail Theresa or Janet for a guide on “how to” fix common 1502 reporting errors.



E-Tran

All lenders are strongly encouraged to utilize E-Tran for loan Servicing actions. At present, E-Tran may be utilized by lenders to cancel loans and make loan name changes. In the near future, additional loan servicing actions will become available through E-Tran.

E-Tran will enable lenders to make the loan servicing changes without any sort of paper submission to the SBA.

- Cancel undisbursed loans.
- Changes to maturity (prior to disbursement, Standard 7A lenders will require SBA approval before making changes).
- Change loan from revolver to term or vice versa.
- Change legal/trade name or address.



Servicing the SBA loan

The basic rule of thumb

- Loan servicing actions are governed by SOP 50-50-4
- Lenders must use “reasonable care”
- Lenders must act as “prudent lenders”
- Lenders must service SBA loans with the same degree of care used in servicing it’s non-SBA loan portfolio.



Workouts

SBA Information Notice 5000-1077 (10/16/08)
The Agency strongly encourages lenders to make every effort to work with their SBA borrowers on an individual basis in order to facilitate the long term success of that small business.



Lender Liquidation Standards

- § 120.535 Standards for Lender and CDC loan servicing, loan liquidation and debt collection litigation.
- *Liquidate using prudent lending standards.* Lenders and Authorized CDC Liquidators must liquidate and conduct debt collection litigation for 7(a) and 504 loans in their portfolio no less diligently than for their non-SBA portfolio, and in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan. Lenders and CDCs that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards followed by commercial lenders that liquidate loans without a government guarantee. They are also to operate in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan.



Lender Liquidation Standards (continued)

§ 120.536 Servicing and liquidation actions that require the prior written consent of SBA

- a) *Actions by Lenders and CDCs.* Except as otherwise provided in a Supplemental Guarantee Agreement with a Lender or an Agreement with a CDC, SBA must give its prior written consent before a Lender or CDC takes any of the following actions:
 - (1) Increases the principal amount of a loan above that authorized by SBA at loan origination.
 - (2) Confers a Preference on the Lender or CDC or engages in an activity that creates a conflict of interest.
 - (3) Compromises the principal balance of a loan.
 - (4) Takes title to any property in the name of SBA.
 - (5) Takes title to environmentally contaminated property, or takes over operation and control of a business that handles hazardous substances or hazardous wastes.
 - (6) Transfers, sells or pledges more than 90% of a loan.
 - (7) Takes any action for which prior written consent is required by a Loan Program Requirement.



Lender liquidation Standards (continued)

- Offers in compromise:

- The following must be submitted for consideration:
 - Completed Financial Statement of Debtor
 - Completed Offer in compromise form (SBA form 1150)
 - Copies of prior two years complete personal and business federal income tax returns including all schedules (signed and dated).
 - Completed IRS Tax Authorization Form 4506
 - A written statement of obligor/guarantor clearly setting forth the source of funds for payment being offered.
 - An itemized list of all transfers and/or acquisitions of real property or major items of personal property by obligor since the date the debt to SBA was created.



Lender Liquidation Standards (continued)

- § 120.536 Servicing and liquidation actions that require the prior written consent of SBA
- (c) *Documentation requirements.*

For all servicing/liquidation actions not requiring SBA's prior written consent, Lenders and CDCs must document the justifications for their decisions and retain these and supporting documents in their file for future SBA review to determine if the actions taken by the Lender or CDC were prudent, commercially reasonable, and complied with all Loan Program Requirements.



Other General Notes of Interest

Per CFR 120.524, the SBA is released from liability on its guarantee if the lender fails to request that SBA purchase a guarantee within 180 days after maturity of the loan.

However, if the lender is conducting liquidation or debt collection litigation in connection with a loan that has matured, SBA will be released from its guarantee only if the lender fails to request that SBA purchase the guarantee within 180 days after the completion of the liquidation or debt collection litigation.



Other General Notes of Interest

The burden of proof is on the lender to demonstrate that it has closed, serviced and liquidated a loan in a prudent and commercially reasonable manner and in accordance with the terms of the loan authorization and SBA program requirements.

The purchase documentation begins prior to first disbursement.

U.S. Small Business Administration



Your Small Business Resource

The Guaranty Purchase

The guaranty purchase is the lender's request for the government to honor/fulfill its promise to pay on a loan account that is uncollectible.

U.S. Small Business Administration



When To Start The Process

A lender may request payment of the guaranty for most SBA programs following a 60-day uncured delinquency.

Borrower can not, or will not, repay the loan on loan on reasonable terms.

However, all SBA programs strongly encourage lender to fully liquidate the loan prior to the purchase request.

U.S. Small Business Administration



Your Small Business Resource

When will the SBA purchase an SBA Express loan?

Normally, SBA purchases its guaranteed interest after the lender has fully liquidated all collateral and the lender has pursued all avenues of collection. However, SBA will process the purchase of any SBA Express loan that involves, regardless of loan balance, bankruptcy, judicial foreclosure, litigation or other unusual 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.

U.S. Small Business Administration



Your Small Business Resource

Requesting SBA to Honor its' Guaranty

SBA reviews a lender's request that SBA honor purchase the guaranty. This review determines if the lender has complied with the SBA loan authorization for the loan, SBA requirements, and prudent lending practices. The amount and types of documentation that the lender must include in its guaranty purchase package depends on the type of loan, use of proceeds, collateral, and other factors. SBA conducts this review prior to purchase.

U.S. Small Business Administration



Your Small Business Resource

Purchase Review

- Review and Analysis of Lender Wrap up Report
- Review of all supporting documentation for compliance with Loan Authorization, including Use of Proceeds and Collateral Conditions
- Analysis of Transcript
- Recommendation from the Purchaser

U.S. Small Business Administration



Legal Review

- Review of Purchaser's Notes and Summary
- Verification of Eligibility
- Review of Loan Authorization Conditions
- Check documentation for legal sufficiency
- Business Entity verification
- Review of Bankruptcy Information
- Recommendation of Purchase based on Legal Review



Approval

- Review of Purchaser's Recommendations
- Approval or Non Concurrence of Purchase
- Review and Confirmation of Purchase Amounts
- Verification that purchase complies with SBA Rules and Regulations



10 TAB Purchase Demand Kit

Find the Express purchase demand kit at:

http://www.sba.gov/idc/groups/public/documents/sba_program_office/expresspurchasedemand.pdf

U.S. Small Business Administration



Your Small Business Resource

Highlights of the New Purchase Demand Kit

- A New 10 Tab Layout
- Brand labeling in the Margin
- Added Digital Features within the Electronic Form
- Drop Down Menus for ease of Completion
- Ability to Save/Print and the ease of use with Send-this-File



What The Lender Can Do To Assist

- Submit complete PDK's in proper organization/form.
 - We can only process a claim when the documentation necessary for review is substantially complete.
- We have begun scanning incoming PDK's and storing these items electronically.
 - Please do not staple PDK's together as this slows the scanning process.
- PDK's can be submitted electronically! Visit our Center website at:

<http://www.sba.gov/aboutsba/sbaprograms/elending/clc/index.html>

At the bottom of the page, you will find a link which enables you to e-mail secure files or packages to the Center.

U.S. Small Business Administration



The SBA Express Ten Tab Purchase Demand Kit

Cover Page

- Basic loan/contact information
- Tab summary
- Demand request
- Wrap-up report
- Certification



TAB 1 – Eligibility information

SBA form 1919

- for each owner 20% or greater
- answer all bullet questions
- attach SBA form 159 (fees), if applicable
- attached SBA form 601 (construction), if applicable

SBA form 1920

- parts A and C are required
- provide any supporting eligibility documents
- not needed from eligibility authorized Express lenders

U.S. Small Business Administration



TAB 1 – Eligibility information

SBA form 2238

- required if loan application was not submitted electronically
- sign certification



TAB 2 – Loan Authorization

Provide a copy of the Loan Authorization

Equity injections - provide documentation

Debt refinance not on SBA 1920

- answer questions



TAB 3 – Loan Note and Guaranties

Provide copy of loan note

- submit copies of modifications, amendments, deferments, and workout agreements
- secondary market loans, provide investor's approval

Provide copies of all guaranties

- include consent for material changes

U.S. Small Business Administration



Your Small Business Resource

TAB 4 – Wire Transfer

Complete the wire transfer form

- important – this is how you get paid

U.S. Small Business Administration



TAB 5 – Certified transcript

SBA form 1149 or comparable

- comparable forms must contain all items requested

U.S. Small Business Administration



Your Small Business Resource

TAB 6 – Special loan programs

If a special program was used

- indicate which program
- provide required documents



TAB 7 - Collateral

Loan balance under \$25,000

- mark box (liquidation complete)
- no other collateral information required

Collateral value over \$1,000

- provide collateral details
- provide actions taken (visits, filings, lien documents, etc)



TAB 7 - Collateral

Wrap-up report – provide narrative:

- liquidation
- recovery
- expenses
- net amount applied to loan
- remaining items
 - recommendation and justification

U.S. Small Business Administration



TAB 8 – Recoveries, Expenses, Litigation

Wrap-up report – provide summary

- all payments
- recoveries
- expenses



TAB 8 – Recoveries, expenses, litigation

Routine liquidation expenses

- copies of bills

Litigation/legal expenses

- copies of invoices (date, hours, charge/hour)
- copies of Agency pre-approvals

U.S. Small Business Administration



Your Small Business Resource

TAB 8 –Recoveries, Expenses, Litigation

Application order of collateral proceeds

1. liquidation expenses
2. 120 days of interest
3. principal

Legal pleadings

- copies of pleadings, schedules, bankruptcy filings, court motions, default judgments, abstracts

Provide all details in wrap-up report



TAB 9 - Bankruptcies

Documentation needed

- Chapter 7 – no asset
 - document case is closed and obligor discharged
- **Chapter 7, 11, and 13**
 - bankruptcy notification
 - bank proof of claim
 - bank request for relief from stay
 - bankruptcy plan and report of distributions



TAB 9 - Bankruptcies

Bankruptcies paid over a term of years

Three payment options

- 1. Delay demand payment until paid**
- 2. Payment before term pay out**
 1. Lender bears risk of loss if plan not paid as agreed
- 3. SBA Expedited Procedure**
 1. Liquidation is expected to be protracted
 2. Liquidation status report every 180 days
 3. Final wrap-up report required
 4. Must forward SBA's proportionate share

U.S. Small Business Administration



Your Small Business Resource

TAB 10 – Early Payment Default

SBA is released of liability if lender failed to make, close, service, or liquidate the loan in a prudent manner

Early default is defined as

1. Term loan: 18 months from final disbursement
2. Line of credit: 18 months from initial disbursement

U.S. Small Business Administration



Your Small Business Resource

TAB 10 – Early Payment Default

Lender must submit

- credit memorandum and supporting documents
- credit analysis
- complete copy of borrower application
- SBA 912, if any questions marked “yes”



Resources

- 50-50-4 “loan servicing” SOP
- 50-51-4 “loan liquidation” SOP
- Express loan program guide

http://www.sba.gov/idc/groups/public/documents/sba_program_office/bank_ex_guide.pdf

- Service Center website

<http://www.sba.gov/aboutsba/sbaprograms/ending/clc/index.html>