

**SBA**

**SOP 50 51 2**

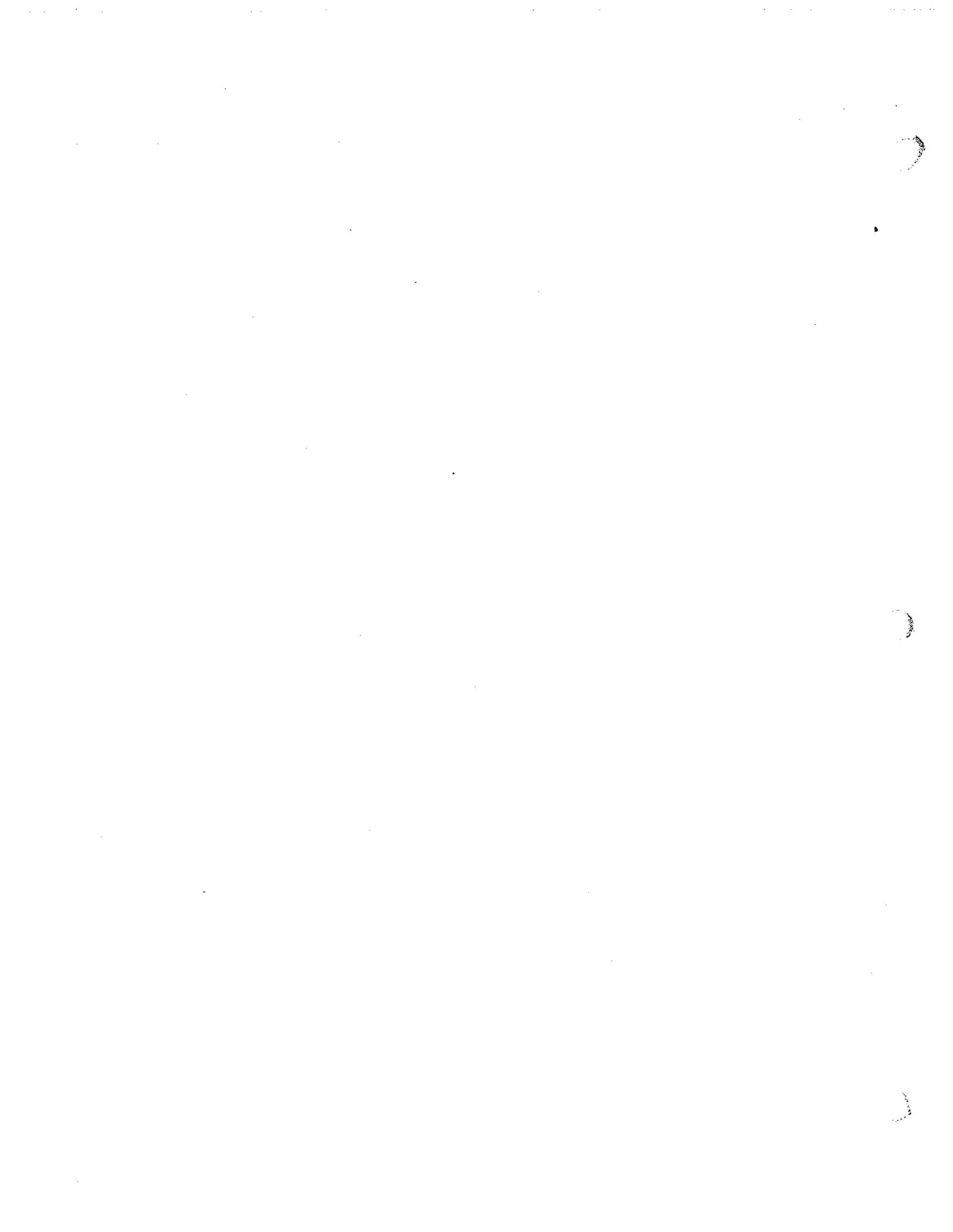
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**LOAN LIQUIDATION &  
ACQUIRED PROPERTY**

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**Office of Financial Assistance  
Borrower and Lender Servicing**

**U.S. Small Business  
Administration**



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## CHAPTER 1

### PURPOSE AND ORGANIZATION

#### 1. What is the Purpose of this Standard Operating Procedure (SOP)?

The purpose of this SOP is to provide you with guidelines for liquidation activities of:

- a. The SBA personnel;
- b. Participating lenders; and
- c. Certified development companies (CDC).

#### 2. What is the Scope of Liquidation Activities?

Loan liquidation personnel handle problem accounts which require enforced collection measures or other actions to protect the interests of the Government. Liquidation personnel take all necessary and appropriate steps in connection with the administration and collection of loans classified as "In Liquidation" typically, these steps include:

- a. Workouts;
- b. Recovery from collateral; and
- c. Pursuit of guarantors and other obligors.

#### 3. How is this SOP Organized?

- a. This SOP is organized to provide you with both the references to regulations and the policy you need to know to perform your job in loan liquidation.
- b. The term "You" refers to the recommending official. The term recommending official is defined in Chapter 4, "General Guidelines for Liquidation Activities." All references other than "You" (recommending official) will be identified in the text.
- c. In this SOP, "MUST" is used when the action is mandatory. Deviations from the mandatory actions must be approved by the Associate Administrator for Financial Assistance (AA/FA) or designee.
- d. Chapter 2 states the regulations from the **Code Federal Regulations (CFR)** which relate to the SBA's loan liquidation functions. The "MANDATORY" words in the CFR are "SHALL," "WILL," and "MUST." Deviations from the mandatory actions

must be approved by the Associate Administrator for Financial Assistance (AA/FA) or designee.

- e. Chapter 3 contains general guidelines for liquidation activities, including definitions and delegations of authority.
- f. The remaining chapters of this SOP deal with various individual topics which are part of the liquidation process.

**4. What are the Sources of Authority and Guidance for Liquidation Activity?**

**a. As a loan liquidation official you must be aware that all liquidation activities you take must conform to:**

- (1) Federal regulations;
- (2) The SBA policy and procedures; and
- (3) The SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)."

**b. What do you need to know about the regulations?**

- (1) From time to time, SBA publishes changes to the CFR to implement new legislation or to clarify or modify existing regulations. These changes are published in the Federal Register and incorporated into the bound version of the CFR annually.
- (2) The subsections of **13 CFR part 120** which pertain to loan liquidation are provided in Chapter 2 of this SOP.

**c. What do you need to know about the SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)?"**

- (1) The SBA 750, is SBA's contract of guaranty with the lenders in the 7(a) program.
- (2) The lender - SBA contracts for the 7(a) program include:
  - (a) SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)";
  - (b) SBA Form 750B, "Loan Guaranty Agreement (Deferred Participation) for Short Term Loans";

- (c) SBA Form 1186, "Supplemental Guaranty Agreement, Certified Lenders Program (CLP)";
- (d) SBA Form 1347, "Supplemental Guaranty Agreement, Preferred Lenders Program (PLP)";
- (e) SBA Form 750EX, "Supplemental Guaranty Agreement, Export Working Capital Program (EWCP)";
- (f) SBA Form 1918, "Supplemental Guaranty Agreement, FASTRAK Program"; and
- (g) LowDoc and CAPLINE programs used for the SBA 750B or SBA 750.

**5. What will this SOP Provide?**

This SOP will provide the policy for procedures and administration of all loans classified "in liquidation" status. This would include loans serviced by:

- a. The SBA;
- b. Participating lenders; and
- c. CDCs

**6. When Should You Refer to the Loan Servicing SOP?**

You should be fully familiar with the regulations and polices contained in SOP 50 50, Loan Servicing. You will use SOP 50 50 for liquidation matters whenever the situation is:

- a. Not covered by this SOP; and
- b. The "servicing" approach is more appropriate.



## CHAPTER 2

## REGULATIONS AND OTHER AUTHORITIES

This chapter provides direct citations of subsections of 13 CFR, "Business Credit and Assistance," which pertain to loan liquidation. Reference is made to the exact citing at the beginning of each subsection.

**NOTE:** The "mandatory" words in the CFR are "SHALL," "WILL," AND "MUST."

1. **13 CFR § 120.512.**  
**Who services the loan after SBA honors its guarantee?**

Generally, after SBA honors its guarantee, the Lender must continue to hold the Loan Instruments and service and liquidate the loan. The Lender must execute a Certificate of interest showing SBA's percentage of the loan, and must submit a liquidation plan to SBA for each loan to be liquidated. If SBA elects to service or liquidate the loan, the Lender must assign the Loan Instruments to SBA.

2. **13 CFR § 120.431.**  
**Suspension or revocation of eligibility to participate.**

SBA may suspend or revoke the eligibility of a Lender to participate in the 7(a) program because of a violation of SBA regulations, a breach of any agreement with SBA, a change of circumstance resulting in the Lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. Proceedings for such purposes will be conducted in accordance with the provisions of part 134 of this chapter. A suspension or revocation will not invalidate a guarantee previously provided by SBA.

3. **13 CFR § 120.540.**  
**What are SBA's policies concerning liquidation of collateral?**

- (a) **Liquidation policy.**

SBA or the Lender may liquidate collateral securing a loan if the loan is in default or there is no reasonable prospect that the loan can be repaid within a reasonable period.

- (b) **Sale and conversion of loans.**

Without the consent of the Borrower, SBA may:

- (1) Sell a direct loan;

- (2) Convert a guaranteed or immediate participation loan to a direct loan; or
- (3) Convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender.

**(c) Disposal of collateral and assets acquired through foreclosure or conveyance.**

SBA or the Lender may sell real and personal property (including contracts and claims) pledged to secure a loan that is in default in accordance with the provisions of the related security instrument (see § 120.550 for Homestead Protection for Farmers).

- (1) Competitive bids or negotiated sales.

Generally, SBA will offer loan collateral and acquired assets for public sale through competitive bids at auctions or sealed bid sales. The Lender may use negotiated sales if consistent with its usual practice for similar non-SBA assets.

- (2) Lease of acquired property.

Normally, neither SBA nor a Lender will rent or lease acquired property or grant options to purchase. SBA and the Lender will consider proposals for a lease if it appears a property cannot be sold advantageously and the lease may be terminated on reasonable notice upon receipt of a favorable purchase offer.

**(d) Recoveries and security interests shared.**

SBA and the Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lienholders), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

**(e) Guarantors.**

Guarantors of financial assistance have no rights of contribution against SBA on an SBA guaranteed or direct loan. SBA is not deemed to be a co-guarantor with any other guarantors.

4. **13 CFR § 120.10.**  
**Definitions.**

**Associate.**

- (1) An Associate of a Lender or CDC is:
- (i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an agent involved in the loan process;
  - (ii) Any entity in which one or more individuals referred to in paragraphs (1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent.
- (2) An Associate of a small business is:
- (i) An officer, director, owner of more than 20 percent of the equity, or key employee of the small business;
  - (ii) Any entity in which one or more individuals referred to in paragraphs (2)(i) of this definition owns or controls at least 20 percent; and,
  - (iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company ("SBIC") licensed by SBA).
- (3) For purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the certification, participation agreement, or loan is outstanding:
- (i) For a CDC, the date of certification by SBA;
  - (ii) For a Lender, the date of application for a loan guarantee on behalf of an applicant; or,
  - (iii) For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

**Authorization** is SBA's written agreement providing the terms and conditions under which SBA will make or guarantee business loans. It is not a contract to make a loan.

**Borrower** is the obligor of an SBA business loan.

**Certified Development Company ("CDC")** is an entity authorized by SBA to deliver 504 financing to small businesses.

**Close Relative** is a spouse; a parent; or a child or sibling, or the spouse of any such person.

**Eligible Passive Company** is a small entity or trust which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business, and which complies with the conditions set forth in § 120.111.

**Intermediary** is the entity in the Microloan program that receives SBA financial assistance and makes loans to small businesses in amounts up to \$25,000.

**Lender** is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

**Loan Instruments** are the Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

**Operating Company** is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations personal property owned by an Eligible Passive Company.

**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.

**Rural Area** is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

**Service Provider** is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

5. **13 CFR § 120.140.**  
**What ethical requirements apply to participants?**

Lenders, Intermediaries, CDCs, and Associate Development Companies ("ADCs") (in this section, collectively referred to as "Participants"), must act ethically and exhibit good character. Ethical indiscretion of an Associate of a Participant or a member of a CDC will

be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

- (a) Self-deal;
- (b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates or an Associate's Close Relatives) or SBA;
- (c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);
- (d) Be incarcerated, on parole, or on probation;
- (e) Knowingly misrepresent or make a false statement to SBA;
- (f) Engage in conduct reflecting a lack of business integrity or honesty;
- (g) Be a convicted felon, or have an adverse final civil judgment (in a case involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;
- (h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the Participant may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;
- (i) Fail to disclose to SBA all relationships between the small business and its Associates (including Close Relatives of Associates), the Participant, and/or the lenders financing the Project of which it is aware or should be aware;
- (j) Fail to disclose to SBA whether the loan will:
  - (1) Reduce the exposure of a Participant or an Associate of a Participant in a position to sustain a loss;
  - (2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Participant or an Associate of the Participant;
  - (3) Repay or refinance a debt due a Participant or an Associate of a Participant; or

- (4) Require the small business, or an Associate (including Close Relatives of Associates), to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association);
- (k) Issue a real estate forward commitment to a builder or developer; or
- (l) Engage in any activity which taints its objective judgment in evaluating the loan.

**6. 13 CFR § 120.410.  
Requirements for all participating lenders.**

A Lender must:

- (a) Have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans;
- (b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);
- (c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140; and
- (d) Be supervised and examined by a State or Federal regulatory authority, satisfactory to SBA.

**7. 13 CFR § 120.411.  
Preferences.**

An agreement to participate under the Act may not establish any Preferences in favor of the Lender.

**8. 13 CFR § 120.412.  
Other services Lenders may provide Borrowers.**

Subject to § 120.140 Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Fees cannot exceed those charged by established professional consultants providing similar services. *See also* § 120.195.

9. **13 CFR § 120.440.**  
**What is the Certified Lenders Program?**

Under the Certified Lenders Program (CLP), designated Lenders process, close, service, and may liquidate, SBA guaranteed loans. SBA gives priority to applications and servicing actions submitted by Lenders under this program, and will provide expedited loan processing or servicing. All other rules in this part 120 relating to the operations of Lenders apply to CLP Lenders.

10. **13 CFR § 120.450.**  
**What is the Preferred Lenders Program?**

Under the Preferred Lenders Program (PLP), designated Lenders process, close, service, and liquidate SBA guaranteed loans with reduced requirements for documentation to and prior to approval by SBA.

11. **13 CFR § 120.453.**  
**What are the requirements of a PLP Lender in servicing and liquidating SBA guaranteed loans?**

The PLP Lender must service and liquidate its SBA guaranteed loan portfolio (including its non-PLP loans) using generally accepted commercial banking standards employed by prudent lenders. The PLP Lender must liquidate any defaulted SBA guaranteed loan in its portfolio unless SBA advises in writing that SBA will liquidate the loan. The PLP Lender must submit a liquidation plan to SBA prior to commencing liquidation action. The PLP Lender may take any necessary servicing action, or liquidation action consistent with a plan, for any SBA guaranteed loan in its portfolio, except it may not:

- (a) Take any action that confers a Preference on the Lender;
- (b) Accept a compromise settlement without prior written SBA consent; and
- (c) Sell or pledge more than 90 percent of a PLP loan.

**"TO BE REVISED" This section will be revised as it is inconsistent with current legislation.**

12. **13 CFR § 120.520.**  
**When does SBA honor Its guarantee?**

- (a) SBA, in its sole discretion, may purchase a guaranteed portion of a loan at any time. A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and

the default has not been cured. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses.

- (b) Purchase by SBA of the guaranteed portion does not waive any of SBA's rights to recover money paid on the guarantee, based upon the Lender's negligence, misconduct, or violation of this part, including those actions listed in § 120.524 (a), the Loan Guarantee Agreement or the Loan Instruments.

**13. 13 CFR § 120.521.**

**What interest rate applies after SBA purchases Its guaranteed portion?**

When SBA purchases the guaranteed portion of a fixed interest rate loan, the rate of interest remains as stated in the note. On loans with a fluctuating interest rate, the interest rate that the Borrower owes will be at the rate in effect at the time of the earliest uncured payment default, or the rate in effect at the time of purchase (where no default has occurred).

**14. 13 CFR § 120.522.**

**How much accrued interest does SBA pay to the Lender or Registered Holder when SBA purchases the guaranteed portion?**

**(a) Rate of interest.**

If SBA purchases the guaranteed portion from a Lender or from a Registered Holder (if sold in the Secondary Market), it will pay accrued interest at:

- (1) The rate in the note if it is a fixed rate loan; or
- (2) The rate in effect on the date of the earliest uncured payment default, or of SBA's purchase (if there has been no default).

**(b) Payment to Lender.**

If the Lender submits a complete purchase request to SBA within 120 days of the earliest uncured payment default, SBA will pay accrued interest to the Lender from the last interest paid-to-date up to the date of payment. If the Lender requests SBA to purchase after 120 days from the date of the earliest uncured payment default date, SBA will pay only 120 days of interest. For LowDoc loans, the interest paid to the Lender will be governed by the Supplemental Guarantee Agreement.

**(c) Payment to Registered Holder.**

SBA will pay a Registered Holder all accrued interest up to the date of payment.

**(d) Extension of the 120 day period.**

Before the 120 days expire, the SBA field office may extend the period if the Lender and SBA agree that the Borrower can cure the default within a reasonable and definite period of time or that the benefits from doing so otherwise will exceed the costs of SBA paying additional interest. If the 120 days have passed, only the AA/FA or designee can extend the period.

**15. 13 CFR § 120.523.****What is the "earliest uncured payment default"?**

The earliest uncured payment default is the date of the earliest failure by a Borrower to pay a regular installment of principal and/or interest when due. Payments made by the Borrower before a Lender makes its request to SBA to purchase are applied to the earliest uncured payment default. If the installment is paid in full, the earliest uncured payment default date will advance to the next unpaid installment date. If a Borrower makes any payment after the Lender makes its request to SBA to purchase, the earliest uncured payment default date does not change because the Lender has already exercised its right to request purchase.

**16. 13 CFR § 120.524.****When is SBA released from liability on Its guarantee?**

- (a)** SBA is released from liability on a loan guarantee (in whole or in part, within SBA's exclusive discretion), if any of the events below occur:
- (1) The Lender has failed to comply materially with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization;
  - (2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;
  - (3) The Lender's improper action or inaction has placed SBA at risk;
  - (4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;
  - (5) The Lender has misrepresented a material fact to SBA regarding a guaranteed loan;
  - (6) SBA has received a written request from the Lender to terminate the guarantee;
  - (7) The Lender has not paid the guarantee fee within the period required under SBA rules and regulations;

- (8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;
  - (9) The Lender has failed to use required SBA forms or exact electronic copies; or
  - (10) The Borrower has paid the loan in full.
- (b) If SBA determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any money paid on the guarantee plus interest from the Lender responsible for those events.
  - (c) If the Lender's loan documentation indicates that one or more of the events in paragraph (a) of this section may have occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.
  - (d) Any information provided to SBA prior to Lender's request for SBA to honor its guarantee shall not prejudice SBA's right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.
  - (e) Unless SBA provides written notice to the contrary, the Lender remains responsible for all loan servicing and liquidation actions until SBA honors its guarantee in full.

**17. 13 CFR § 120.550.**

**What is homestead protection for farmers?**

SBA may lease to a farmer-Borrower the farm residence occupied by the Borrower and a reasonable amount of adjoining property (no more than 10 acres and seven farm buildings), if they were acquired by SBA as a result of a defaulted farm loan made or guaranteed by SBA (*see* the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921, for qualifying loan purposes).

**18. 13 CFR § 120.551.**

**Who is eligible for homestead protection?**

SBA must notify the Borrower in possession of the availability of these homestead protection rights within 30 days after SBA acquires the property. A farmer-Borrower must:

- (a) Apply for the homestead occupancy to the SBA field office which serviced the loan within 90 days after SBA acquires the property;

- (b) Provide evidence that the farm produces farm income reasonable for the area and economic conditions;
- (c) Show that at least 60 percent of the Borrower and spouse's gross annual income came from farm or ranch operations in at least any two out of the last six calendar years;
- (d) Have resided on the property during the previous six years; and
- (e) Be personally liable for the debt:

**19. 13 CFR § 120.552.  
Lease.**

If approved, the applicant must personally occupy the residence during the term of the lease and pay a reasonable rent to SBA. The lease will be for a period of at least 3 years, but no more than 5 years. A lease of less than 5 years may be renewed, but not beyond 5 years from the original lease date. During or at the end of the lease period, the lessee has a right of first refusal to reacquire the homestead property under terms and conditions no less favorable than those offered to any other purchaser.

**20. 13 CFR § 120.553.  
Appeal.**

If the application is denied, the Borrower may appeal the decision to the AA/FA. Until the conclusion of any appeal, the Borrower may retain possession of the homestead property.

**21. 13 CFR § 120.554.  
Conflict of laws.**

In the event of a conflict between the homestead provisions at § 120.550 through 120.553 of this part, and any state law relating to the right of a Borrower to designate for separate sale or to redeem part or all of the real property securing a loan foreclosed by the Lender, state law shall prevail.

**22. 13 CFR 120.938.  
Default.**

- (a) Upon occurrence of an event of default specified in the 504 note which requires automatic acceleration, the note becomes due and payable. Upon occurrence of an event of default which does not require automatic acceleration, SBA may forbear acceleration of the note and attempt to resolve the default. If the default is not cured subsequently, the note shall be accelerated. In either case, upon acceleration of the note, the Debenture which funded it is also due immediately, and SBA must honor its

guarantee of the Debenture. SBA shall not reimburse the investor for any premium paid.

- (b) If a CDC defaults on a Debenture, SBA generally shall limit its recovery to the payments made by the small business to the CDC on the loan made from the Debenture proceeds, and the collateral securing the defaulted loan. However, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud, negligence, or misrepresentation by the CDC.

**23. 13 CFR § 120.940.  
Prepayment of the 504 loan or debenture.**

The Borrower may prepay its 504 loan, if it pays the entire principal balance, unpaid interest, any unpaid fees, and any prepayment premium established in the note. If the Borrower prepays, the CDC must prepay the corresponding Debenture with interest and premium. If one of the Debentures in a Debenture Pool is prepaid, the Investors in that Debenture Pool must be paid pro rata, and SBA's guarantee on the entire Debenture Pool must be proportionately reduced. If the entire Debenture Pool is paid off, SBA may call all Certificates backed by the Pool for redemption.

**CHAPTER 3**  
**CORRESPONDENCE, REPORTS, AND**  
**CONTROL SYSTEMS**

**1. Correspondence.**

All correspondence received in field offices must be handled in a professional, business like manner. Prompt response is essential.

**a. Who handles routine correspondence?**

The assigned official responsible for the loan account.

**b. What are the time frames for response?**

As a guideline, you should respond to correspondence within 10 business days, or less.

**c. What information must you retain and where?**

**(1) Specific loan accounts.**

You must place copies of all correspondence and documented telephone calls on substantial matters for specific loan accounts in the related loan file.

**(2) General subject matters.**

You must place copies in an official subject file (e.g. general policy and procedural correspondence from Headquarters)

**2. What is SBA Form 327, Modification or Administrative Action?**

The term "Modification or Administrative Action" refers to an action to modify the authorization and loan agreement or other actions which are necessary to help the borrower respond to a business growth opportunity or to respond to a problem. It also refers to actions that SBA may take that would affect the loan (e.g., change the status of loan from regular servicing to "in-liquidation," to transfer the loan from one lender to another, etc.)

All 327 actions require approval under the rule of two authority. (See paragraph 2, chapter 4)

Modifications or administrative actions on specific loans are taken by the completion of an SBA Form 327, "Modification or administrative action" or the SBA 327 stamp format. The result is a "327 action."

**a. SBA Form 327.**

SBA 327, "Modification or administrative action" is available as a pre-printed form or on-line from SBA computer software. The report must contain all the essential information pertinent to the issue being considered, such as status of the loan, collateral, guarantors, and comments of the recommending official originating the report.

- (1) The recommending official comments should include:
  - (a) Summary of the request;
  - (b) Evaluation of supporting documentation; and
  - (c) Recommendation for approval or denial.
- (2) The approving official must:
  - (a) Take final action to approve or deny the request; and
  - (b) Document the reason for his/her decision if it is not already clearly stated in the recommendation.

**NOTE:** Documentation by the approving official is not necessary when the recommendation is clear and concise, is the basis of the approving official's determination, and it is so stated on the action by the approving official.

**b. 327 stamp format.**

You may accomplish routine or uncomplicated changes in the authorization and loan agreement by using an SBA 327 stamp:

- (1) The SBA 327 stamp "Modification or administrative action - stamp", is an approved stamp format which can be affixed to incoming borrower/lender/CDC correspondence to reflect SBA action. You may use the SBA 327 stamp in those cases where you are not required to distribute the action to the Office of Financial Operations (OFO) Denver.

- (2) You should limit its use to less complicated requests where the incoming letter (and any enclosures) satisfactorily describes the action requested and provides sufficient information to allow final action.
- (3) In some cases, you may use the SBA 327 stamp for administrative actions that are not in response to bank or borrower requests (e.g., submissions of a request corrections to OFO, Denver).
- (4) You must consecutively number these actions with other 327 actions, and each action must reflect the signature of the recommending and approving officials.

**c. Authority for action.**

You must cite on the SBA 327 form/stamp the applicable SOP chapter and paragraph number that provides authority for the action. If you take more than one action with an SBA 327 form/stamp, you must cite each action with the applicable chapter and paragraph numbers.

**d. Filing of the action.**

You must file the 327 action (with related documents such as a credit memo, etc.) with other 327 actions in the borrower's loan file. The field office may use a photocopy or facsimile as a response to the borrower/lender/CDC.

**e. Actions requiring approval by another office.**

- (1) You must use an SBA 327 to recommend loan servicing action on specific cases which require approval at an office other than the originating office. The proposed action and the signatures and titles of the recommending/approving officials must be on the report. It is essential that the report contain all the pertinent information necessary to make an informed decision. (This section applies when a loan is transferred to another field office. See SOP 50-50, Chapter 3, "Administrative Aspects for Loan Servicing," sub-paragraph 1.d., When do you transfer loans between field offices or between commercial loan service centers?)
- (2) The originating office will forward the action to the next office [e.g., branch to district, district/service center to Borrower and Lender Servicing (BLS)], with a copy retained by the originating office, pending final action. The report must include the comments and recommendation of the highest supervisory official using the rule of two on an SBA 327 at each office and of counsel (on legal issues).

**NOTE:** This process will be the same for actions that must be sent to Headquarters for a final decision.

- (3) The office taking final action will do so on the form, or if needed, by separate letter. The office taking final action will retain a copy and return the original action to the originating office.
- (4) When the action taken requires notice to lender/CDC/borrower, the originating office must:
  - (a) Give such advice by separate letter; and
  - (b) File a copy of the letter in the correspondence section of the loan folder.

**NOTE:** Various SBA automated computer systems may be valuable in making efficient use of your time in preparing 327 actions. See your Information Resource Manager (IRM), for details.

### **3. Transferring Loans Between Field Offices.**

From time to time, you may need to request another field office to accept responsibility for further action on a loan (e.g. borrower moves outside your jurisdiction). A field office should not refuse to accept a valid transfer of a loan, or refuse to perform a reasonable task for another field office. Any loss attributed under any transferred account will be attributed to the transferring office.

### **4. Liquidation Litigation Tracking System (LLTS).**

- a. The LLTS provides a variety of computerized information screens. It is used to monitor the status of liquidation and litigation cases. The LLTS provides a chronological record of liquidation and litigation actions taken. It also contains detailed collateral and guarantor information.
- b. When a problem loan is classified "in liquidation," a liquidation plan must be developed. Key elements of the plan must be entered into LLTS within 30 days following receipt of the loan. Periodic updates must be made as the loan progresses.

### **5. What are the Requirements of the Liquidation Plan?**

The SBA/participating lender must use the standardized "Lender Liquidation Plan Format" which SBA has developed. You must submit any significant modification to this format to Headquarters for approval. (See "Liquidation Plan Format," appendix 15, for the required elements of the standardized "Lender Liquidation Plan Format.")

**6. How is a Liquidation Plan Approved?**

- a. Directly in LLTS; or
- b. Via SBA 327 (if so enter general comments into LLTS).

**7. Who is Responsible for Maintaining/Updating LLTS?**

- a. Once the initial data entry screens (A, D, and E) are completed placing a loan "in liquidation" in LLTS, the system is maintained by the liquidation official as liquidation actions occur.
- b. If the loan is placed "in litigation," the system requires additional input/comments by the assigned SBA field counsel for legal actions as they occur.
- c. The liquidation loan officer must keep LLTS updated. At a minimum, loan status comments must be entered at least every 60 days.

**NOTE:** For time sensitive issues, you must maintain a tickler system (screen C). The reviewing official must ensure that drift is avoided by addressing these issues at portfolio review meetings.

**8. Who is Responsible for Oversight of the LLTS?**

- a. The supervisory official must review the SBA and lender-serviced accounts using LLTS every calendar quarter on:
  - (1) All Colpur accounts and liquidation accounts that have been in liquidation 180 days or more;
  - (2) A random sample of 25 percent of all liquidation accounts under 180 days;
  - (3) Preferred lender program (PLP), and LowDoc liquidation accounts do not need to be reviewed prior to guaranty purchase; and
  - (4) FA\$TRAK loans will be reviewed at time of guaranty purchase with the wrap up report.
- b. The review may be conducted either electronically or face-to-face with the assigned liquidation official. If drift appears in the random review, a more detailed review is required.
- c. The supervisory official must post all comments to LLTS.

- 9. What are the Supervisor's Objectives When Conducting the LLTS Portfolio Review? The supervisor objectives are to:**
- a. Track activity and general progress of the loan account;
  - b. Ensure that an effective liquidation plan is established and followed;
  - c. Ensure that the liquidation loan officer is taking every action necessary to protect the Agency;
  - d. Avoid any unwarranted delays; and
  - e. Provide guidance for future actions.
- 10. What Should the Supervisor Determine at the LLTS Portfolio Review? The supervisor should determine that:**
- a. An acceptable liquidation plan has been established and entered into LLTS; or
  - b. General comments from a 327 action are entered into LLTS;
  - c. All required factual information has been obtained; and
  - d. The supervisor has entered all directional comments into LLTS to document the review.
- 11. Where Can You Find More Information About LLTS?**
- Complete instructions are in the "LLTS Users Manual" which is located on the SBA Internal Bulletin Board System within the "SBA Data Communications System User Manual" (SBA-DCS). (See paragraph 19, in this chapter titled "Computer Input, Support and Control Systems.")
- 12. What Loan Accounting Data is Available, and Where is it Found?**
- Field offices currently obtain much of the loan accounting data in the Portfolio Management Query System (PMQD) which you access locally. Occasionally it is necessary to contact the OFO in Denver for special accounting data.
- 13. How Do You Use the PMQD System?**
- a. You can access the system through your local area network (LAN).
  - b. You may use PMQD as a menu driven system by entering PMQD00; or

- c. You may directly access individual screens for information. See the PMQD00 screen for a directory.

**14. What Accounting Information is Available from the Office of Financial Operations (OFO)?**

- a. Certified statements of account;
- b. Transcripts of account;
- c. Confirmation of loan payoff amounts; and
- d. Other verification support.

These reports should only be ordered when absolutely necessary, as they can be voluminous. Most accounting data is found on the PMQD system.

**NOTE:** Sometimes when requesting a loan payoff in PMQD09, "Accounting Payoff Data" you may find an item has been placed in "suspense." This will freeze the account. You should contact OFO, Denver, who can usually resolve suspense items. This will permit you to obtain the payoff locally.

**15. What is the Procedure for 503/504 Payoff?**

The procedure for 503/504 debenture purchase and acceleration is contained in Chapter 11, "Prepayment or Purchase of a Development Company Loan or Debenture," in SOP 50 50.

**16. Special Computer Inputs/Controls When a Loan is Charged Off.**

You must ensure that vital information is entered into the SBA database at the time a loan is charged off. The LAUD13 must be updated to enable you to "REFER-NOT REFER" a loan for further collection action. This data is relied upon for post charge off activities conducted by Headquarters such as:

- a. Referral to private collection agencies;
- b. Federal salary/retirement offset;
- c. Reporting loan deficiency balances as income to IRS; or
- d. Other automated collection efforts that may be available.

**17. Safekeeping and Control of the Collateral Records?**

- a. The field office collateral cashier is responsible for these functions.
- b. All original notes, debentures, and other like loan documents will be given to and held by the cashier.
- c. The cashier will release documents requested in accordance with established cashier control procedures.

**18. What Must Be Done When Approved Actions Affect Collateral Records?**

When you take action that affects the collateral records, counsel must oversee the preparation and execution of the required legal documents. You must provide the field office collateral cashier with the original new document, or a copy if the original is not available. A copy must be placed in the loan file.

**19. Computer Input, Support and Control Systems.**

There are many computer screens, reports and systems to provide field offices with information from central records. There are also many computer inputs required from the field to update those records. These systems are described in detail in the "SBA Data Communications System User Manual" (SBA-DCS). You may access this user guide via modem through the SBA Internal Bulletin Board. You should become fully familiar with the SBA-DCS user manual. If you need assistance accessing or downloading portions of the manual contact your IRM for assistance.

## CHAPTER 4

GENERAL GUIDELINES FOR  
LIQUIDATION ACTIVITIES

## 1. Definitions.

## a. Appraisal.

A "current appraisal" is one made within the past 120 days, or not more than 1 year if justified in a 327 action.

## b. Approving official.

Approving official refers to an SBA staff member who has met the requirements outlined in the delegations of authority, as published in the Federal Register. (This is often the line supervisor.)

## c. Claim amount.

The net outstanding principal balance that would be remaining after the proposed compromise offer is applied to the current principal balance.

## d. Cram down.

An approval of a bankruptcy, Chapter 11 plan of reorganization, over the objection of a creditor, when the judge finds that the plan is in the best interest of all other creditors and does not unfairly treat the objecting creditors.

## e. Colpur.

Colpur is collateral purchased or property acquired by SBA or its participating lenders through loan liquidation.

## f. Cost of money to the Government.

Cost of money to the Government is the interest yield equivalent to that being paid on Treasury securities for similar maturities. These rates are published in the Wall Street Journal, Section C, under the heading of "Treasury Bonds, Notes, and Bills," "Ask YLD" column.

**g. Debt, evidence of.**

References to borrowers' loans and accounts include:

- (1) Notes;
- (2) Receivables;
- (3) Judgments; and
- (4) Other evidence of debt payable to the SBA.

**h. Drift.**

Drift is when there is serious delay in managing a loan (by SBA/lender) without good documented reason noted in the LLTS.

**i. Field office.**

The term field office is used to indicate district offices, branch offices, commercial loan servicing centers, Santa Ana Disaster Loan Servicing and Liquidation Office, and disaster home loan servicing centers.

**j. Liquidation officer.**

The generic term "liquidation officer" refers to the SBA staff member who performs the basic tasks discussed in this SOP.

**k. Obligor/debtor.**

The terms "obligor" or "debtor" include:

- (1) Borrower;
- (2) Co-borrower;
- (3) Guarantor(s);
- (4) Assumptor(s);
- (5) Judgment debtor(s); and
- (6) Any other party who has liability for a loan account.

**l. Present value.**

Present value is the current worth of future sums of money. This concept is used in many phases of liquidation decision making. To calculate present value refer to:

- (1) Determining present value (appendix); and
- (2) Available software products (e.g. fisCAL).

**m. Recommending official.**

Recommending Official refers to an SBA staff member who has met the requirements outlined in the delegations of authority as published as a Notice in the Federal Register. (This is often the liquidation officer.)

**n. Supervisory attorney.**

Supervisory attorney is the:

- (1) District counsel in a district office;
- (2) Senior litigation counsel in the litigation units and Administrative Law litigation unit, and in the Santa Ana Disaster Loan Servicing and Liquidation Office;
- (3) Supervisory attorney in the commercial loan servicing center(s); and
- (4) Servicing center attorney in a disaster home loan servicing center (or, if there is none, the district counsel in the nearest district office).

**2. What are the SBA's Delegations of Authority?**

- a. The Delegations of authority are published as a Notice in the Federal Register.
- b. What are the limitations on authority to the field?

**(1) Exceptions to policy.**

Instances where circumstances require or suggest an action which is not in full compliance with the mandatory parts ("must") of the SOP are "exceptions to policy." Final authority to approve exceptions lies with the AA/FA or designee. The SBA Form 327, Modification or Administrative Action, must include comments and recommendations of the field office.

- (2) **Rule of Two.**
- (a) All actions taken under delegated authority must reflect both the recommending official and the approving official. This process is called the "Rule of Two."
  - (b) Accounts classified as in litigation, must include comments by both counsel and the approving official.
  - (c) Final approval, on credit issues where the account is classified in litigation is the responsibility of the approving official (e.g. liquidation division supervisor, ADD/ED).
  - (d) Removing the loan from "in litigation" is the responsibility of counsel.
- (3) **What happens if your recommendation for action is not approved by the approving official (a split decision)?**
- (a) If the approving official does not approve your recommendation for action, he/she must add comments and recommendations to your 327 action and refer the loan to the second level of authority. That next level of authority must indicate the final action taken and the basis for the decision.
  - (b) If the position taken at the second level of authority is contrary to the differing recommendations of both you (the recommending official) and the first approving official, the matter will go forward to the next level of authority until it reaches the point of concurrence in a prior recommendation.
- (4) **Example:**
- (a) You are a liquidation specialist and you recommend a workout in an 327 action.
  - (b) Your approving official is the chief of liquidation. If the chief of liquidation approves your 327 action, the action is final and the workout is approved.
  - (c) If the chief of liquidation declines the action, he or she must refer the action to the second level of authority which, for example, is the assistant district director for economic development (ADD/ED). If the ADD/ED concurs with your recommendation or with the Chief of Liquidation, the action is final. For example, if the ADD/ED concurs

with your recommendation to approve the workout, the workout is approved. However, if the ADD/ED concurs with your chief of liquidation's decision to decline the workout, the workout is declined.

- (d) If the ADD/ED does not uphold your recommendation or the chief of liquidation's decision and recommends yet another action, the ADD/ED must refer the action to the next level of authority. In this case, the ADD/ED would refer the action to the deputy district director (DDD) or district director (DD).

**NOTE:** Regardless of title, all officials must have appropriate delegation of authority from the Associate Administrator for Financial Assistance (AA/FA).

**(5) What can't be approved under the rule of two?**

According to the delegations of authority published in the Federal Register, no SBA employee has the authority to:

- (a) Take action on any loan which is in "litigation" status without legal review and concurrence;
- (b) Deny liability of the SBA under the terms of a participation or guaranty agreement; or
- (c) Authorize suit for recovery from a participating lender under any alleged violation of a participation or guaranty agreement.

**3. What Do You Do When You Receive a Written Proposal by an Obligor or Debtor?**

You must formally act on all written requests in compliance with the rule of two.

**a. What do you do if you receive an oral proposal?**

- (1) If the request is grossly lacking in merit or supporting documentation, then you may deny the request without a recommendation; or
- (2) If the request has merit, you must request a written proposal with supporting documentation.

b. What do you do if the obligor, debtor, or participating lender requests a reconsideration or an appeal?

- (1) Handle it in the same manner as the original written proposal; then
- (2) You must submit the request to the next level of authority.

4. What are the Field Offices' Performance Goals for Loans in Liquidation, Litigation, and Colpur Status?

You should:

- a. Complete loans in liquidation in 12 months, unless you cannot accomplish this for good cause;
- b. Complete loans in litigation in 18 months, unless you cannot accomplish this for good cause, such as delay caused by a U.S. Attorney's office or time spent awaiting a court's determination; and
- c. Dispose acquired assets (Colpur) within 12 months of acquisition, unless you cannot accomplish this for good cause, such as the necessity for remediation efforts to clean up hazardous waste.

**NOTE:** See chapter 11, "Collateral Purchased (Colpur) by SBA and Lender" for additional information on Colpur disposal.

**NOTE:** The Office of Financial Assistance (FA) will provide recovery and guaranty purchase goals through the Office of Field Operations to each district office.

5. Management Reviews.

- a. Every 60 days each DD and Santa Ana Disaster Servicing and Liquidation Office Director must chair a meeting of the ADD/ED, district counsel, and liquidation supervisor to review office caseloads of more than 180 days in liquidation status.
  - (1) The purpose is to:
    - (a) Ensure compliance with goals;
    - (b) Set new priorities; and
    - (c) Allocate resources and review related issues.

- (2) Directors must take the lead in promoting a teamwork approach to recoveries. Since liquidation and legal staff have separate areas of responsibility and authority, it is vital that a cooperative attitude exist.
- b. Regional administrators (RA) must ensure that the required meetings take place and discuss any recommendations with their directors.
  - (1) The purpose of the periodic director's review is:
    - (a) To provide for the effective management of resources; and
    - (b) To emphasize the importance of recovery processes.
  - (2) The reviews are not meant to substitute for the existing in-depth portfolio reviews by liquidation supervisors.
- c. For lender oversight and managerial reviews, see Chapter 8, "Lender-Serviced Liquidations."

#### 6. **Placing a Loan "In Liquidation" or "In Litigation" Status.**

You must prepare a 327 action. At a minimum, your report must provide full justification for the action.

Disaster home loans are consumer-type credits and do not require the amount of information necessary for business loans.

##### a. **When MUST a loan be placed "in liquidation" status?**

A loan MUST be placed "in liquidation" when:

- (1) Foreclosure action by a prior lienholder or a law suit has been instituted against the borrower or obligor with respect to any substantial collateral securing the loan or guaranty and the Agency's interest may be adversely affected;
- (2) The borrower has filed a voluntary petition or any involuntary petition has been filed against the borrower under the bankruptcy code and there is evidence that borrower has assets pledged as collateral which this Agency must protect and the loan is delinquent;
- (3) A receiver has been appointed, an assignment for the benefit of creditors has been made, or other legal actions have been taken for the purpose of liquidating the collateral or obligor's assets; or

- (4) All or a valuable part of the collateral has been abandoned by the obligor.

**b. When SHOULD a loan be placed "in liquidation" status?**

A loan should be placed in liquidation when:

- (1) All reasonable alternatives to collect the debt have been exhausted;
- (2) The borrower cannot, or will not, repay the debt on reasonable terms;
- (3) The collateral is clearly in serious danger of dissipating; or
- (4) Any other circumstances which may substantially and adversely affect the Agency's position (law suit by a junior lienholder, etc.).

**c. When MUST a loan be placed "in litigation" status?**

An account must be referred to the field office counsel and classified as "in litigation" when:

- (1) There are insolvency proceedings, such as bankruptcy, receivership, assignment for the benefit of creditors involving the obligor and there is evidence that collateral of significant value exists and loan is delinquent;
- (2) A law suit has been instituted against a borrower which may have a substantially adverse effect on the Agency's position;
- (3) The SBA has been named a party defendant in a suit involving a borrower which may substantially harm the Agency's position; or
- (4) The Agency must pursue judgment or otherwise enforce its liens through litigation.

**d. When SHOULD you place a loan "in litigation" status?**

An account should be referred to the field office counsel when:

- (1) There are insolvency proceedings, such as bankruptcy, receivership, or assignment for the benefit of creditors involving the borrower. Discuss with counsel, as there may be assets of limited value or borrower may be current with loan payments; or

(2) There is a need for legal action to effect further recovery or to protect the position of SBA.

e. **Can you recommend placing a loan "in litigation" status without placing the loan "in liquidation" status?**

A loan can be placed in litigation without being in liquidation. A loan is to be placed "in litigation" by use of a 327 action.

**NOTE:** The recommending official may recommend classifying a loan "in liquidation" and "in litigation" on the same 327 action.

f. **When and how to remove a loan from "in litigation" status?**

When the litigation matter is complete or a determination is made that further legal effort would not be warranted or justified, counsel will prepare and approve a 327 action authorizing removal of the loan from an "in litigation" status and transferring it to liquidation or regular servicing for appropriate action.

g. **When and how to remove a loan from "in liquidation" status?**

An account can be returned to servicing by use of a 327 action when the situation that classified a loan as "in liquidation" has been resolved or has been restructured/reamortized by:

- (1) A workout plan;
- (2) A term compromise agreement;
- (3) A judgment has been obtained; and
- (4) At least three monthly payments have been made, as agreed.

## **7. Placing/Removing a Loan In or Out of Liquidation/Litigation Status.**

- a. When a liquidation case is identified as needing legal action, you must transfer it to litigation status with the concurrence of counsel.
- b. Counsel will proceed with appropriate action, subject to approval by liquidation personnel, in regard to credit matters.
- c. After transfer to litigation, the loan becomes the responsibility of the legal division. The account will be monitored according to the newly established 18 month litigation time frame.

- d. Under the "Rule of Two" for litigation cases:
- (1) For purely credit matters (such as settlements and releases of claims for consideration):
    - (a) The recommending official for these actions will be an official in the Liquidation Division; and
    - (b) The approving official will be an official outside of the legal division (e.g. the liquidation supervisor or ADD/ED).

**NOTE:** Comments of counsel are required.

- (2) For foreclosure actions, a loan officer/liquidation staff must:
  - (a) Arrange and conduct the sale in accordance with all legal requirements prescribed by SBA counsel;
  - (b) Provide all necessary assistance including arranging for and paying for appraisals, title reports, environmental reports, and auctioneers; and
  - (c) Be responsible for preparing protective bids, providing for the care and preservation of collateral, and attending sales as needed.
- (3) When litigation is completed or a determination is reached that further legal effort would be unproductive:
  - (a) Counsel will prepare a 327 action authorizing removal of the loan from litigation status and transfer it back to liquidation for appropriate action; and
  - (b) If a workout or restructuring plan is approved while a loan is in liquidation status, the account will be removed from liquidation once three regular payments have been received in accordance with the terms of the plan even though a debtor/borrower might remain under the technical jurisdiction of a Bankruptcy Court.

## 8. Risk Management Database, Loan Underwriting Characteristics.

- a. The Small Business Programs Improvement Act of 1996, Public Law 104-208, requires the Small Business Administration to establish a risk management database to capture information on loans going into default (defined by SBA for this purpose as those that are being transferred to liquidation status after January 1, 1997). This applies to all loans transferred into liquidation status no matter when they were

- approved. This involves having available, at loan origination, certain underwriting characteristics for each business loan SBA makes or guarantees, plus additional data on loans that go into default. In order to comply with this requirement, the specified data must be available at the time of loan approval and must be entered into SBA's database when a loan is placed in liquidation.
- b. The SBA and its participating lenders must obtain loan origination data on the specified underwriting characteristics for each business loan the Agency makes or guarantees. This loan origination data will be supplemented by additional information on collateral for loans that go into default, and SBA staff must enter all required data into SBA's systems through a new LLTS screen (titled "Underwriting Characteristics") when a loan is placed in liquidation.
  - c. Servicing/liquidation supervisors must verify the entry of this data and its accuracy as part of their regular supervisory reviews. Also, district directors must monitor compliance during their regular 60-day reviews under the Liquidation Improvement Project.
  - d. The required information on loans transferred to liquidation status after January 1, 1997, pertains to a borrower's financial condition and collateral at the time of the loan application on an actual and pro-forma basis, along with additional information on collateral at the time a loan goes into default. The risk management database will include:
    - (1) A credit history indicator at time of application;
    - (2) The current ratio and the debt to tangible net worth ratio at the time of loan approval;
    - (3) A collateral analysis at the time of loan approval showing loan to value ratios for both fair market and liquidation valuations; and
    - (4) The net realizable value of loan collateral at default.
  - e. Processing personnel must ensure that all information needed to compute the ratios is collected on every business loan, and servicing/liquidation personnel must input this data for loans that go into liquidation after January 1, 1997.
  - f. For valid comparisons, ratios must be computed using the same method for each loan. The procedures are detailed in the appendix 16, "Loan Underwriting Criteria -- Risk Management Database."

- (1) Field offices must distribute this information and appendix 16, "Loan Underwriting Criteria -- Risk Management Database" to each participating lender submitting a request for loan approval after the date of this SOP.
  - (2) Lenders must be aware that the information required to calculate the specified ratios must be in the loan file for each SBA guaranteed loan they originate (since June 17,1997).
  - (3) For lender serviced loans that go into liquidation, the lender must calculate all ratios as of the time of application and provide these ratios to SBA along with the specified information on loan collateral as an attachment (following the LLTS screen format) to the liquidation plan.
  - (4) The liquidation plan must be submitted by the lender to SBA when required according to the type of lender and loan program involved, and must be entered by SBA staff into the Agency's database when received from the lender.
- g. The SBA has added an "Underwriting Characteristics" screen to LLTS ("V" screen) to meet the legislative requirement. This screen requires the capture of the specified data by field office staff when a loan is transferred to liquidation status. Complete information on the new screen is contained in Section IV, Chapter 4.22 ("Underwriting Characteristics") for the LLTS in the SBA-DCS User Manual. This section includes input procedures, error messages, field names and descriptions, as well as an example of the screen itself. Although the instructions contain a detailed guide, please note the following.
- (1) All SBA and lender serviced business loans must be included in the data collection effort. This includes CDC loans and disaster business loans, but not disaster home loans.
  - (2) For lender serviced loans, lenders must provide the "Underwriting Characteristics" as an attachment (using a format similar to the LLTS screen) to the liquidation plan. Lenders must submit the plan to SBA at the beginning of the liquidation process or at the time of guaranty purchase, depending upon the requirements of the loan program and type of lender.
  - (3) When SBA receives the liquidation plan and the underwriting characteristics attachment, liquidation staff must enter all data in the LLTS screen for all loans transferred to liquidation after January 1, 1997.
  - (4) All data fields in the LLTS screen must be completed. If information is not available, enter a "0" (zero) in the appropriate space.

**9. Which 327 Actions Must SBA Counsel Review?**

- a. Legal counsel must review all 327 actions involving the following activities (exception are noted in the corresponding categories):
- (1) Exceptions to policy;
  - (2) Conflict of interest/preference;
  - (3) Acquisition of environmentally impaired property;
  - (4) Transfer of a loan to another lender;
  - (5) Subordinations (review includes the 327 action and other documents deemed necessary);
  - (6) Assumptions (review includes the 327 action and other documents deemed necessary);
  - (7) Release or substitution of collateral;
  - (8) Release or substitution of obligors;
  - (9) Workouts;
  - (10) Purchase under the SBA guaranty, including "repairs" and denials of liability;
  - (11) Deeds in lieu of foreclosure;
  - (12) Review of liquidation plans (for issues regarding legal compliance, e.g., legal expenses);
  - (13) Payment of attorneys' fees;
  - (14) Transfers of a loan into litigation;
  - (15) Transfers of a loan out of litigation;
  - (16) All 327 actions on a loans in litigation status;
  - (17) Purchase and/or payment of prior liens;
  - (18) Payment of real estate taxes;

- (19) Compromise actions;
- (20) All charge-offs;
- (21) Any other document or 327 actions with issues regarding legal compliance;  
and
- (22) Substantive revisions to the loan authorization.

**NOTE:** Other exceptions may be noted in chapter 10 on "Special Programs."

- b. Counsel must refer all purely credit issues or administrative aspects to the Liquidation/Servicing Division.
- c. For lender-serviced loans, the lender is responsible for the preparation and legal review of all documentation.
- d. For CDC loans, the CDC is responsible for preparing all documents. The SBA counsel must review all CDC prepared documentation.

#### **10. What Other 327 Actions Does SBA Counsel Typically Review?**

Besides the 327 actions listed above which counsel must review in each instance, the following are examples of other 327 actions which counsel should review:

- a. Transfers into liquidation status;
- b. Protective bids at foreclosure sales;
- c. Assignment for the benefit of creditors;
- d. Alterations in the terms of any loan instrument;
- e. Disposal of COLPUR;
- f. Transfers to servicing from liquidation; and
- g. Abandonment of collateral.

**NOTE:** For all matters discussed in this SOP where there is an issue regarding legal compliance, final authority rests with the General Counsel or designee.

**11. Who has Authority to Liquidate SBA Loans?**

The following people have authority to liquidate SBA loans:

- a. Delegated SBA employees per existing delegation of authority as published in the Federal Register; and
- b. Participating lenders with an executed SBA 750.

**12. What is the Federal Statute of Limitations Act?**

- a. Under the Federal statute of limitations [28 U.S.C. 2415(a)], an action by the Government to recover upon a contract is barred unless filed within 6 years from the date a cause of action occurred. The date of the accrual of the cause of action may be subject to various interpretations.
- b. Whenever any doubt exists regarding the applicability of the statute to any claim, counsel will determine if it is necessary to ensure that the statute does not bar any intended action by the Agency.

**13. How Do You Handle Conflicts of Interest?**

You must become fully familiar with 13 CFR § 120.10 and § 120.140 cited in Chapter 2, "Regulations and Other Authorities."

- a. **Conflicts of interest can arise between one's official and personal duties. Some possible conflicts of official duties involve:**
  - (1) Agency employees and their close relatives;
  - (2) Participating lenders' employees and their close relatives; and
  - (3) Certified development companies' employees and their close relatives.
- b. **Special care should be taken in situations involving:**
  - (1) An associate of the participant (see chapter 2, "Regulations and Other Authorities," for a definition);
  - (2) Close relatives of an employee (see chapter 2, "Regulations and Other Authorities," for a definition);
  - (3) Loans to SBA employees and their close relatives;

- (4) Loans to participant's associates;
- (5) Employee/associate bidding on collateral being liquidated; and
- (6) Purchases of collateral or "Colpur" by close relatives of the participating lender's associates.

**c. Loans to SBA employees and their close relatives.**

If an SBA employee or a close relative of an SBA employee is an obligor on a loan, all significant actions affecting their liability must be referred to BLS or the Headquarters Claims Review Committee for final action.

**(1) For this purpose SBA employees also include:**

- (a) Service Corps of Retired Executives (SCORE); and
- (b) SBA Advisory Council members.

**(2) Significant actions affecting their liability include:**

- (a) Charge-offs;
- (b) Compromises;
- (c) Releases of an obligor;
- (d) Substantial workout of payments; and
- (e) Substantial release of collateral.

**d. Loans to participant associates.**

If an associate of a participant is an obligor on a loan, you must refer all significant actions affecting their liability to BLS for final action.

**e. Can an employee/associate bid or purchase at a sale?**

- (1) No. An SBA employee, close relative, or members of the household must not bid or purchase for their own interest either directly or through an agent at any SBA-related sale of collateral or "Colpur."

- (2) Associates of the participating lender, close relative, or members of the household of the participant's associates must not bid or purchase on their own accord or through agents at any SBA-related sale of collateral or "Colpur."

**14. What is SBA's Policy on the Sale of a Loan?**

A cash sale for not less than the total amount due and transfer of the note and related loan documents, without recourse, may be approved with the written consent of the participant, where appropriate. As a matter of policy, a reasonable effort should be made to notify the borrower of the sale of a loan.

**15. What is SBA's Policy on Certain Litigation Matters?**

When it appears that legal action by the Department of Justice (DOJ) is required to effect further recovery or to protect the position of SBA, the matter must be referred to field office counsel.

It is not contemplated that all matters requiring counsel's comments, opinions, or actions will be classified as "in litigation."

**a. Litigation instituted against SBA or the Administrator.**

An original process or notice of litigation served upon or received by an SBA employee must be brought to the attention of counsel immediately. No acceptance or waiver of service of process will be made without the prior approval of counsel who will coordinate the matter with General Counsel and/or the U.S. Attorney.

**b. Department of Justice (DOJ).**

Disposition of collateral involving litigation and other accounts involved in a suit against SBA must be referred to the Agency's counsel. Where appropriate SBA's counsel must make arrangements through the DOJ for the U. S. Attorney to represent the Agency on all claims more than \$5,000 (exclusive of interest and costs) and all accounts which are secured by a preferred ship mortgage, falling within the U.S. Attorney's delegated authority.

**(1) How does SBA make recommendations to DOJ?**

When referring an account to DOJ, counsel must advise the U.S. Attorney of the Agency's desire to consider and submit a recommendation with respect to any action on the account. This is especially important on participation loans since each action must be coordinated with the participant. The U.S. Attorney should be advised of the pertinent provisions of the participation agreement.

**(2) What is the liquidation staff's role?**

The assigned liquidation official must assist counsel in preparing the referral of an account to DOJ by providing pertinent documentation, including the "Claims Collection Litigation Report" (CCLR), unless counsel request otherwise, as needed on:

- (a) Obligors;
- (b) Guarantors;
- (c) Loan data; and
- (d) Any other credit information and analysis which may be appropriate.

In addition, the liquidation official must inform counsel of any adverse actions.

**(3) What is SBA's policy on inaction by DOJ?**

In the event undue delay is experienced in the handling of an SBA referral, assistance should be requested from the Office of Litigation by memo with a copy to BLS which must be prepared by counsel. The memo must document the pertinent facts about the referral and detailing the follow-up efforts made by the field office.

**c. What are the requirements of the Claims Collection Act?**

Under the Federal Claims Collection Act, documented attempts to settle the obligation and the identification of worthwhile recovery prospects (e.g., property, income) are prerequisites for referral to the DOJ for legally enforced collection. The SBA 327 recommending referral to DOJ for collection should clearly detail the Agency's attempts to reasonably settle the claim and adequately describe and evaluate the attachable assets or other worthwhile recovery possibilities.

**CHAPTER 5****PROBLEM LOANS AND WORKOUT SITUATIONS****1. What is SBA's Policy Regarding Workouts of Loans Classified "In Liquidation?"**

- a. SBA's mandate is to foster and assist small business.
- b. You should work with the borrower to structure a workout whenever feasible.
- c. Be creative, since the alternative of liquidating the collateral usually results in reduced net recovery for SBA.

**2. How Do You Determine if a Workout Should Be Considered?**

Analyze the loan based on the following four questions:

- a. Is the borrower cooperative and acting in good faith?;
- b. Will restructuring the repayment plan help the borrower pay the debt?;
- c. Can the borrower's cash flow support the workout plan?; and
- d. Is a workout in the best interest of both the borrower and the SBA?

**3. Is it Necessary to View the Collateral Before Considering a Workout on a Problem Loan?**

Not necessarily. An up-to-date review of the existing collateral versus additional unencumbered assets must be completed, but you are not required to personally view the collateral.

You should personally view the assets if you feel it will be beneficial. If additional collateral is to be taken as consideration for a workout, you must be aware that the Agency's lien could be invalidated if the borrower files bankruptcy within the preference period. Presently the preference period is 90 days; 1 year for insider. (Consult with counsel for further clarification.)

**4. What Types of Relief are Available to the Borrower?**

- a. Reinstatement of maturity;
- b. Deferment of payment;

- c. Postponement of any liquidation action;
- d. Extension of maturity; or
- e. Reamortizations\rescheduled accounts.

**NOTE:** SBA carries a matured loan as "delinquent," even if paying as agreed. This has a negative impact on your currency rate. It is important that you update the new maturity date in the SBA database as soon as any extension is approved.

See SOP 50 50, "Loan Servicing," for detailed discussion of these actions.

## 5. What Type of Legal Review and Formal Documentation is Required?

- a. For SBA-serviced loans:
  - (1) Counsel must review the loan documents to ensure that all existing liens remain intact and any newly pledged collateral is properly secured. Documents to review include:
    - (a) Security agreements;
    - (b) UCC lien filings;
    - (c) Mortgages; and
    - (d) Any other existing collateral documents.
  - (2) Counsel must prepare and/or review documentation necessary to protect the Agency's interests. Typical documentation may include:
    - (a) A new note;
    - (b) A renewal note;
    - (c) A modification to the note; or
    - (d) An amendment to the original note.

- b. For lender-serviced loans, the lender is responsible for the preparation and review of these documents.
- c. In some instances, it may be necessary to obtain consent of the guarantor(s). Counsel must determine if notice or consent is required and must determine the consequences, if any, of noncompliance by SBA.
- d. For any additional items that counsel must review, see paragraph 9, "Which 327 Actions Must SBA Counsel Review?" in Chapter 4, "General Guidelines for Liquidation Activities."

#### **6. What Interest Rate Adjustments May Be Made in a Workout Situation?**

- a. On participation loans, the rate is negotiable with the lender, but may not exceed the maximum rate allowed by SBA under the particular loan program.
- b. On disaster loans, the interest rate may be adjusted despite statutorily mandated rates at loan origination.
- c. On all other direct loans, the interest rate will be the rate in effect at the time the workout is approved.

**NOTE:** See chapter 10, "Special Programs," for any exceptions.

#### **7. Special Interest Rate Rules.**

- a. On "Purchased Guaranty Participation" (XGP) loans where the interest rate was frozen at a high rate, you may reduce the rate to current levels.
- b. You may consider a retroactive adjustment of the interest rate.

(See paragraph 14, "Reduction/Elimination of Interest Rates or Accrued Interest," in Chapter 17, "Compromise Action," for details.)

- c. In some circumstances the liquidation of the collateral will result in a large loss to the Government. You may reduce the interest rate to the "Cost of Money to the Government" or lower, if it will help produce a viable workout using the rule of two.

#### **8. What Determines the "Cost of Money to the Government?"**

The Government's cost of money is equal to the interest rate payable on Treasury issues with similar maturities. You obtain this rate by comparing the workout maturity with the Treasury issues published daily in the Wall Street Journal.

9. **Information for Workout on the Disaster Loan Program.**

See Chapter 10, "Special Programs."

10. **Special Handling of Loans Where Borrower is Willing but Unable to Pay (Hardship Case).**

Often, when the business fails, the individuals are in dire financial straits. There may be, from time to time, a case where they would pay but are unable to financially. In those instances, you should consider the following.

a. **A hardship delay.**

- (1) An SBA 327 must be prepared recommending postponement of collection action for up to 1 year because of the financial hardship circumstances;
- (2) Further delays may be considered based on the specific circumstances of the case; and
- (3) Further delays may only be considered if it appears that the obligor's financial condition may substantially improve in the near term.

b. **Is the primary residence at risk?**

If the primary residence is at risk, you may consider a creative repayment plan payable over time. The end product should reflect a reasonable return to SBA where the individual(s) retain their residence. You should be able to resolve most cases with proper handling.

c. **Other specialized approaches.**

- (1) Special circumstances require innovative approaches. You may have a local economy or marketplace with unique problems that impair your enforcement of collection.

For example:

- (a) A property may be located in a market that is saturated with similar hard to sell properties;
- (b) You may have taken a deed in lieu of foreclosure as part of a settlement agreement in exchange for a life estate interest; or
- (c) You may find some other locally unique problem.

- (2) As with the hardship situation, the best course of action may be to delay collection in hopes that the market, economy, or individual's situation improves. A recommendation must be made on an SBA 327 to the approving official.
- (a) You should consider recommending (by 327 action) to:
- i. Reduce future installments to \$1.00 for a period of no more than 1 year from the date of the next installment due date to provide relief to the borrower;
- NOTE:** The \$1.00 installment is established so that the borrower is reminded regularly of their debt to the Agency while not placing any additional burden at this time of hardship.
- ii. Reestablish the original payment amount to commence at the end of this relief period (to maintain proper follow up of the account); and
  - iii. Reclassify the loan to "Servicing" status.
- (b) This will ensure that:
- i. An annual review of the obligor's financial condition is completed to determine if subsequent annual suspensions (and reviews) of the payment installment are appropriate;
  - ii. The account will not be accidentally referred to a collection agency; and
  - iii. That timely follow up will take place.

#### **11. Assistance Provided to Existing Borrowers who Suffer Losses in a Declared Disaster?**

For further information, see paragraph 29, with the same name as this paragraph in Chapter 5, "Specific Loan Servicing Actions," in SOP 50 50, Loan Servicing.



## CHAPTER 6

### SBA-SERVICED LIQUIDATIONS

This chapter deals with possession, control and protection of collateral when it is determined that a workout is not possible and the loan is SBA serviced. It is important that you document all your findings and actions in the Delinquent Loan Collection System (DLCS) or the Liquidation/Litigation Tracking System (LLTS) as appropriate.

#### 1. What is SBA's Policy for SBA-Serviced Liquidations?

- a. You must direct your efforts toward maximizing recovery in a minimum amount of time.
- b. You must promptly proceed to locate, identify, assess, and protect all pledged real and personal property.

#### 2. What Initial Steps Should Be Taken if a Workout is Not Possible?

- a. Review the loan documents;
- b. Identify all collateral and lien positions;
- c. Identify the status of taxes;
- d. Identify the status of hazard insurance;
- e. Make a field visit to view collateral;
- f. Assess the collateral value;
- g. Determine the need for care and preservation of the collateral; and
- h. Assess potential environmental issues.

#### 3. What Loan Documents Must be Reviewed?

You must begin with an in-depth review of all available loan documents. Review both the loan file and the collateral file (e.g., notes, deeds of trust, UCCs, etc.). This will allow you to be fully familiar with the business assets, obligors, and guarantors, along with any peculiar items and changes that have occurred since the loan was made. In addition, you must determine the exact status of real and personal property taxes, hazard insurance, and

prior liens including open-end provisions, since any of these factors may have an adverse impact on the SBA's collateral position.

#### 4. How Do You Verify What Collateral Actually Remains or is Available?

- a. The loan file is a valuable source of information relative to collateral issues. The loan authorization contains the original requirements and the 327 actions will reveal any adjustments made. It is very important to be thorough.
- b. Collect data through discussions with borrower and any other sources familiar with the borrower.
- c. You must search the public records for all liens of record, including judgments, special assessments, ad valorem, and other tax liens.
- d. Obtain Universal Commercial Code (UCC) lien searches, real estate property reports, business information reports and any other investigative search that is available and warranted.
- e. Determine if any Internal Revenue Service (IRS) liens exist to accomplish a discharge of IRS lien. (See paragraph 14 in this chapter, "Coordination between the Internal Revenue Service (IRS)".)
- f. Visit the business premises.
- g. Obtain an appraisal of the assets.
  - (1) A formal appraisal is justified and valuable when determining how to dispose of the assets.
  - (2) If collateral is nominal, the loan officer's opinion of value should suffice. (See Chapter 16 on "Appraisals".)

**NOTE:** You must obtain an appraisal on any assets, regardless of value, that may be deeded to SBA in exchange for a credit to an obligor's debt (deed-in-lieu).

#### 5. Mandatory Field Visit Requirements.

- a. SBA personnel must make site visits following the guidelines for lenders. (See paragraph 8, "What Steps Should SBA Take after Being Notified of an Adverse Event?" in the subparagraph b., "Site Visits - 'Lender - Serviced Loans'" in Chapter 8, "Lender-Serviced Liquidations")

- b. In addition, if a site visit was not made within the previous 120 days, one must be made prior to the sale or computation of a protective bid for substantial collateral (real or personal).
- c. Hiring a contract appraiser or evaluator is permitted if field office staff is inadequate. The cost must be charged to the loan as a recoverable expense.
- d. You must attend all sales of SBA related collateral, unless visit is waived by an SBA 327 for good cause.

#### **6. What Should You be Looking for During the Visit?**

You should:

- a. View the business assets to verify what remains versus what was supposed to exist;
- b. Identify, if possible, additional assets to pursue;
- c. Determine whether the collateral requires special protection and the related costs of care and preservation of collateral (CPC); and
- d. Assess what sale technique would be most effective.  
(See Chapter 7, "SBA's Methods of Recovery from Collateral.")

#### **7. How Should the Field Visit and Inspection of Collateral be Documented?**

- a. A memorandum report must be prepared covering the inspection of collateral and detailing any major discrepancies with what should have existed based on review of the file.

This report should contain:

- (1) Determination of collateral value;
- (2) Review of Agency's lien position on collateral;
- (3) Specific identification and description of all worthwhile assets including serial numbers;
- (4) Results of review of loan documents and borrower's records, including books of account and other financial documents;
- (5) Considerations on the care and preservation of collateral (CPC); and

- (6) Analysis of use of loan proceeds to compare with assets currently on site.
- b. If there is any evidence that pledged items worth more than \$5,000 are missing or have been sold, concealed or otherwise disposed of with intent to defraud the SBA, you should contact the Office of the Inspector General (OIG) and discuss the matter. If a report is required, refer to Chapter 24, "Referrals to the Inspector General" for referral instructions.
- c. Photographs and/or videotaping provide excellent supplements to the written report and should be used whenever possible.
- d. A written evaluation of the collateral should be included in the field visit report, either a formal appraisal or loan officer's estimate as appropriate.
- e. The report must be reviewed by the approving official and comments are to be entered (by the approving official) into LLTS.

#### 8. Is it Best to Sell the Assets at the Location or Remove Them to Storage?

Once you have determined what collateral exists, viewed it and estimated the liquidation sale value, you should decide whether to conduct the sale of assets at the borrower's premises.

**Some things you should consider include the following.**

- a. The costs of care and preservation of collateral (e.g., moving and storage fees, sale commission, advertising, utilities, etc.).
- b. Landlord storage costs.

The landlord will usually allow a sale to take place on the premises for a reasonable storage fee or possibly no charge at all. Most of the time, the landlord is more interested in getting the space back to be able to obtain another lease.

- c. Landlord Waiver.

If you have a "Waiver of Landlord Lien," you have specific rights as to possession of the collateral. If you do NOT have the waiver, you should consult with counsel as to landlord rights in your specific state.

- d. Environmental considerations. See paragraph 15.b. of this chapter, "What is SBA's environmental evaluation policy?"
- e. Any other factors which may affect your sale (e.g., location, available parking, security, etc...).

## 9. **Repossession of Collateral.**

### a. **When is possession obtained?**

- (1) The SBA must take control of the collateral in order to proceed to sale.
- (2) Remember that when you are taking collateral into the Agency's custody you are responsible for taking prudent care and protecting the assets.
- (3) This responsibility is not to be taken lightly as it could have an impact on personal guarantors and collection of any deficiency.
- (4) The liquidation officer should not take possession until he/she:
  - (a) Has a clear plan of action;
  - (b) Knows the property has worthwhile value;
  - (c) Coordinates with counsel as to legal aspects; and
  - (d) Determines what contractor assistance is advisable.

### b. **How do you obtain possession?**

Possession may be taken:

- (1) Pursuant to the UCC through peaceful repossession;
- (2) With the assistance from the landlord;
- (3) Directly from the borrower in a cooperative effort; or
- (4) Through enforced debt collection.

If the debtor refuses entry and/or possession, counsel will take the necessary steps to permit entry for the purpose of determining the need for and particulars of enforced collection.

## 10. **When Don't You Take Possession of Collateral?**

### a. **Do not take possession in the following cases.**

- (1) From an "employee of the borrower," deal with the borrower/owner directly and obtain his/her cooperation whenever possible.

- (2) Of "income producing property" whose value is dependant on income generated or anything that is alive or growing until after arrangements have been made to contract with a competent professional to handle/manage the assets. A back up plan must also be in place.
  - (3) Of property which **MAY** be contaminated by hazardous waste or materials. (See paragraph 15. b., "What is SBA's environmental evaluation policy?")
  - (4) Of any individual's personal effects not specifically identified as SBA collateral.
- b. If you encounter a belligerent borrower, back off. It is the SBA's policy to abandon or proceed judicially, depending on the value and circumstances, if any threat of violence is perceived. No amount of collateral is worth exposing an employee to danger.

**NOTE:** Cash should be taken with great caution. If cash is taken, an itemized inventory by denomination of all paper and coins must be made and witnessed by at least two other people. The cash taken must be converted to a cashiers, check or money order and applied to the borrowers account as soon as possible.

**11. What is a Typical Sequence of Events When the Borrower and Landlord Cooperate and Peaceful Possession Will be Taken?**

- a. Check for hazardous materials or waste;
- b. Take the keys;
- c. Allow the borrower and employees to take personal belongings;
- d. Change the locks;
- e. Take physical inventory;
- f. Pick up accounts receivable;
- g. Arrange for utilities;
- h. Post the property as necessary;
- i. Notify police and key neighbors if deemed necessary;
- j. Check insurance coverage;

- k. Provide for any special maintenance required for equipment;
- l. Determine security needs; and
- m. Ensure that competent management is in place if needed.

## **12. Selling Collateral After Taking Possession.**

See Chapter 7, "SBA's Methods of Recovery from Collateral."

## **13. Release/Subordination of Agency Lien.**

Recommendations for release and/or subordination of SBA lien on loans "in liquidation" will only be considered if they clearly are in the Agency's best interest. Release/subordination should be used to effect maximum recovery. Each action will be considered based on its effect on the value of the collateral and the ability to obtain greater overall recovery on the loan. (See Appendix 34, "IRS/SBA Memorandum of Understanding (MOU) and Agreement.")

### **a. Request for release of lien by borrower.**

Generally liquidation by the borrower in a piecemeal fashion is not in the SBA's best interest. The borrower finds buyers for attractive assets leaving the rest for public auction. In a few instances, however, it may be beneficial. The recommending official must ensure that any sales/releases are for good value and will not adversely affect any subsequent foreclosure sale. Use SBA 327 for approval.

### **b. Other Requests for release of lien.**

- (1) Upon receipt of a request for release of property from an SBA lien, the recommending official should assess the facts, obtain participant approval, and ensure that SBA approval will not constitute waiver of lien.
- (2) You may recommend release of collateral subject to the following.
  - (a) Real and/or personal property may be released for a reasonable amount based on SBA's estimate of value. If the offer is for less than the estimated value, or the amount to be applied on the loan is less than the proceeds from sale, the basis for release must be clear and the loan file must be fully documented.
  - (b) Proceeds from release must be applied to transaction code 305, collections from the liquidation process.

- (c) The equity or value of any new property taken in substitution for a release must be comparable to what is released. The new asset must be pledged as collateral even though taken subject to a purchase money or prior lien.
- (d) The SBA must not consent to a sale of property in which it holds a security interest or mortgage lien if such action may constitute a waiver of lien or security interest. Consult with counsel.

**NOTE:** When a personal residence is the only worthwhile asset and there are no other prospects for recovery, (e.g., income), you may reach an agreement on release of the house for consideration. Consult with counsel to ensure that the obligor/guarantor remains liable for the deficiency. You should strive to obtain a sum over and above the release amount and settle/compromise the entire SBA claim. This will complete the case and is generally the preferred course of action.

**c. Subordination to another debt.**

Subordination to another debt must be preceded by a careful analysis and full documentation. Few instances are appropriate, but some may be in the best interests of the Agency.

These may include:

- (1) Construction completion where the only way to complete the project and ensure recovery is through additional financing;
- (2) Short term working capital needs;
- (3) Hazardous waste workouts where subordination to a loan for cleanup would be preferable to abandonment;
- (4) Special purpose facilities; or
- (5) Other instances where the facts clearly show the subordination would be in SBA's best interest.

**d. Process SBA 327.**

Process SBA 327, with comments of counsel, for approval of release or subordination requests. Once approved, ask counsel to prepare and/or review the appropriate documents.

**14. Coordination Between SBA and the Internal Revenue Service (IRS).****a. Agreements.**

The SBA and IRS have outstanding agreements (see Appendix 35) under which they cooperate on problem accounts. The overriding intent of the agreements is to mutually protect the Government's overall interests and to mutually strive to maximize recovery. Typical areas of cooperation are:

- (1) Early contact on delinquent taxpayers/borrowers;
- (2) Discharge of IRS tax liens; and
- (3) Cross training on each others procedures.

**b. Who coordinates actions with the IRS?**

- (1) A Headquarters liaison is established between the IRS Office of the Assistant Commissioner and SBA's Office of the AA/FA. Periodic meetings may be held to discuss areas of mutual concerns.
- (2) A regional liaison may be established between the IRS assistant regional commissioner (collection) and SBA's office of the regional administrator. Meetings are held on an "as needed" basis to discuss problems concerning either agency.
- (3) A field liaison is established between designated field office coordinators from each agency. Specific taxpayer/borrower problems must be resolved quickly.

**c. What will happen when a Federal tax deficiency is discovered?**

- (1) The SBA should contact the IRS if SBA knows that a borrower is delinquent in filing or paying Federal taxes.
- (2) The IRS should notify SBA if IRS expects to take enforcement action against a taxpayer they know is an SBA borrower.
- (3) In either case, SBA and IRS should mutually agree on a specific time frame to analyze and resolve the tax problem.

**d. What action does SBA take upon notice from IRS?**

- (1) You must evaluate the borrower's ability to pay the tax deficiency within an agreed upon time frame.

- (2) If you believe the borrower is financially viable, consider methods to make cash flow available to pay IRS, such as:
  - (a) Deferment of payments;
  - (b) Reduction in payments; or
  - (c) Subordination, release, or assignment of collateral.
- (3) If you determine that the borrower is not financially viable, you should advise the IRS immediately.

**e. What action does IRS take upon notice from SBA?**

Normally, IRS will refrain from taking enforcement action, including the filing of a tax lien during the evaluation period. Be aware that IRS may, based on their own judgment, feel that the Government's best interests would be jeopardized by delay. In those instances, IRS will notify SBA of the enforcement action planned.

**f. How do you obtain release of a junior IRS tax lien?**

- (1) To reduce litigation costs and make property more readily marketable, SBA and IRS agree to work together where both have a lien on the same property.
- (2) For the procedure to request a certificate of discharge and a sample cover letter, see Appendix 36 and 37, "IRS Special Procedure for Discharge of Lien" and "Suggested Format for Application for Discharge of Junior IRS lien."
- (3) The certificate of discharge should be returned to IRS for cancellation if it is not used for any reason by SBA.

**g. Skip trace information from IRS.**

You may obtain the last known address on the IRS tax records by submitting a written request to IRS. (See Appendix 38, " Sample Borrower Letter to IRS.")

**15. Environmental Considerations.**

The liquidation officer must be aware of the substantial liability issues concerning hazardous materials and contaminated property. The clean-up costs of a contaminated site can be very costly and the stigma could adversely effect the collateral value. Ownership and/or management of contaminated property can result in liability for clean-up, site restoration, and potential third party claims that arise from the contamination.

a. **What are the effects on collateral?**

When a site is designated as contaminated by Federal or State environmental agencies, a lien may be filed to cover the costs of cleanup and restoration. The property value will be reduced by the lien amount. The SBA's liability for clean-up costs may be affected by the degree of control that the Agency exercises over a borrower and its collateral if hazardous wastes exist. Coordination with and approval of counsel is important.

b. **What is SBA's environmental evaluation policy?**

- (1) You/lender must conduct a preliminary assessment of risk at the beginning of liquidation. You must complete the "Environmental Questionnaire" on all loans supported by real estate, generally excluding residential real estate, with worthwhile equity for SBA in the property. This questionnaire is located in SOP 50 10, "Processing Business Loans."
- (2) If there is any possibility that hazardous materials may exist, or there is a potential for contamination of property, a professional environmental audit, Phase I audit, must be obtained.
- (3) In no event will SBA take ownership or control (i.e., operational control effecting the environmental decisions of the company) of any property of a firm identified in a "frequently polluting industry" prior to conclusive completion of the necessary level of environmental assessment. (See SOP 50 10). In this situation, you must conduct at least a Phase I audit. Every effort must be made to sell this type of collateral rather than taking ownership and control.

16. **What is a "Preliminary Assessment of Risk?"**

It is the evaluation you perform if there is any evidence that there may be environmental concerns with a property. The "Environmental Questionnaire" (See SOP 50 10), must be used as a tool. If any possibility of contamination exists, a Phase I audit is required, at a minimum.

a. **What is a Phase I Audit?**

A Phase I audit will be performed by a reputable private firm and as a minimum should include the following;

- (1) Inspection of site and adjacent properties;
- (2) Review of historical site property records;

- (3) Review of regulatory agencies' records;
- (4) Personal interviews with individuals knowledgeable with the site operations;  
and
- (5) The report provided by the auditors will indicate if any areas of concern were detected, and will advise if a Phase II audit is required.

**b. What is a Phase II Audit?**

- (1) This type of assessment is required if it is known that significant contamination exists, or a Phase I recommends it. The report is in much more detail as to specific problem areas already identified.

At a minimum the following items should be included in the Phase II Audit;

- (a) Taking physical samples for testing. (e.g., testing for presence of asbestos, PCB's or radon, soil and groundwater sampling and testing, leak analysis for underground storage tanks);
  - (b) Hydrological investigation of site vicinity; and
  - (c) Determination of the extent of contamination and costs of clean-up.
- (2) When contamination is identified how do you analyze the level of concern?

You should take into consideration your own knowledge and experience, any professional assessments received and their recommendations, and projected costs of clean-up and restoration. This will allow you to make a prudent judgment on how to proceed. As it may pertain, see paragraphs 22 and 23, in this chapter, "When may Collateral be Abandoned?" and "If Collateral is Abandoned..."

**c. What are the limitations on the requirements for a Phase I or II Audit?**

- (1) The approving official may waive the requirements for a Phase I or II audit on a case by case basis.
- (2) Some cases where waiving of an audit may be appropriate are:
  - (a) The SBA has no knowledge that environmental risks exist and the property is not on the list of frequently polluting industries;
  - (b) Phase I audit has recently been conducted by SBA; or

- (c) Equity in the property is so limited that the Agency is not planning to take possession in any event.

**17. What are the SBA Guidelines for Qualifying Environmental Auditors?**

Environmental audits must be performed by a firm that is impartial, has no interest in the property or transaction and has demonstrated expertise in its field. Care must be taken to ensure that the firm hired has no relationship with the property sellers or their representatives. In order to establish their level of expertise and the absence of any conflict of interest, the firm must satisfy SBA as to all the following topics:

- a. How long the contractor has been performing environmental assessments of real property;
- b. Details concerning certification or approval of the contractor pursuant to an official Federal, State or local program or policy to conduct environmental assessments;
- c. Identity, training, and relevant experience of all employees who will work on the project;
- d. Details concerning any membership of the contractor in any organization whose purpose relates to the performance of environmental assessments;
- e. If the assessment will be performed in accordance with generally recognized standards, provide a description of the standards;
- f. The nature of any previous environmental inspections the contractor has performed for the seller or purchaser of the subject property;
- g. A description of any affiliation the contractor now has, or has ever had, with the seller or purchaser of the subject property;
- h. A description of any liability insurance the contractor has to cover claims in the event it fails to discover adverse environmental conditions in its inspection; and is the contractor willing to indemnify SBA for any costs stemming from any negligent failure to detect contamination; and
- i. A certification by the signing individual, under penalty for false statements, 18 U.S.C. § 1001, that the above information is true and correct.

Questions concerning these matters should be formally asked of all auditors whose assessments will be relied upon to determine the degree of environmental risk associated with real estate collateral, and a copy of their response placed in the loan file.

**18. Accounts Receivable (A/R) Guidelines.**

- a. You must identify and pursue pledged A/R in a timely and aggressive manner.
- b. The A/R must be promptly evaluated and collected (or abandoned, if appropriate).
- c. You must directly, or through others:
  - (1) Perform a review of the receivables to the extent of available books and records;
  - (2) Determine potential collectibility;
  - (3) Determine costs of collection;
  - (4) Provide notice to the individual account debtors; and,
  - (5) Ensure proper controls are in place and records maintained.

**19. How do You Handle Collection of A/R?****a. Collection by SBA.**

- (1) You must take possession of the accounts receivable ledger and all supporting documents, (e.g., invoices, orders, receipts, etc.) These supporting documents will be necessary if litigation is required on any of the accounts.
- (2) Notice to the borrower's debtors.

Notice must be given to all A/R debtors in writing. This will notify debtors that SBA is holder of the debt by way of its security interest in the borrower's accounts receivable. The letter should be prepared with input from counsel and mailed on SBA letterhead. See Appendix 21 for a sample A/R collection letter.

- (3) Supplemental A/R file.

You should set up a supplemental A/R file to collect correspondence and the ledger information. There will probably be many follow up letters and copies are to be kept in the file. Place A/R file with the original loan file.

- (4) The A/R record of debt and payments.

As part of the A/R collection file you should keep a listing of all accounts owing and payments made. Give a copy of the listing to the collateral cashier to ensure prompt identification, recording, and application of payments received.

- (5) Attempt to get the borrower to help resolve disputed claims.
- (6) Consider discounting the receivables that are not collected after several attempts.
- (7) Abandon uncollectible accounts (SBA 327 required).
- (8) You should notify the obligors of any remaining A/R once SBA ceases collection efforts. Advise them that they may collect as they wish and remit the proceeds less collection costs to SBA. This notice must be in writing and will help negate any defenses that obligors might raise in a suit for the deficiency balance.
- (9) Close the A/R supplemental file and place it in the original docket file.

**b. Collection by borrower.**

Borrower collection can be risky for the obvious reason that funds could be diverted. On the other hand, the borrower will be held liable for any deficiency and has a vested interest in collecting the most available. The borrower also can best handle any disputed claims. Analyze the situation carefully, but in the final analysis the basic question that must be answered is "Do you trust the borrower?"

**20. May Pledged Accounts Receivable be Sold?**

Yes. If the sale is in the best interest of the business. There are, however, concerns that the purchaser may use questionable or excessively aggressive collection methods which could reflect adversely on SBA. Therefore, care must be taken to ensure that SBA does not put itself in such a position.

The sale of A/Rs may be held in one of the following manners:

- a. You may sell the A/Rs to the purchaser of a going concern who is a bona fide owner/operator. The A/R's will have their greatest value to the new business owner/operator. You must use an SBA 327 for approval.

- b. You may recommend approval of a sale of A/Rs by another party in interest, (e. g., borrower, court, participant). This does not expose the SBA to potential criticism for collection methods which may be used by the participant. Use an SBA 327 for approval.
- c. All other sales of A/R must be sent through channels to BLS for approval.

## 21. Guidelines for Handling Shares of Voting Stock.

- a. Shares of voting stock held as collateral and registered in the name of the Agency's nominee may be voted at stockholders' meetings to protect SBA's interest as a creditor. Care should be exercised, however, since management control may make SBA liable for hazardous waste cleanup. You must consult with counsel.
- b. The line supervisor may, after documented conversation with counsel:
  - (1) Determine how the shares are to be voted; and
  - (2) Effect the execution of proxies if necessary.
- c. Stock must not be voted in favor of the election of any employee of the Agency as a director of the issuing corporation without the approval of AA/FA or designee.
- d. An SBA 327 is required for this entire process, and it may be used as the vehicle to document the conversation with counsel.

## 22. When May Collateral be Abandoned?

You should abandon collateral when the cost to dispose of the collateral exceeds potential recovery to SBA. This may be appropriate where:

- a. The collateral is of nominal value and costs of sale outweigh the anticipated selling price; or
- b. There is environmental contamination and the clean-up costs exceed the property value.

A cost/benefit analysis must be done on each individual case considered for abandonment. Any recommendation to abandon collateral must be presented on SBA 327 to the approving official who has final authority. When there are issues regarding legal compliance, you must obtain counsel's approval before recommending abandonment.

**23. If Collateral is Abandoned are UCC Liens or Mortgages Released?**

No. Liens will not be released except when consideration is received. Liens on abandoned personal property will remain in effect. However, they will be allowed to lapse at the next refiling date unless the SBA 327 approving the abandonment specifically requires them to be refiled.

Real estate mortgages should only be released with appropriate consideration which must be approved via SBA 327.



## CHAPTER 7

## THE SBA'S METHODS OF RECOVERY FROM COLLATERAL

## 1. What is SBA's Policy?

The SBA's policy is to:

- a. Take action promptly and in the manner most advantageous to the Agency when:
  - (1) The loan is in default; or
  - (2) There is no reasonable prospect of borrower repaying the loan;
- b. Maximize recovery in the sale of collateral in the minimum amount of time; and
- c. Pursue aggressive marketing of the collateral in order to avoid acquiring assets.

**NOTE:** When feasible, you are strongly encouraged to upgrade the legal required advertising for a UCC sale, or for a judicial or summary foreclosure on real estate, to meet SBA's requirements for a "comprehensive public sale."

See 13 CFR §120.540

## 2. What Should You Take Into Consideration When Taking Action on a Liquidation Account?

- a. Statutory authority;
- b. Applicable State law;
- c. Appropriate operating procedures; and
- d. Agency objectives.

## 3. What are the Basic Methods in Achieving Recovery?

- a. Voluntary sale by borrower.

The owner of real estate or personal property may be able to sell its assets and apply the proceeds to the loan debt.

**(1) The obligor must have:**

- (a) Possession of collateral;
- (b) Clear title to the property free of all liens;
- (c) Agreement with existing lienholders that they are willing to cooperate in the sale and transfer of title; and
- (d) A current appraisal no older than 1 year which can be obtained by the Agency.

You should be aware that experience shows only a small percentage of cases will work in this type of sale. A degree of direct supervision is required, which far exceeds that needed when assets are being sold by a professional auctioneer.

In addition, the borrower may sell the "good" items leaving the Agency without sufficient collateral to hold a public auction.

**(2) The release of SBA's lien can be for:**

- (a) Cash; or
- (b) A down payment of cash with a note receivable which you must secure with the asset involved.

You should conduct a lien search prior to any arrangement.

**b. Deed in lieu of foreclosure.**

The Agency may accept a deed or bill of sale in lieu of taking foreclosure action. The liquidation officer must conduct a thorough evaluation, as this procedure carries certain risks.

You will need the following information to assist you in making a recommendation:

- (1) Clear title from the owner;
- (2) A written agreement between SBA and all obligors on an agreed amount of credit to be applied to the loan balance; *the lender*
- (3) A recent appraisal or other reliable indication of value must be available to support the amount credited;

- (4) An assessment of possible pollution problems (See paragraph 15, "Environmental Considerations" in Chapter 6, "SBA-Serviced Liquidations");
- (5) A determination as to whether the sale complies with the Bulk Sales Act if applicable;
- (6) A current lien search;
- (7) A review from counsel of whether State law will adversely affect SBA's right to collect the balance of the loan from any obligors; and
- (8) The 327 action recommending this approach must contain documentation that a forced sale would not generate a larger return.

**c. Nonjudicial (summary) sale of personal property.**

Virtually every State has adopted the procedures set forth in the UCC. You must consult with counsel as to the requirements in your particular area. The UCC covers personal property pledged on a loan.

**(1) The two major requirements of the UCC are as follows.**

**(a) Reasonable notice.**

Depending on State law, the secured party will send notice to the debtor, guarantor, and any other secured party from whom you have received written notice of a claim in the collateral.

"Reasonableness" governs the timing of the notice. You may find in the security agreement a specific period of time for notice. Where no time period is specified, reasonable notice depends upon the circumstances.

**(b) Commercial reasonableness.**

Every aspect of a sale of collateral must be commercially reasonable, including the time, place, and terms of the sale.

**(2) What must the liquidation officer do to comply with the UCC requirements?**

**(a) You must:**

- i. Obtain peaceful possession of the property;

- ii. Give proper notice of the sale by certified mail, return receipt requested, to all obligors and guarantors (See the Appendix 25 and 26, "UCC Notification, Personal Property Sale -- Direct Loan" and "...-- XGP Loan," for sample letters);
- iii. Include all required information in the individual and public notices;
- iv. Notify all parties having a "security" interest in the collateral;
- v. Have a current appraisal or other reliable indicator of value for the property to be sold; and
- vi. Consult with counsel as to the requirements in your specific state.

(b) You should:

- i. Consider using a professional selling agent, such as an auction company, to establish the commercial reasonableness of the sale; and
- ii. Take extra sales efforts to show the Agency's intent to conduct a "well advertised, public, and commercially reasonable sale."

(3) What are the types of UCC sales?

(a) The UCC public sale.

You must obtain peaceful possession of the property, give proper notice of the sale as outlined above, and sell to the highest bidder at a well advertised public auction. Once the notice has expired you may consummate the sale.

(b) The UCC private sale.

You must obtain peaceful possession and tentatively negotiate an acceptable selling price. You must give public notice to all interested parties as outlined above. This notice must also state that the sale is subject to receipt of a better offer by a specified date.

**(c) The UCC special case sale.**

- i. Items of collateral covered under this section would be perishables, livestock, and any other collateral which would require special handling in which the costs would exceed expected value.
- ii. You should conduct this sale shortly after obtaining possession.
- iii. You should attempt to notify all obligors and guarantors of such a sale.

**d. Foreclosure of deed of trust.**

"Trust Deeds" or "Deeds of Trust" are used in some states to effect a lien on real estate. There is a trustee named, usually an attorney, who is willing to serve in that capacity. If the owner does not pay as agreed, the trustee, as requested by SBA or lender, will advertise, and publicly sell the property and apply the proceeds of the sale to the debt.

**4. Foreclosure of Mortgages.**

The property owner conveys, depending on State law, either a lien on the realty or the title to the realty to SBA or the lender. The mortgage will be canceled or released when the debt is paid. The SBA/lender may sell the property at public sale and apply the proceeds to the debt if the borrower fails to pay. There are certain States which require judicial foreclosure of real property mortgages, while others permit summary, nonjudicial foreclosure sales.

**a. Judicial sale.**

There are some States which do not permit nonjudicial foreclosure sales of real property. The Agency must prove the debt and security held as well as allow all parties an opportunity to be heard in court before the foreclosure can be held.

When you cannot obtain peaceful possession of personal property in some jurisdictions, the court action for possession of the property may result in a judicial sale.

**(1) Judicial foreclosures may be handled as follows:**

- (a) The SBA may initiate action for a judicial foreclosure; or

- (b) The SBA, as a mortgage holder, may be named a party defendant in a foreclosure action by another lienholder.

The DOJ, which represents SBA, will attempt to confine its litigation to the Federal courts. The lender may bring the foreclosure action in State or Federal court.

**(2) The following are types of judicial sales.**

**(a) Receivership sale.**

A receiver, who functions much like a bankruptcy trustee, will take possession of and protect the property. The court will order the receiver to sell the property publicly or privately on terms directed by the Court.

**(b) Bankruptcy sale.**

A bankruptcy trustee in a Chapter 7 bankruptcy, may sell both real and personal property which will be free and clear of liens.

**This sale can be:**

- i. Negotiated;
- ii. Offered publicly by the trustee in the courtroom;
- iii. A sealed bid; or
- iv. An on-site public auction.

**(c) Sale by debtor-in-possession.**

The debtor-in-possession or the trustee in a debt arrangement under the Bankruptcy Code may sell collateral by negotiation or some form of public offering. The sale will be preceded by a hearing and court order.

Confirmation of the court is usually required and the liens will move from the property and attach to the proceeds of the sale.

**(3) Possessory actions.**

The court retains jurisdiction over the property for the purpose of sale and distributing the proceeds after they determine the priority of liens and other interests.

**b. Quasi-judicial sale.**

**This is a process allowing the debtor to:**

- (1) Appear before an entry-level court official; and
- (2) Contest the creditor's right to proceed with the sale of their property.

Counsel will normally handle this procedure as it varies from State to State.

**5. What Type of Sales are Acceptable and How are They Handled?**

The SBA's regulations provide for the sale of loan collateral in accordance with the pertinent security instruments generally by public sale through competitive bidding at an auction sale or a sealed bid sale.

**a. Voluntary sale by borrower.**

See earlier paragraph.

**b. Public auction.**

- (1) Public auctions are conducted in accordance with applicable statutes and are considered to be legally correct.
- (2) The normal procedure involves publication of a notice of sale, usually in a local newspaper, followed by the public auction.
- (3) You should upgrade the legal required advertising to meet SBA's requirements for a comprehensive public sale whenever possible.

**c. Comprehensive public sale.**

(See 13 CFR §120.540 c.)

- (1) Whenever possible, you are strongly encouraged to offer collateral at a comprehensive public sale.

- (2) To meet the requirements of a comprehensive public sale you should consider using additional promotion by:
  - (a) Display advertising;
  - (b) Brochures;
  - (c) Purchasing updated mailing lists;
  - (d) Advertising in trade journals;
  - (e) Including descriptive information and photographs in SBA's Internet listing of acquired assets; and
  - (f) Any other sales support activity that would be used in a well conducted public sale.
- (3) Whenever possible, you should attempt to arrange with the trustee, sheriff, marshal, receiver, or bankruptcy trustee to allow a professional auctioneer, realtor or other sales professional to assist in promoting and conducting the foreclosure sale. All U. S. District Courts and many State courts have the power to provide for this in an order of sale.

**d. Private sales.**

- (1) The UCC authorizes creditors to use either public or private sale for personal property collateral, as may be commercially reasonable, but does not set forth detailed procedures to use for a private sale.
- (2) You should use procedures which provide protection against a sale being held invalid or a loss of liability of the obligors. Coordinate with the borrower whenever possible. The two important items to remember are "notice" and "commercially reasonableness."
- (3) The approving official has authority to approve a private sale of personal property collateral consistent with the UCC, or for real property collateral, if fully justified in the 327 action.
- (4) A current appraisal (within 120 days is preferred, but no more than 1 year as justified in the 327) must be available with the value documented on the 327 action recommending the private sale. This is especially important in the event that a deficiency balance will remain for which remaining obligors will be pursued.

- (5) The lender may be authorized to conduct private sales in any amount if such actions are:
  - (a) In accordance with applicable laws;
  - (b) The regular practice on their non-SBA loans; and
  - (c) The SBA has given prior written concurrence.
- (6) The approving official has delegated authority to approve the 27 action authorizing the above sales.

**e. Sealed bid sales.**

- (1) You may offer collateral using advertised sealed bids.
- (2) The Agency's requirement that you conduct a comprehensive public sale whenever possible mandates that you promote the sealed bid sale properly.
- (3) You may consider sealed bid sales where the number of potential bidders is perceived to be limited. You should consider that this process requires you to handle all aspects of the sale, which entails:
  - (a) Developing prospects;
  - (b) Writing ads;
  - (c) Working with advertisers;
  - (d) Arranging for payment of expenses;
  - (e) Controlling the bids; and
  - (f) Answering inquiries.
- (4) You must first prepare the:
  - (a) Invitation to bid;
  - (b) Terms and conditions for submitting bids; and
  - (c) Bid form.

(Examples of these forms are in Appendix 20-i)

**f. Sealed bidders auction.**

You may conduct a sealed bidders auction using the following basic steps:

- (1) You solicit your sealed bid in accordance with Appendix 19-i;
- (2) A prearranged formula for selecting the bidding finalists is done;
- (3) The sealed bid deposits of the finalist are retained; and
- (4) An open public auction is held among the high bidders.

Should this method fail, you are then free to negotiate with interested parties.

**6. Is "Term Financing" Available?**

- a. Yes. But you must fully justify accepting term financing in a 327 action as SBA's general policy is to sell collateral for cash.
- b. Term financing normally applies to real estate.
- c. You would need to document as a special compelling need to offer terms on personal property.

**7. How Would a Term Sale be Handled?**

- a. The advertising must reflect that:
  - (1) Financing is available to persons who qualify within a specific time period prior to the sale;
  - (2) Financial statements are required;
  - (3) Bank references are needed;
  - (4) The applicant must be of good character;
  - (5) The credit criteria for determining financial responsibility will be the same as if the Agency were processing a new business loan;
  - (6) The net present value of a term bid must exceed a cash bid by at least "10 percent"; and

- (7) Certification must be made by individuals purchasing on terms that they are not more than 60 days delinquent with child support payments.
- b. The amount of the credit bid should be limited to not more than 80 percent of the successful bid. Purchaser should pay at least 20 percent in cash or certified funds at time of sale.
- c. The terms, rates, security positions, and other factors allowable for Colpur are also applicable for term financing in auction or sealed bid situations.

#### 8. What Is a Protective Bid?

- a. A protective bid is:
  - (1) The amount of SBA or lender's bid at a sale; and
  - (2) Established based on the current appraisal less related expenses associated with the foreclosure sale.
- b. It is SBA's policy to bid a fair value at foreclosure sales conducted by SBA.

**NOTE:** The SBA personnel normally will NOT make known the amount of the Agency's protective bid, appraised value or liquidation value. HOWEVER, you are free to discuss a range of acceptable value with the selling agent.

#### 9. Are Protective Bids Always Required?

- a. No. There are times when the value is nominal and the related expenses such as moving, storing, reselling, etc., exceed the appraised value. A protective bid is not required, and the sale can be advertised as an absolute auction. However, an SBA Form 327 must be prepared justifying your action.
- b. The key to establishing a need for a protective bid rests on the quality of the appraisal. You will find the appraisal is one of the most important tools of liquidation.

#### 10. How Do You Prepare a Protective Bid?

Your baseline for determining the bid should normally be the liquidation value. The SBA will base protective bids on the "sound liquidating value" of the collateral. The protective bid must be approved by 327 action. The following items must be subtracted when establishing a protective bid:

- a. Anticipated costs of acquisition and resale;

- b. Special considerations described below:
- (1) All prior liens, charges, and claims against the collateral which will have to be paid by the successful bidder;
  - (2) Consideration to be paid IRS for release of a junior tax lien;
  - (3) Expenses of protection, maintenance, and preparation prior to resale;
  - (4) Depreciation, vandalism, or other foreseeable decline in value prior to resale; and
  - (5) Costs of resale, including advertising, commissions, and administrative expense.

(See Appendix 24-i for an example protective bid.)

**11. What is a Bid in Excess of Sound Liquidating Value?**

- a. This is a bid which is higher than the liquidating value. The bid should not be in excess of the related SBA indebtedness due on the account. There must be no legal avenues of recovery other than the collateral (i.e., obligors who are bankrupt, deceased, or otherwise not worth pursuing). The basic reason for establishing a bid in this manner would be for future negotiating purposes.
- b. When a liquidation officer establishes a bid which is greater than the appraised value, justification must be documented on a 327 action.

**12. Sales By Prior Lienholders - Are Protective Bids Needed?**

- a. You should normally prepare a protective bid:
  - (1) To keep the prior lienholder from bidding in at only a nominal figure; or
  - (2) For use in exercising a right of redemption where that is available to SBA.
- b. If you choose not to enter a bid, it may:
  - (1) Permit a prior lienholder or third party to acquire the collateral at a fraction of its value; and
  - (2) Open the way to an unduly large deficiency judgment by the prior lienholder and reduce SBA's ability to recover from the guarantors.

- c. The SBA's right of redemption may, in some cases, be exercised only by paying the prior lienholder.
- d. You should attempt to use additional advertising and employ the services of a professional sales agent, after discussing with the prior lienholder. This would be done at our expense.

**13. Are there Exceptions to Establishing a Protective Bid?**

Yes.

- a. Some jurisdictions require a lienholder to bid a minimum percentage of the market value of the collateral being sold. You should still compute a protective bid amount based on guidelines in this chapter.
- b. A bid would not be necessary when:
  - (1) The value of the collateral is nominal (e.g., less than \$5,000); or
  - (2) Related cost of the sale (e.g., repairs, EPA clean up, legal, taxes, etc.) exceed the value of the collateral.

**14. What Tolerance Range is Allowed in Protective Bids?**

A reasonable range is usually 10 percent. This should cover any unanticipated events which may unfold at the sale.

**15. When Do You Offer Collateral in Bulk or Piecemeal?**

- a. There are times when it will be beneficial to offer collateral in bulk, in piecemeal or a combination of the two.
- b. You should be aware that some jurisdictions:
  - (1) Prohibit bulk sales (this is now rare);
  - (2) Require that sales of real estate and personal property be separate;
  - (3) Require a parcel or piecemeal offering; or
  - (4) Allow the property owner to direct or designate the order in which parcels or classes of property are to be sold until enough collateral is sold to repay the obligation.

**16. Types of Bidding:****a. Bulk.**

- (1) Bidding should ordinarily commence at a certain figure and proceed as necessary, up to the authorized protective bid.
- (2) You need to also be aware of the legal implications of bulk sales:
  - (a) Acquiring property for less than its "true value";
  - (b) Meeting the commercially reasonable requirements; or
  - (c) Bulk sales statutes.

**b. Bulk then piecemeal.**

- (1) Your bidding strategy can become more flexible by:
  - (a) Bidding just in bulk;
  - (b) Bidding just on certain parcels; or
  - (c) Bidding on both bulk and certain parcels.
- (2) The bulk bidder should be given the opportunity to increase his bulk bid prior to starting the piecemeal bidding.
- (3) The collateral will be sold by whichever manner of bidding brings the most recovery to SBA.
- (4) Having the bulk bidding first is mandatory whenever there is any possibility of the collateral being sold bulk.
- (5) You must be aware of the various possibilities which may result from piecemeal or bulk bidding. You may find that advertising bulk and then piecemeal can hurt your sale. Potential buyers who are interested in one or a few items may not be willing to spend their time when the possibility exists that everything can go to a bulk bidder.

c. **Piecemeal.**

Piecemeal bidding may be more beneficial for SBA. A typical example would be machine shop in rented premises. The Agency would not want to acquire all of the collateral and may choose to bid on only the major pieces.

You will find the decision to offer in bulk, in bulk and then piecemeal, or just piecemeal will depend on the type of collateral you are selling, the jurisdiction in which you are selling or just the local protocol.



## CHAPTER 8

## LENDER-SERVICED LIQUIDATIONS

## 1. What is SBA's Policy on Lender Liquidations?

## a. It is SBA's policy that the lender must:

- (1) Service and liquidate a loan when they have asked SBA to honor its guaranty;
- (2) Execute an SBA Form 152, "Participation Certificate," showing SBA's guaranty percentage of the loan;
- (3) Submit a liquidation plan;
- (4) Maximize recovery in the sale of collateral in the minimum amount of time; and
- (5) Avoid acquiring assets whenever possible through the aggressive marketing of loan collateral.

NOTE: Whenever feasible, you are strongly encouraged to upgrade the legal required advertising for a UCC sale, or for a judicial or summary foreclosure on real estate, to meet SBA's requirements for a "comprehensive public sale."

## b. If SBA chooses to service or liquidate the loan:

- (1) The lender must assign the loan instruments to the SBA;
- (2) You must complete an SBA 327 justifying this action; and
- (3) The Agency must execute an SBA Form 156, "Certificate of Interest", showing lender's percentage of the loan.

(See CFR § 120.512.)

## 2. Lender Oversight and Managerial Reviews.

- a. During the managerial reviews, lenders who are not adequately liquidating loans must be identified, especially those in the PLP, LowDoc, and FA\$TRAK programs.

- b. Lenders with chronic problems and lenders who do not take suggested corrective actions must be identified by the DD.

The DD must:

- (1) Promptly contact the lenders;
- (2) Must meet with the appropriate officials of those institutions to discuss SBA liquidation procedures and expectations under the Federal regulations, SBA policy and procedures, the 750 agreement, any supplemental guaranty agreements and the authorization and loan agreement; and,
- (3) Annually, the DDs must provide a summary report to their regional administrators and Headquarters on lender liquidation deficiencies within 60 days of the end of each fiscal year.

### 3. What Lender Programs do the Procedures in this Chapter Apply to?

The liquidation procedures outlined in this chapter apply to the 7(a) guaranty loan program as well as all other SBA/lender programs. Any exceptions to these procedures are outlined in Chapter 10, "Special Programs," for certain loan programs such as:

- a. LowDoc;
- b. FA\$TRAK;
- c. Preferred Lender Program (PLP);
- d. Certified Lender Program (CLP);
- e. Certified Development Company (CDC) Program (503/504 loans);
- f. CAPLines; and
- g. Export Working Capital Program (EWCP).

### 4. What Should the Lender Do When it Appears a Borrower May Not Repay Its Loan?

When the lender determines that there is no longer any reasonable possibility that a borrower will be able to repay the SBA guaranteed loan in an orderly manner, it should immediately contact the SBA to begin the process for enforcing recovery. No two liquidations are the same. Therefore, the following paragraphs should assist the lender in reaching a resolution.

5. **When Must a Lender Notify the SBA Servicing Office of an Adverse Event?**

The participating lender must notify the SBA office servicing the loan when there is an adverse event. The notice should be by telephone, followed with a fax and/or written confirmation. If a servicing center is servicing the loan, it will take appropriate action and forward the loan file to a local field office, if appropriate.

6. **What are Adverse Events?**

Adverse events include, but are not limited to:

a. **Foreclosure or other legal action.**

The institution of a foreclosure action or other legal action against the borrower or other obligor which adversely impacts SBA's interest in any worthwhile collateral securing a loan or guaranty.

b. **Bankruptcy.**

The borrower, a significant obligor, or a person in possession of collateral has filed a voluntary petition or an involuntary petition has been filed against the borrower under any chapter of the Bankruptcy Act.

c. **Receiver appointed or other legal action.**

A receiver has been appointed, an assignment for the benefit of creditors has been made, or other legal action has been taken to liquidate collateral or to force a change in management or ownership.

d. **Abandonment.**

Substantial collateral has been abandoned by the borrower.

e. **Dissipation of collateral.**

Substantial collateral is being, or is in danger of being dissipated.

f. **Other.**

Any other circumstance which may substantially and adversely affect the joint position of the lender and SBA.

**7. How do You Handle an Adverse Event if the First Notice is a Liquidation Plan?**

If the first notice you receive from the lender is the lender's proposed liquidation plan, you or the line supervisor **must** contact the lender as soon as possible following receipt of the plan to ascertain the essential facts. During the conversation, you (or the line supervisor) must:

- a. Make certain that the lender will make the required field visit; or
- b. Advise the lender that no action, including making demand on the borrower, is to be taken without SBA's written approval.

**8. What Steps Should SBA Take After Being Notified of an Adverse Event?**

- a. **Discuss requirement of field visit to the borrower.**

Once you know about any event which creates an "in liquidation" situation, the lender must visit the borrower's business premises. If the lender does not make the field visit within the time frame noted below, the lender must document the reason for not doing so, and you must establish with the lender a new deadline for the visit with an SBA 327.

If it is a lender serviced loan, the lender must perform the field visit. With the exception of PLP, LowDoc, and FA\$TRAK lenders, the lenders are required to notify SBA of their findings. The PLP, LowDoc, and FA\$TRAK lenders must document their findings in the borrower's loan file.

- b. **Site Visits - "Lender Serviced Loans."**

- (1) Lenders must make site visits and prepare a comprehensive and detailed report containing an inventory of assets and an assessment of their condition.

- (a) This action must be performed:

- i. Within 60 days of an unremedied default in payment; or
- ii. As soon as possible after default if there are assets of significant value that could be removed or depleted.

- (b) Whether a payment default exists, a site visit must be conducted within 15 days of an event which would cause a loan to be placed into liquidation status, including:

- i. Business shutdown or abandonment;

- ii. Foreclosure or other adverse action affecting significant collateral;
  - iii. Bankruptcy or receivership; or
  - iv. Any reason to believe collateral is being lost or its value diminished.
- (2) The recommending official/approving official (e.g., loan officer/line supervisor) will review:
- (a) The site visit reports at the time of guaranty purchase; and
  - (b) The quality and appropriateness of real estate appraisals, personal property appraisals, and any environmental surveys.
- (3) Alternative to site visits by lender.
- (a) Lenders may engage third party inventory/appraisal contractors to perform the same duties provided the costs are reasonable in relation to the services provided.
  - (b) Minimum review standards are outlined in subparagraph 8.c., "Minimum collateral evaluation and appraisal standards," in Chapter 8, "Lender-Serviced Liquidations."
  - (c) If the lender's information conforms in all respects to the SBA standards, SBA personnel will not need to make a site visit, nor will one be necessary prior to the computation of a protective bid for sale purposes.

**c. Minimum collateral evaluation and appraisal standards.**

- (1) A meaningful collateral inspection by lenders and/or SBA is both a comprehensive inventory and a valuation of the collateral. The following is necessary to provide a meaningful inspection of personal property collateral.
- (a) Specific description and identification including serial numbers.
  - (b) Photographs or videotapes of larger or more significant pieces to establish condition, identity, and pictorial evidence.
  - (c) Establishment of individual liquidation values.

- (d) Evaluation of inventory (especially of retail items).
- (2) This can either be done by videotaping or by actual count. The latter is only necessary if there is sufficient value in the inventory to warrant consideration of sale, and it is needed to verify or establish the value of the inventory on the basis of retail price or cost.
  - (3) Retail inventory firms are generally economical and efficient and can provide an accurate accounting of goods.
  - (4) A timely and comprehensive inspection may improve the overall recovery on loans where chattels have been overlooked or ignored.
  - (5) A thorough review includes an analysis of the use of loan proceeds to compare with assets currently on site.
    - (a) Any differences should be addressed in discussions with the borrower.
    - (b) The focus is to evaluate early and effectively in a manner appropriate for the collateral involved. (For instance, if a borrower is a small rural store with little or no appreciable inventory, the cost of having a contractor evaluate and dispose of this asset might well prove counterproductive. On the other hand, if one is working with a retail store where inventory is the only significant source of recovery, it is very important to have a quick and reliable measure so liquidation personnel can have the data necessary to formulate liquidation and disposal methods and alternatives.)
    - (c) If at all possible, site visits should include a review of the borrower's books and records to determine whether any funds were inappropriately taken out of the company or used for unauthorized purposes.
    - (d) In reviews of defaulted loans, the Inspector General's office has frequently found that unauthorized use of funds has occurred but gone undetected, because books and records were not reviewed.
    - (e) In addition, you must make a preliminary review of security instruments and document the amount and condition of the collateral before you prepare the SBA 327 establishing any protective bid in the event of foreclosure sale.

(See Chapters 6 and 10, "SBA-Serviced Liquidations" and on "Special Programs" for exceptions.)

**d. Order lien searches as appropriate.**

Lenders must first determine their exact lien position prior to taking any steps in the foreclosure process.

**e. Order appraisals as appropriate.**

If it is determined that an appraisal is needed, the appraisal must be no older than 1 year to be classified as current. (See Chapter 16, "Appraisals.")

**f. Determine if any environmental issues exist.**

The lender must be alert for possible environmental problems. (See paragraph 15, "Environmental Considerations," in Chapter 6, "SBA-Serviced Liquidations.")

**g. Consider potential for workout.**

If the borrower is still operating, assess the potential for workout or restructure of the account. (See Chapter 5, "Problem Loans and Workout Situations.")

**h. Coordinate liquidation with the lender.**

If the borrower has ceased operations or enforced collection is necessary, you should discuss plans for liquidation with the lender. You should reach a tentative agreement with the lender regarding the steps to be taken.

**i. Consider whether to transfer into litigation.**

You must discuss with counsel any questions regarding the possibility of placing a loan into litigation.

**9. What Should the Lender and SBA do if Immediate On-Site Action is Necessary?**

- a. If the needed action is "routine" (e. g., changing locks on a vacated building, ordering a lien search, or obtaining an appraisal) then you may give approval to act.
- b. If the needed action is "non-routine," you should call and clear the matter with your line supervisor and counsel, when necessary. Once cleared, you may take (or give approval to take) the action. This information is to be documented either in the field visit report or the liquidation plan as well as documented on an SBA 327.

**10. What are the Factors to Consider in Determining that a Lender Should Not Liquidate a Loan?**

**a. Competing liens or loans held by lender.**

- (1) If:
  - (a) The SBA and the participating lender have competing liens against any of the borrower's assets; or
  - (b) The lender has a non-SBA loan to the same borrower or its principals;
- (2) Then the lender must not be allowed to handle the liquidation, unless:
  - (a) Any disputes are resolved prior to the commencement of such action; and
  - (b) There is a written agreement as to the distribution of funds expected to be realized.
- (3) In such cases, you must verify that the lender has properly distributed all funds received. (See Chapter 7, "SBA's Methods of Recovery from Collateral.")

**b. Lender's past performance.**

If a lender's past efforts at liquidation were unsatisfactory (poor results, excessive costs, poor responsiveness), SBA should not allow the lender to liquidate until the problems are likely resolved.

**NOTE:** You must complete an SBA 327 justifying this action.

**11. What Happens When the Lender Liquidates a Loan?**

The following steps must be taken:

**a. Employment of a public auction firm.**

If the lender hires an auctioneer for purposes of meeting the "commercially reasonable" test, the following information must be obtained.

- (1) The liquidation plan must state that SBA will be made whole if acts or omissions by the auctioneer cause SBA loss. There must be sufficient protection afforded the lender against misconduct or negligence of the auctioneer. This can be ensured through proper liability insurance and bonding

that is either required and/or customary and reasonable. (See Chapter 15, "Contracting With Auction Firms.")

- (2) The lender may require the auction firm to provide a bond in the amount of the anticipated sale proceeds. This will generally only cover personal property as proceeds from sale of real estate are usually controlled by the trustee or other selling agent.
- (3) The lender may use the requirements of SBA in hiring an auction firm as outlined in Chapter 15, "Contracting with Auction Firms."

**b. Submission of a liquidation plan to SBA by the lender.**

- (1) A standardized liquidation plan format (see Appendix 15-i) has been developed by FA to ensure that liquidation instruction and policies provided to lenders are consistent.
- (2) The lender must attach to the plan the "Underwriting Characteristics" of the loan. (Refer to Chapter 4, "General Guidelines for Liquidation Activities," paragraph 8, "Risk Management Data Base, Loan Underwriting Characteristics," for additional information.)
- (3) The standardized liquidation format has been developed for use by ALL lenders.
- (4) The lender must submit a liquidation plan to SBA for approval in advance of liquidating the collateral.
- (5) The lender must use the SBA's standardized lender liquidation plan format.
- (6) You may customize this plan to fit local law and procedures as long as the essential data is captured.
- (7) Major deviations must be approved in advance by the Office of Borrower and Lender Servicing (BLS).

**NOTE:** Refer to Chapter 10, "Special Programs" (e.g., PLP, CLP, LowDoc, etc.) for the requirements of liquidation plans.

**c. Control of sale proceeds.**

The auctioneer or other selling agent must be required to deposit the gross proceeds from the sale of the collateral or Colpur in an escrow account pending payment of authorized expenses/fees and maintain a detailed accounting of the sale. The escrow

account should be, if possible, an interest bearing account and identified as being for the benefit of the specific SBA related loan.

**d. Other.**

Any other circumstance which may substantially and adversely affect the joint position of the lender and SBA.

**12. The Lender's Liquidation Plan is Reviewed and Approved as Follows.**

- a. The recommending official must promptly review the liquidation plan making appropriate recommendations to the approving official.
- b. Counsel must review for reasonableness of legal fees and the legal procedures to be undertaken.
- c. The approving official must document the approval of the liquidation plan in LLTS within 30 business days following approval.
- d. The approving official may approve the plan in LLTS or by use of a 327 action.

**NOTE:** Refer to Chapter 10, "Special Programs" (e.g., CLP, PLP, LowDoc, etc.) for the requirements relating to liquidation plans.

**13. What if the Lender Requests a Change to the Liquidation Plan?**

It is not unusual for liquidation plans to be changed as events unfold. The lender must obtain the SBA's approval before proceeding with major changes in the plan and expenses.

**a. Procedure.**

When possible, the lender should submit a written proposal to the SBA. The SBA will then evaluate the proposal and approve any change with a 327 action.

**b. Urgency versus documentation.**

Sometimes situations require swift or even immediate action to protect the interests of the Government. You and the lender should discuss the situation and possible steps to take. Once you reach a general agreement, you must brief the line supervisor (and counsel, if appropriate). You must obtain verbal approval from the approving official before you relay consent to the participant. Document agreed changes should be implemented as soon as practical with a 327 action.

**14. What if SBA Requests a Change to the Liquidation Plan?**

When the liquidation plan is submitted to SBA for approval, the lender must adhere to changes requested by SBA.

**15. What are the SBA Liquidation Officer's Responsibilities for Follow-Through?**

You must maintain a close working relationship with the lender throughout the course of the liquidation. A summary of all contacts, attempted contacts, and reviews must be entered into the LLTS chronological record.

**a. Ongoing contact.**

The lender must provide copies of significant documentation such as letters, sales notices, and reports as they occur. Such material should be reviewed by the liquidation officer (and counsel, if appropriate), handled as deemed necessary and placed in the loan file. In addition, the lender or its counsel must provide SBA counsel and you with copies of all pleadings.

**b. 90 Day reviews.**

You must make telephone, written, or face-to-face contact with the lender handling the liquidation of the account at least once every calendar quarter.

**c. Supervisory review.**

The supervisory official must review the lender-serviced accounts using LLTS every calendar quarter on:

- (1) All liquidation accounts that have been in liquidation 180 days or more;
- (2) Colpur accounts (see Chapter 11, "Collateral Purchased by SBA and Lender."); and
- (3) A random sample of 25 percent of all liquidation accounts under 180 days.

The review may be conducted either electronically or face-to-face with the assigned liquidation official. If drift appears in the random review, a more detailed review is required.

**d. Field visits.**

Field visits to the borrower's premises and to the lender's office should be made from time to time during the liquidation process.

e. **Attendance at sales.**

- (1) An SBA loan officer need not attend public sales conducted by the lender, particularly if:
  - (a) An SBA representative has viewed, within the past 120 days, the collateral to be offered for sale; or
  - (b) The SBA determines that such attendance would not be necessary to protect SBA's position.
- (2) A representative of the lender must be in attendance at sales of worthwhile assets.
- (3) In such cases, the lender must send the SBA a report of the events which took place at the sale. Also, the lender must send the SBA a copy of the auctioneer's (or other selling agent's) accounting. **Repeated failure of the participant to furnish the required documentation may be justification to revoke the SBA Form 750 Agreement of the participant.**

f. **Monitoring expenses and recoveries.**

You must ensure that liquidating lenders keep expenses in line with the agreed upon liquidation plan. You must also ensure that they properly apply recoveries from the liquidation process, especially when there are competing liens or non-SBA loans involved.

**16. How Does the SBA and the Lender Handle Insurance?**

The SBA usually does not purchase or continue premiums on insurance during liquidation of the collateral. However, banks usually do purchase or maintain hazard insurance on the collateral as well as public liability coverage and may ask SBA to share in the premium expense. (See Chapter 22, "Insurance Property, Life and Public Liability.")

**17. May Lenders Who are Liquidating SBA Loans Use Private/Negotiated Sales?**

Yes. Lenders who are liquidating SBA loans may use private/negotiated sales if:

- a. It is practiced in similar sales of non-SBA assets; and
- b. The sales were disclosed in their liquidation plan or subsequent amendments to the plan.

The use of private/negotiated sales are subject to certain conditions, which are described in the following paragraphs.

(See 13 CFR 120.540 c(1).)

**18. What are the Main Requirements for a Private/Negotiated Sale Prior to an Actual Foreclosure?**

The requirements for the lender to use private/negotiated sales are:

- a. The real estate or personal property must be free and clear of all liens or the lienholders must cooperate in the sale and transfer of title; preferably within 120 days and
- b. A current appraisal no older than 1 year must exist, (See Chapter 7, "SBA's Methods of Recovery from Collateral.")

**19. What are the Limitations on the Lender's Use of Private/Negotiated Sales?**

Lenders conducting the liquidation may conduct private/negotiated sales as follows.

**a. Private UCC sales.**

The uniform commercial code (UCC) provides means for conducting private sales of collateral by secured parties in the event of default. The liquidating lender may conduct private UCC sales of collateral without limits as to size/amount, provided:

- (1) The approach used is similar to the means used by the lender in its liquidation of non-SBA loans;
- (2) The sale is deemed to be commercially reasonable under the circumstances;
- (3) The sale satisfies the provisions of the Bulk Sales Act; and
- (4) The expected net recovery at least equals the net amount estimated to be realized from a public sale.

**b. Sales of a "going" business in its entirety.**

A favorable aspect of private/negotiated sales is that they can provide a means to sell the collateral as an operating entity. This may result in a larger recovery, depending on the circumstances. Accordingly, the approving official may authorize the liquidation lender to conduct private/negotiated "going" business sales of collateral in

its entirety, without regard to loan size or estimated recovery amount, provided the prerequisites indicated in the prior subparagraph, "Private UCC Sales" are met.

**c. Sales to existing owners.**

Private sales of collateral may not be made to existing owners under any circumstances.

**d. Costs of sale.**

Reasonable costs of advertising, labor, and fees are permissible on all sales of collateral, even if those costs are not specifically described in the liquidation plan.

**e. Term sales.**

- (1) Private sales on terms are subject to the same requirements as other terms sales of collateral or Colpur. Use SBA documents if possible, practical and agreeable to the lender.
- (2) Before purchase of an SBA guaranty, a lender financed sale of assets (seller carryback and/or takeback) on a loan it is liquidating does not require SBA's approval, and will reduce the loan balance by the amount of the sale.
- (3) After purchase, a lender may sell assets (through a note receivable) on a loan it is liquidating with SBA's prior written approval.
- (4) See paragraph 6, "Is 'Term Financing' Available?" in Chapter 7, "Methods of Recovery from Collateral" and in Chapter 11, "Collateral Purchased by SBA and Lender" starting with paragraph 19, "When Can You Sell on Terms?"

**20. Can a Lender Sell Colpur at a Private or Negotiated Sale?**

Yes. A lender may conduct private or negotiated sales on Colpur accounts regardless of the dollar amount involved. (See Chapter 11, "Collateral Purchased (Colpur) by SBA and Lender.")

**21. What are the Limitations and Restrictions on the Lender's Handling of Liquidations?**

The SBA's limitations and restrictions on the lenders handling of the liquidation of SBA guaranteed loans are essentially incorporated in three requirements as follows.

- a. The SBA must give its consent to the general liquidation plan at the outset (including anticipated litigation) and whenever significant modifications to the plan are needed.

- b. The lender must follow procedures which:
- (1) Are consistent with generally accepted practices used by prudent lenders; and
  - (2) Are required by this SOP, SBA's rules and regulations, and SBA's loan documents.

In this regard, the SBA expects that the participant will use the same degree of prudence it uses when it liquidates its non-SBA loans.

- c. Prior written consent must be obtained from SBA in certain circumstances.

## 22. When Must the Lender Obtain the SBA's Prior Written Consent?

The lender handling the liquidation of a loan must obtain SBA's prior written consent in the event of any of the following.

### a. Restrictions on sales to associates of participants.

Associates of participants must not bid or purchase directly or through agents on their own account at any SBA related sale. This includes sales of collateral or Colpur conducted by either the SBA or the lender. Written permission from the SBA is required to sell any SBA related collateral or Colpur to a close relative who is not a member of the household of participant's associates. (See Chapter 4, "General Guidelines for Liquidation Activities" for definitions and procedures.)

### b. Legal fees.

The SBA counsel must review proposed litigation and make a decision on the proper forum to bring an action.

Legal fees must not exceed more than 10 percent of the amount agreed to by SBA in the liquidation plan, as amended. If legal fees exceed the amount of recovery through liquidation on the loan, no payment of those fees may be made unless fully justified and approved by SBA 327.

### c. Protective bids.

A protective bid is:

- (1) The amount of lender's bid at sale; or
- (2) Established based on the current appraisal and related expenses associated with the foreclosure sale.

Except for PLP, LowDoc and FASTRAK loans, the SBA must concur with the lender's recommendation for a protective bid and to subsequent changes of more than 10 percent if a protective bid is entered. For more information related to protective bids, see Chapter 7, "SBA's Methods of Recovery from Collateral."

**d. Compromise of debt.**

Lenders must not unilaterally compromise an SBA account.

**e. Release of an obligor.**

Lenders must not unilaterally release any obligor on an SBA loan. (See Chapter 10, "Special Programs" for any exceptions.)

**f. Variances from lender's usual procedures.**

When the proposed actions vary from either the lender's or the SBA's usual liquidation procedures, you must document the circumstances. A 327 action with counsel's comments is required.

**g. Matters covered by the guaranty agreement.**

The SBA Form 750, "Loan Guaranty Agreement," (with the participant) specifies certain matters which require agreement between the SBA and the lender. The following actions must be approved by SBA if not contained in the lender's liquidation plan.

- (1) Accelerate the maturity of the note. (If the need for immediate action exists, an SBA 327 stamped letter from the participant is sufficient for this action.)
- (2) Make or consent to any substantial alteration in the terms of the Note or related loan instruments.
- (3) Approve any release, substitution, or exchanges of collateral, except where the value released does not exceed 20 percent of the original loan amount.
- (4) Sell, assign, or transfer the note or related loan instruments.
- (5) Sue upon the note or related loan instruments.
- (6) Waive any claim against a borrower, guarantor, standby creditor, or other obligor (see Chapter 10, "Special Programs").

- (7) Purchase, pay installments on, or pay in full a prior lien. (See Chapter 9, "Purchasing SBA's Guaranty" in SOP 50 50, Loan Servicing.)

**23. How Should a Disagreement with the Lender be Resolved?**

- a. An impasse will be handled as an exception to policy.
- b. The approving official and or the district director must make a personal effort to reach an agreement with the participant before the matter is forwarded to the Office of Borrower and Lender Servicing.

**24. How Must You Apply the Proceeds from Liquidation?**

When you are satisfied as to the amount of the expenses and the division of the recovery, the net proceeds (lender's out-of-pocket liquidation expenses can be paid first) from the liquidation process must be applied as follows.

- a. When the SBA guaranty has NOT been purchased, the participant will be allowed to recover up to 120 days of interest from liquidation proceeds, using the interest rate in effect at payment default. All other proceeds received from liquidation must be applied by the lender to the principal balance of the loan. The SBA will then pay only its portion of the principal balance outstanding with no accrued interest at the time of the guaranty purchase. (See SOP 50 50, Chapter 9, "Purchasing SBA's Guaranty.")
- b. When the SBA guaranty HAS been purchased, the participant must apply the net proceeds first to principal, then to interest, unless directed otherwise by SBA. The lender must then remit SBA's share of the net proceeds to the appropriate field office, together with:
  - (1) A SBA 172, Report of Transactions on Loans Serviced by Banks. (see Appendix 2); and
  - (2) An itemized accounting of all income and expenses.

**25. What Must You do When the Above Information is Received?**

When you receive the SBA 172 and the itemized accounting of all income and expenses, you must:

- a. Review the material and determine whether everything conforms with the liquidation plan: and,

- b. Instruct the cashier to forward the funds and SBA Form 172 to OFO for application on the account using the appropriate transaction code. (See SOP 20 19, "Loan Accounting Procedures," for transaction "collection" codes and SOP 20 05, "General Cashier Control Procedures" for transaction "expense" codes.)

**NOTE:** You must instruct the participating lender handling the liquidation NOT to send any collections from the liquidation process directly to OFO. Allowable exceptions are scheduled periodic payments received in accordance with bankruptcy plans and workout arrangements which have been approved by the approving official (SBA 327 required).

## 26. How Can Loans Be Canceled or Charged-Off?

An account which has been serviced/liquidated by the lender can be canceled or charged off in several ways.

### a. Cancellation of the SBA guaranty.

The approving official may approve cancellation of the SBA guaranty in instances where SBA has not honored its guaranty and will not be requested to do so. You must send a copy of the SBA 327 approving cancellation to OFO.

### b. Charge off of the loan.

If the SBA has honored its guaranty and there is no expectation of further worthwhile recovery, you may charge off the loan with counsel's approval. You must review the liquidation actions by the lender to ensure that the liquidation plan was followed and that no observable harm to SBA resulted from the lender's actions. The SBA 327 recommending charge off must include a statement of this finding. (See Chapter 18, "Charge Off Procedures.")

## CHAPTER 9

MISCELLANEOUS ISSUES REGARDING  
PARTICIPATION LOANS**1. How Do You Handle a Lender's Request for SBA to Purchase the Unguaranteed Portion (Lender's Share) of a Loan?**

General authority has not been delegated to field offices to approve the purchase of the participating lender's share of a loan. The approving official does, however, have the authority to decline such a request.

**2. Proposals to Purchase the Unguaranteed Portion (Lender's Share) are an Exception to Policy.**

You must treat proposals to purchase the lender's share as an exception to policy, except in the following situations where authority is delegated.

**a. Situations with companion disaster loans.**

Where the participant will not agree to a justifiable deferment of payments with respect to the participation loan, the approving official may:

- (1) Maintain installments on the lender's share to prevent default during the period of deferment (add to SBA share); or
- (2) Authorize purchase of the participant's share of loan.

**b. Loans acquired by the Federal Deposit Insurance Corporation (FDIC).**

The approving official may authorize the purchase of the entire loan (including the lender's share) from the FDIC when it is in the best interest of SBA to do so. The amount paid for the unguaranteed portion of the account cannot exceed the lesser of:

- (1) The agreed upon present (discounted) value of the participant's share; or
- (2) Par (face) value of the participant's share.

**NOTE:** You must compare these two values in the SBA Form 327 authorizing purchase from the FDIC. (See Chapters 9 and 1, "Purchasing SBA's Guaranty" and FDIC in the SOP 50 50, Loan Servicing.)

**3. How Do You Handle a Lender's Request to Change the Lender's Participation in a Loan?**

**a. Prior to purchase by SBA of its guaranteed share.**

The SBA may authorize an increase in the lender's participation when requested by the lender before the SBA purchases the guaranteed share of the loan. This action requires a 327 action, with a copy to OFO.

**b. After the guaranty has been purchased.**

If the SBA authorizes a lender's request to increase its share after the SBA has purchased its guaranty, then:

- (1) A new SBA Form 152, "Participation Certificate," (see Appendix 1 in SOP 50 50.) must be exchanged for the old one; and,
- (2) The lender must provide the funds necessary to repurchase its increased share.

Copies of both the SBA 327 and the lender's check must be sent to OFO.

**c. Decrease in lender's share (unguaranteed portion).**

No authority has been delegated to field offices to decrease the participant's share except as indicated in paragraph 2, "Proposals to Purchase the Unguaranteed Portion (Lender's Share) are an Exception to Policy."

**4. How is the SBA Guaranty Terminated or Canceled?**

The SBA guaranty may terminate or be canceled by letter of request from the participant, nonpayment of guaranty fees, or at loan maturity.

**NOTE:** You cannot cancel the guaranty on a loan sold on the secondary market.

**a. Letter of request from participant.**

A participant may request in writing that the SBA's guaranty be canceled. You may cancel the participation agreement as of the day the request was received. Use an SBA 327 to accomplish the cancellation. You must send a copy of the completed SBA 327 to OFO.

**b. Nonpayment of guaranty fees.**

The SBA 750 provides for automatic termination of the SBA guaranty if the required guaranty fee is not paid on a timely basis.

**c. Loan maturity.**

- (1) The SBA's obligation to purchase expires automatically 120 days after the maturity date of all loans.
- (2) The approving official may approve a lender's request made before the maturity date to extend the purchase deadline.
- (3) A 327 action is required.

**5. What Must You Advise the Lender When the SBA Guaranty Has Been or Will Be Canceled?**

You must write to a participant to advise or acknowledge when a guaranty has been or will be canceled. You must advise the participant in the letter that:

- a. The SBA does not waive any preexisting causes of action against the participant or borrower; and
- b. The SBA does not waive any defenses against preexisting causes of action.

**6. Are Lender Reports and Fee Requirements Associated with Servicing Still Necessary During Liquidation?**

Various routine reports by lenders and some fee requirements may continue to be necessary during the liquidation of a loan, especially when purchase of the guaranty was not accomplished prior to liquidation. Most of these requirements are covered in the SOP 50 50, Loan Servicing.

**7. How Do You Handle the Purchase of SBA's Guaranteed Share of a Loan if the Loan is Now in Liquidation?**

**a. In general.**

A loan may be classified as "in liquidation" before the SBA has purchased its guaranteed share. If so, you should give immediate consideration to purchasing the guaranty using the help of the servicing personnel, if available. You should be guided by the requirements in Chapter 9, "Purchasing SBA's Guaranty" in SOP 50 50, Loan Servicing.

**b. Special considerations relating to Colpur.**

The acquisition of Colpur, by any means, mandates a purchase of the SBA guaranty **unless** the servicing office documents by use of a 327 action that reasons may exist to deny liability. You should begin the guaranty purchase process as soon as it appears that collateral will be acquired.

**8. What Possible Misunderstanding of Remaining Liability Exists if Colpur is Acquired before the Purchase is Completed?**

There are two common areas of misunderstanding that may develop when the lender acquires Colpur prior to SBA's purchase of its guaranty. They are as follows.

- a. The SBA's guaranty runs to the loan account only. Since the acquisition of collateral usually acts as a credit against the loan (just like a loan payment), the amount of SBA's obligation to the lender is reduced by the amount bid at the sale less expenses.
- b. Colpur is an owned asset of the lender(s) and accrues no interest.

**NOTE:**        Do not overlook these accounting issues when you discuss liquidation plans with participating lenders.

**9. Is a Grace Period Allowed for Crediting a Borrower's Account When Collateral Purchased?**

Yes. In some situations, events may be moving faster than the ability of the lender to assemble and submit the necessary documentation to support the purchase request. In those instances, the SBA will allow a grace period of no more than 30 days before deductions will be made to the amount paid the lender.

**NOTE:**        The aggregate interest paid must not exceed permissible limits. (See SOP 50 50, Loan Servicing.)

You must describe the events causing the delay in purchase in both:

- a. The SBA 327 authorizing the purchase; and,
- b. The SBA Form 297, "Collateral Purchase Report," (see Appendix 3) setting up the Colpur account.

**10. How are Loans that Have Been Sold into the Secondary Market Handled?**

Special procedures have been developed to ensure appropriate control and uniform handling of loans sold into the secondary market. The relevant guidelines are contained in Chapter 9, "Purchasing SBA's Guaranty" in SOP 50 50, "Loan Servicing."

**11. When Should the SBA Consider Invoking its Unilateral Purchase Privilege?**

The field office should consider invoking the "SBA Purchase Privilege" contained in SBA 750 if:

- a. The lender will NOT voluntarily request purchase;
- b. The lender will NOT transfer servicing of the loan;
- c. The interests of SBA are being adversely affected by unsatisfactory administration by the lender; and
- d. Liquidation action appears necessary and a strong possibility of a conflict of interests exists (e. g., separate, direct lending by the participant to borrower, an affiliate, a guarantor, or other obligor).



## CHAPTER 10

## SPECIAL PROGRAMS

This chapter has been established to identify SBA programs which require different procedures for purchase of the guaranty and liquidation.

Unless specifically outlined in this chapter, all procedures and guidelines discussed in previous chapters will prevail.

**1. Low Documentation Loan Program (LowDoc).**

LowDoc is an expedited process under the Agency's 7(a) Guaranty Loan Program which streamlines the loan application process for guaranty loans in amounts of \$100,000 or less. The purpose is to reduce the paperwork and quicken the response time.

**a. Who liquidates a LowDoc loan?**

The lender does the liquidation on all LowDoc loans unless otherwise advised in writing by SBA.

**b. What requirements must the lender follow?**

- (1) All liquidations must be done prudently and in a commercially reasonable manner; and
- (2) The liquidation must be consistent with SBA's regulations and the guaranty agreement.

**c. When does SBA require a LowDoc lender to submit a liquidation plan?**

A liquidation plan, using the standardized liquidation plan format (see Appendix 15), is required to be submitted by a LowDoc lender to SBA on LowDoc loans:

- (1) Prior to starting liquidation action for loans with a principal balance more than \$50,000 at the time of default; or

**NOTE:** SBA has 10 business days to notify lender of any changes to the plan.

- (2) When the LowDoc lender requests SBA to purchase the guaranty for loans with a principal balance of \$50,000 or less at the time of default.

**d. Is the lender required to submit a report on LowDoc loans?**

Yes. The lender must provide a **written** status report on every LowDoc liquidation every 90 days.

**e. How are expenses handled?**

- (1) The SBA shares in reasonable and necessary costs incurred by the participant on a pro-rata basis up to its (SBA's) share of total recoveries; and
- (2) SBA may agree to pay more (on a case by case basis) in bankruptcy situations.

**f. How are costs in excess of the above handled?**

The lender needs to absorb any excess costs.

**g. When does SBA honor its guaranty on a Low Doc loan?**

The SBA will honor the guaranty after the lender has liquidated all personal property (business chattels) and lender indicates how it will pursue:

- (1) Real estate; and
- (2) Guarantors.

**h. Are there exceptions to this policy?**

Yes. The SBA may purchase the guaranty prior to lender liquidating personal property when:

- (1) There is a bankruptcy situation; and,
- (2) The lender provides an explanation for any delay and has a satisfactory recovery plan showing how and when the remaining assets will be liquidated.

**i. How are guaranty purchases handled when the loan is sold on the secondary market?**

The lender is strongly encouraged to purchase loans sold on the secondary market. The SBA will then purchase from the lender as indicated above, or from the secondary market holder if lender does not purchase.

**j. Can SBA purchase directly from the secondary market?**

Yes. The SBA may immediately purchase from the secondary holder if necessary.

**k. Is there a limit on the amount of interest SBA will pay on a LowDoc loan?**

Yes. The SBA will pay up to 120 days of accrued interest on LowDoc loans.

**l. What information is needed at the time of the guaranty purchase?**

- (1) The liquidation plan (if not already provided);
- (2) A complete accounting showing all receipts and disbursements during the liquidation process;
- (3) Identification of all collateral at loan origination with an explanation of the disposition of each item along with proceeds involved;
- (4) The commercial reasonableness must always be addressed;
- (5) Names of any contractors involved and their compensation which could include appraisers, auctioneers, attorneys, etc;
- (6) All other sources of recovery pursued by the lender along with the proceeds received, or the reason for not pursuing; and
- (7) Identification of any remaining sources of potential recovery along with a plan of action.

**m. Is the lender required to submit the above information when SBA has purchased directly from the secondary market?**

Yes. The lender must submit the above mentioned information after it has completed the liquidation action on the account.

**n. Are SBA liquidation loan officers required to make field visits on Low Doc loans?**

No. The SBA liquidation officers are not expected to make field visits on LowDoc loans, but are not restricted from doing so.

**o. Who is responsible for liquidation after the guaranty has been purchased?**

The lender continues to be responsible for all liquidation actions even after the guaranty has been purchased.

**p. When must the lender provide a "wrap up report?"**

- (1) The lender must provide SBA with a wrap up report documenting the lender's actions and results.
  - (a) When the lender determines that the loan will not be fully repaid after all worthwhile collateral has been liquidated; and
  - (b) No further recoveries are anticipated within a reasonable period of time, (see Appendix 18, "Final Wrap Up Report" checklist).
- (2) If SBA purchase is requested, the necessary documentation for SBA to complete its purchase review of the loan must be provided (see Appendix 18, "Checklist for Purchase Documents").

**2. FA\$TRAK Program.**

- a. This program was established to increase the capital available to those businesses seeking loans of \$100,000 or less by permitting lenders to use their existing documentation and procedures and receive an SBA 50% guaranty on the loan. Participation in FA\$TRAK is limited to those lenders which have been approved by SBA and have executed the supplemental guaranty agreement.
- b. Eliminating the requirement that SBA forms be used and application procedures be followed allows lenders to reduce the cost of processing an SBA guaranteed loan. To further reduce the lender's cost of doing business with the SBA, lenders participating in FA\$TRAK are permitted to use their own internal documentation for servicing actions and are permitted to use their existing procedures for loan liquidation.

**c. Who liquidates FA\$TRAK loans?**

The lender will be expected to fully liquidate loans approved under FA\$TRAK.

**d. What procedures must the lender follow?**

The lender must:

- (1) Follow the same policies and procedures it uses for its non-guaranteed portfolio;
- (2) Be able to demonstrate it has followed these policies and procedures; and
- (3) Conduct a commercially reasonable sale.

e. **How are proceeds from the sale of collateral handled?**

Proceeds from the sale of collateral must be applied in the following order:

- (1) To expenses associated with the liquidation;
- (2) To interest (NOT to exceed 120 days of interest on the balance as of the earliest uncured payment default); and
- (3) To any principal balance.

f. **Are care and preservation expenses recoverable from the proceeds of sale?**

Yes. The lender is to ensure that ordinary protective measures are taken. Expenses associated with the protection of collateral may be recovered from the proceeds of the sale of the collateral.

g. **Is there a limit on the amount of expenses SBA will pay?**

Yes. The SBA will not pay to the lender an amount in excess of 50 percent of the loan balance at the time of default plus 120 days of interest at the rate in effect on the date of default.

h. **Who absorbs expenses which exceed the above amount?**

The lender must absorb any expenses that exceed this amount.

i. **Are there exceptions to whom the bank can hire to provide various liquidation functions?**

Yes. The selection of firms owned by the officers, directors, employees, or stockholders (10 percent or greater) to provide care and preservation services, legal assistance, or other services associated with the liquidation must be avoided.

**NOTE:** If it cannot be avoided, the lender must be prepared to justify the benefit to SBA of using the particular firm.

j. **Are there restrictions on who can purchase assets from collateral sales?**

Yes. Collateral sales to the lender's officers, directors, employees, or stockholders (10 percent or greater) or a close relative of either are not permitted.

**k. How is the purchase of the guaranty handled under the FA\$TRAK Program?**

The guaranty will be purchased after:

- (1) The lender has fully liquidated all collateral;
- (2) All obligors have been pursued;
- (3) SBA has reviewed the documentation that supports the loan; and
- (4) Lender has submitted a wrap up report (see Appendix 18, "Final Wrap Up Report Format).

**l. How is the amount purchased determined?**

The purchase amount will consist of the SBA guaranteed percentage of the balance remaining **after** liquidation **plus** up to 120 days of interest (if liquidation proceeds were insufficient to cover a full 120 days of interest) based on the balance outstanding at the time of the earliest uncured default.

**m. What information must the lender submit to receive payment?**

The lender must submit a:

- (1) Transcript of account;
- (2) Summary of liquidation activities;
- (3) Detail of liquidation expenses; and
- (4) Copy of the note and relevant loan documents.

**n. Who reviews this information?**

The servicing office will review the account and prepare the paperwork required to wire SBA's portion of the proceeds to the lender.

**o. Is SBA permitted to purchase its guaranty prior to liquidation?**

Yes. The SBA reserves the right to purchase its guaranty prior to liquidation.

**p. Are SBA liquidation officers permitted to liquidate FA\$TRAK loans?**

Yes.

**NOTE:** It is expected the right to purchase prior to liquidation and to use SBA personnel to liquidate will be used only in very unusual circumstances.

**q. Is a liquidation plan necessary under the FA\$TRAK Program?**

No. It is not necessary to provide a liquidation plan to SBA.

**r. Does SBA ever review the liquidation action taken by the lender?**

Yes. The liquidation action taken must be fully documented by the lender and will be reviewed by SBA as part of the general review of a lender's use of the FA\$TRAK Program.

**s. If collateral is sold on terms, is there a guaranty on the Note Receivable?**

No. The lender is permitted to take back a note receivable on the sale of collateral on any terms negotiated between the lender and the buyer. However, the note receivable **WILL NOT** have an SBA guaranty.

**3. Export Working Capital Program (EWCP).**

SBA's Export Working Capital Program (EWCP) is designated to assist small businesses who need export working capital guarantees of \$750,000 or less. Larger businesses and small businesses with greater credit needs will be served by Eximbank. The EWCP applicants who are ineligible for SBA assistance will be notified of such and, if the applicant approves, referred to Eximbank for further assistance.

**a. Who liquidates loans covered under the Export Working Capital Program?**

Lenders must liquidate the collateral associated with the export transactions financed by the EWCP loan (e.g., insurance on foreign receivables, assignment of proceeds under the letter of credit, assignment of an export sale contract). All other collateral associated with EWCP loans should be liquidated by the lender subject to SBA approval.

**b. What are the requirements when the lender participates under the Preferred Lenders Program (PLP)?**

Preferred Lender Program participants are to liquidate collateral associated with all EWCP loans in their portfolio unless SBA determines otherwise (using the PLP rules and regulations).

**c. Is a liquidation plan necessary?**

Yes. A liquidation plan (using the SBA's standardized lender liquidation plan Format in Appendix 15) is necessary when the lender liquidates the collateral. (See Chapters 2 and 8, "Regulations and Other Authorities" and "Lender-Serviced Liquidations" for further guidance.)

**d. When can lender request SBA to purchase the guaranty?**

Lenders may request SBA to purchase the guaranty on a loan that has an uncured default in payment after the lender has liquidated collateral associated with export transactions financed by the EWCP

**e. Is there a time limit for requesting SBA to purchase the guaranty?**

Yes. Requests for guaranty purchase may be made as soon as 30 days after an uncured default in payment but not later than 120 days after such an uncured default.

**f. Are there limits for revolving loans?**

Yes. Requests for the purchase of the guaranty must be made within 120 days of maturity.

**g. What are the requirements in post-shipment guarantees?**

The lender must establish that the cause of the loss is not covered by EximBank or other insurers' applicable post-shipment insurance.

**h. Does the post-shipment rule apply to combined guarantees?**

The post-shipment rule applies if the default occurs after shipment.

**4. Certified Lenders Program (CLP).**

The Certified Lenders Program (CLP) was piloted in 1979 as an experiment in streamlining the financial assistance delivery system of the Small Business Administration

The CLP lenders are expected to liquidate loans they originate unless SBA advises otherwise for reasons including potential conflicts of interest or poor record in loan liquidation. If a CLP lender is deemed to be unable to properly liquidate loans, its status as a CLP lender is to be withdrawn.

**a. When must a liquidation plan be submitted?**

Liquidation plans (using the SBA's standardized lender liquidation plan format in Appendix 15) are required prior to the lender's commencement of liquidation. The SBA must approve, deny, or modify a request for approval of a liquidation plan within 10 business days after the lender makes the request, or the plan will be deemed approved.

**b. How are routine requests handled?**

If a lender requests approval for a routine activity under a liquidation plan, the SBA must respond to the lender's request within 5 business days after the lender makes the request or it will be deemed approved.

**c. What non-routine actions require SBA approval?**

These actions are:

- (1) Preferences (including increases in the amount of any prior lien held by the lender on loan collateral) or conflicts of interest;
- (2) Acceleration of the maturity of a loan;
- (3) Compromises or waivers of any claim against a borrower, guarantor, obligor, or standby creditor;
- (4) Acquisition or purchase of environmentally impaired property;
- (5) Substantial alteration of the terms of any loan instrument;
- (6) Releases of collateral having a cumulative value exceeding 20 percent of the original loan amount; and
- (7) Suit upon any loan instrument.

**d. When can the lender request the purchase of the guaranteed portion?**

The lender may request the purchase of the guaranteed portion anytime after the loan is 60 days or more past due.

e. **Does the CLP lender continue servicing once a request is made to SBA for the purchase of the guaranteed portion?**

- Once the CLP lender requests SBA to purchase, the lenders are expected to continue servicing and to liquidate loans they originate unless SBA advises otherwise.

5. **Preferred Lender Program (PLP).**

The Preferred Lender Program (PLP) is another step in the SBA's streamlining process which began in 1978 with the development of the revised SBA Form 750, "Loan Guaranty Agreement," and the SBA Form 1347, "Supplemental Guaranty Agreement Preferred Lender Program," which gave lenders more authority than was the case under previous agreements, especially with regard to the servicing and liquidation of SBA-guaranteed loans.

The PLP was authorized by Section 114 of P.L. 96-302 (84 Stat. 833) which allows SBA to delegate the loan approval and additional servicing and liquidation responsibilities to the PLP Lenders.

a. **Liquidation policy.**

- (1) The SBA policy requires PLP lenders to take all routine liquidation actions without prior SBA approval.
- (2) The instructions in this section apply to ALL loans in a PLP lenders' portfolio regardless of program type, including loans not approved under PLP procedures.
- (3) All liquidation actions must be consistent with generally accepted commercial banking practices used by prudent lenders.

b. **Non-routine actions that require prior SBA approval are as follows.**

- (1) Any action that would create a conflict of interest or confer any preference on the lender in collection or lien position with respect to SBA's position or the shared SBA/lender position on the guaranteed loan.
- (2) Compromise with any obligor of the principal loan balance outstanding for less than the full amount due. Accrued interest can be adjusted by the lender, if justified, without prior SBA approval.

**NOTE:** Guarantors: If a loan is delinquent or liquidation is contemplated or underway, prior SBA approval is required to release a guarantor for less than the principal balance owed even if actual demand has not yet been made on the guarantor.

- (3) Acquisition of title to environmentally impaired property (property which exceeds the minimum action levels established by relevant regulatory agencies).
- (4) Transfer of a loan to another lender.
- (5) Sell or pledge more than 90 percent of a loan.

**c. Adverse situations.**

- (1) The SBA office servicing a loan must be notified in writing when a loan is transferred to liquidation status (i.e., the lender determines that enforced collection procedures must be pursued to effect repayment).
- (2) A loan must be transferred to liquidation status when any of the following occur:
  - (a) Foreclosure or suit adversely affecting worthwhile collateral securing the loan is initiated;
  - (b) Voluntary or involuntary bankruptcy petition is filed; and
  - (c) Receiver is appointed or other legal action is initiated for the purpose of liquidating a borrower's assets, or all or a valuable part of the collateral is abandoned by the borrower.
- (3) A Loan should be transferred to liquidation status may be appropriate when:
  - (a) Loan payments are 60 days or more past due; and
  - (b) Workout arrangements do not appear feasible; or
  - (c) Any other circumstances or defaults occur which may have a substantial adverse effect on the loan.
- (4) If a loan file is located at an SBA loan processing or servicing center when any liquidation event occurs, the center will transfer the loan to the local SBA office for handling after notification by the lender of the occurrence of the liquidation event.
- (5) Lender must disclose and report:
  - (a) All other "non-SBA" loans with borrower(s);

- (b) Guarantor(s), or principal(s); and
- (c) Any potential conflict of interest involving competing liens on collateral securing these loans.

**d. Purchase of the SBA guaranty.**

- (1) The SBA encourages the lender to delay requesting SBA to purchase until liquidation of all worthwhile collateral is complete and a cost-benefit analysis shows that further recovery action is not warranted. If a loan is sold, SBA also encourages the lender to purchase the guaranteed portion directly from Colson and proceed with liquidation. However, SBA will purchase its guaranteed portion after 60 days delinquency if the lender requests.
- (2) Lenders who complete liquidation prior to requesting guaranty purchase will be allowed to recover up to 120 days interest from liquidation proceeds (i.e., as recovery is obtained, the lender may apply liquidation proceeds to interest until a maximum of 120 days is obtained, with the balance going toward principal; interest is calculated using the rate in effect at the time of the earliest uncured payment default; if guaranty purchase is made by SBA prior to completion of liquidation, interest will be calculated at the note rate minus 1 percent).
- (3) If SBA is requested to purchase its guaranty from the lender, lender must provide all applicable items on the "Checklist for Purchase Documents" (see Appendix 17) within 10 days of its request. This includes copies of the executed loan authorization, a certified transcript of account, a summary of major servicing actions, and all changes and modifications to loan documents along with copies of all supporting loan documentation, including settlement sheets so that SBA is able to complete a "pre-purchase review."
- (4) For all LowDoc loans in a PLP lender's portfolio, personal property securing the loan must be liquidated **prior** to the purchase of the guaranty from the lender except for bankruptcy situations. For secondary market loans, however, SBA will purchase from the investor if the lender fails to do so.

**e. Site visits.**

- (1) The lender (or its agent) must make and document 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.

- (2) Whether or not a payment default exists, a site visit must be conducted within 15 days after the lender becomes aware of any event which causes a loan to be placed into liquidation status.
- (3) The report must contain an inventory of assets and an assessment of their condition and value, and include a review of books and records as feasible to determine use of loan proceeds and the existence of any unauthorized use of funds.
- (4) If a site visit is waived under appropriate circumstances, the waiver must be documented by the lender in the loan file.

**f. Lender liquidation plan.**

- (1) Prior to commencing recovery procedures, the lender must prepare a liquidation plan containing information referred to in SBA Form 1979, "Liquidation Plan Format" (see Appendix 15) with the "Loan Underwriting Characteristics" attached. The "Loan Underwriting Characteristics" are discussed in Chapter 4 "General Guidelines for Liquidation Activities" and the appendix titled "Loan Underwriting Criteria -- Risk Management Database."
- (2) Lenders must submit a copy of the liquidation plan at the time of their request for guaranty purchase on loans with principal balances more than \$50,000 (also when SBA purchases from the secondary market holder, if the lender does not do so).
- (3) For loans with a principal balance of \$50,000 or less, the lender must submit the liquidation plan with the final wrap up report (see appendix).
- (4) The SBA approval of the plan is not required, and **submission of the plan to SBA does not constitute approval of the plan by the Agency or acceptance of its terms.**
- (5) The SBA may request additional information on any liquidation plan or may request that a plan be modified.
- (6) On all loans, the plan and any amendments must be submitted with the final wrap up report at completion of the recovery process.

**g. Workouts.**

- (1) The SBA servicing office must be notified in writing of a loan workout once three regular monthly payments have been made by the borrower under any workout plan and it is appropriate to remove the loan from liquidation status.

If payments are being received under a confirmed bankruptcy plan, provide a copy of the plan to SBA.

- (2) The SBA strongly encourages the lender to consider workouts wherever possible prior to liquidation and also after liquidation procedures have commenced.

**h. Collateral disposition.**

- (1) Sales of collateral must be:
  - (a) "Commercially reasonable;"
  - (b) Conform to local laws and practice, and the lender's procedures on non-SBA loans; and
  - (c) Consistent with generally accepted commercial banking practices used by prudent lenders.
  - (d) The SBA related collateral must NOT be sold back to the original borrower or any other obligor/guarantor on the loan, or sold to lender's associates or close relatives (including members of household) of lender's associates (e.g., lender's officers, directors, stockholders, employees), without prior SBA written approval.
- (2) A lender liquidating collateral from an SBA guaranteed loan may finance the sale with another SBA guaranteed loan, but may NOT do so under the Preferred Lender Program. A lender financed sale of assets (seller carryback and/or takeback) without an SBA guaranty does not require SBA's approval.
- (3) After purchase of the guaranty, a lender may sell assets on a loan it is liquidating through a note receivable with SBA's prior written approval.

**i. Acquired Property.**

**RESERVED**

**j. Compromise.**

- (1) Compromise is usually not appropriate when it appears there is sufficient equity to fully satisfy the remaining balance due on the debt.
- (2) Compromise should be considered prior to:

- (a) Foreclosure of a personal residence pledged as security when there is insufficient equity in the property to fully satisfy the deficiency balance remaining after liquidation of all business assets; and,
  - (b) Commencement of litigation.
- (3) Compromise must NOT be considered if there is evidence of fraud or substantial misrepresentation on the part of the offeror.

**k. Fees, expenses and recoveries.**

- (1) Servicing and liquidation expenses.
  - (a) Servicing and liquidation expenses paid by the lender must be customary and reasonable for the services obtained and consistent with local practice.
  - (b) The SBA will examine expenses upon completion of the liquidation to ensure all expenses meet these guidelines.
  - (c) The lender must maintain a transcript of account recording all loan payments, liquidation recoveries, fees and expenses properly chargeable to the loan.
  - (d) The SBA will share in reasonable and necessary expenses incurred by the lender on a pro-rata basis up to SBA's share of total recoveries. The SBA may agree to pay more on a case by case basis.
- (2) Recoveries from liquidation or sale of collateral.
  - (a) Recoveries from liquidation or sale of collateral will be applied to outstanding expenses first (or up to 120 days interest if lender is liquidating prior to guaranty purchase), and the balance to principal.
  - (b) The SBA will NOT pay its share of advances or expenses of the lender before guaranty purchase.
  - (c) After guaranty purchase, it is recommended that the lender aggregate expenses which cannot be paid from liquidation proceeds for submission to SBA when recovery procedures are substantially completed, or periodically (e.g., monthly) during the liquidation process.

- (3) Recoveries after guaranty purchase.
- (a) If SBA has purchased its guarantee, the lender must remit to the local SBA office, within 10 days of receipt, SBA's portion of any regular loan payments and any cumulative liquidation recoveries totaling more than \$5,000.
  - (b) The lender must submit a completed "Transaction Report on Loans Serviced by Lenders," SBA Form 172, with each remittance.
    - i. The lender must indicate whether the remittance is a recovery from liquidation of an asset or a regular loan payment and itemize any expenses deducted from the recovery.
    - ii. The lender must NOT deduct a "servicing" fee on liquidation recoveries.

**I. Litigation; attorney fees and expenses.**

Whether or not a particular loan was made under the PLP Program, a PLP Lender may handle litigation which SBA considers routine without SBA's prior approval, provided outside counsel for the PLP lender proposes to charge fees which are customary and consistent with SBA guidelines issued by District Counsel for each District Office. Litigation which SBA considers non-routine will require a litigation plan approved in advance by SBA.

- (1) What is litigation?

Any matter pending before a judicial or administrative tribunal.

- (2) What is routine litigation?

Routine litigation is uncontested litigation, such as non adversary matters in bankruptcy and undisputed foreclosure actions.

- (3) What is non-routine litigation?

All contested litigation is non-routine. Such litigation consists of those cases where facts or legal issues are in dispute requiring resolution through adjudication.

- (4) When does a Litigation Plan require prior approval by District Counsel?

PLP lenders must submit to District Counsel for prior approval a Litigation Plan for:

- (a) Non-routine litigation; and
- (b) Routine litigation involving estimated legal costs exceeding \$3000.

- (5) What if a PLP Lender fails to submit for prior approval a litigation plan for non-routine litigation or routine litigation involving estimated litigation costs exceeding \$3000.

Legal fees and costs will only be reimbursed to the extent the District Counsel determines such fees and costs were necessary and reasonable.

- (6) What must a Litigation Plan include?

The Plan must include an estimate of the legal fees to be incurred, a description of the legal and factual issues involved, and possible settlement alternatives.

- (7) What are the requirements with respect to the retention of attorneys by PLP lenders?

SBA requires the following:

- (a) PLP legal fees must be reasonable and customary for the services provided;
- (b) SBA may object to the retention of private counsel that is too costly;
- (c) The legal fees of PLP outside counsel for SBA litigation cannot exceed those charged the lender for non-SBA litigation;
- (d) PLP lenders may not use private counsel for non-legal liquidation services,
- (e) PLP outside counsel may not double bill for unnecessary work or work that only benefits the lender; and
- (f) SBA District Counsel must review the actual legal bills in all cases.

(8) Must SBA District Counsel review the actual legal bills in all cases?

Yes.

**m. Progress reports.**

- (1) The lender must submit quarterly status updates for:
  - (a) All liquidation cases with principal balances more than \$50,000 beginning at the time of guaranty purchase; and
  - (b) Acquired assets (REO, colpur) beginning 6 months after acquisition.
- (2) These reports must explain what recovery action has taken place since the start of liquidation or the last report and indicate estimated time to complete the liquidation process or colpur sale.
- (3) The SBA reserves the right to request additional liquidation status reports at any time.

**n. Paid in full loans.**

Lender must notify the SBA servicing office in writing when a liquidation loan has been paid in full.

**o. Wrap up reports.**

- (1) When the lender determines that the loan will not be fully repaid after all worthwhile collateral has been liquidated and no further recoveries are anticipated within a reasonable period of time, the lender must provide SBA with a wrap up report documenting the lender's actions and results (see "Final Wrap Up Report Format" in Appendix 18).
- (2) If SBA purchase is requested, the necessary documentation for SBA to complete its purchase review of the loan must be provided (see "Checklist for Purchase Documents" in Appendix 17).

**p. SBA liquidation.**

The SBA reserves the right to request that a lender transfer servicing to the Agency of a particular liquidation or litigation activity, or to take over servicing of the entire loan.

**6. Disaster Loans - Liquidation.****a. Disaster home loans.**

Disaster home loans should be afforded a level of treatment different from that given business loans.

**(1) What is required on the liquidation report?**

- (a) Reports do not require the extent of information necessary for business accounts. Basically, the analysis presented should be sufficient to allow a conclusion as to whether the obligor:
  - i. Cannot repay the debt on reasonable terms; or
  - ii. Can pay but will not do so voluntarily.
- (b) Every report should provide:
  - i. An analysis of the obligors' repayment ability; and
  - ii. The potential sources of funds for repayment (i.e., collateral, earnings, etc.)
- (c) You should consider each account on its own merits. Liquidation should be recommended only after all reasonable collection efforts have been exhausted.

**(2) What special considerations are given on disaster home loans?**

- (a) Hardship circumstances must be considered in situations where the property is owned and used as the primary and only residence of an individual whose income is fixed or limited by reason of:
  - i. Retirement, disability, or other similar circumstances; and
  - ii. Who relies on support from a survivor, disability, or retirement benefits under a pension, insurance, or other program.
- (b) You may recommend a reduction or suspension of loan principal payments for individuals (and spouses) deemed to be suffering hardship circumstances. Reduced or suspended payments may be authorized for as long as the Agency determines that making regular payments would constitute a substantial hardship.

- (c) If suspension of principal and/or interest payments is appropriate, you must use the SBA 327 to make the recommendation. The 327 action must include LAUD11 input for:
- i. A future installment date of no more than 1 year from the revised installment due date; and
  - ii. Future installment amount from the original terms.

**NOTE:** The 1 year limit ensures an annual review of the borrower to determine if continued annual suspension and review is appropriate based on the obligor(s) current financial condition.

- (d) Upon approval of the suspension, the account must be returned to the servicing office/center.

**(3) When do you enforce collections?**

- (a) In those home loan situations where it is determined that the obligor can pay, but will not, you should begin preparation to take enforced collection. Upon receipt of such an account in liquidation you should:
- i. Make a prompt contact with the obligor(s) to attempt to resolve the impasse; and
  - ii. Give full consideration to any reasonable workout plan or settlement (compromise) proposal which meets the requirements of the Federal Claims Collection Act.
- (b) If voluntary resolution of the matter is not possible within a reasonable time, you should:
- i. Proceed with action against any collateral;
  - ii. Identify those assets against which a judgment might be enforced; and
  - iii. Establish a general estimate of recovery.
- (c) If worthwhile recovery prospects are indicated and court action is necessary, the account must be referred promptly to counsel for litigation. These considerations should be a part of your liquidation plan.

**(4) How do you handle uncollectible accounts?**

- (a) If you determine that the obligor(s) cannot pay the debt and there are no substantial, realizable assets, you may recommend that the home loan account be classified to "in liquidation" and "charged off" on the same SBA 327. The SBA 327 should clearly document that:
  - i. A reasonable basis for determining collectibility was used; and
  - ii. That costs would exceed the estimated recovery.
- (b) Approval of the charge off recommendation rests with the approving official subject to legal review. Appropriate instructions to refer or not refer the account to Internal Revenue Service (IRS) and/or a private collection agency must be entered into the SBA data base at the time of charge off.

**b. Disaster business loans.**

- (1) Disaster business loans should generally be liquidated as outlined in this SOP. However, at times you will find that some loans classified as disaster business loans are given to individuals who have suffered loss or damage to their investment rental homes. In these situations the loans are, basically, consumer type credits and, accordingly, should be given a level of treatment different from that given to business loans.
- (2) What level of treatment should be given?

You should treat these types of business loans in the same manner as the disaster home loans.

**c. Disaster farm loans.**

Disaster farm loans should generally be liquidated as outlined in this SOP. However, special attention must be given to the 13 CFR § 120.550 Homestead Protection for Farmers.

**7. Certified Development Company (CDC) Loan Program.**

The SBA provides long-term financing to small businesses through its Certified Development Company Program. The program, commonly referred to as the development company loan program, makes loans available for buying land, buildings, and machinery and equipment; building, modernizing, renovating, or restoring existing facilities and sites.

a. **What kind of assistance should the CDC provide?**

Field offices are encouraged to keep willing and cooperative CDCs involved with loan liquidation where possible. The CDCs can actively assist in actions by doing the "leg work" in cooperation with SBA. This would include:

- (1) Alternatives for workouts;
- (2) Recommending assumptions; and
- (3) Recommending required litigation.

b. **Can a CDC liquidate SBA loans?**

Yes, SBA may negotiate agreements with CDCs to liquidate loans but not to litigate loans.

c. **Are there any special procedures for liquidating loans made by a CDC in the Accredited Lenders Program (ALP)?**

No. Generally these loans are liquidated by SBA in the same manner as outlined in this SOP with the CDCs assistance.

8. **CAPLines Program.**

a. CAPLines is the name assigned to all of the Agency's short term lending programs except those dedicated entirely to exporting. The CAPLines umbrella consists of five separate and distinctive sub-programs.

- (1) Seasonal;
- (2) Contract;
- (3) Builder;
- (4) Standard Asset Based; and
- (5) Small Asset Based.

b. Each sub-program is only available on a guaranty basis.

c. The servicing and liquidation guidelines for the various loan programs under the umbrella of CAPLines Program are in the appendix of SOP 50 50.

**CHAPTER 11****COLLATERAL PURCHASED (COLPUR)  
BY SBA AND LENDER****1. What is Colpur?**

Colpur is collateral purchased or acquired by SBA or its participating lender through SBA liquidation.

**2. What is SBA's Policy?**

The SBA's policy is to dispose of collateral purchased in such a manner as to realize the maximum recovery in the minimum amount of time.

**3. What is the Agency's Policy on Obtaining and Retaining Colpur?**

While the Agency will continue to emphasize avoiding the acquisition of assets, it recognizes that acquiring some Colpur may be necessary to protect SBA's position.

- a. You should take all possible steps to keep Colpur levels down without compromising the financial considerations used to govern its acquisition and sale.
- b. You should take all reasonable efforts to sell collateral at the earliest possible time to obtain a reasonable price and thus avoid the acquisition of Colpur.
- c. You should be aware of the importance of:
  - (1) Accurate appraisals;
  - (2) Market and environmental factors;
  - (3) The necessity of realistic bid computations; and
  - (4) The fact that real property should NOT be acquired or held for speculation.
- d. The Agency's goal is to sell Colpur within 12 months of acquisition.
- e. Financial Assistance(FA) will periodically provide each DD a list of their office's Colpur aging report.

- f. All Colpur should be disposed of within 12 months of acquisition if an advantageous recovery can be obtained. In cases where this is not possible, the DD must review and approve a disposition plan.
- g. Factors that might necessitate an extension of the time for disposal include:
  - (1) Legal problems precluding a sale or preventing a sale at a realistic price;
  - (2) Environmental concerns (property undergoing remediation);
  - (3) Seasonal factors (e.g., selling beach property in mid-winter); and
  - (4) Eviction procedures in progress.
- h. There are legitimate instances where a short delay will result in a significant increase in recovery. However, to merely "wait for the market to improve" is NOT a good reason to postpone a sale and may be unwarranted speculation.

**4. In Whose Name Should the Colpur Property Be Titled When Serviced by SBA?**

Title should be placed in the name of the "Administrator, U.S. Small Business Administration, an Agency of the United States."

**NOTE:** There is a tax advantage in vesting full title in the name of the Agency. By so doing, the real and personal property will be in a nontaxable status with regard to future assessments.

**5. In Whose Name Should the Colpur Property Be Titled When Serviced by the Lender?**

If Colpur can be disposed of in a short time period (normally 120 days), title should be placed in the name of the "Administrator, U.S. Small Business Administration, an Agency of the United States." All lenders (e.g., 7(a), PLP, LowDoc, FA\$TRAK, etc.) must obtain SBA's approval prior to titling collateral in the name of the Agency.

If the sale will take longer, the lender must consult with SBA to consider transfer of the property to SBA's name if significant tax savings could be realized. The value of the property and tax rates must be considered.

**6. When Must You Complete an SBA 297, "Collateral Purchase Report?"**

- a. If SBA acquires Colpur in the Agency's name, an SBA 297 must be completed.

- b. If the lender acquires Colpur:
- (1) Titling it in their name either prior to SBA purchasing the guaranty or after, an SBA 297 is not required as the property is not in the name of the Agency.
  - (2) Titling it in the name of the Agency either prior to SBA purchasing the guaranty or after, you/lender must complete an SBA Form 297. If it is prior to purchase, you must immediately process the purchase. If a lender completes the SBA 297, the form must be sent to the local district office.

**NOTE:** An accurate net realizable value, the acquisition price, and an indication as to whether the Colpur is in partial or full satisfaction of the debt are required whenever SBA acquires an asset.

## 7. Preparation of SBA Form 297, "Collateral Purchase Report."

### a. Part I of the SBA 297.

You must prepare Part I of the SBA 297 (See appendix) whenever property is acquired. The report must be submitted within 30 days to OFO.

### b. Part II of a new SBA 297.

You must prepare Part II of a new SBA 297 whenever property is sold. The report must be submitted within 30 days to OFO.

### c. Date purchased.

You must use the date the Agency/lender is the successful bidder at the sale, or the date of the written conveyance agreement (if applicable).

### d. Redemption period.

If the property can be redeemed by the borrower or third party, the expiration date of the redemption period must be entered in the "Comments" section of the report. If the property is redeemed, it will be necessary to inform OFO by the submission of a new SBA 297.

### e. Purchase price.

- (1) In the case of a public sale, the term "Purchase Price" will mean the Agency's or participant's bid price or amount of consideration set by the court having jurisdiction.

- (2) In the case of a voluntary conveyance, the purchase price must be the consideration set forth in the conveyance agreement.
- (3) When the basis for computing the purchase price is other than the liquidation value, you must state the basis used in the "Comments" section of SBA 297.

**f. Liquidation values.**

The report should contain an itemized list of the Colpur by class, type, and/or separate tracts or lots with the detailed liquidation values.

**g. Reporting sale of Colpur.**

Part II of the report must identify whether the transaction was a partial or final sale of the Colpur, and if it was for cash or terms. Failure to provide this information will unnecessarily delay recording the sale in the SBA database.

**8. How is Colpur to be sold by SBA, the Participating Lender, or another Mortgagee, or Lender?**

- a. For SBA-serviced loans you are strongly encouraged to offer acquired assets (Colpur) for public sale through competitive bids at auctions or sealed bid sales. Lenders may use negotiated sales if consistent with their usual practice for similar non-SBA assets. [See 13 CFR § 120.540 c.]
- b. Colpur acquired through foreclosure.
  - (1) Properties obtained through either judicial or non-judicial (summary) foreclosure procedures consistent with State law may be disposed of by negotiated sale immediately after SBA acquires them.
  - (2) The line supervisor is authorized to:
    - (a) Approve an auction or other type of public sale;
    - (b) Approve a negotiated sale;
    - (c) Approve the listing with a qualified broker for the property to be sold in a commercially reasonable manner appropriate to the type of asset and consistent with prevailing local practices; and
    - (d) Approve suitable advertising for a negotiated or other sale by Agency staff.

- (3) You must justify all negotiated sales or listing prices with a recent appraisal (preferably within 120 days, but no older than a year) of the property or other reliable indication of value (such as an opinion by a qualified broker in situations where prices can be readily ascertained because of similar property sales in an active market).
  - (4) Professional appraisals continue to be preferred. However, experienced brokers may be able to provide equally reliable information faster and at less cost. Residential values may be established through use of comparable sales information.
  - (5) You should use net present value (NPV) calculations in setting or accepting any sales price, taking into account care and preservation expenses as well as other holding costs (see Appendix 31, 32, and 33, "Determining Present Value," "Present Value - Table 1," and "... - Table 2" for NPV example). The commercial reasonableness of any procedure should always be weighed.
  - (6) Whenever possible, in order to avoid the acquisition of an asset (Colpur), the minimum legal requirements for a foreclosure sale conducted by SBA or a participating lender should be supplemented by display or other advertising to obtain maximum exposure for the property to obtain the best price.
- c. Colpur acquired through a deed in lieu of foreclosure.
- (1) This type of Colpur must continue to be exposed to a comprehensive public sale as defined in Chapter 7, "SBA's Methods of Recovery from Collateral."
  - (2) Exception.

If a property has a market value of less than \$25,000, the line supervisor may use acceptable methods of sale as outlined in the previous subparagraph 8.b., "Colpur Acquired Through Foreclosure."

## 9. What are the Responsibilities and Liabilities of Ownership?

Maintain condition of property to:

- a. Prevent deterioration;
- b. Prevent vandalism;
- c. Avoid a potential "attractive nuisance";
- d. Prevent personal injury; and

e. Clean up contamination.

**10. What Special Attention is Given Colpur Accounts?**

All Colpur accounts over 180 days must be reviewed every 60 days by the approving official to ensure that a reasonable disposal plan is being pursued.

**11. Is There a Dollar Limit for Expenses?**

If SBA's aggregate share of all advances and expenses on any one Colpur is more than the lesser of \$50,000 or 75 percent of the liquidation value of the property, they must be approved by the district director.

**NOTE:** This limitation does not apply to direct selling costs or the purchase of a prior lien.

**12. How Often Must You Obtain Updated Appraisals on Colpur?**

You must obtain an updated appraisal annually unless justified by a 327 action.

**NOTE:** An appraiser cannot appraise the same piece of Colpur more than two consecutive times, unless justified in a 327 action.

**13. Can You EVER Use an Appraisal Older than 1 Year?**

Only in rare circumstances should an appraisal older than 1 year be used and must be documented by a 327 action.

**14. When is Using an Appraisal Older than 1 Year an Exception to Policy?**

The use of an appraisal over 1 year old in the case of a private sale of collateral or Colpur is an exception to policy and requires Headquarters approval (AA/BLS).

- a. You should perform a site visit at least annually; and,
- b. You should prepare a field visit report which should be forwarded to the approving official and then be placed in the loan file.

**15. What are the Restrictions on a Negotiated Sale of Colpur Property?**

- a. The selling price must be supported by an appraisal not more than 1 year old; preferably, one performed within the past 120 days.

- b. The property must have been offered at least once at a comprehensive public sale unless it was acquired through a foreclosure sale consistent with state law or is valued at less than \$25,000.

**16. What Procedures Should be Followed with Real Estate Brokers When an Account is:**

**a. SBA-serviced?**

- (1) The property must have been subjected to a comprehensive public sale unless it was acquired through a foreclosure sale consistent with state law; or is valued at less than \$25,000.
- (2) The property may be listed on a nonexclusive or exclusive basis with a real estate broker as authorized by a 327 action.

**b. Lender-serviced?**

- (1) The property may be listed with a real estate broker on a nonexclusive or exclusive basis in accordance with the procedures it uses for non-SBA property; and
- (2) The asking price should be supported by a current appraisal or other reliable indication of value.

**17. What are the General Requirements When Using a Real Estate Broker?**

- a. A predetermined asking price will be established;
- b. The listing broker must be local to the property being sold, except where the property must be marketed more extensively, and have experience in the type of property being marketed;
- c. All agreements with brokers must be in writing and signed by both parties;
- d. If possible, SBA should reserve the right to sell to customers obtained through its own sources;
- e. The commission to be paid to the broker must be no greater than the rate customarily paid in the area;
- f. The listing broker must be properly licensed and should be a member of a multiple listing service; and

- g. A commission must not be paid unless:
  - (1) The broker negotiates a sale satisfactory to SBA;
  - (2) Title is actually conveyed; and
  - (3) Consideration is paid to SBA in accordance with the sales contract.
- h. No commission will be paid directly or indirectly to:
  - (1) Any employee of SBA;
  - (2) Any employee of the participating lender; and
  - (3) Their close relatives or associates.
- i. The Agency must pay only one commission;
- j. The listing should allow for termination by SBA at its option or should be for a specific limited time (typically 90 days); and
- k. Each SBA office must use a number of qualified brokers on a rotating basis.

**18. What Must a Purchase Offer Contain, and How Do You Process it?**

- a. All offers must:
  - (1) Be in writing from offeror or authorized agent;
  - (2) Provide written proof of agency; and
  - (3) Not be disclosed to other prospective purchasers or their agents.
- b. A good faith deposit of 5 percent must be submitted in the form of cash or certified funds.
- c. Be approved by a 327 action which must reflect:
  - (1) The results of all sales efforts;
  - (2) Current value of the property; and
  - (3) Identity of the purchaser.

- d. A letter of acceptance must be sent to the potential purchaser. (See Appendix 41, "Sample Acceptance Letter for Sale of Property.")

**19. When Can You Sell on Terms?**

- a. Colpur should be sold for cash unless it is more advantageous to SBA to sell on terms.
- b. What terms are acceptable?
  - (1) Down payment of at least 20 percent (may be adjusted to be competitive with the local market);
  - (2) Balance payable in equal monthly payments;
  - (3) Monthly payment must exceed accruing interest;
  - (4) Interest rate should be based on prevailing rates in the area.
    - (a) A rate may be established below market rate (but not less than the cost of money to the Government except in unusual situations). See definition in Chapter 4, "General Guidelines for Liquidation Activities;"
    - (b) The interest rate must not exceed the state statutory rate of interest;
  - (5) Maturity should not exceed 15 years (balloon payment allowed at maturity); and
  - (6) The net present value of any term offer must be compared with any cash offers. The net present value of a term offer must exceed a cash offer by at least "10 percent." If it does not, take the cash offer.

**20. Is a First Lien Position Required on the Property Financed by SBA?**

Yes. The note must be secured by a first lien on the Colpur being financed.

**21. What Type of Property can Be Sold on Terms?**

- a. Residential Colpur:
  - (1) Should almost always be for cash as numerous sources of financing for this type of property is available;

- (2) A term sale with interest near market can be authorized based on the mortgage market in your area; and
- (3) A 327 action must be prepared justifying both the term sale and any lower interest rate.

**b. Commercial real estate:**

- (1) A term sale with interest rate below market can be authorized; and
- (2) A 327 action must be prepared justifying both the term sale and the lower interest rate.

**c. Personal property Colpur:**

- (1) Sales of personal property must be for cash; and
- (2) Sales to the buyer of the premises housing the personal property may be on terms:
  - (a) Terms may be offered if related to the remaining life of the asset but must not exceed 5 years; and
  - (b) The monthly payment must cover actual accruing interest and depreciation.

**22. What are the Credit Requirements of a Potential Bidder?**

- a. Financial responsibility: credit must be cleared before the sale, not after.
- b. Character.
- c. All sale advertisements must state that for term sales:
  - (1) Potential buyers must be approved prior to the sale;
  - (2) A deadline for receipt of the required documentation to allow time for credit review;
  - (3) Purchaser must provide hazard and public liability insurance; (see Chapter 22, "Insurance");
  - (4) Purchaser must execute SBA Form 1261, "Statements Required By Laws & Executive Orders" (see SOP 50 10 for additional information) and

- (5) Certification must be made that purchaser (and principals of a borrower who own 50 percent or more of the voting interest of the business) is not delinquent more than 60 days under the terms of any administrative order, court order, or repayment agreement that requires payment of child support.

Principals may be sole proprietors, partners, shareholders of a corporation, or members and/or managers of a limited liability company.

### 23. Homestead Protection for Farmers.

#### a. How does it differ from non-farm residential property?

The Consolidated Farm and Rural Development Act, as amended by Public Law 100-233, provides special homestead protection for a farmer whose residence is acquired by SBA.

The SBA may lease to a farmer, borrower, the farm residence occupied by the borrower and a reasonable amount of adjoining property (no more than 10 adjoining acres and seven farm buildings) if they were acquired by SBA as a result of a defaulted farm loan made or guaranteed by SBA. (See 13 CFR § 120.550 through 120.554.)

#### b. What notice is required to borrower?

Within 30 days of the acquisition of homestead property by SBA, you must notify the borrower of their rights under the Homestead Protection.

This notice must be in writing by "Certified Mail - Return Receipt Requested" and at a minimum contain:

- (1) A copy of the regulation is cited in Chapter 2, "Regulations and Other Authorities:"
- (2) Information that the residence and a reasonable amount of adjoining property may be subject to lease from SBA for a period of up to 5 years;
- (3) Borrower must apply for occupancy rights within 90 days of the date SBA acquired; and
- (4) Advise certain eligibility requirements must be complied with as reflected in the CFR.

c. **What are the specific eligibility requirements?**

- (1) See a copy of the regulation as cited in Chapter 2, "Regulations and Other Authorities;"
- (2) When more than one member of an entity, such as a corporation or a partnership, each possesses and occupies a separate homestead property, each may apply for homestead protection for his or her residence.

d. **Does borrower have appeal rights?**

Yes. Borrower may appeal the field office's denial of an application upon receipt of written notice of the denial of homestead eligibility. The borrower may appeal the decision to AA/FA in Headquarters.

e. **Does borrower have possession rights?**

Yes. Borrower must have the right to retain possession and occupancy while the application is being processed up to and including the conclusion of any appeal. The property must not be leased or sold to third parties until any appeal is concluded.

f. **What are the requirements of the lease?**

- (1) A right of ingress and egress to a public way must exist or be provided. Sources of water, power/utility lines, and sanitation facilities, if outside the homestead parcel, will be covered by appropriate easements.
- (2) Access for any Colpur remaining after the homestead parcel is taken out must have its own access to a public way.

**No lease will be approved if the remaining Colpur will not have such access.**

- (3) The lease may be for a period of up to 5 years and must contain an option to purchase; and
- (4) That SBA retain termination rights allowing the Agency to terminate the lease by providing a 60 day advance written notice to the farmer/borrower of SBA's intention to terminate the lease.

g. **A termination notice could be given to the borrower due to any of the following conditions:**

- (1) Lessee fails to make payments as agreed;

- (2) Lessee fails to maintain the property in good condition; and
- (3) Interference by lessee in SBA's efforts to sell the remaining Colpur.

**h. Does lessee have the right of first refusal?**

Yes. You must offer the property to the lessee under the same terms and conditions as you would any other purchaser.

**24. National Register of Historic Places.**

Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f) requires that every Federal agency "take into account" how its undertakings could affect historic properties. To accomplish this, any property owned or acquired by SBA must be reviewed to determine if it possesses characteristics that would qualify it for inclusion on the National Register of Historic Places, and if so, SBA must comply with Section 106 before disposal of the property. The process to follow is contained in regulations entitled "Protection of Historic Properties" (36 CFR Part 800). The SBA may not transfer title or make any major structural changes to a property until this process has been concluded.

**a. Identification.**

If a property is 50 years of age or older, or if it appears old but its age is unknown, contact the State Historic Preservation Office (SHPO) for the state where the property is located to determine whether the property is listed on or eligible for the National Register. The SHPO's are generally connected with the governor's office of the respective State or territory.

**b. Treatment.**

If it is determined during consultation with the SHPO that a property is historic, then appropriate measures must be taken to ensure its protection when it passes out of Federal control. The SBA should consult with the SHPO to determine if restrictions or covenants in the deed or instrument of transfer are necessary to protect the property's historic characteristics or whether other measure are appropriate (placing restrictions as to future use, remodeling, etc.) in the deed to be transferred by SBA. The effect on the sale price of the property can be substantial. Sometimes a "historic" designation improves the property's value; in other instances, the restrictions negate its "highest and best" use.

**25. Preparing a Plan to Dispose of Colpur Property.**

An SBA 327 should be used to outline the disposal plan. The SBA 327 should cover:

- a. Method of sale with possible alternatives;
- b. Minimum acceptable price; and
- c. Any other needed information.

**26. What Should You Consider When Establishing a "Minimum Acceptable Bid"?**

- a. Fair market value of the property;
- b. Protective bid analysis;
- c. Any other pertinent justification;
- d. Usable value of the property to be sold; and
- e. Your acceptable minimal bid must include a 10 percent plus or minus tolerance.

**NOTE:** The SBA personnel normally will NOT make known the amount of the Agency's minimum acceptable sales price, appraised value, or liquidating value of Colpur. HOWEVER, you are free to discuss a range of acceptable value with the selling agent.

**27. Restrictions for Purchase of Colpur.****a. Restrictions on the borrower.**

The SBA does NOT favor selling acquired nonresidential property for less than the full amount due to:

- (1) The borrower from whom it was acquired; or
- (2) The principals responsible for its management.

**NOTE:** The amount due the Agency includes the total Agency investment in the property plus the deficiency and any interest accrued.

b. **Restrictions on SBA employees.**

Employees of SBA, Service Core of Retired Executives (SCORE) volunteers, SBA Advisory Counsel Members, and close relatives of any must not bid or purchase directly or indirectly at any SBA related sale.

c. **Restrictions on the lender.**

Associates of participants must not bid or purchase for their own account, directly or indirectly, at any SBA related sale. The SBA must give written permission to sell any SBA related collateral or Colpur to close relatives of participant's associates (See paragraph 2, "How Do You Handle Conflicts of Interests?" in Chapter 4, "General Guidelines for Liquidation Activities.")

28. **Are There Exceptions to Selling Colpur to the Borrower?**

a. **Nonresidential Colpur** can be sold to the borrower for less than the full amount due when:

- (1) A comprehensive public sale has been held;
- (2) You have exhausted all other sales efforts; and
- (3) The sale is for cash.

b. **Residential Colpur** which was and is proposed to continue to be a primary and only residence may be sold back to an obligor who will continue to be the occupant. The requirements for such a sale are:

- (1) The property is sold for a fair market value; and
- (2) The sale is normally for cash.

**NOTE:** Your documentation supporting a sale of this type must show why the action is not detrimental to the interests of the Agency.

29. **How is Title to Colpur Conveyed to the Purchaser?**

a. **SBA-serviced Colpur.**

- (1) Counsel is to prepare and/or review the conveyance of title to the real property or review the title/escrow company's documentation related to the transfer of the property.

The Deed will usually be by quit claim, bargain and sale deed, without warranty, or a special warranty, if circumstances justify.

**NOTE:** The SBA, based on its tax exempt status, is not liable for documentary stamp taxes with respect to its instruments of conveyance. The agreement must state that all required revenue or documentary stamps must be paid for by the purchaser.

- (2) Counsel is to prepare the bill of sale for conveying personal property without representation or warranty. The instrument of conveyance to the purchaser should include the removal date of personal property and a statement that purchaser will not be permitted to resell the items purchased on the premises. Further, any damage to the premises by removal of the personal property items is the responsibility of the purchaser.

**b. Lender-serviced Colpur.**

- (1) When the Colpur is in the name of SBA and sold by the lender, conveyance should be handled in the same manner as when SBA is doing the servicing.
- (2) When the Colpur is in the name of the lender, it will convey property in the same manner it handles its non-SBA accounts.

**30. What are the Administrative Procedures for Setting up Term Colpur Sales?**

The following procedures are followed to set up a Colpur account sold on terms in the SBA data base.

- a. You should enter "PMQD16" and transmit. Enter the first six numbers of the original loan number. You will need to enter the seventh and eighth number which tells you how many note receivable accounts have been set up. Once you enter the seventh and eighth number, transmit and you should receive the ninth and tenth number which represents the "check digits."

An example would be: The original loan number 5363523004. Call up PMQD16 - transmit; now enter 53635231 - transmit - the last two numbers should now appear on the screen. The seventh and eighth numbers entered 31 reflects this is the first note receivable set up - if you needed to set up another term sale off of the original account, you would enter "32" as your seventh and eighth number. (See SOP 20 19 2, "Loan Accounting Procedures," for further detail.)

- b. Your next step would be to complete **SBA Form 515, Note Receivable Report**, which is self-explanatory. (See Appendix 8)

You must distribute the SBA 515 as follows:

- (1) The collateral cashier will receive a copy of the SBA 515 and the original note to place in a collateral file;

**NOTE:** If lender serviced, a copy of note will be accepted.

- (2) The collateral cashier will receive a copy of the SBA 515 and a copy of the note to set up a loan file; and
- (3) The original SBA 515 and a copy of the note must be sent to OFO. See SOP 20 19 2, "Loan Accounting Procedures."

**NOTE:** In certain court actions, a copy of the court order will be used in place of a new note.

c. Recording requirements.

- (1) You must have all instruments securing the note recorded in the appropriate office of public records in accordance with local requirements.
- (2) You must place contracts of sale on record if required by law or custom or if advantageous to the Agency.

d. Handling of note receivables if purchaser defaults.

You should follow the same procedures for classifying a regular SBA loan. (See SOP 50 50, "Loan Servicing.")

**31. Can Colpur be Leased?**

- a. A lease of real property Colpur must be predicated on your inability to sell the property. If you can justify the advantage to SBA, a lease can be executed for periods up to 1 year.
- b. Personal property must NOT be rented.
- c. Lender's request to lease Colpur must be handled by these same considerations.
- d. All leases must be prepared by Counsel.

**32. Terms and Conditions of a Lease.**

- a. A lease or lease purchase must be designed for the protection of the Agency.

- b. You must make an inspection and inventory, jointly with lessee, before and after the period covered by the lease.
- c. The lease must have a provision for:
  - (1) The return of the property to SBA in the same condition (less fair wear and tear only);
  - (2) Reimbursement to SBA for missing items or those returned in unsatisfactory condition; and
  - (3) The lessee to obtain, at his/her expense, casualty and public liability insurance.
- d. The lease should permit the lessor to cancel the lease in the event of sale or redemption of the property prior to the expiration of the policy.
- e. You should not rent Colpur to the borrower from whom it was acquired or to any of the principals responsible for the borrower's management unless:
  - (1) Unusual circumstances exist;
  - (2) It is to the Agency's advantage; and
  - (3) A comparable or more desirable proposal cannot be obtained.

You should support this with an SBA 327.
- f. You must make at least semiannual inspections of the leased property to determine its condition and the compliance to the lease and prepare a report summarizing your findings.

### 33. Profit from Sale of Colpur.

You should protect the SBA against possible allegations of unconscionable profit. This can be accomplished by the use of a professional auctioneer to assist in advertising and conducting foreclosure sales. Sale of property must be advertised as widely as possible under the circumstances. **The benefit you will receive is that the property may be sold at the foreclosure, preventing it from becoming Colpur in the first place.**

#### a. Unconscionable profit.

There is legal precedent which requires a lender to apply Colpur profit to the debt if the period of time the property was actually held by the lender was short and the

profit large. The courts found the "profit" was really "equity" which had not been properly developed by the lender in its foreclosure efforts.

**b. Determination of Colpur profit or commercially reasonable recover.**

The amount of funds to be credited to the loan account may be approved by the line supervisor acting on the recommendation of the liquidation loan officer. Counsel's concurrence is required.

**c. Compromise of obligor.**

Corrective credits to the loan account should occur in conjunction with a compromise with the obligor(s) of the overall indebtedness. The account must be adjusted to reflect the appropriate credit even if a compromise is not possible.

**d. Funds in excess of loan balance.**

Any overage may be retained by SBA, paid into the registry of the court having jurisdiction, or handled in such manner as determined to be the most equitable under the circumstances. A 327 action is required with comments of Counsel.

**e. Documentation and justification of profit.**

- (1) When the profit on a sale of Colpur exceeds 10 percent of the purchase price (20 percent if more than 1 year since acquisition), a 327 action is required.
- (2) The 327 action must document the:
  - (a) Circumstances that caused the increase in value;
  - (b) Whether the value may have existed at the time of acquisition; and
  - (c) Distribution of the profit to the general fund, to the loan account, to the court, to junior creditors or to the obligor(s), and justify it.
- (3) If you can justify the profit as a result of special events or circumstances which occurred after the acquisition, the profit may properly belong in the SBA general fund.

**NOTE:** It is not the intention of the Agency to take advantage of a borrower's situation or to make an unreasonable profit on Colpur to the detriment of the debtor(s). The burden of proof is on the Agency since the SBA is typically in control of the marketing efforts and are well aware of the values prior to foreclosure.

**34. Abandonment of Colpur.****a. Personal property.**

For personal property, you must prepare a 327 action recommending abandonment. This decision should be based on the limited value and the fact that the cost of selling would exceed estimated recovery.

**b. Real estate.**

For real estate titled in the Agency's name, you cannot abandon it. You must fully detail in those rare instances where the value of the property has fallen to the point that no purchase can be generated.

**NOTE:** The responsibilities and liabilities of the Agency continue as long as the title is held (e.g., unsightly display, potential hazards).

**c. Sales efforts.**

There are times that you as a loan officer must become more innovative in disposing of assets. When you have exhausted all of these efforts, an "exception to policy" plan, documented by a 327 action must be prepared. This action must summarize all of the innovative sales efforts attempted as well as any potential liability faced by the Agency.

**d. Potential liability.**

- (1) When possible, you should assess a property's potential liability to the Agency at the time the protective bid is computed. Occasions arise where the liability was not known or unforeseen changes occur after SBA has acquired the asset.
- (2) You should annually update the Colpur account to review potential liability.

**e. Hazardous waste.**

The presence of any hazardous waste may have significant ramifications with respect to the value and ability to sell real or personal property. You should be aware, it is not necessarily the case that SBA is liable for cleanup of hazardous waste on property in which the SBA holds title. Relevant statutes, regulations and case law must be carefully reviewed in each instance by Counsel. You should notify Counsel of all communications you receive from Federal, State, or local environmental agencies. Additionally, Counsel should be advised of any instance where it is suspected or alleged that hazardous waste is located on property titled in the Agency's name.

**NOTE:** The prohibitions of abandoning real property remain applicable even if hazardous waste is discovered.

**f. Documentation and forms which are needed for abandonment action on personal property.**

- (1) A 327 action must be prepared by the recommending official reflecting:
  - (a) The value of the property;
  - (b) The sales effort; and
  - (c) The reason for abandonment.
- (2) Justification must be outlined in the 327 action as to why the property should be abandoned.
- (3) A 327 action must be forwarded to the approving official for final action with comments of counsel.
- (4) An SBA 297 must be prepared;
- (5) The "Date of Sale" will be the approval date of the SBA 327 authorizing the abandonment; and
- (6) The word "Abandoned" will be inserted in the "Gross Sale Price" column.

**35. Options to Purchase.**

The SBA or the participating lender must not grant an option to purchase, to do so will be treated as an exception to policy.



**CHAPTER 12****GUIDELINES FOR PERSONAL GUARANTIES****1. What is a Personal Guaranty?**

A personal guaranty is the obligation to pay the entire indebtedness (unless the guaranty is limited).

**2. What Form is Used for a Personal Guaranty?**

You will use the SBA Form 148, " Small Business Administration (SBA) Guaranty," (see Appendix 1). This form is executed in connection with loans made by or in participation with the Agency.

**3. Circumstances of Default?**

Although not all inclusive, the following circumstances are considered defaults:

- a. Failure to maintain payments as required by the promissory note and authorization and loan agreement;
- b. Failure to pay taxes on personal or real property securing the loan;
- c. Failure to pay withholding taxes;
- d. Cancellation of hazard or life insurance policies;
- e. Abandonment of collateral;
- f. Any other condition which could impact the Agency's collateral position; or
- g. Breach of any agreement or covenant.

**4. When Do You Notify a Guarantor of Default?**

When SBA becomes aware of a default (e.g., as noted above), you should consult with counsel to determine if written notification of the default to a guarantors is appropriate.

**5. What Requirements are There for Notifying a Husband and Wife When Both are Liable?**

When written notification is necessary, you should send it by regular and certified mail Return receipt requested both jointly and separately.

**6. When Must You Send a Demand for Payment in Full to All Guarantors?**

You must send it when:

- a. The note has been accelerated;
- b. When the approving official has determined that any of the "automatic in liquidation" situations exist (see SOP 50 50, "Loan Servicing");
- c. When liquidation action has been authorized; and
- d. Consult with counsel.

**7. Steps to Take to Review the Guarantor's Financial Condition.**

When you receive a loan classified "in liquidation" you must review the financial condition of each guarantor. This review is made to determine the possible recovery from each guarantor.

**a. What type of review is needed?**

You should analyze and compare the most recent and historical financial information available (e.g., financial statements, tax returns, etc.).

**b. What outside services are available to determine guarantor's financial condition?**

- (1) Local credit bureau;
- (2) Special reporting services such as:
  - (a) Current assets and income report;
  - (b) Single property check;
  - (c) Skip tracing services;
  - (d) UCC lien search; and

(e) State corporation commission file search.

**c. What do you do if a substantial adverse change in guarantors financial condition is identified?**

If your review reflects a substantial change in a guarantor's financial condition, you should obtain full details.

**(1) What are common adverse changes?**

(a) Disposal of assets; and

(b) Creation of fictitious debts.

**(2) Whom should you refer these matters to if you determine the Agency will suffer a loss?**

You must report it to the Inspector General's Office as detailed in Chapter 24, "Referrals to the Inspector General."

**8. What Do You Do When the Guarantor is Deceased?**

- a. Ascertain the status of life insurance;
- b. Consult with counsel to determine the necessity of filing a probate claim; and
- c. Consult with counsel prior to releasing a claim on a loan in liquidation status with claims against the estate.

**9. What Notices Might the Agency Receive Which Would Indicate a Guarantor Might Be Insolvent?**

- a. Foreclosure notice by a lien holder;
- b. Bankruptcy filing; or
- c. Receivership notification.

**10. What Action Should the Agency Take when Notices of Foreclosure, Bankruptcy, or Receivership Against the Guarantors are Received?**

- a. The liquidation loan officer should determine:
  - (1) The value of any assets involved;

- (2) The amount of any prior liens in order to make decision on paying off balance;
  - (3) The overall strength of the business;
  - (4) The strength of remaining guarantors; and
  - (5) The chances of the loan payments continuing.
- b. The liquidation loan officer must notify counsel to determine what action must be taken to protect the Agency's position.

**11. Will an Account Always Be Liquidated When an Adverse Action Occurs With Guarantor?**

No. You should give consideration to the overall financial stability of the business. If you anticipate full payment from the business, monitoring the guarantor's situation will be satisfactory.

**12. When Can You Release a Personal Guarantor?**

You may release a personal guarantor when:

- a. The loan is fully paid;
- b. The full amount due from a limited guarantor is paid;
- c. A compromise offer has been approved; or
- d. The release is part of a workout, sale, or reorganization of the firm and:
  - (1) Substitution of guarantors and collateral of equal or better value is made; or
  - (2) The release is in the best interests of the Government.

**NOTE:** The liquidation officer must consult with counsel to ensure that no legal rights of the Agency against the borrower, guarantors, or any other party will be adversely affected by the release.

**13. What Do You Do if the Guarantor is Missing?**

A missing guarantor can normally be traced using any of the following methods:

- a. The Skip Trace Service Report available from Equifax;

- b. Various on-line skip trace databases;
- c. Contact with the Internal Revenue Service;  
(see Appendix 38 for format)
- d. Nearby places of business;
- e. Obligor's other creditors;
- f. Consumer credit services;
- g. Local participating lenders;
- h. Obligor's neighbors, relatives, former employers;
- i. United States Post Office;
- j. Utility companies;
- k. Local unions;
- l. Department of Veterans Affairs;
- m. State motor vehicle records;
- n. Other licensing or taxing authorities; or
- o. Life insurance companies.

**14. When Do You Take Action Against a Guarantor?**

Generally, the business assets are usually considered to be the primary source of recovery and are ordinarily liquidated prior to taking action against a guarantor.

Nevertheless, collateral can be liquidated in any order determined to be in the best interest of the Agency.

**15. What Actions Can the Agency Take Against the Guarantors?**

Actions which can be taken are:

- a. **A suit can be brought against the guarantor or action against nonbusiness collateral securing the guaranty.**

Where immediate action is deemed necessary, you must justify by a 327 action.

Such reasons may include:

- (1) Lack of cooperation;
  - (2) Failure to supply financial information;
  - (3) Refusing to assist in the liquidation of business assets;
  - (4) Possible dissipation of assets; or
  - (5) Foreclosure actions by other lien holders.
- b. **SBA can process a compromise offer from a guarantor prior to the sale of the business collateral when:**
- (1) The deficiency balance has been determined; and
  - (2) It is advantageous to the Agency.
- c. **Information to refer a Guarantor to the Department of Justice (DOJ) for a Deficiency Judgment.**

The following should be completed for a referral:

- (1) The recovery potential of each guarantor must be identified; and,
- (2) The 327 action should include recommendations for suit against other obligors, judicial foreclosure action, or any other court action which may be necessary.

**16. Judgments.**

Prior to recommending legal enforcement action against a guarantor, the recommending official:

- a. Should be certain that all reasonable recovery action against the business collateral has taken place;
- b. Must be in compliance with the Federal Claims Collection Act and the Federal Claims Collection Standards; and
- c. Must review and analyze the financial condition of each guarantor. The analysis involves review of:
  - (1) Financial statements;
  - (2) Credit reports;
  - (3) Appraisals; and
  - (4) Financial data submitted at loan processing in comparison to current data obtained.

**17. What Should the Review of the Guarantors Current Financial Condition Allow the Liquidation Officer to Determine?**

- a. Extent of collectibility;
- b. Estimate of the potential costs involved;
- c. Net estimated recovery; and
- d. Sources from which recovery is expected.

**18. What Must the Liquidation Officer Do Prior to Referring a Guarantor for Judgment?**

You must solicit a compromise offer prior to referring the guarantor for judgment, pursuant to the Claims Collection Act.

**19. What Information Must the 327 Action Contain to Proceed with Suit?**

- a. A summary of the actions previously taken;
- b. Your efforts to solicit a compromise;

- c. A determination that reasonable prospects exist for collection under the judgment such as the availability of:
  - (1) Valuable properties;
  - (2) Excess income; and
  - (3) Strong financial condition;
- d. A copy of all credit reports;
- e. A copy of all appraisals; and
- f. A completed Claims Collection Litigation Report (CCLR).

**20. How is the Referral Processed?**

- a. Unless delegated to SBA, the DOJ handles all litigation in coordination with field counsel, Office of Litigation, and/or the litigation units.
- b. The 327 action, along with information listed above, must be forwarded to counsel for review, comment, and referral to the DOJ.

**21. What is the Prime Time for Intensive Follow-up Once the Judgment Has Been Obtained?**

The 90 day period following obtainment of the judgment is the prime time to pursue the previously identified source of collectibility from the obligors.

**22. When Should the Loan Continue in a "in Liquidation/Litigation" Status?**

It should continue until it is:

- a. Paid in full;
- b. Compromised;
- c. Approved repayment plan; or
- d. Charged off.

**23. How are Disagreements with the U. S. Attorney Handled?**

District counsel will report the situation to the Office of General Counsel. The line supervisor will consult with district counsel if guidance is needed.

**24. What Reports and Records are Required Upon Entry of a "Money" Judgment?**

SBA Form 489, "Judgment Report," (see Appendix 7) must be reported to Office Financial Operations (OFO), if it meets the following criteria.

**a. Incomplete judgment.**

If the judicial order does not constitute a final judgment until a sale is held and the deficiency established, the order will not be reported as a judgment until the final deficiency is entered or established following the sale.

**b. Computation of judgment.**

The liquidation officer should request counsel to arrange with the U. S. Attorney to include in judgments to be rendered in favor of SBA, the amount due as computed by OFO plus interest and the interest rate.

**c. Judgment obtained by the participant.**

When the participant obtains the judgment, SBA should concur in the computation of the debt. Also, the liquidation officer must obtain from the lender a signed statement setting forth any information required for the report which is not reflected on the judgment. The statement and a copy of the judgment will be attached to the SBA 489.

**d. Rerecorded judgments.**

If the debtor moves to a new location and the recording and perfecting of a judgment is required in the new jurisdiction, a second SBA 489 to OFO is not necessary.

**25. When is it Not Necessary to Submit an SBA 489 Report?**

Where a judgment has been taken against the primary obligor, you should not submit an SBA 489 on a judgment taken against a guarantor. It is not necessary to make a report on judgments that are "enforcement" judgments, such as those that authorize foreclosure.

**26. Where Should A Copy of the Judgment and Judgment Report Be Sent?**

- a. A copy of the judgment will be attached to each copy of the report; and
- b. A copy of each judgment report will be retained in the loan file.

## CHAPTER 13

**LOAN GUARANTY PURCHASE REVIEWS  
DENIAL OF LIABILITY ON GUARANTY  
SUIT AGAINST PARTICIPANT TO RECOVER PAID GUARANTY**

**1. Regulatory Authority to Deny Liability Under SBA's Loan Guaranty or to Initiate Suit to Recover a Paid Guaranty is contained in 13 CFR §120.524**

**§ 120.524. When is SBA released from liability on its guaranty?**

(a) SBA is released from liability on a loan guaranty (in whole or in part, within SBA's exclusive discretion), if any of the events below occur:

(1) The Lender has failed to comply materially with any of the provisions of these regulations, the Loan Guaranty Agreement, or the Authorization;

(2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;

(3) The Lender's improper action or inaction has placed SBA at risk;

(4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;

(5) The Lender has misrepresented a material fact to SBA regarding a guaranteed loan;

(6) SBA has received a written request from the Lender to terminate the guaranty;

(7) The Lender has not paid the guaranty fee within the period required under SBA rules and regulations;

(8) The Lender has failed to request that SBA purchase a guaranty within 120 days after maturity of the loan;

(9) The Lender has failed to use required SBA forms or exact electronic copies; or

(10) The Borrower has paid the loan in full.

(b) If SBA determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any money paid on the guaranty plus interest from the Lender responsible for those events.

(c) If the Lender's loan documentation indicates that one or more of the events in paragraph (a) of this section may have occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guaranty, and may withhold a decision on whether to honor the guaranty until the completion of such investigation.

(d) Any information provided to SBA prior to Lender's request for SBA to honor its guaranty shall not prejudice SBA's right to deny liability for a guaranty if one or more of the events listed in paragraph (a) of this section occur.

(e) Unless SBA provides written notice to the contrary, the Lender remains responsible for all loan servicing and liquidation actions until SBA honors its guaranty in full.

**2. Processing Purchase Requests and Which Office Has Authority Within SBA to Deny Liability on a Loan Guaranty or to Approve the Initiation of Suit to Recover a Paid Loan Guaranty**

7(a) guaranty purchases are processed in the National Guaranty Purchase Center and some district offices, except that *SBAExpress* and *CommunityExpress* purchases are processed in the Commercial Loan Service Center (CLSC) that services the loan. Field offices or centers with responsibility for processing purchases are referred to in this Chapter as "field/center offices."

No authority has been delegated to field/center offices to deny liability, in whole or in part, to purchase SBA's guaranteed portion of a loan or to approve the initiation of a lawsuit against a participant lender to recover funds paid under a guaranty. The Associate Deputy Administrator for Capital Access (ADA/CA), or the person acting in that position, has the authority to deny liability or to approve the initiation of a lawsuit against a participant lender seeking the recovery of a guaranty payment. Before exercising this authority, the ADA/CA must obtain legal concurrence from the Office of General Counsel (OGC).

**3. Evaluating a Purchase Request and Recommending Repair or Full/Partial Denial of Liability**

The general policy for guaranty purchase reviews is to reach a fair decision based on a thorough review of the lender's purchase request and all relevant documentation. If a lender has been deficient in its handling of a loan, the financial staff in the field/center office should attempt to reach an equitable resolution through negotiation and agreement with the lender (a "repair") sufficient to compensate SBA for the amount of monetary loss caused by any lender deficiencies. If the loss on the loan was total or near total, the lender will be asked to agree to cancellation of the guaranty by SBA (a "voluntary cancellation"). A denial of liability or litigation for recovery should be considered when the lender is not negotiating in good faith, is unwilling to agree to a monetary adjustment that reflects the harm caused to SBA, or when the lender's actions are so serious that a repair would be insufficient.

Financial staff should also consult the guaranty purchase procedures in SOP 50 50, Chapter 9, "Purchasing SBA's Guaranty."

Examples of cases where a repair or full/partial denial of liability may be appropriate, in accordance with the guidance in this chapter, include:

- a. The lender did not perfect the security interest required in the authorization;
- b. The lender did not disburse the loan in accordance with the use of proceeds section of the authorization;
- c. The lender did not properly execute the mortgage/deed of trust, rendering the instrument unenforceable;

- d. The lender disbursed funds despite knowledge of a material adverse change in the financial condition of borrower;
- e. The lender released a guarantor or compromised the loan without the consent of SBA when required;
- f. The lender conferred a preference on itself to the detriment of the SBA loan;
- g. The lender did not service the loan in a manner consistent with prudent lending practices; or
- h. The lender engaged in fraud or material misrepresentation to SBA in the loan origination process or subsequently.

#### 4. **Timely Processing**

SBA will process guaranty purchases expeditiously with the ultimate objective of determining the Agency's liability with respect to a particular loan guaranty. Where SBA has purchased the guaranteed portion of a loan from the secondary market, financial and legal staff must always complete the post-purchase review prior to inclusion of a loan in an asset sale or prior to charge-off, preferably within 90 days of the purchase.

#### 5. **Purchase Review Scope and Responsibilities**

##### a. **Purpose of Review and Responsibilities**

The purpose of a pre-purchase or post-purchase review is to determine whether, based on the information available at the time of the review, SBA should honor a purchase request, seek a repair, deny liability in full or in part on its guaranty, or seek recovery from the lender if SBA has already purchased from the secondary market holder or the lender itself. The purchase review is a process that serves to minimize improper payments by ensuring that SBA purchases only those loans which were originated, closed, serviced and liquidated in accordance with the loan authorization, prudent lending standards applicable to commercial loans, SBA regulations, and other Agency requirements. The review process must always include a thorough analysis of the lender's administration of the loan (based on information available at the time), particularly in complicated cases or if there are questions about lender misconduct. The review examines whether the lender has: (1) complied materially with the loan authorization, statute, SBA regulations, SOPs, and other SBA requirements; (2) made, closed, serviced, and/or liquidated the loan in a prudent manner; (3) misrepresented or failed to disclose a material fact to SBA; or (4) put the SBA's guaranty at risk.

Financial staff is responsible for determining credit issues and the amount of loss to SBA, and for making a recommendation regarding whether SBA should seek a repair or deny liability in whole or in part. Field/center counsel are responsible

for providing advice on legal issues and whether lender's noncompliance is material, as well as for preparing a legal opinion as to whether SBA is liable under its guaranty.

**b. Recommendations for Full or Partial Denial of Liability**

Generally, a full denial of liability under 13 C.F.R. § 120.524 would be appropriate if the lender's misconduct resulted in SBA guaranteeing a loan that should not have been made (e.g., if the loan was ineligible), or if the lender's imprudent actions resulted in a total, or near total, loss on the loan. A partial denial, as permitted by § 120.524(a), is generally appropriate if the lender's failure resulted in a quantifiable loss, such as with respect to a specific piece of collateral (e.g., if the lender failed to obtain the required lien position on that collateral).

**6. Repairs**

- a. The field/center office must address the lender's deficiencies and purchase issues with the lender before it may recommend denial. Financial staff should explain to the lender the problems that must be satisfactorily addressed before purchase can be recommended. At the same time, they should seek to determine the lender's point of view regarding the matter.
- b. Field/center offices are encouraged to resolve lender deficiencies through repairs; however, field/center offices should not agree to a repair if the settlement amount is insufficient to compensate the Agency for its losses or if the lender's actions are sufficiently serious that a full denial of liability is warranted. If financial staff believe that there are grounds for a full denial and would so recommend, field/center offices first should ask the lender to agree to the cancellation of the guaranty by SBA, or to repay SBA for a secondary market purchase. If less than a full denial is appropriate, and the lender will not agree to an adequate repair, the field/center office then should send a recommendation for a partial denial to Headquarters and withhold payment on the remaining portion of the guaranty until Headquarters has made a decision on the recommended action.
- c. If the lender agrees to an adequate repair, the field/center office may purchase at the reduced amount without referral to Headquarters if the adjustment reasonably approximates the anticipated or actual loss caused by the lender (see discussion in paragraph 8 on determining loss). Any such repair must be fully documented and consistent with the findings made in the purchase review, and contain the comments and concurrence of field/center counsel.
- d. Repairs must be calculated as a specific dollar amount, and NOT as a reduction of SBA's guaranty percentage on a loan. The dollar amount of the repair must be entered in the Guaranty Purchase Tracking System (GPTS) as the "net" amount – that is, the dollar amount of harm caused by the lender multiplied by SBA's guaranty percentage on the loan. The purchase amount disbursed to the lender will reflect a reduction by the net repair amount entered in GPTS.

- e. In some cases, the lender may agree to release SBA from any further liability under the guaranty. A voluntary cancellation of the guaranty by the lender is preferable to a denial of liability by SBA because it allows an efficient administrative resolution without the need to process a denial, and avoids an adversary proceeding with the lender. Therefore, financial staff should always request a voluntary cancellation in writing before a denial action is initiated. Voluntary cancellations must be entered in GPTS.
- f. When SBA responds to a letter requesting cancellation, SBA must advise the lender that SBA's agreement to the cancellation does not waive any of its preexisting rights or defenses in the event that a cancellation is not ultimately consummated. For further details, see SOP 50 50, Chapter 10, Paragraph 2.

## 7. Lender's Obligation to Show Compliance

It is the lender's obligation to show that it has satisfactorily complied with its duties under its contractual obligations to SBA, SBA's regulations, and all other requirements applicable to the SBA-guaranteed 7(a) loan which it made and, therefore, is entitled to receive payment on the guaranty. If the lender cannot meet this duty, then SBA is not obligated to honor its guaranty, unless a lender can demonstrate that its misconduct did not result in any loss or possible loss to SBA; that its misconduct did not involve an SBA requirement material to the soundness and integrity of the 7(a) program; or that its misconduct did not otherwise fall within any of the circumstances listed in §120.524. SBA's determination regarding its liability under the guaranty will depend upon the circumstances presented on each loan.

## 8. Determining the Amount of Loss Attributable to a Lender

- a. Any denial action based on monetary loss must include an estimate of the loss attributable to the lender's actions or inaction. The basis for the estimate may range from a formal appraisal figure to an educated approximation, depending on the circumstances. Appraisal costs incurred for this purpose are a nonrecoverable program expense and, as such, are not chargeable to the borrower. In the SBA Form 327, financial staff should use the most exact loss figure available and explain how it was determined.
- b. For most repairs or partial denials where collateral is involved, financial staff should calculate the loss to the Agency using the forced sale equivalent (liquidation value) as found in Chapter 17, Paragraph 9(a) of this SOP. In certain early default situations, discussed below in this Chapter, the repair or partial denial may be equivalent to the original cost of the items in question. All repair or partial denial calculations must be included in the SBA Form 327 for the purchase review, or in an attachment, even when it is determined that the liquidation value is nominal.
- c. Questions have arisen as to the Agency's ability to deny liability when it is difficult to quantify the exact amount of loss that is attributable to the lender's

actions. The fact that the amount of loss cannot be exactly quantified should not preclude a repair or denial as long as it is possible to make a reasonable estimate or approximation of the loss. It may also be appropriate to deny liability in full if multiple instances of misconduct by a lender with respect to a particular loan are reasonably believed cumulatively to have caused, or potentially to have caused, substantial loss on a loan. For example, it might not be possible to quantify the loss resulting from a lender's failure to verify an equity injection and the use of loan proceeds, or its failure to take appropriate steps to determine whether collateral was available to secure a loan prior to closing. Even though one of these individual actions might not, in and of itself, warrant a denial, depending on the specific circumstances of the loan, a full or partial denial due to several lender failures may be appropriate.

- d. If at the time the lender requests that SBA honor its guaranty, a substantial, but not total, loss attributable to the lender is possible but not yet fully known, financial staff should encourage the lender to withdraw its purchase request and direct the lender to continue servicing the loan through final liquidation, at which time the lender may resubmit its purchase request. This will result in a complete picture of loss attributable to the lender being known at the time of purchase (and, depending on recovery during liquidation, there may be no loss).

## 9. Program Integrity Considerations

- a. Even in the absence of actual loss or potential financial loss, courts have upheld SBA denials of liability if a lender has failed to comply with an SBA requirement which is deemed material to the soundness and integrity of the 7(a) program. Examples of material requirements where a full denial of liability may be appropriate include, but are not limited to instances where: (1) the loan was ineligible; (2) the lender used a significant portion of the loan proceeds to repay its existing debt without SBA approval; or (3) the lender otherwise conferred a preference on itself or breached SBA's conflict of interest regulations. This is not an exhaustive list, and the significance of other failures should be evaluated on a case-by-case basis.
- b. Courts have also upheld denials of liability if the lender failed to disclose, or misrepresented, material facts to the Agency. A fact generally is considered material to the loan if the accurate disclosure of the fact would have caused SBA to deny an application for a guaranty, or if SBA would not have approved the application without requiring the lender to take additional steps to obtain protection from the risk of loss. For example, a full denial of liability would generally be warranted if the lender fails to disclose to SBA that an adverse change has occurred after SBA issues a loan authorization but prior to loan disbursement, and SBA would either have withdrawn the authorization or disallowed disbursement until the change was properly addressed.

## 10. Role of Field/Center Counsel

Field/center counsel is responsible for advising financial staff whether SBA is, or is not, legally obligated to honor its guaranty (either in whole or in part). Counsel should limit its review to determining whether there has been material noncompliance by a lender and to opining on legal issues. The dollar amount of a loss and other credit issues are to be determined by financial staff with input from counsel as to any legal issues that may affect the loss calculation. If the financial and legal staff are unable to agree on whether SBA should purchase or deny liability in whole or in part, the matter must be referred to the Office of Portfolio Management (OPM) in Headquarters for resolution by the AA/FA with the concurrence of OGC (see "Note" in paragraph 30(b) of this Chapter).

## 11. Post-Purchase Reviews

If a post-purchase review determines that a full or partial denial of liability would have been warranted and the lender does not reimburse SBA for its guaranty payment or agree to a repair that sufficiently compensates the Agency, the field/center office should recommend to OPM in Headquarters that SBA commence litigation to recover all or part of the paid guaranty from the participating lender. Post-purchase reviews must be clearly identified as such in the Guaranty Purchase Tracking System and in any action that is referred to Headquarters.

## 12. Purchase Checklist and File Documentation

- a. Financial staff must use the current version of the Guaranty Purchase Checklist (Appendix 17). Items pre-checked on the list (such as the loan authorization signed by the lender, transcript of account and settlement sheets) are mandatory for all purchase reviews. For the remaining items on the checklist, financial staff must determine the necessity for the item based on the specific loan authorization, SBA policy and the particular circumstances of the loan. Only documents that are necessary to determine SBA's liability for the purchase are required from the lender. For example, financial staff does not need to obtain evidence of flood insurance if there was no flood and loan collateral has been sold. However, if a checklist item required by the loan authorization is not considered relevant to the purchase being processed, financial staff must note the reason on SBA's copy of the checklist (or an attachment). In a case involving early loan problems or an early default, as discussed below in paragraph 14 of this Chapter, or when significant deficiencies are discovered that indicate the lender may have materially breached its obligations, financial staff may deem additional checklist items to be relevant. The checklist used to perform the purchase review must be retained in the loan file with all supporting documentation.
- b. Financial staff must perform a thorough review of a lender's documentation submitted in connection with a purchase review, using the purchase checklist, prior to requesting additional documents from the lender. Financial staff must identify all additional documents needed to complete the purchase review on the checklist, and must expeditiously request this documentation from the lender, in a single communication if possible. It is important to minimize subsequent requests for additional documents once lenders are initially advised concerning required

documentation; however, there may be instances where subsequent requests are necessary. Financial staff must note in the Guaranty Purchase Tracking System the date they requested information from the lender, and the date the lender provided a complete purchase package.

- c. SBA staff may have difficulty obtaining purchase documentation from lenders. SBA's requirement that lenders provide sufficient documentation so that the Agency can determine whether the lender has complied with all of its obligations is material to the integrity of the 7(a) program. Thus, field/center offices must not purchase a guaranty if a lender fails to provide sufficient documentation to allow for an adequate purchase review, unless the lender submits a satisfactory written explanation for any missing documentation and the purchase can be satisfactorily completed without it (the purchase may involve a repair).

Field/center offices should generally provide lenders 30 calendar days to furnish SBA the requested information. If, during the course of a pre-purchase review, a lender fails to provide an adequate response to an Agency request for documentation, the field/center office should advise the lender in writing that it is placing the purchase request in an inactive status until SBA receives an adequate response, or for a period of one year. If the lender has not submitted the required materials after one year, the purchase request will be closed and the loan will be marked paid in full. If adequate materials are submitted by the lender after the purchase has been closed, SBA may reactivate the loan to process the purchase.

- d. If during a post-purchase review, a lender fails to provide necessary documentation requested by SBA within 30 calendar days of the request, and fails to provide a satisfactory written explanation as to why it cannot provide the requested information, financial staff may consider this to be a material failure to comply with SBA loan requirements and to be a basis for a recommendation to bring suit to recover from the lender the amount paid under the guaranty. Similarly, missing documentation can support a partial recovery to the extent that the documentation in question relates to specified collateral or other loan requirements. SBA's request for documentation should advise the lender that its failure to provide the requested items could result in a recommended recovery action.

### **13. Referrals to the Office of Lender Oversight (OLO) and the Office of Inspector General (OIG)**

Purchase reviews may identify lending weaknesses or patterns of deficiencies for a particular lender that may not rise to the level of a denial or repair for a specific loan. These problems should be referred to the OLO in writing with a copy placed in the loan file, and brought to the attention of the lender.

Irregularities on the part of the lender or borrower must be referred to the OIG as required in Chapter 24 of this SOP and in SOP 50 50 4, Chapter 14.

**14. Early Defaults/Early Loan Problems**

For purposes of guaranty purchase reviews, the term "early default" means, generally, a default or business failure that occurs either prior to final disbursement of the loan, or within 18 months from the date of final disbursement. A default includes an unremedied failure to make one or more payments required by the terms of the note, as well as events that would place a loan in liquidation status (see Chapter 4, Paragraph 6 of this SOP). Early loan problems are indicated when, either prior to final disbursement or within the first 18 months after final disbursement, a borrower has a pattern of late payments or partial payments, or funds monthly payments through the sale of collateral, or the lender has deferred two or more consecutive scheduled payments. If the guaranty purchase request involves a loan that experienced early loan problems or an early default, financial staff should review the documentation submitted with the guaranty purchase request with a very high degree of scrutiny. In these situations, financial staff must determine whether a deficiency by the lender in making and/or closing the loan, including the failure to verify a required equity injection, contributed to or allowed the early default or early loan problems.

**15. Purchase Reviews of Preferred Lender Program (PLP) Processed Loans and SBAExpress Loans**

**a. Review of PLP and SBAExpress Eligibility Determination**

PLP lenders are responsible for PLP loan decisions regarding eligibility, pursuant to 13 C.F.R. § 120.452(c). Subsection (b) of § 120.452 indicates that SBA approves PLP loans subject to an eligibility review. SOP 50 10(4)(E) Subpart D, Chapter 3, Paragraph 7b(2) elaborates that the SBA eligibility review is a "quick review," based on the lender's assertions regarding the business and the loan, intended to protect SBA and the lender from making ineligible loans for which SBA could not honor its guaranty. The SOP further states that if an SBA loan number is assigned, and SBA later determines that the loan is not eligible, the Agency still may deny liability on its guaranty if warranted. Similar considerations are set forth in the SBAExpress Program Guide.

In order to determine that a loan processed under PLP or SBAExpress authority was eligible, financial staff must request and review on all guaranty purchases a copy of the documentation used by the lender to support its eligibility determination. Factors that financial staff may consider in determining SBA's liability under its guaranty include whether the eligibility determination was a close call and involved a reasonable judgment by the lender as to the applicant's eligibility. If a loan is found to be clearly ineligible, financial staff should request that the lender voluntarily release the guaranty (or repay SBA if the Agency has already purchased), and recommend a full denial (or litigation to recover SBA's purchase payment) if the lender refuses.

**b. PLP or SBAExpress Early Default Review**

For all guaranty purchase reviews involving a loan processed under PLP or *SBAExpress* authority that has gone into early default or experienced early loan problems, the lender must submit a copy of its credit memorandum with all supporting documentation used or relied on by the lender in its credit analysis, and a complete copy of the borrower's application for the loan, along with SBA Form 912 (Statement of Personal History) for each principal. Financial staff must review these materials to determine if a deficiency by the lender in making and/or closing the loan contributed to or allowed the default or problems.

A denial based upon a lender's underwriting may be appropriate if: (1) a lender failed to comply with an SBA lending requirement in making or closing the loan, which placed the Agency at financial risk; or (2) the lender was clearly negligent by failing to account for an obvious fact that could likely affect the borrower's ability to repay the loan. Examples of the latter would be if the borrower's projected expenses greatly exceeded projected revenues, without any other source of income, or if the lender made a loan to a startup business without comparing projected revenues against either an industry standard or some other reliable objective measure (this could include the lender's experience in making loans to similar businesses). In this regard, SBA's regulations (§ 120.150) state that applicants must be creditworthy and that loans must be so sound as to reasonably assure repayment from the cash flow of the business. If a lender has reasonably used its judgment to evaluate and document repayment ability, a denial would not be appropriate. If financial staff is uncertain whether a lender's actions warrant a denial, it should consult with OPM in Headquarters through appropriate channels.

#### **16. LowDoc Eligibility**

SOP 50 10(4), Appendix 5, Paragraph 4 states that all LowDoc loans are subject to the eligibility and credit requirements of the 7(a) program, and the lender must ensure that all applicants and proposed uses of proceeds are eligible. For all LowDoc guaranty purchase requests, the lender must provide a copy of the eligibility checklist and all supporting documentation used in the lender's eligibility determination.

#### **17. Streamlined Procedure for Small Loan Balance Purchases**

If the outstanding principal loan balance is \$10,000 or less (SBA share), except in cases of early default or early loan problems or where there is suspicion of fraud or misrepresentation, the lender normally must provide only the following documents for the purchase review:

- Written demand that the SBA honor its guaranty, including date of default, interest-paid-to date, interest rate at time of default, and next installment due date;
- Wire transfer instructions;
- Complete certified transcript of account signed by the lender;
- Lender's documentation of eligibility (PLP, *SBAExpress* and LowDoc loans

only);

- Copies of note, authorization and any guaranties; and
- Risk Management Database information.

If the lender has completed liquidation on the account, the lender must also submit:

- Lender certification that liquidation is complete and that all avenues of collection have been exhausted; and
- Final liquidation wrap-up report.

### **18. Exercise of Judgment**

Financial staff members performing purchase reviews are frequently required to exercise judgment in evaluating the materiality of guaranty purchase issues or in calculating repairs. These judgments must be sufficiently documented during the purchase review process so that the basis for the recommendation and/or decision on the purchase can be determined. When this Chapter references the exercise of judgment in situations such as assessing the materiality of a lender's actions or in calculating a repair or partial denial, financial staff must thoroughly explain and justify its judgment in the SBA Form 327 for the purchase review, with relevant supporting documents as appropriate.

### **19. Transfer of Servicing from Lender to SBA**

Lender must not assign to SBA loan documents submitted in connection with a purchase review, unless loan servicing is transferred from the lender to SBA. Such a transfer of servicing should occur by exception only, and the field/center director, or designee, must approve the transfer. See Chapter 8, Paragraph 1(b).

### **20. Transcripts**

A lender must submit a certified transcript of account to SBA for all guaranty purchase requests. The transcript must reflect all transactions on the borrower's account, including liquidation proceeds and expenses, and the lender must certify that the transcript is a true and correct copy (SOP 50 50 4A, Chapter 9, Paragraph 4(b)). If there are significant changes to a lender's certified transcript, the lender must re-certify the revised transcript.

### **21. IRS Tax Return Verification**

On October 7, 1994, SBA established the requirement that lenders must verify financial information submitted with a loan application using IRS Form 4506. See SOP 50 10 4(B), Subpart A, Chapter 6, Paragraph 4(f). Except as provided in *SBAExpress* procedures, this requirement applies regardless of whether it is specifically included in the authorization. Financial staff should consider the following when determining whether to request a repair or recommend a full/partial denial when the IRS tax return verification is absent from the file.

If the loan did not experience an early default or early loan problems, the lender's failure to obtain IRS verification may not be significant, and denial or repair may not be appropriate. The exercise of judgment is required based upon an evaluation of all factors associated with the business failure.

**a. Early Default/Early Loan Problems**

If there is an early default or there are early loan problems, and the lender fails to provide evidence of required verification of financial information or a credible explanation for its absence, then a full denial of liability would generally be warranted unless the lender can clearly show that the failure of the business was due solely to factors unrelated to any financial difficulties of the borrower that the lender should have identified through the IRS verification process.

**b. Change of Ownership**

Most change of ownership situations require verification of the seller's financial information. If it was not obtained, the standard described in subparagraph (a) as applicable to early default/early loan problems applies. See SOP 50 10 4(B), Subpart B, Chapter 1, Paragraph 3c.

**c. IRS Delay**

If a lender encountered delays in receiving IRS transcripts at the time of loan closing, and the loan subsequently defaults, financial staff when processing a purchase review on that loan will consider whether the lender properly followed all SBA required procedures governing such situations, exercised prudent judgment, made any material errors, and properly documented its loan file.

**22. Verification of Use of Loan Proceeds**

SBA's Form 1050 Settlement Sheet requires that lenders (except for SBAExpress loans) document disbursement of loan proceeds through the issuance of joint payee checks, except for working capital and cash to reimburse borrowers for evidenced expenditures. Prudent lending involves reasonable measures to verify use of loan proceeds. Thus, as a general rule, a lender that does not use joint payee checks to evidence the use of loan proceeds should provide copies of paid receipts, paid invoices or other supporting documentation clearly showing that the proceeds were used in accordance with the loan authorization. Evidence of an electronic funds transfer to a vendor could serve as adequate evidence of use of proceeds in lieu of a joint payee check.

Some deficiencies in a lender's failure to verify the use of loan proceeds include missing Form 1050 Settlement Sheets, no verification of assets purchased, no joint payee checks, or no credible evidence verifying expenditures (e.g., paid invoices or receipts). Judgment must be exercised when documentation is either lacking or insufficient for some or all of the loan proceeds. An example of insufficient documentation would be an affidavit from the borrower as the only evidence from the lender to show that it had verified the use of loan proceeds. Also, a bank statement showing only a check number and amount would

not be sufficient proof of the use of proceeds. On the other hand, an invoice marked "paid" supported by copies of cleared checks or bank statements showing that the checks have cleared, would be sufficient. The OIG has found instances where invoices marked paid without supporting documentation (receipts, cancelled checks or bank statements showing cleared checks) were later found to be unsubstantiated.

Financial staff should consider the following when determining whether to seek a repair or recommend a full/partial denial when evidence of the authorized use of proceeds is absent from the file:

**a. Failure to verify use of loan proceeds that contributed to an early default or early loan problems**

A full denial is called for if the business failed because required assets were not purchased. A failure to account for the use of loan proceeds may indicate that the borrower did not purchase equipment needed for the business, with resulting operational problems. In the event that a loan goes into early default or if early loan problems occur, and the lender is unable to verify the use of loan proceeds or locate required collateral at liquidation, financial staff should inquire of the lender about the reasons why the business failed, so as to determine whether the business failed or experienced problems due to the absence of the required assets.

**b. Collateral available at liquidation**

If a lender fails to provide adequate verification for the use of loan proceeds intended to purchase equipment or other collateral securing the loan, and the collateral in question is found on the borrower's premises during a pre-liquidation site review, a denial of liability or repair on the basis of lack of verification of use of proceeds may not be appropriate. A credible inventory of items at default or an auction/appraisal report will suffice to indicate items purchased with loan proceeds. Also, liquidation proceeds received from sold collateral should bear a reasonable relationship to the amount disbursed for that collateral, adjusted for age/depreciation, and forced sale value and expenses.

**c. Establishing loss if collateral is missing at liquidation**

**(i) Early default**

When there is no evidence that assets required by the authorization were in fact purchased (i.e., no joint payee checks or paid invoices/receipts), and the collateral that was to be purchased with loan proceeds is not present at the pre-liquidation site visit, a repair or a partial/full denial may be appropriate. An example of evidence that collateral was actually purchased might consist of documentation provided by the vendor showing delivery and payment for the collateral. Generally, the liquidation value of the collateral may be used to determine loss unless it is reasonable to conclude that the collateral, if available and sold, would have recovered the initial cost or current market value because it was new

or nearly new.

**(ii) Default or business failure that occurs more than 18 months after final disbursement**

Under these circumstances, financial staff should consider a number of factors including length of time the borrower was in business; the relative size of the SBA loan compared to the business assets to be purchased; the type of assets purchased; normal depreciation or obsolescence of the assets; and whether there has been replacement of the assets with leased items, or by assets financed with purchase money security interest financing. Repair or full/partial denial may or may not be appropriate depending on the circumstances. An exercise of judgment is required.

**23. Change of Ownership**

In cases where whole businesses are purchased, asset values may not reflect fair market value and may bring little recovery at liquidation, even a short time after disbursement. Each case requires the exercise of judgment based on the condition of the assets when purchased and normal depreciation in the business operation prior to and subsequent to the change in ownership.

**24. Borrower's Injection**

Lenders are required to verify injections prior to disbursing loan proceeds and must maintain evidence of such verification in their loan files. Lenders are expected to use reasonable and prudent efforts to verify that equity is injected and used as intended, and failure to do so may warrant a repair or partial/full denial. Lenders must submit with each purchase request on a loan for which the loan authorization required an equity injection, documentation to show that they verified the equity injection. Generally, SBA staff will review this documentation only when the loan has experienced an early default or early loan problems, although SBA may review this documentation for other loans as well if circumstances warrant. SBA staff will consider the following in determining whether to seek a repair or recommend full/partial denial:

**a. Cash Injection**

Verifying a cash injection requires documentation such as a copy of a check along with evidence that the check was processed (e.g., at least one bank account statement dated before, but close to, disbursement showing that the funds were available and deposited into the borrower's account), or a copy of an escrow settlement accompanied by a bank account statement showing the injection into the business prior to disbursement. A promissory note, "gift letter" or financial statement alone is generally not sufficient evidence of cash injection.

For any cash injection that is greater than 1/3 of the loan amount or \$200,000, whichever is less, the lender must also verify and document the source of the cash injection. If the cash injection is less than both of these amounts, the lender is

~~required to verify and document only the existence of the cash injection, but not also its source.~~

If a shareholder loan is used as an equity injection, the lender must produce a full standby agreement, or evidence to show that loan payments were made by an entity other than the borrower. The lender must also present credible evidence to demonstrate that the borrower did not use 7(a) loan proceeds to fund the required injection, such as a bank statement showing that the money was available prior to the disbursement of the loan. The sufficiency of evidence from a lender to demonstrate verification of a cash injection depends upon the size of the injection and length of time that a borrower was in business, as discussed below.

**b. Asset Injection**

Asset injections may be more difficult to verify than cash injections. Evidence is often located in the lender's application for guaranty, in the borrower's financial statements, or in the SBA loan processor's write-up, as applicable. SOP 50 10 4 requires lenders to carefully determine the value of non-cash assets injected into the business. See Subpart A, Chapter 4, Paragraph 1(f)(4).

**c. Length of Time in Business**

If there is an early default or early loan problem and a significant cash injection (see discussion below in subparagraph (d)) is not properly documented, a direct link between business failure and the lack of injection should be assumed, and a full denial of liability may be appropriate. If the loan experienced early default or early loan problems, a lender's failure to verify a significant cash injection may be related to potential loss on the loan. If default occurs after 18 months from final disbursement, an exercise of judgment is required based upon an analysis of the cause of business failure and the length of time the business remained open. For example, if the business was in operation for several years after disbursement, the lender may be able to demonstrate that the lack of borrower's injection did not play a significant role in the failure. In this situation, a repair or partial denial in the amount of the unverified cash injection would generally not be appropriate.

**d. Size of Injection**

The amount of the required injection and the size of the loan should be compared. A relatively large injection is generally more instrumental to the business' success than a small injection. Lack of a small injection usually is not a significant factor in the failure of the business unless this failure is combined with a number of other lender deficiencies.

**e. Partial Verification of Injection**

Judgment is required in cases where only a portion of the injection can be verified. If the evidence reveals less than substantial compliance with the authorization, then the field/center office must consider the factors mentioned above in subparagraphs (a) – (d).

**25. Expiration of Guaranty after Maturity**

According to SBA regulations, if the lender fails to request purchase within 120 calendar days after loan maturity, the Agency is not legally obligated to purchase the guaranty (see § 120.524(a)(8)) from the lender. Under certain circumstances, the relevant field/center office may request reinstatement of the guaranty and extension of maturity (or extension of the period during which the lender may request purchase) through the procedures set out in SOP 50 50 4A, Chapter 10, Paragraph 2(b)(3)(d). For example, reinstatement may be appropriate if the lender was actively servicing or liquidating the account prior to purchase (especially with SBA knowledge or concurrence), and inadvertently failed to request purchase or extend the maturity.

**26. Collateral/Lien Position**

When the documentation reveals that the lender failed to obtain the proper lien position on collateral, financial staff should consider whether the lender's failure caused, or could cause, a loss to SBA. If the value of the collateral was negligible, and SBA would not have recovered even with the required lien position, then no loss resulted from the lender's failure and, generally, a repair or partial denial is not justified. If a loss resulted or could result, a repair or partial denial would generally be warranted in an amount equivalent to the reasonably expected recovery had the lender obtained a proper lien position to secure the loan.

**27. Collateral Lists at Time Loan is Made**

The loan authorization usually requires that prior to loan closing, the lender obtain a list of significant collateral securing the loan, including a description and serial number for items of a specified value. Even if not specifically required by the loan authorization, however, it is also generally expected that prudent lenders will obtain such a list of significant collateral. The collateral list greatly assists the lender in identifying collateral in the event of default and ensuing liquidation, and, when attached to a Uniform Commercial Code (UCC) financing statement, helps ensure that the lender will be able to establish the priority of its secured position in that collateral. Although losses resulting from the failure to obtain a collateral list at loan inception may be difficult to quantify, financial staff should consider the following factors when determining whether to seek a repair or recommend full/partial denial based on this failure.

**a. Loss of Rights in Collateral**

If all collateral that secured the loan existed at default, but the lender by its failure to identify collateral at loan inception was precluded from asserting rights over some or all of the collateral (for example, if there are competing creditors or the borrower disputes the lien), a repair or partial denial is appropriate in an amount

equivalent to the liquidation value of the collateral.

**b. No Resulting Loss**

If a lender clearly demonstrates that no loss resulted from the lack of a collateral list, a repair or partial denial on this basis is usually inappropriate. For example, if the lender provides credible evidence to support abandonment, either due to the lack of value of the assets or due to the fact that the costs of removal would exceed reasonably expected recovery, the lender's failure to obtain the collateral list should be considered immaterial and a repair or denial is generally not warranted.

**c. Liquidation Proceeds**

If all loan collateral is liquidated, and financial staff concludes that the items sold and liquidation proceeds appear reasonable given the nature and size of the business, then the lender's failure to obtain the collateral listing is generally immaterial, and repair or full/partial denial is usually not warranted.

**28. Common Servicing and Liquidation Deficiencies**

**a. Site Visits and Collateral Inventory at Liquidation**

Site visits are very important, and lenders should not omit them. Chapter 8 of this SOP requires lenders to perform site visits within specified timeframes and defines a meaningful collateral inspection (see Chapter 8, Paragraph 8). Lenders should prepare a comprehensive listing/inventory of collateral at default, usually completed when the site visit is conducted. Financial staff should consider whether the lender's site visit was conducted in a timely manner. A site visit will generally be timely if made within 15 calendar days of the occurrence of an event that would cause a loan to be placed in liquidation – such as abandonment of the business by the borrower, bankruptcy of the borrower when the loan is in default and substantial collateral exists, litigation against the borrower that may have a substantial adverse effect on the lender's interest, or foreclosure by a prior lienholder on substantial collateral. However, the visit should be made sooner if there is collateral of significant value that could be removed or depleted. Appraisals or third party inspections are acceptable to determine collateral value.

If there is reason to believe that collateral is missing or devalued as a result of a lender's failure to conduct a timely site visit or obtain a meaningful collateral inspection, a repair or partial denial is generally warranted (see discussion of collateral lists in paragraph 27 above, for establishing an amount of the repair or partial denial).

**b. Liquidation Actions**

A lender's failure to act in a timely manner to safeguard and liquidate loan collateral must be considered in evaluating a purchase request. If a lender

permitted a substantial decline in the value of collateral to occur because of unnecessary delays or mismanagement of the liquidation process, a repair or partial/full denial of liability should be considered based on the dollar amount of harm caused by the lender.

**c. Liquidation Sale**

If items that were listed on the lender's post-default site visit inventory or appraisal are unaccounted for in the liquidation sale, a repair or partial denial is generally warranted unless the lender can show that it took reasonable and prudent efforts to secure and liquidate the collateral or can clearly show that no loss resulted from the unaccounted-for collateral (for example, the appraisal did not take into consideration costs of removing assets, which rendered the unaccounted-for assets worthless). Similarly, if a reconciliation of the post-closing inventory and post-default inventory reveals significant discrepancies, there may be grounds for a repair or partial denial unless the lender provides a reasonable explanation of the differences. An exercise of judgment is required.

**29. Loans Flagged in the Guaranty Repair Tracking System (GRTS)**

If a lender was deficient in loan origination or servicing/liquidation, and the deficiency is significant enough that it may result in a repair or full/partial denial action if SBA were to process a guaranty purchase request, the field/center office must indicate the problem in the loan record using the Delinquent Loan Collection System (DLCS). To do this, a "GI" (for "Guaranty Issue") is entered in the action code input field in the DLCS action/update screen. The field/center office should also make additional comments on the nature of the problem in the chronological record.

Loan problems may be discovered any time during the life of a loan, such as during a lender site visit or borrower inquiry. Further, OLO may identify loan problems during lender reviews, and the OIG may uncover problems during its audits. Such problems should also be recorded in the DLCS system.

Financial staff must address all problems on loans identified with a possible repair/denial issue in the GRTS. Financial staff will be alerted to such loans when they access the purchase processing system. A copy of the report or other document that generated the flag in GRTS should be obtained and reviewed during the purchase process. Comments regarding the resolution of possible repair/denial issues must be included in the SBA Form 327 for the purchase.

If the final purchase decision is contrary to the finding that was the basis for the flag, such as an audit recommendation, the reason should be fully justified in the SBA Form 327 and supporting documentation. The SBA Form 327 should clearly state how the problem was overcome after the loan was flagged and/or why the problem is no longer an issue. In cases where SBA management concurred with an audit recommendation that generated a flag, the purchase action should normally conform to the prior management decision.

**30. Field/Center Office's Reporting Requirements When Recommending a Denial or Initiation of Suit to Recover a Paid Guaranty**

- a. The field/center office must prepare a detailed SBA Form 327 whenever there is serious doubt as to SBA's legal obligation to honor its guaranty.
- b. The report on SBA Form 327 must:
  - (i) Be clear, reasonable and unbiased;
  - (ii) Be complete, with attachments and exhibits, so that a final determination will be possible after it is reviewed; and
  - (iii) Reflect all aspects of the situation, including but not limited to:
    - (a) A clear identification of lender's failures;
    - (b) The findings from a review of the documents and lien searches;
    - (c) An estimate of anticipated or actual loss attributable to the lender's actions/inactions;
    - (d) Efforts by the lender to correct the deficiencies;
    - (e) Explanation that lender cannot or will not correct the deficiencies; and
    - (f) Comments of each reviewing official, including opinion of counsel as to the grounds for denial and likelihood for success in court should the lender contest SBA's denial decision.

**NOTE:** If field/center counsel determines that SBA is not legally obligated to honor its guaranty, in whole or in part, this decision cannot be overruled at the field/center level. In the event of a disagreement between field/center counsel and financial staff, the issue and the loan file must be referred to the AA/FA for final action, with the concurrence of OGC.

- c. The purchase review package must include the original SBA Form 327 and must be accompanied by the loan file.
- d. Routing.
  - (i) The full report must be forwarded to the OPM in Headquarters. The report to OPM must carry the recommendations and signatures of the:
    - (a) Recommending official (liquidation loan officer);

- (b) Field/center attorney;
  - (c) First level supervisor (approving official);
  - (d) Deputy or assistant field/center director; and
  - (e) Field/center director or designee.
- (ii) During the approval process in the field/center office, reviewing officials are encouraged to reopen discussions with the lender (e.g., higher bank level, bank attorney) if clarification is needed, or if a repair or voluntary cancellation of the guaranty appears possible.

**CHAPTER 14****BANKRUPTCY PROCEEDINGS****1. What Do You Do When a Notice of Bankruptcy is Received?**

- a. Transfer the loan to "in litigation" status if not already done;
- b. Cease all collection/liquidation activities;
- c. Bank/SBA officials must take prompt action to protect the Agency's interests;
- d. A proof of claim, setting forth SBA's claim against the collateral and/or individuals, should be filed, if appropriate; and
- e. You should request that counsel file a special request for notice which will ensure all reports filed in the bankruptcy are sent to you.

**2. Who Attends Bankruptcy Hearings?**

Liquidation officers and/or SBA's legal representative should attend the first meeting of creditors and subsequent hearings. It is important to keep up-to-date on the proceedings.

**3. Is the SBA Representative Required to Attend All Hearings?**

No. If SBA interests will not be affected, or there is nothing of substance to discuss, you do not need to attend.

**4. How Do You Document What Took Place at a Hearing?**

You must prepare a full report, memorandum, or provide other documentation to include:

- (1) Details of the matters discussed;
- (2) Decisions reached;
- (3) Orders issued by the court; and
- (4) All other pertinent developments.

**5. How Do You Obtain Possession of Collateral in Bankruptcy?**

- a. You should work closely with the participant or SBA counsel to evaluate collateral.

- b. Counsel should seek "abandonment" or "relief from stay" in any case where there is no equity for unsecured creditors.

**6. What Can Be Done if the Bankruptcy Trustee Insists on Selling the Collateral?**

- a. If a trustee is appointed and insists on selling the collateral, counsel for the Agency/lender may object through an appropriate bankruptcy pleading.
- b. If objection is overruled, monitor the trustee, or the trustee reports, closely for excessive fees or charges which can be disputed when he/she files a request for fees and expenses.

**7. Must SBA Approve Any Sale by the Bankruptcy Trustee?**

- a. No. The Agency may consent to a sale of collateral by the trustee only where:
  - (1) Only where the sale will be advantageous to the SBA; and
  - (2) Only under a written stipulation or court order expressly providing the amount to be deducted from the sales proceeds for administrative costs and expenses.
- b. There may be instances where it makes sense to allow the trustee to sell. This must be documented on an SBA Form 327 and approved by the approving official (line supervisor). You should obtain the comments of counsel on the SBA 327 action.

**8. What Should You Take into Consideration in Deciding Whether You Should Allow the Trustee to Sell?**

- a. Will it avoid delay or other hinderance?
- b. Will it avoid further depreciation and/or vandalism?
- c. Will care and preservation expenses be less?
- d. Will it be more cost effective to use the trustee?
- e. Is hazard, workers compensation, and liability insurance in effect?

The underlying principle is to use the trustee if it costs less and you can obtain the same dollars in a shorter period of time. Remember to allow for trustee fees and trustee attorney fees (e.g., commissions and proceeds for the estate). These costs will be in addition to the normal sale expenses. The recommending official must prepare an SBA Form 327 for consideration by counsel and the approving official. Counsel will prepare any necessary documents required for court approval.

## 9. Plans of Reorganization.

Bankruptcy filings under Chapters 11, 12, and 13 will involve plans for reorganization. You, through SBA's counsel, must begin negotiations from the onset of the bankruptcy. Restructured negotiations are the nucleus from which will evolve a feasible plan to reorganize. If it is not acceptable to SBA, SBA may file its objections to the proposed plan with the court. Determinations to voice an objection or refrain from doing so involve credit/legal considerations which require close interaction between the liquidation loan officer regarding the credit matters and counsel regarding the legal issues.

### a. Objection/no objection to the plan.

- (1) A "no objection" position may result in a court order to proceed.
- (2) An "objection" will generally result in further discussions and hopefully negotiations.
- (3) These recommendations must be made locally by the recommending official preparing an SBA Form 327 and routing it through counsel and the approving official for a final decision.

### b. Approval of proposed plan.

Agency approval of a plan of reorganization goes further than a "no objection" position and must be approved by the rule of two.

### c. "Cram Down."

Even if SBA objects to a proposed plan, it is within the court's discretion to order a "cram down." The line supervisor and counsel may decide whether or not to file an objection or appeal.



## CHAPTER 15

## CONTRACTING WITH AUCTION FIRMS

**1. What is SBA Policy on the Sale of Collateral and of Collateral Purchased (Colpur)?**

- a. The SBA's policy is to offer loan collateral and Colpur for public sale through competitive bids at a "public auction" or "sealed bid sale" unless the property has been acquired through a foreclosure proceeding consistent with State law.
- b. The lender may use negotiated sales if this is their normal practice for non-SBA collateral.

See 13 CFR §120.540 (c) (1)

**2. What is SBA Policy for Hiring Auctioneers for SBA Serviced Loans?**

The SBA must hire only qualified professional auctioneers with good experience and a satisfactory commercial track record to handle its sales.

**3. Why are the Services of an Auction Firm Needed?**

The SBA's defense is strengthened by using a capable and clearly qualified firm should the Agency be challenged as to whether a sale was commercially reasonable. (See Chapter 7, "SBA's Methods of Recovery from Collateral.")

**4. What Qualifications Must an Auction Firm Have Before Being Hired by SBA?**

They should have:

- a. Documented financial strength;
- b. Available full-time staff;
- c. Ability to be bonded, if required. (See paragraph 13, "What are the Requirements for Bonding," in this chapter);
- d. \$1,000,000 liability policy;
- e. Ability to attract well-financed bidders;
- f. Good experience in the type of property being sold;

- g. Facility for storage and conducting sales;
- h. Proper security; and
- i. Equipment moving capabilities.

**5. How Do You Authorize the Use of an Auction Firm?**

- a. You must prepare a 327 action outlining the auction firm to be hired and the expenses associated; or
- b. The information can be outlined in the Liquidation plan which requires recommending official and approving official's signature.

You must document any changes from the requirements outlined in the Master Auctioneer's Agreement.

**6. What is the Minimum Number of Qualified Auctioneers that a Field Office Must Maintain and Use for an SBA Liquidation?**

- a. All field offices must use the services of at least two auctioneers when annual commissions are more than \$50,000.
- b. Field offices must utilize the services of at least three auctioneers when annual commissions are more than \$100,000.
- c. It is strongly encouraged that, as the need for auctions increases, the field offices proportionally increase the number of auctioneers it uses based on the requirements noted above.

**7. What is a Master Auctioneer Agreement?**

This is an agreement between SBA and each auction firm determined to be qualified to sell collateral or Colpur. (See Appendix 39.)

**8. What are the Requirements Maintaining an Auctioneer File for SBA-Serviced Loans?**

- a. Each office is required to maintain a file of all the auctioneers approved, as well as declined with the supporting documentation.
- b. This file must include the Master Auctioneer Agreements.
- c. The file must contain an SBA Form 1307, "Auctioneer Log," for each auctioneer used. You may develop your own computer generated log if it addresses all of the

elements in the current form (see Appendix 13) or supply this form to your auctioneers for them to complete and return to the field office. Once you have reviewed the information submitted by the auction firm, it can be placed in the appropriate auctioneer file with no further documentation needed.

- d. All supporting documentation for each auction will be maintained in the borrower's loan file.

**9. What is an Auctioneer Contract?**

- a. This is a contract which must be completed for each sale assigned to the particular auction firm.
- b. The contract is between SBA and the auction firm.
- c. The contract must be filed in the borrower's loan file.

(See Appendix 40, "Sample Auctioneer Contract.")

**10. What are the Auctioneer Responsibilities in Connection With a Sale?**

- a. Attract bidders by proper marketing;
- b. Know the market;
- c. Prepare and present the property for sale;
- d. Conduct and control bidding;
- e. Collect funds;
- f. Oversee removal of sale items;
- g. Provide prompt and full accounting to SBA;
- h. Submit detailed sale report; and
- i. Consult with loan officer on all matters affecting maximum recovery on property to be sold.

**11. What Information Must Be in an Auctioneer's Sale Report?**

- a. Listing of items or lots sold;

- b. Name of successful bidder and bidder number with amount paid;
- c. Original invoices for each expense paid; and
- d. Signed report listing total amount of sale, expenses, commissions (and how computed), and net amount of funds submitted to SBA.

**12. What are the Responsibilities of the Liquidation Staff in Connection With the Auction Sales?**

- a. Review brochures and advertising;
- b. Refer interested buyers to auction firm;
- c. Insure proper viewing time of collateral prior to sale;
- d. Determine need for cleaning, painting, etc., of property;
- e. Monitor sale;
- f. Determine need for and develop a protective bid;
- g. Determine auction firm has systems in place for removal and check out of items sold; and
- h. Prepare a sale report.

**13. What are the Requirements for Bonding?**

- a. The auctioneer is not required to obtain a bond:
  - (1) If anticipated sale proceeds are not expected to be more than \$50,000: or
  - (2) If the amount is more than \$50,000 is paid directly to SBA from the auction proceeds; and
  - (3) The firm has a documented track record of at least 3 years of experience with SBA or a participating lender.
- b. If the auction company does not have the 3-year track record with SBA, a bond in the amount required by State law or \$50,000, whichever is greater, IS REQUIRED on all sales regardless of anticipated sale proceeds.

**CHAPTER 16****APPRAISALS****1. What is SBA's Practice on Obtaining Appraisals?**

It is SBA's practice to obtain pre-foreclosure appraisals on collateral when the:

- a. Loan is placed in liquidation status, and it appears that collateral will be disposed of to achieve recovery;
- b. Collateral is believed to have significant value;
- c. Collateral is of special purpose in nature; or
- d. Possibility exists that suit will be brought against the remaining obligors for a deficiency balance.

**2. Why is an Appraisal Needed?**

An appraisal must be obtained to make sound liquidation decisions such as:

- a. Determining the method of liquidation;
- b. Granting a request by a borrower for release of collateral; and
- c. Establishing the need for protective bids.

**3. When Must an Appraisal Be Done?**

- a. Negotiated private sales must be supported by at least one appraisal made by a fee appraiser within the past year.
- b. A new appraisal must be completed if the existing appraisal is more than 1 year old.

**4. When is Using an Appraisal Over 1 Year Old Considered an Exception to Policy?**

The use of an appraisal over 1 year old, in the case of a private sale of collateral or Colpur, is an exception to policy and requires Headquarters approval.

(See Chapter 7, "SBA's Method of Recovery from Collateral," and Chapter 11, "Collateral Purchased (Colpur) by SBA and Lender.")

**5. How Many Fee Appraisers Should Your Office Obtain?**

Whenever possible, you should obtain more than one appraiser. When fees paid to appraisers will be more than \$25,000 a year, you should obtain the services of at least two appraisers.

**6. From What Groups Can You Select a Fee Appraiser?**

- a. Local professional appraisal organizations;
- b. Local auctioneers; and
- c. State-certified or licensed appraisers.

The Agency encourages the use of state licensed or certified appraisers whenever it is practical and appropriate.

**7. How is the Employment of a Fee Appraiser Documented?**

Employment of a fee appraiser should be documented by a:

- a. Contract for Appraisal Report (See appendix 42); and
- b. A 327 action outlining all information regarding the:
  - (1) Proposed appraisal;
  - (2) Fee to be charged;
  - (3) Type of report; and
  - (4) Values which will be provided, e.g., piecemeal, going business.

**8. Is a Pre-Payment Review Necessary?**

Yes. You should review the:

- a. Bill for comparison with prevailing local rates; and
- b. Report for content and quality.

The signature authorizing payment will document that work was performed in a satisfactory manner.

**9. What is the Procedure for Paying Appraisal Expenses?**

Payment will be made through the on-line Care and Preservation of Collateral (CPC) Payment System using the procedures outlined in the SBA-DCS User Manual.

**10. What Other Services can Be Obtained by Using the Same Basic Criteria as with Fee Appraisers?**

You may obtain other related services on a fee basis which could include:

- a. Architects;
- b. Project engineers;
- c. Surveyors;
- d. Hazardous waste assessment firms; and
- e. Environmental audit services.

**11. What Type of Collateral Could Be Valued Using a "Desk Estimate?"**

- a. When you are working on a servicing or liquidation matter involving equipment of a general purpose type, a "desk estimate" may be acceptable.
- b. Collateral identified as "general purpose type" could be:
  - (1) Automotive equipment;
  - (2) Office equipment; and
  - (3) Any general purpose property with values available from general references, catalogues, or common knowledge.

**NOTE:** A desk estimate should be the Agency's last choice. A liquidation officer along with the Agency assumes a lot of responsibility by performing this evaluation, if the Agency is challenged on the value. For this reason, only senior liquidation officers must be used to perform such evaluations.

**12. What Steps Should Be Taken to Complete a Desk Estimate?**

- a. The following information should be prepared:
- (1) A 327 action stating the reasons for the desk estimate rather than an actual appraisal;
  - (2) A columnar listing of major items of collateral;
  - (3) A statement as to the condition of each item of collateral; and
  - (4) A column to the right of the listing for the values to be placed.
- b. This information should be provided to the senior liquidation loan officer to insert the reasonable values based on their background knowledge and the information at hand.

**13. Should the Liquidation Loan Officer Perform the Desk Appraisal and Handle the Sale or Develop the Protective Bid?**

No. However, If the liquidation loan officer must perform the evaluation and conduct the sales activities, the line supervisor must review the liquidation loan officer's work to minimize potential conflict of interests problems.

**14. How Should You Handle Potential Dispute Situations?**

If you have an irate or noncooperative borrower, an appraisal should always be obtained from an appraiser who can qualify as an expert witness.

## CHAPTER 17

### COMPROMISE ACTIONS

#### 1. What is the Authority to Compromise?

The SBA can compromise a debt (that is, it can accept less than the full amount owed on a debt) based on the authority contained in the following statutes and regulatory sources:

##### a. Section 5(b) of the Small Business Act.

Section 5(b) of the Small Business Act gives the Administrator authority to effect compromise settlements.

##### b. The Federal Claims Collection Act.

The Federal Claims Collection Act (31 U.S.C. 3701 and following), provides a means for the settlement, adjustment, and compromise of claims by Federal agencies.

##### c. 4 CFR § 183.

4 CFR § 183 prescribes standards for the compromise of claims under the Federal Claims Collection Act.

#### 2. What is the General Settlement Policy?

##### a. Terms "compromise" or "settlement."

The terms "compromise" or "settlement" can be used interchangeably or together to mean the resolution of a debt for less than the amount due through mutual agreement between debtor and SBA.

##### b. Obligor does not have the ability to make full payment.

When it is known that the obligor does not have the ability to make full payment, it may be appropriate to settle for less than the full amount due. However, when the liability of the obligor is clear and the Government can collect fully without protracted litigation (or large unrecoverable expenses) there is little basis to settle for less than what is owed.

**c. Compromised/settlement amount.**

It must bear a reasonable relationship to the estimated net present value of the projected amount of recovery available through enforced collection.

**d. Factors in assessing debtors ability to pay.**

- (1) Health and life expectancy;
- (2) Local economic conditions;
- (3) Present and potential income;
- (4) Equity in pledged or reachable assets;
- (5) Possibility of assets being improperly transferred or concealed by debtor; and
- (6) Applicable exemptions available to debtor under State and Federal law.

**e. Debtor assistance.**

Active cooperation by the debtor may have substantially enhanced recovery. This should be recognized in the settlement analysis.

**f. Benefits to others.**

A compromise proposal which may also benefit junior lienholders is permissible when the benefits to the SBA are significant and there are no better alternatives.

**g. Prompt action.**

- (1) You need to initiate the compromise process within 3 months after a deficiency has been established.
- (2) The SBA Form 327 is to be completed promptly after receipt of the required materials necessary for consideration of the offer.

**h. Documented recovery efforts.**

The file must show that efforts to realize recovery on the assets and to compromise have been made.

i. **Charge off.**

The charge off of an account having substantial equity in reachable assets is NOT an acceptable alternative.

3. **Compromise Attempt.**

The SBA must attempt to reach a compromise settlement with obligors prior to commencement of foreclosure actions against their personal residences or the referral to DOJ for such actions. This is applicable in all cases no matter how the lien originated.

4. **Fraud or Misrepresentation.**

- a. An offer in compromise cannot be accepted if the Agency has knowledge of fraud, substantial misrepresentation, or financial dishonesty on the part of the offeror.
- b. Settlement of claims involving these issues is reserved for the DOJ.

5. **"Rule of Two" Authority.**

- a. Loan officers must justify and explain compromise actions using standard the SBA Form 327 format with appropriate supporting documentation indicating the benefit to the borrower and/or to the Agency. Legal involvement is required as indicated.
- b. District offices, branch offices, disaster home loan servicing centers, Santa Ana Disaster Loan Servicing and Liquidation Office, commercial loan servicing centers.

Field office staff may take the following actions by rule of two

(1) Compromises of interest accrued or adjustment of interest rate:

- (a) Waiving any amount of accrued interest;
- (b) Retroactively reduce the applicable interest rate down to and including zero (no interest accrual) for any time period; and
- (c) Reductions in interest rates for future time periods (limited or indefinite) down to and including zero (no interest accrual).
- (d) Review by counsel is required if loan documentation is altered.

- (2) The sale of notes, waiving all or a portion of the interest accrued (see below for adjustment of the principal balance).
  - (3) Negotiated sales of Colpur acquired through foreclosure proceedings consistent with state law (and Colpur with a market value of less than \$25,000 acquired through a deed in lieu of foreclosure) can be approved by the rule of two. Legal review of the sale documentation is required.
  - (4) These procedures and authorities for the compromise of accrued interest or the adjustment of the interest rate also apply to "going business" loans.
  - (5) Legal review is required in order to permit comment on legal implications of the recommended action.
- c. District offices, Santa Ana Disaster Loan Servicing and Liquidation Office, by the rule of two, can approve compromises of principal amount of \$500,000.
- (1) This authority level is determined by the principal amount forgiven rather than by the principal balance outstanding on the account. (for example, the net outstanding principal balance that would be remaining after the proposed compromise offer is applied to the current principal balance.)
  - (2) Legal review is required in order to permit comment on legal implications of the recommended action.
- d. Branch offices, by the rule of two, can approve compromises of principal amount of \$300,000.
- e. Disaster home loan servicing centers, by the rule of two, can approve compromises of principal amount of \$100,000.

NOTE: The authority noted in items "a. - e." of this paragraph also applies to the sale of a note or other evidence of indebtedness for less than the full principal amount due the Agency. Field offices must submit compromise recommendations (rule of two with comments of counsel) involving the forgiveness of outstanding principal more than of the above amounts to the Headquarters Claims Review Committee for final action.

- f. District offices, branch offices, disaster home loan servicing centers, Santa Ana Disaster Loan Servicing and Liquidation Office may approve compromises of any size recommended for acceptance by DOJ (including "going businesses") by the rule of two with legal concurrence for the following.

- (1) Compromises when obligors are in bankruptcy or in litigation under the administrative control of the Department of Justice.

U.S. Attorneys offices have been delegated authority to settle cases involving claims of \$1 million principal (plus any accrued interest) or less, if the referring agency concurs with the settlement.

- (2) For claims more than \$1 million, the approval of the Commercial Litigation Branch of the Civil Division, Department of Justice in Washington D.C., is required.

NOTE: If SBA disagrees with the U.S. Attorney's decision on cases within the delegated authority, the matter must be referred to the Commercial Litigation Branch of the Civil Division, Department of Justice in Washington D.C. for resolution.

**6. What is the Headquarters Claims Review Committee (HCRC) and What Actions it Can Take?**

**a. This committee is compromised of:**

- (1) Assistant Administrator for Borrower and Lender Servicing (Chair);
- (2) Director of the Office of Loan Programs;
- (3) Associate General Counsel for Litigation; or
- (4) Their designees.

**b. The HCRC is authorized to:**

- (1) Sell a note/loan or other evidence of indebtedness owed SBA for less than the principal amount due, upon majority vote of its members;
- (2) Compromise an Agency claim against a going business for any principal balance amount, upon majority vote of its members; or,
- (3) Release a claim against an obligor in any amount, upon majority vote of the members.
- (4) Hear appeals of any decision made by the HCRC, made by the requester to the AA/FA.

- c. Field offices must send these loans to HCRC along with their recommendations (rule of two) with comments of counsel.

## 7. What are the Compromise Procedures?

Early recognition, by all parties, that a compromise settlement is a likely occurrence can lead to greater borrower cooperation and a greater recovery from the business assets. The most knowledgeable person regarding the business assets is the borrower. An honest relationship between the liquidator and the borrower will go a long way towards avoiding unpleasant surprises and the eventual settlement of the debt. You must not make any promises to the borrower. Ordinarily, do not begin formal discussions before the business collateral has been liquidated.

### a. Fact finding.

Once the business assets have been liquidated, you must obtain sufficient evidence to evaluate the obligors ability to pay the remaining debt. Included are financial statements completed under penalty of perjury. Where it appears that the obligor cannot pay, give them an:

- (1) SBA Form 770, "Financial Statement of Debtor;" and
- (2) SBA Form 1150, "Offer in Compromise."

(See Appendix 11 for these forms.)

- b. Hopefully, the compromise procedure will result in an amicable, reasonable and timely resolution of the obligation. You must not assume the obligor(s) know(s) the Agency procedures and must strive to make sure they:

- (1) Are aware of their continuing liability;
- (2) Are told a compromise settlement is a privilege, not a right;
- (3) Are advised that they must make full disclosure of all assets and liabilities and SBA reserves the right to make such confirmation or appraisals as it deems necessary, either directly or through third parties;
- (4) Understand the concepts of "ability to pay" and "recoverable through legal means," and convey to them our intent to arrive at a figure which is reasonably comparable to the amount achievable if enforcement action were employed;
- (5) Agree to a date for submission of the completed forms and documentation;

- (6) Will receive a letter from you summarizing your discussions, which will document the file and aid in avoiding misunderstandings; and
- (7) Are not told "proposed amounts" which "might" be acceptable, at the initial review.

c. **When should you negotiate an amount to be used as the basis for a settlement?**

(1) **Extensive negotiation.**

Extensive negotiation is not advisable when the decision is based on the debtor's ability to pay. First, obtain full disclosure of the individual's situation and then make an objective determination based on the information provided. However, if the borrower does not make an adequate offer, you should discuss it with the borrower with the intent to obtain an acceptable offer.

(2) **Litigative probabilities.**

Litigative probabilities involving issues as to the actual liability of the debtor should be thoroughly explored. The degree of doubt coupled with the potential expense and time involved in pursuing the matter will generally determine the acceptable amount for a settlement.

Counsel must be consulted in these matters.

(3) **Summary rejection.**

Summary rejection of a written or oral proposal is an allowable method to further negotiations.

(a) **Verbal proposals.**

Verbal proposals lacking merit can be rejected by the recommending official (liquidating official) in favor of obtaining a formal compromise proposal.

(b) **Written offers.**

Written offers grossly lacking merit can be rejected by the recommending official but the offeror must be given a reasonable opportunity to increase the offer.

(c) **Department of Justice (DOJ) referrals.**

A DOJ referral (e.g. an offer submitted by them) cannot be summarily rejected. You must obtain legal concurrence and submit each proposal to the approving official before any final, official response is made to the DOJ regarding the offer. (See paragraph 13, "Compromise Proposals Received from the Department of Justice.")

(4) **Counter offer.**

If you decline an offer in which full disclosure has been made, you are generally obligated to propose an amount which could be found acceptable. You should reflect this amount in the SBA 327 report. This offer should be left open for a period of time (e.g. 90 days from date of notice) and if consummated within this time would not have to be approved further.

(5) **Declined offer.**

What do you do if the offer is declined?

- (a) You should begin immediate negotiations to obtain a better offer.
- (b) If the compromise must be submitted to the HCRC, you can put forth a "probably acceptable" range. Take care not to make a commitment since only the HCRC has the authority to commit the Agency for releases of claims more than \$500,000 principal. (See paragraph 1, "Definitions" in Chapter 4, "General Guidelines for Liquidation Activities," for the definition of the term "Claim Amount." )
- (c) You can provide a more complete write up where you feel information was not fully presented.
- (d) Proceed with other recovery options when it is apparent no "deal" will be possible.

**8. The Compromise Package.**

The borrower must submit an offer in writing accompanied by the appropriate supporting documentation to be accepted for processing and presentation to reviewing officials and/or the HCRC.

**a. Information needed from the obligor(s).****(1) SBA Form 1150, Offer in Compromise.**

You must obtain an SBA Form 1150, "Offer in Compromise", containing the offer and signed by each person making the offer. Offers submitted in some other format are only acceptable if the document makes reference to 18 U.S. Code 1001 (false statements) in a fashion similar to that of the SBA 1150.

**(2) SBA Form 770, Financial Statement of Debtor.**

The SBA 770 is a balance sheet and statement of income and expenses which covers each obligor for the most current year. SBA 770 or the equivalent must be used. Signed copies of Federal income tax filings are acceptable for the income and expense requirement. On DOJ referrals Form DJ-35, "Financial Statement of Debtor," may be used. A supplement to Form DJ-35 should be obtained to show pending inheritance or trust data.

**(3) Obligor's beneficiary status.**

A statement must be made of each obligor's beneficiary status under pending inheritance or established trust.

**(4) Source of funds statement.**

Disclosure must be made by each obligor regarding the source of the funds for the offer. Where loans are involved, the collateral for the loan must be specified.

**(5) Reference.**

The face of each supporting document must make reference to its being a part of the SBA 1150.

**b. Needed from the liquidation officer.**

- (1) You need the concurrence of the participating lender whenever possible.

- (2) You need the asset values and income claimed by the obligor and must be verified. This is an established credit practice and relies on a number of sources:
  - (a) Reports from credit reporting bureaus; and
  - (b) Current Assets and Income Report.
- (3) You need the Dwelling Property Report:
  - (a) Discussions with the lender, local realtors, appraisers, and county assessors; and,
  - (b) Viewing the assets by the liquidation officer.

A copy of the value verification documentation should be part of the compromise package.

- (4) You need the analysis comparing the original balance sheet (submitted with loan application) and the statements now submitted with the compromise offer, with an explanation as to the disposition of any significant assets which are no longer on the current statements. Major changes should be discussed in detail along with any suspicious transfers of assets.
- (5) You may need appraisals where the value of a significant asset is in question and the difference(s) in value may affect decisions to be made on the compromise. (See Chapter 16, "Appraisals.")
- (6) You must assess the obligors' ability to pay.
- (7) You need comparisons of the new financial information with the previously submitted data in the loan file. Especially review the original personal financial statement submitted with the loan application and compare it with the one now being submitted. Make direct comparisons between major assets owned at that time and the assets now owned. Likewise, review the liabilities owed then with what is now owed. The obligors need to be contacted for clarification of any major unexplained differences between these statements.

## 9. Assessing Obligor's "Ability to Pay."

The adequacy of a compromise offer must begin with an evaluation of the assets of the obligor(s). The starting point is ordinarily the net present value of the forced sale value of such assets (not the loan balance). This value combined with the prognosis of the obligors' earning power form the basis for determining the adequacy of the offer. The review must

balance the right of the Government to collect the amount owed and the obligation to treat all obligors with dignity and fairness.

The following is a list of areas for consideration in assessing the obligor's ability to pay.

**a. Forced sale equivalent (liquidation value).**

- (1) The basis for this value is normally the amount recoverable from the sale of the assets within a limited period of time (auction type sale). Also to be considered, is the time and expense needed for the Agency to gain control of the asset. In the absence of other available criteria, the following general guidelines should be used as a percentage of market value. An additional deduction of 5 - 10 percent for other expenses should also be considered to establish a realistic forced sale equivalent.

**Real Property:**

Commercial . . . . .	75%
Residential . . . . .	80%
Unimproved Land . . . . .	50%

**Business Assets:**

Machinery/Equipment . . . . .	50%
Accounts Receivable/Inventory . . . . .	20%
Furniture/Fixtures . . . . .	10%
Leasehold Improvements . . . . .	5%

- (2) The Claims Collection Act and the GAO standard provide that consideration be given to the time and monies involved with enforced collection to establish a discounted forced sales figure. The forced sale equivalent value needs to be adjusted for the following types of expenses.

**Court costs, filing fees;**

- (a) Prior liens, taxes, assessments;
- (b) Costs of sale (auctioneer's fees, advertising, lotting, and clean up costs);
- (c) Time of SBA employees (financial, legal, clerical, and administrative);
- (d) U.S. Attorney costs (professional, administrative, out of pocket);
- (e) Possibility of protested litigation or of bankruptcy and related expenses;

- (f) Time mandated by State redemption periods and the cost (depreciation, vandalism, insurance risks) that may result from such delays;
- (g) Care and protection expenses pending resale;
- (h) Extraordinary expenses of eviction, repairs to property, vandalism;
- (i) Costs necessary to bring property to marketable condition;
- (j) Transportation/travel costs; and
- (k) Discount reflecting the present value of future net recovery.

**b. Non-reachable assets and income.**

There may be items which are utilizable to the obligor(s) and have substantial value but are beyond the reach of the Government. The facts of the situation should enter into the Agency's assessment of the obligor's good faith.

**c. Jointly owned property.**

Special problems are encountered when the obligor shares ownership with another of an asset. This, by itself, is not sufficient reason to disregard the asset as having no value. The situation must be closely examined to determine (even to the extent of hiring appraisers and consultants) if the potential value of the property warrants further action.

**d. Individual asset valuations.**

Each worthwhile asset owned by the obligor needs to be assessed. Estimating the values of these assets is not an exact science but the Agency needs to have a uniformity of approach.

**(1) Cash.**

You should only be concerned with cash in amounts substantially in excess of basic living expenses as determined from the SBA 770. Special accounts (IRA's, Keoghs, trust accounts) should be valued net of early withdrawal penalties and other costs.

**(2) Cash surrender value (CSV) of life insurance.**

You should determine the net amount receivable under the terms of the policy. Loans outstanding and other costs may also have to be subtracted out. The

policy must often be surrendered in order to receive the CSV. The loan value should be used for analysis if surrendering the policy would leave the family with inadequate protection. This approach is to be used even if the Agency is acknowledged as assignee in the insurance company's home office.

(3) **Accounts/notes receivable.**

The size, age, and collectibility of these assets need to be examined to determine their worth. Typically they have little forced sale value. Ordinarily only large receivables should receive much attention.

(4) **Furniture, fixtures, and other personal effects.**

These are normally not worth very much. Efforts spent in other areas will yield much better results. You will assign a nominal value to the contents of a modest home for compromise situations. If such assets are subject to an Agency lien, the lien may be realized for nominal value or the assets may be abandoned if no such release is possible.

(5) **Jewelry, paintings, antiques, and collections.**

When items in these categories have been assigned substantial value, they should be given special attention. Outside sources may have to be utilized to determine meaningful values on these specialty items.

(6) **Automobiles.**

Automobiles have a ready market and various published books give a handy reference as to value. Gross compromise value "rule of thumb" is 80 percent of loan value. Of course prior encumbrances must be deducted to determine the net compromise value.

(7) **Securities.**

The value of stocks and bonds in publicly traded firms are easily ascertained and can quickly be converted to cash. Ownership interest in firms with closely held corporate stock and in unincorporated firms present much greater valuation problems. Each situation is considered using the best judgment available. If substantial potential worth is apparent, obtain a valuation analysis by a chartered financial analyst or some other qualified person.

**(8) Other assets.**

Common carrier rights, copyrights, liquor licenses, patents, inheritances, and trusts are the types of assets that can be worthless or have substantial value. Confer with counsel regarding local laws and their effect on these assets. The establishment of values for these assets must rely on a reasonable assessment of the circumstances in each case.

**(9) Real estate.**

This is often the asset having the largest value on the balance sheet. For income producing or commercial properties, it is desirable to use a member of a nationally recognized appraisal organization.

(a) For the average residence, some of the acceptable alternatives are:

- i. A "Property Report" by a recognized reporting service;
- ii. A written evaluation from a local realtor (with Multiple Listing Service (MLS) comparables);
- iii. A report from a residential appraiser used by Farmers Home Administration (FHA), Veterans Administration (VA), or other established mortgage lender; or
- iv. Any other local source you may have of similar reliability.

(b) These reports usually furnish the market value of the property. This is not sufficient for our purposes. The following must be weighed:

- i. State redemption periods, homestead exemptions, and the like.

These can substantially delay or negate our ability to get the property: consult with counsel if you have any questions on the impact of this type of legislation. The value analysis must consider the recovery impact of local laws.

- ii. Policy regarding primary residence.

Both the DOJ and SBA have strong positions regarding foreclosing on homes. For SBA, a foreclosure action must be considered only as a very last resort. Concerted settlement efforts must first be attempted, and fully documented in the loan file. Similarly, the DOJ will not, as a matter of policy, proceed

if a reasonable settlement is at all possible or if the result will cause a cooperative debtor a severe hardship. This policy is consistent with the Claims Collection Act which says that a compromise settlement must be attempted before steps are taken to deprive obligors of their residences.

(See paragraph 10, "Special Handling of Loans where the Borrower is Willing but Unable to Pay," in Chapter 5, "Problem Loans and Workout Situations.")

**e. Determinations regarding applicable liabilities/liens.**

Once an evaluation of assets has been made, attention should be shifted to the liability section of the balance sheet. Large new obligations should be reviewed to determine how they came about and how they are secured.

**(1) Debts with senior liens.**

Debts with senior lien positions decrease our equity in the property. If the debt is legitimate and properly perfected it may well eliminate any interest the Agency has in the asset. Junior liens may represent a potential purchaser of the property.

**(2) Unsecured debts.**

Unsecured debts do not affect our interest in assets when the Agency is properly perfected but they are an impediment to the obligors ability to pay. They could lead to a filing of bankruptcy.

**(3) Debts to relatives/close associates.**

Particular attention should be shown to large recent debts of this nature. The debt may encumber assets that would otherwise be available to SBA. You must verify that such debts are real and were created at "arms length." A written explanation detailing consideration given for the debt, value of security, and date pledged should be made.

**f. Evaluation of income.**

The primary basis for a compromise settlement is the present value of the net realizable equity. However, consideration must be given to the income (present and prospective) of the obligor(s). The concern is not income needed for ordinary living expenses, but that which is significantly in excess of what is needed. There are no

hard and fast rules, rather it is the good judgment of the recommending and reviewing officials which will decide each case on its own merits.

(1) **Trust income.**

Substantial income arising from trusts or other fixed source when combined with regular income providing cash flow substantially in excess of normal living expenses are to be reflected in compromise considerations. A copy of the trust must to be obtained and reviewed to make a determination as to its availability.

(2) **Lottery and other prizes.**

No weight will be given to this possibility in evaluating income potential.

g. **Term settlements.**

A cash settlement is the preferred method in compromising a debt. This is not always possible and individual circumstances may dictate a term offer to be most appropriate. Items to consider on term settlements are as follows.

(1) **Time limits.**

Terms should not exceed 5 years. No balloon is permitted on settlements based solely on the potential earnings of the obligors. Where based on the value of residential real estate, a balloon is permitted. You must be sure to properly secure the collateral used in a term settlement.

(2) **Present value.**

The present value of a proposed term settlement should always be calculated using a discount rate reflecting interest rate, term, and recovery prospects. A cash amount within 10 percent of the present value should be obtained from the obligor if possible. If both cash and terms are offered and the term offer does not exceed the cash by 10 percent, take the cash offer.

(3) **Reinstatement of original debt.**

A provision for the automatic reversion to the entire original claim upon failure to reasonably satisfy the repayment requirement must be included in each term compromise settlement. This is also the time to include any allowable local remedies such as confession of judgment which can be included in the settlement agreement.

(4) **Interest rate on term settlements.**

There is no requirement that term settlements bear interest. The reviewing official has the authority to set a reasonable interest rate. When interest is included in the settlement agreement, payments must exceed interest accruals.

(5) **Hardship Term Arrangements.**

Special consideration may be given to the acceptance of a term compromise with a delayed first payment of up to a year when:

- (a) The only worthwhile equity is in residence;
- (b) The family depends on retirement benefits, welfare payments, or other limited income for sustenance; or
- (c) The obligor-residents are in poor health, have limited life expectancy, or low earnings potential.

(See Chapter 5, "Problem Loans and Workout Situations.")

(6) **Recording term settlements.**

- (a) Use SBA Form 515, "Note Receivable Report," when a periodic payment plan is contemplated.
- (b) A new note is usually not required since the compromise agreement itself will ordinarily suffice. Check with counsel.
- (c) An SBA 327 authorizing the term settlement is distributed in the usual manner with an SBA 515 attached.
- (d) When appropriate, the loan balance can be charged off with instructions that it not be included in the various referral processes (collection agencies, IRS).

(7) **Servicing term settlements.**

Service the account as any other. The approving official cannot reduce the gross amount of the compromise, but is able to authorize reduced payments or other relief if needed to carry out the basic intent of the agreement. However, when payments are not made reasonably as agreed, the full amount owed can (if permitted by the agreement) be reinstated and pre-compromise enforcement proceedings resumed.

(8) **Completion of term settlement.**

Upon successful completion of the term settlement, SBA must release all applicable liens.

10. **Preparation of the Compromise Report.**

Once all the necessary information is provided and negotiations have produced a "final" offer, the liquidation officer prepares a report on the proposal using an SBA 327. (See Appendix 27, "Recommended Compromise Report Format.") The format allows for consideration of the major points in a uniform manner and should be followed to the extent practical and appropriate to the case at hand. Points are to be expanded or cut back depending on the complexity of the matter. An offer that provides for a recovery to SBA which is reasonably related to the present value of the net amount and obtainable through enforced action should be recommended for approval. One that does not meet this standard should be declined.

a. **Attachments.**

Include as attachments to the compromise package copies of the financial data submitted by the obligor and copies of verification documents (credit reports, appraisals, etc).

b. **Recommendations.**

For the purpose of follow up actions the following tasks must be completed separately.

(1) **Charge off.**

A separate SBA 327 recommending charge off must be prepared as a single action report.

(2) **Term compromise.**

A new SBA 327 must be prepared to detail the terms of the note receivable. A copy of this form and an SBA 515 must be sent to OFO.

c. **Multiple debts.**

Obligors having more than one SBA related debt to compromise should be treated in one combined comprehensive report. Copies of this report must be placed in the loan files for each obligation.

**d. Final action taken by HCRC.**

- (1) Four complete copies must be forwarded to the Office of Borrower and Lender Servicing in Headquarters.
- (2) Do not forward the loan file unless requested to do so.

**e. Completing the action,**

Once the compromise is approved, the recommending official will ensure that the steps are promptly taken to finalize the action.

**(1) Application of funds.**

Obtain the settlement funds as quickly as possible and apply them to the principal balance.

**(2) Lump sum.**

Apply using Transaction Code 305, Collection on a Loan, Collections from the Liquidation Process.

**(a) Charge offs.**

Apply using Transaction Code 385, Other Receipts, Recovery on Loans Charged Off - Principal First.

**(b) Term settlements.**

Set up as a note receivable and apply funds as called for in the agreement.

**(3) Release of documents.**

Once the agreed upon settlement amount is made in certified funds, the appropriate documents can be released depending upon whether the compromise is in full satisfaction of the outstanding debt or for release of one obligor only.

The line supervisor must prepare a memo to the collateral cashier:

- (a) Authorizing the release; and

- (b) Including the supervisory attorney's opinion that this release will not adversely effect any further avenues of collection (e.g., pursuit of other guarantors, assignment of proceeds from a pending law suit).

(4) Deficiency balances.

If the compromise action represented the last available means of recovery, the deficiency balance needs to be charged off. Proper instructions must be entered into the SBA database in Field 73 of LAUD 13 so the account will NOT be included in various post charge off automated collection initiatives (e.g. IRS Offset or referral to a collection agency).

11. **Compromise During Insolvency Proceedings.**

- a. The Agency has delegated authority to the field office to take final action on proposals to settle Agency claims of any size which are in bankruptcy or are under the administrative control of the U.S. Department of Justice.
- b. Field offices may resolve negotiations in the following forums.

- (1) Approval of a proposed plan.
- (2) Objection/no objection to a proposed plan.

It is intended that decisions on these matters be made through agreement between the liquidation and legal divisions.

- (3) Cram down.

The SBA's reaction to a court ordered "cram down" can be decided by the line supervisor and counsel. They may determine whether to enter an objection or appeal.

- (4) Personal guarantors;

Directed action by the Court regarding a business loan will generally not affect the Agency's rights against obligors. Check with counsel.

12. **Compromise Involving a Going Business.**

- a. Only the HCRC has authority to settle a claim of the Agency against a "going" concern EXCEPT for the following which can be handled under the rule of two:

- (1) Bankruptcy or when the claim is under the administrative control of the United States Department of Justice (concurrence by counsel is required); and/or
  - (2) An adjustment to accrued interest on a "going business," including a retroactive reduction of interest rate.
- b. It is NOT the policy of the HCRC to approve settlements on any going concern loan unless the firm:
- (1) Has settlement arrangements with other creditors;
  - (2) Has made full disclosure;
  - (3) Has proposed a settlement which is clearly in the best interests of the Government; and
  - (4) Will not be able to continue to operate under its current debt structure.
- c. **Definition of a going concern/business.**
- (1) The term "going business" refers to situations where the business is still in operation and under the same ownership.
  - (2) A business is still classified as a going concern for compromise purposes when the legal structure has changed as long as the ownership is essentially the same (e.g. ownership changes from a corporation to a partnership and the principal owners remain the same).
- d. **"Informal" arrangements with creditors.**

These will encompass the major creditors within a plan developed by or between a creditors committee, trade association, law firm, or the like. They must involve binding written agreements between the creditors of any worthwhile size and represent the best credit consensus of these major parties at interest. A good informal arrangement would not have a court's sanction but would, have results that are similar to the results likely to be obtained through a court ordered arrangement.

e. **Special considerations.**

A settlement proposal made to the major creditors may receive positive consideration by SBA only if the following criteria are met.

(1) Collateral values must be protected.

Where the settlement consists of a cash payment the payment needs to be at least as large as the net amount which would be received if the collateral were sold (appraisal needed). If terms are proposed, existing collateral and guarantees must be retained to support the settlement agreement.

(2) Percentage settlements.

When you consider a compromise with a going concern, your figures should be based on the estimated liquidation recovery of the pledged assets and then on a percentage of the remaining unsecured portion of the loan. The percentage approach for compromising the loan should only be used on the unsecured portion.

(3) Equality of treatment.

It is expected that the offer to the Agency will be at least equivalent to what is offered other creditors of the same class.

(4) Conditional acceptance.

The Agency's acceptance of the plan will be conditioned upon the like acceptance of the other creditors needed to make the plan work. In effect, all the major creditors need to be in agreement for the plan to succeed.

(5) Collateral improvement efforts.

Full consideration must be given to the possibility of obtaining additional collateral. Improving our security position is important in reaching a favorable decision in a "going" business settlement.

(6) Appreciation sharing.

In exchange for forgiving debt at the present time, the obligor may be willing to permit SBA's sharing in potential future earnings or appreciation. Give consideration to the following:

## (a) Assignment of stock.

The SBA can take a passive assignment of corporate stock. Ordinarily this will contain the provision that the stock be sold back to the firm or some third party within a set period of years.

## (b) Profit sharing.

The possibility of profit sharing over a set period of years may be incorporated into a settlement agreement. The agreement should call for audited financial statements and significant noncompliance penalties, up to and including reinstatement of the debt.

## (c) Appreciation Sharing Agreements.

Where the firm has assets which may substantially increase in value, consider the possibility of entering into a "Shared Appreciation Agreement." (See Appendix 22.) Counsel must review the agreement.

**13. Compromise Proposals Received from the Department of Justice.**

When a claim is being handled by the Department of Justice (DOJ), the authority to accept or reject a compromise offer is invested in the Attorney General. Authority is delegated down to the U.S. Attorney level on claims up to a certain dollar amount. The DOJ requests the recommendation of SBA in most cases, and usually give such recommendations great weight. The DOJ, Civil Division, directive requires that the Agency must be consulted with respect to any significant proposed action.

**a. Response time.**

All requests for a response from the field office must be responded to within 10 working days to the DOJ. An extension of time should be requested from the office which sent the offer if additional time is needed.

**b. Final action authority.**

In all accounts referred to DOJ, final authority rests with DOJ.

**c. Coordination with the U.S. Attorney.**

Supervisory counsel will be the responsible point of coordination for all matters involving SBA accounts being handled by the DOJ. Internally, within SBA, counsel will handle legal matters, and the program side (Liquidation Division) will deal with credit matters.

**d. Direct proposals.**

A compromise proposal received by SBA directly from an obligor on a loan being handled by the DOJ must be photocopied and forwarded to the responsible U.S. Attorney. With this proposal, you will advise DOJ that SBA is preparing a recommendation.

**e. Advise of SBA determination.**

The SBA's recommendation will be provided to the U.S. Attorney together with advice of any special considerations and problem areas.

**14. Reduction/Elimination of Interest Rates or Accrued Interest.**

Interest rate reductions must be fully documented by an SBA 327. The approval levels vary with the situation.

**a. Correction of errors.**

The line supervisor has authority to approve actions to correct mistakes and accounting/calculation errors involving interest rates or interest accrual levels (SBA 327 needed).

**b. Reductions of interest rate (down to and including no interest accrual).**

These actions can be approved by the rule of two as indicated in this chapter in the paragraph on the "Rule of Two" authority.

**c. Retroactive interest rate reduction.**

This involves the elimination or reduction of interest which has already accrued on a loan. These reductions can be handled by the rule of two as indicated in paragraph 5, "'Rule of Two' Authority," in this chapter.

## CHAPTER 18

### CHARGE OFF PROCEDURES

#### 1. What is SBA's Policy Regarding Charge Off Accounts?

The SBA's policy is to be diligent and thorough in its collection of debt and to promptly charge off all uncollectible accounts.

The charge off status will more accurately reflect the status of the individual account and the Agency's entire portfolio.

#### 2. Definitions.

##### a. Administrative costs.

Costs which have been incurred through enforced collection such as time, travel, and other out of pocket expenses.

##### b. Charge off.

- (1) Charge off is the process by which SBA recognizes a loss and removes the uncollectible account from its active receivable accounts.
- (2) A charge off does NOT affect SBA's rights against any obligor nor reduce the SBA's ability to proceed with any available remedy.

##### c. Miscellaneous receivables.

These are funds owed to the SBA from participating lenders. They may represent lender's share of care and preservation expenses, borrower's returned checks when the Agency was servicing the account or other unremitted fees.

##### d. Partial charge off.

A partial charge off is the process of writing off a portion of the loan balance. The amount written off is typically based on the balance determined to be uncollectible.

The SBA accounting does NOT provide for a partial charge off. If any portion of the debt is collectible in the near future with out excessive costs, the charge off action must be delayed.

**3. 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.

**4. How do You Determine When You are Justified in Charging Off a Loan?**

**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 maximum recovery from:
  - (1) Voluntary payments from the borrower;
  - (2) Liquidation of collateral;
  - (3) Compromise with obligor leaving only a deficiency balance; and
  - (4) 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 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, and,
- g. The inability of Agency or private sector collections efforts to effect further worthwhile recovery.

**5. When Can't You Charge Off a Loan?**

- a. If you are receiving regular loan payments as outlined in the note or a workout plan, you **cannot** charge off an account.
- b. An account which has been referred to the Department of Justice for legally enforced collection **cannot** be charged off.

- (1) You may make a charge off subsequent to referral to DOJ based on new evidence and return of case to SBA. You must coordinate this action with DOJ.
- (2) The DOJ should return to SBA for disposition accounts mutually placed in inactive status by both DOJ and SBA.

## 6. What Are the Procedures for Charge Off?

- a. You must evaluate each obligor, which includes debtor, guarantor, and cosigner, before you can charge off a loan.
- b. You must document the file that a compromise offer was solicited and that any further collection costs would likely exceed recovery.
- c. You must collect or charge off all miscellaneous receivables due from participating lenders. (See Chapter 19, "Administrative Costs, Advances, Expenses and Recoveries.")
- d. You can charge off an existing loan account even though you may have a Colpur account set up. The only requirement is that the Colpur account must be set up on SBA's records.
- e. You must prepare a 327 action, which must include legal concurrence in the action.
- f. You should check the principal balance showing on the appropriate computer screens when you are preparing the 327 action. You should also verify that all payments have been processed and advances or expenses finalized.

## 7. What Documentation Must Be Contained in the 327 Action?

- a. All major collateral must be identified outlining how it was disposed of and the recovery achieved.
- b. Each remaining obligor must be identified with documented financial condition.
- c. Each obligor released previously must be identified and the reason for that release.
- d. You must outline your collection efforts.
- e. Your efforts in compromising the debt and the results must be outlined.
- f. You must provide a statement as to:

- (1) Reasons for charge off action; and
  - (2) Estimate of any further recovery possible with estimate of costs (administrative and litigative).
- g. You must review the lender liquidation plan and comment as to compliance with this plan. The following statement must be made, provided the lender complied with the plan:
- The liquidation plan of the lender has been reviewed, and we are of the opinion the basic liquidation plan, as may have been amended, was followed. Further, no observable harm to SBA resulted from the lender's actions.**
- h. You must note in the 327 action whether the loan should be marked "Refer" or "Do Not Refer" on the SBA database (e.g., referral to collection agencies, tax refund offset, Credit Alert Interactive Voice Response System (CAIVRS), etc.).
  - i. Counsel must provide review and concurrence on the 327 action. (See paragraph 8, "Field Office Counsel Review of Charge-off Actions.")
  - j. The 327 action must adequately explain the recommendation(s).

**8. Field Office Counsel Review of Charge off Actions.**

- a. **Charge offs require the review and concurrence of SBA counsel.**
  - (1) If such review cannot be completed within 30 days, or if counsel determines that additional recovery would be possible through legal action, the loan must be transferred out of "Liquidation Status" and placed into "Litigation Status" only.
  - (2) At this point, the loan becomes the responsibility of the district counsel except for normal support provided by loan servicing/liquidation personnel.
- b. **Once a potential charge-off loan is transferred to litigation:**
  - (1) Counsel will review the loan to determine the type of action that will be undertaken to attempt further recovery using in-house resources (including SBA's litigation units) and contractor assistance as appropriate.
  - (2) Care should be taken that this additional action not come at the expense of neglecting or postponing timely action on more current or significant cases.

**NOTE:** A record of recoveries using these revised procedures will be maintained by district counsels and provided periodically to the Office of Litigation.

- (3) When SBA counsel determines that all appropriate action has been completed and a loan is ready for charge off. The loan will be transferred back to liquidation for processing the final charge off action, including system updates for referral for tax refund and administrative offset and to the Government contract collection agencies.
- c. It is important that close cooperation and coordination be maintained between legal and liquidation staffs so that a teamwork approach will be maintained to recovery procedures.
- d. Loan servicing/liquidation staff will remain responsible for providing support to the legal division even when a loan is classified in litigation, including:
  - (1) Locating principals;
  - (2) Ordering appraisals;
  - (3) Retaining auctioneers; and
  - (4) Making other arrangements for the sale and care and preservation of collateral, and providing for the payment of costs and expenses.

**9. What Financial Information is Needed on Debtor?**

You must have current credit information on each obligor to support a charge off, (i.e., Dun and Bradstreet, Equifax, or Credit Bureau Report). A current SBA Form 770, "Financial Statement of Debtor," is NOT a prerequisite to a charge off.

**10. What Loans Must You Refer to a Collection Agency and When?**

- a. If loans are unsecured or have no remaining worthwhile collateral they should be charged off as quickly as possible and the loans will be referred to collection agencies automatically during the next referral cycle unless they are legally barred from further collection efforts.

- b. If litigation is later initiated against a direct obligor or guarantor, you may withdraw the loan from the collection agency (if it has not already been returned to SBA according to the time frames specified by contract).
- c. You may refer a loan prior to charge off if you designate the loan for referral.

**11. When do You NOT Refer an Obligor to a Collection Agency, IRS, or for a Federal Salary or Retirement Offset?**

A referral is NOT made when the obligor has filed in bankruptcy or has been discharged in bankruptcy or otherwise legally relieved of the debt.

**12. What Referral Actions are Mandatory When You enter a Charge Off in the Computer?**

**a. Private collection agency.**

Loans are referred to private collection agencies for intensive collection follow up and, if appropriate, submission of offers in compromise. (See paragraph 10, "What Loans Must You Refer to a Collection Agency and When.")

**b. IRS Tax Refund Offset Program and administrative offset.**

Loans are referred to the IRS and/or the Treasury Department for offset against any Federal income tax refund or other amounts which may be payable to the obligor(s).

This is an annual procedure which includes all such accounts categorized as charge off within the preceding ten calendar years. Guarantors must be entered into the referral system if they are eligible for referral.

(See Appendix 28.)

**c. Federal Employee Salary Offset.**

The names of all applicable obligors are processed through a periodic computer match with participating Federal agencies and the U. S. Postal Service. All matches are reported to the SBA field office for voluntary settlement or application of the salary offset authority.

Refer to Chapter 3, "Correspondence, Reports, and Control Systems," for proper procedures and codes in making these referrals.

d. **Credit Alert Interactive Voice Response System (CAIVRS).**

Charged off accounts, unless marked "Do Not Refer," will **automatically** on a periodic basis be referred to CAIVRS data base for credit screening purposes.

13. **What are the Requirements for Retaining Loan Files?**

- a. The General Records retention schedule requires field offices to hold charged off files for 3 years before transferring to the Federal Records Center (FRC).
- b. The FRC will hold charged off files for an additional 7 years and then destroy.
- c. If you have a companion note receivable file, you may retain the charge off file for the life of the note receivable. Your second choice would be to "strip" the charged off file of needed information and place in the note receivable file.
- d. The field offices will receive SBA Form 328, "Notice of Charged Off Loans and Related Receivables" (see Appendix 6), once an account is classified in the "Charged Off" status.

When the "Charged Off" account is SBA serviced, the collateral cashier will merge the collateral file with the docket file upon notification of the charged off status. This must be accomplished by receipt of the actual loan file which has been marked "Charged Off" and a copy of the 327 action or receipt of SBA 328. When the file is forwarded to the FRC, all collateral documents will be in the file and destroyed after the 7 year period. **For this reason, it is essential that you have exhausted all reasonable avenues for collection.**

14. **When Do You Reactivate a Charged Off Account?**

You may reactivate a loan from the charged off status when a satisfactory repayment schedule has been established.

If you discover information which reflects potential recovery and liquidation or litigation action is necessary, the account must be worked in the charged off status.

15. **When Does SBA Submit IRS Form 1099-C, "Cancellation of Debt, to the Internal Revenue Service?"**

- a. The SBA will report the debt if the IRS Tax Refund Offset Program has been utilized for several years with little or no collection results.

- b. Headquarters reports the amount of the debt (principal plus interest at charge off) as income to the obligor(s) after the account is no longer eligible for administrative offset.
- c. If a loan is charged off as a result of a bankruptcy, an IRS Form 1099C will still be issued.

**16. What is SBA's Role Once the Account Has Been Referred to the IRS Under the 1099C program?**

SBA must take no further collection action.

**17. What if Borrower Starts a Repayment Schedule After the Referral is Made?**

The Agency may accept voluntary repayments of the debt at any time. The borrower must file an amended tax return to reflect the reduction of the deficiency.

**18. What Accounts are Referred to the IRS for Offset?**

All loans are referred unless coded "do not refer."

**19. What Accounts are Exempt from IRS and Collection Agency Referral?**

Obligors who have filed in or been discharged in bankruptcy or otherwise legally relieved of the debt.

**20. When is it Necessary to Apply Funds to the Principal Charged Off Balance?**

You would apply proceeds to the principal balance of a charged off loan when:

- a. You located collateral and it is sold;
- b. You process a compromise offer;
- c. A court order so states;
- d. An agreement is reached with the borrower;
- e. A special initiative exists; and
- f. It is beneficial to the Government.

**21. Are Charged Off Accounts Referred to Credit Bureaus?**

Yes.

Certain charged off accounts are automatically reported to credit bureaus as being charged off.



**CHAPTER 19****ADMINISTRATIVE COSTS, ADVANCES,  
EXPENSES, AND RECOVERIES****1. Introduction.**

This chapter relates to:

- a. Procedures for the payment of administrative costs;
- b. Advances legally chargeable to the loan account; and
- c. Various other expenses incurred in connection with accounts in liquidation.

**2. What are Administrative Costs and Who Absorbs Them?**

Administrative costs are known as the cost of doing business. The SBA and the lender each absorb their own costs.

**3. What are Some Examples of Administrative Costs?**

- a. Travel costs by SBA or lender's employees;
- b. Incidental costs such as telephone use; and
- c. Other administrative type costs.

**4. What are Advances and Who Absorbs Them?**

An advance is an expenditure made by a lienholder to protect the value of its collateral and its lien position on the collateral. These advances increase the principal indebtedness if the legal instruments permit and are absorbed by the borrower.

**5. What are Some Examples of Advances?**

- a. Payment of taxes on real estate collateral;
- b. Hazard insurance premiums, where authorized;

- c. Payment of installments on prior liens;
- d. Ground or building rents or warehouse charges;
- e. Payment of utility costs;
- f. Audits or audit reports;
- g. Purchase of prior liens;
- h. Maintenance of fire prevention devices;
- i. Repairs or cleanup efforts to prevent excessive depreciation and/or to eliminate fire hazards;
- j. Costs incurred as mortgagee in possession of abandoned property;
- k. Employment of caretakers and/or the purchase or rental of security systems; and
- l. Costs on COLPUR which relates to pre-COLPUR status.

**NOTE:** Care must be taken to ensure the proper account (original account or COLPUR account) is charged.

**6. What is an Expense?**

An expense is an expenditure made by a lienholder to protect the value of its collateral and its lien position on the collateral.

**7. What are Some Examples of Expenses?**

- a. Abstracts of title or title reports for real property;
- b. Title insurance on real property;
- c. UCC-3 lien searches for personal property;
- d. Recording fees for real property and personal property lien recordings and filings;
- e. Real property and personal property appraisals; and

- f. Fees for legal services provided by outside counsel (not including SBA staff counsel and lender/CDC salaried staff counsel), to prepare legal documents.

**8. How are Expenses Classified and Who Absorbs?**

**a. Recoverable.**

Virtually all loan expenses should be classified as recoverable and are chargeable to the loan account and therefore, absorbed by debtor with the exception of the following:

- (1) If charging the expense to the account is prohibited by law or court action; or
- (2) The expense is clearly not related directly to the administration of the specific loan account.

**b. Nonrecoverable.**

All nonrecoverable expenses must be charged against each office's individual salaries and expense operating budget if:

The expense is identifiable to a loan which has an approval date on or after October 1, 1991.

**9. Are Expenses on COLPUR Accounts Considered Recoverable?**

Yes. Generally, expenses relating to COLPUR must be considered as recoverable and chargeable to the property costs unless:

- a. Charging the expense to the account is prohibited by law or court action; or
- b. Other considerations would warrant classifying the expense as nonrecoverable.

**10. Who is Responsible for Processing the Recoverable and Nonrecoverable Expenses?**

**a. Recoverable.**

The Liquidation Division in each office must continue to process payments of the recoverable expense through the automated miscellaneous disbursements system.

**b. Nonrecoverable.**

The Federal Financial System (FFS) employee in each office in conjunction with the Liquidation Division employee must process the payment of any nonrecoverable expense.

**11. What Entries are "NO" Longer Accepted in the CPC System?**

- a. Charge to code "3" (program expense);
- b. Transaction code 211; and
- c. Use of "dummy" loan numbers 999 990 0005 or 999 991 0008.

**12. Must Individual Checks be Ordered on Each Account?**

Yes. If a vendor bills for services on multiple loans or COLPUR accounts, individual checks must be ordered on each account.

**13. How are Payments Processed for Nonrecoverable Expenses?**

To authorize payment of a nonrecoverable expense, the Liquidation employee must provide the FFS employee the following information (documentation package):

- a. A "work sheet" copy of SF 1034, Public Voucher for Purchases and Services Other than Personal;
- b. The original invoice; and
- c. A copy of the SBA 327, "Modification or Administrative Action," authorizing payment.
- d. The SBA 327 "rubber stamp" directly on the invoice in place of using SBA 327 is permissible.

**14. Where Must the FFS Employee Return the Documentation Package Once the Payment has Been Processed?**

The FFS employee must return the package to liquidation to place in the loan file for future review.

**15. What is the Basis for Determining the Fund Which the FFS System Must Charge for the Nonrecoverable Payments?**

**a. Loans approved prior to October 1, 1991.**

Payments must be made from the Program Revolving Fund (Business or Disaster);

**b. Loan approved on or after October 1, 1991.**

Payments must be made from the servicing office's Salaries & Expenses Operating Budget (Finance and Investment or Disaster Loan Servicing).

**16. What is the Object Class to be Used for All Nonrecoverable Expenses Input into the FFS?**

The Object Class is 2515 - Other Services - Nonrecoverable Expenses.

**17. Who Must the FFS Employee Contact to Establish a New Vendor Code?**

**a. You must contact:**

The Office of Financial Operations (OFO), Denver, to establish a new vendor code "prior" to making the initial payment to the vendor.

**b. This new vendor code must be:**

- (1) Used to identify nonrecoverable activity; and
- (2) Different from the existing CPC payee file or FFS vendor file codes.

**18. Are Participating Lenders Billed for Their Share of the Nonrecoverable Expenses?**

No. Participants are not billed for their share of the FFS nonrecoverable expenses. (For further information, see paragraph 19, "Does SBA pay expenses to the participating lender prior to the purchase of the guaranty?")

**NOTE:** The FFS system has the necessary instructions that will assist you with these transactions.

**19. Does SBA Pay Expenses to the Participating Lender Prior to the Purchase of the Guaranty?**

- a. The SBA must NOT pay expenses prior to the purchase of the guaranty.
- b. This action may occasionally be required as an exception to policy and can be handled as follows.

(1) If the participant does NOT require immediate payment:

The expense must be treated as recoverable and SBA must pay the participant their share when the guaranty is purchased.

(2) If the participant requires immediate payment:

(a) The expense must be paid as a nonrecoverable expense through the FFS system.

(b) It is important to understand that when a lender requires immediate payment, SBA will be reimbursing the lender for SBA's share (guaranty percentage) only. Therefore, there will not be any funds for the Agency to recover from the lender.

(c) When the lender submits the transcript with the request for purchase, the amount requested for the Agency to pay the lender should be net any expenses paid by the Agency prior to purchase of the guaranty. This will avoid any double reimbursement to the lender.

**NOTE:** The SBA will NOT pay interest or "service fees" on the funds expended by a lender after the guaranty has been honored.

**20. When Do You Use the Imprest Fund for Disbursements?**

- a. The use of the servicing office's imprest fund must be limited to emergency situations which must be documented in a 327 action.
- b. Each support document must show the loan number(s) and the amount of the charge.

**21. What Information Must be on OF 1129, "Cashier Reimbursement Voucher And/Or Accountability Report?"**

The detail and supporting documentation must be subtotaled into the following categories.

a. **Recoverable transactions.**

(1) Business Loan and Investment Fund; and

(2) Disaster Loan Fund.

b. **Nonrecoverable transactions.**

(1) Business Loan and Investment Fund.

Loans with an approval date **before** October 1, 1991.

(2) Disaster Loan Fund.

Loans with an approval date **before** October 1, 1991.

(3) Salaries and Expenses - Finance and Investment.

Loans with an approval date **on or after** October 1, 1991.

(4) Salaries and Expenses - Disaster Loan Servicing.

Loans with an approval date **on or after** October 1, 1991.

22. **Have the Procedures for Processing Expenses on 503 and 504 Development Company Loans Changed?**

No. Sections 503 and 504 Development Company Loans expense processing has not changed.

23. **Is There a Maximum Level of Care and Preservation Expense?**

a. Yes. Unless a greater amount is approved by the district director, SBA's share of all advances and expenses (both recoverable and nonrecoverable, must not exceed the lesser of \$50,000 or 75 percent of the most recent appraisal. **This does not include purchase of a prior lien or direct selling costs.**

b. The recommending official must estimate these expenses at the onset of liquidation.

**24. How are Expenses Handled When the Participating Lender is Involved and SBA is Servicing the Account?**

- a. When SBA is servicing the account:
- (1) The liquidation officer should make all possible attempts to obtain prior approval from lender before incurring expenses; and
  - (2) A check will be ordered to pay the expense and the lender will then be billed for their share of the expense by OFO.
- b. Payment to the lender of SBA's pro rata share must not be made prior to SBA's purchase of the guaranty but may be included in the check covering the purchase only when SBA consented (327 action) to the expenditure at the time it was made by the lender.

**NOTE:** Participants will not be billed when their share of an expense is less than \$5.00 even if the "Bill Participant?" question on the LAQU02 Input Screen is answered, "Y". The expense is forgiven and charged to the general ledger account 5120, Miscellaneous Lending Expenses.

**25. Are Lenders Permitted to Deduct Expenses from Sale Proceeds?**

- a. Yes. The lender is permitted to deduct expenses from any sale proceeds they may be holding from the sale of collateral.
- b. They must provide complete documentation as to the expenses being paid.
- c. The SBA must not pay interest or service fees on the funds expended by a participant after the guaranty has been honored.

**26. How does SBA Know if a Lender Has Not Paid Their Share of an Expense Which has been Billed by SBA?**

The liquidation loan officer must review the weekly delinquency report which will list all miscellaneous receivables due from participating lenders.

**27. Is Participant Allowed to Delay Payment of SBA's Share of an Expense?**

Occasionally, SBA will agree to delay the participant's payment of its share of expenses, with the understanding that appropriate deduction will be made from the participant's share of the liquidation proceeds.

This Agreement must be documented by a 327 action.

**28. What Happens When a Borrower's Check is Returned for Non-sufficient Funds and SBA is Servicing the Account?**

When SBA is servicing an account, you may be notified that a borrower issued a loan payment and the check was returned from their bank for non-sufficient funds. The participating lender will be billed for return of their share of the loan payment which was sent to them within 24 hours of receipt by SBA.

**NOTE:** A deferment must NOT be granted to a participant for funds due as a result of a returned check from an obligor.

**29. What is the Prompt Payment Act?**

The Prompt Payment Act of 1982 requires that a Federal agency must pay interest and penalties on late payments. [See OMB Circular A-125 (rev.), "Prompt Payment"; SOP 20 17, "Fiscal Examination Procedures, OFO"; and FAR Subpart 32.9 for further guidelines.]

Late payments are considered to be:

- a. 30 days after an invoice; or
- b. After the date payment is due under the contract for work provided.

**30. What Expenses are not "Contracted for" and are Not Covered Under the Prompt Payment Act?**

They are payments to commercial banks, sureties, and other participants involved with SBA in the delivery of the Agency's programs. Such as:

- a. Participants' share of receipts and reimbursement of participants' expenses and amounts paid for Pollution Control and Lease Guarantee Claims;
- b. Loan guaranty advances and purchases;

- c. Loan debenture disbursements;
- d. 8(a) disbursements;
- e. Utilities (unless acquired by contract or other written request);
- f. Taxes;
- g. Subscriptions;
- h. Rents;
- i. Protective bids;
- j. UCC filing fees; or
- k. Prior liens payments.

**31. What Payment Guidelines Should be Included in a Contract?**

The following information should be contained in the contract.

- a. Payment of invoices will be made 30 days after the later of, the date a proper invoice is received or the date on which SBA accepts the property or services, if the Agency date-stamps the invoice with the date of receipt at the time of receipt.
- b. A notation that partial payments are prohibited, if applicable.
- c. Separate due dates for partial payments will be shown in the case of partial executions or deliveries.
- d. A stated inspection period following delivery, where necessary, for SBA acceptance of the property or service.
- e. Name, title, phone number, and complete mailing address of officials of the contractor and of the designated billing office.

**32. How are Improper or Defective Invoices Handled?**

- a. Any invoice containing an apparent error, defect or impropriety must be returned promptly to the vendor, but no later than 7 days after receipt.

- b. When the Agency fails to notify the vendor of a defective invoice within 7 days, the number of days allowed for payment of the corrected invoice will be reduced by the number of days between the 7th day and the day notification was transmitted to the vendor.

**33. What Must the 327 Action or SF Form 1034, "Public Voucher for Purchase and Services Other than Personal," Contain for Processing Payment Requests?**

The 327 action and SF Form 1034 (see Appendix 33) must contain the following:

- a. Charges to be paid with original invoice attached;
- b. A statement that lender does or does not concur;
- c. State if the participant should be billed for the pro-rata share;
- d. A statement that the value of the expenditure compared to SBA's interest is warranted;
- e. Identify if this is an advance or an expense;
- f. Is the advance/expense recoverable or not;
- g. Name of payee with delivery instructions;
- h. Is the payment covered by the Prompt Payment Act; and
- i. State the delivery deadline for the payment.

**NOTE:** When the lender requests the Agency to reimburse them our guaranteed portion of an expense, their written request must be attached to the SBA 327 action.

**34. How are Recoveries Handled When an Account is in Regular Servicing?**

When an account is in regular servicing, both the participating lender and the borrower must be advised to send the payments directly to the Office Financial Operations (OFO), Denver, CO.

**35. Does the Participating Lender have to Submit SBA Form 172 for recovery?**

Yes. You should advise lender that an SBA Form 172 must be submitted along with their check.

**36. Are there Exceptions to Sending the Payments on a Regular Servicing Account to OFO, Denver?**

Yes. If you are working on a problem account which is not classified "in liquidation," you may instruct the borrower or lender to send the payments and SBA 172, as applicable, to you in the field. However, once you have resolved the situation, you must advise them to forward their payment to OFO, Denver, CO.

**37. How are Recoveries Handled When an Account is in Liquidation?**

The borrower and lender must be advised to send the payments and SBA 172, as applicable, to you in the field office.

**38. How Should Payments Received in the Field be Handled?**

You must forward all payments received to OFO, Denver, with the proper transaction code for applying the funds. (See SOP 20 19, "Loan Accounting Procedures," for transaction "collection" codes and SOP 20 05, "General Cashier Control Procedures" for transaction "expense" codes.)

**39. How Do You Apply Payments Received on an Account in Liquidation?**

a. **Payments received from the liquidation process would normally be applied to principal. This refers to payments received from:**

- (1) Sale of collateral;
- (2) Single-payment compromises with borrowers;
- (3) Single-payment collections from guarantors; and
- (4) Single payment compromises with guarantors.

**b. The exception to applying payments to principal first would be:**

- (1) If you are working on a restructuring or workout plan with the borrower, collections may be applied first to interest with the balance to principal; or
- (2) Recoveries by private collection agencies or intergovernmental offsets are not normally considered to be collections from the liquidation process. However, they may be classified, as such, if approved as part of a settlement or compromise agreement.

**40. How Do You Apply Payments on an Account Which has been Charged Off?**

- a. All payments on charged off accounts must be applied first to principal, and the balance, if any, to interest which is transaction code 385.
- b. Transaction code 385 is typically used in the following circumstances:
  - (1) To apply proceeds from the sale of "found" collateral;
  - (2) To apply the funds received on a compromise processed after the loan was charged off;
  - (3) When you are required by a legally binding agreement or other court order; or
  - (4) When you have determined that such application is in the best interest of the Government.

**NOTE:** Occasionally, the Department of Justice, a participating lender, or some other approved entity may be servicing the charged off loan. In such instances, SBA must apply any collections in the same manner as the servicing agent.

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## CHAPTER 20

**EFFECTS OF COMPETING TAX LIENS  
(STATE, COUNTY AND LOCAL)  
ON LOAN COLLATERAL AND COLPUR PROPERTY**

1. **What is the SBA Policy on Payment of Tax Liabilities and Liens on Loan Collateral and COLPUR Property by SBA or Participating Lender?**
  - a. You are authorized to pay accruing and past due property taxes and tax liens on loan collateral and COLPUR property. The payment authorization is based upon your written "best interests" of SBA/Participant analysis (SBA 327). All such payments must be charged to the appropriate loan or COLPUR account. Counsel must concur and a legal opinion must be included in all tax payment authorizations.
  - b. The payment by participating lender of accruing or past due property taxes and tax liens (or purchase) on collateral or COLPUR is authorized when, in the opinion of the approving official, such payment is in the best interests of SBA/participating lender.
  - c. You should work closely with counsel on all issues including the following.
    - (1) Counsel must concur and legal commentary must be included in all tax payment authorizations. All problems relating to payment of taxes must be forwarded for counsel's comments. The final decision as to such actions must be made by the approving official after consideration of counsel's comments.
    - (2) Counsel should be consulted to give guidance on the existence and operation of jurisdictional tax law to enable you to independently analyze alternative tax payment proposals.
    - (3) You must provide counsel with all available tax documentation and the legal opinion must at a minimum include comments regarding:
      - (a) Validity of the tax;
      - (b) Relative priorities between loan collateral and tax claim;
      - (c) Any late charge or penalty;
      - (d) The date by which tax should be paid;

- (e) Practical legal consequences of nonpayment; and
- (f) Applicable redemption rights and expiration dates.

**2. Who is Responsible for Payment of Property Taxes on Loan Collateral and COLPUR Property?**

- a. The property owner, usually the borrower or co-obligor, is legally responsible for payment of property taxes.
- b. You should attempt to get the responsible party to pay the taxes on loan collateral. Where you are successful in getting the taxes paid by the appropriate party you should request documentary evidence of payment.
- c. Where taxes are not being paid by the responsible party, SBA or participant must notify all obligors and guarantors. Notice is made by certified mail informing the parties of the delinquency or nonpayment and of their legal responsibility to make the tax payments.

**3. When are SBA Security Interests in Collateral Subordinate to Competing State and Local Tax Claims and Liens?**

- a. The "subordination section" of the Small Business Act (15 USC 646), states when the property interests held by SBA will be lower in priority to valid ad valorem tax liens on the specific property.

An ad valorem tax is a tax imposed on the value of property, the most common ad valorem tax is that which is imposed by states, counties, and municipalities on real estate.

- b. You must be aware that the subordination section of the Act does **NOT** include:
  - (1) Late charges;
  - (2) Penalties;
  - (3) Interest;
  - (4) Water, sewer, curb/sidewalk, or light district assessments;

- (5) "General tax liens" against the property for unpaid ad valorem tax on other property of the taxpayers; and
- (6) Unpaid sales, withholding, income, or other taxes of the taxpayer.

The tax claims based upon the above categories generally are lower in enforcement priority to earlier perfected SBA/participant liens.

c. Tax liens against property in the debtor's name are created through statutory authority, and you must take particular care to determine:

- (1) Time of lien attachment;
- (2) Whether the amount of the lien is correct;
- (3) Duration of lien;
- (4) Scope of lien;
- (5) Priority and method of lien enforcement; and
- (6) How payment of the tax is handled in the locality.

d. You must determine the relative priority between the interest of SBA/participant in the loan collateral and a competing state or local ad valorem tax lien.

#### **4. How Should You Determine Whether to Pay Priority Taxes on Loan Collateral?**

- a. The decision to pay outstanding taxes, penalties, and other charges must be based on both legal and credit reviews and the critical assessment regarding who holds the superior or priority interest.
- b. Where you determine the taxes and charges are superior to the Agency/participant loan collateral interest, you should consider the following issues:
  - (1) Does the liquidation value of the collateral support payment of the taxes prior to your liquidation sale?
  - (2) Will nonpayment likely impair recovery or chill bidding at a liquidation sale in an amount more than the tax claim?

- (3) Will the taxing authority consent to SBA's liquidation sale subject to the tax?
- (4) Where the sale will be piecemeal and the collateral will be disbursed, will the tax authority agree to collect their taxes from the proceeds of the sale?

**5. What Issues Should You Consider When SBA Has Junior Tax Liens on Collateral?**

- a. Will our lien foreclosure actually wipe out the junior tax lien?
- b. Does the taxing authority have any statutory protective measures to cloud title or chill bidding at our foreclosure sale?
- c. Is the taxing authority contesting our claim to priority status? What effect will that unresolved tax priority question have upon our "commercially reasonable sale?"
- d. Is it prudent to payoff the junior tax lien and then conduct your liquidation sale? If it is, you must consider these factors:
  - (1) The liquidation property value (forced sale) of the taxed collateral;
  - (2) SBA personnel time, out-of-pocket expenses, time commitment to resolution of adversarial situation;
  - (3) Actual and potential expenditures for protection and maintenance of collateral, depreciation of collateral, and associated market related costs;
  - (4) The relative effect of payment or nonpayment on collectibility from obligors and guarantors;
  - (5) Whether the extended risk, such as lack of hazard insurance during the delay of sale, dictates payment of junior liens addressing the identified risk factor; and
  - (6) Will partial payment resolve the tax priority issue?

**6. When does SBA Acquire Tax Immunity for COLPUR?**

- a. Real and personal property owned by the SBA (and other Federal departments and agencies) is immune from State and local taxes under an implied Constitutional immunity repeatedly affirmed by Federal courts.

Participating lenders do not gain this tax advantage where they acquire title to loan collateral property in their name.

- b. The real and personal property acquired by SBA through liquidation sale is immune from State and local taxation from the time of acquisition. The tax immunity may also apply where SBA is a mortgagee in possession. The SBA counsel should make such a determination.
- c. Previously levied ad valorem tax liens are unaffected by SBA's acquisition. However, while the execution of the tax lien may be impaired because of the protection of Section 5(b) of the Small Business Act you are well advised to pay the tax or sell the property subject to the lien at the earliest possible time commensurate with commercially reasonable conduct.
- d. Local taxing authorities must be given prompt notice of SBA's acquisition of property and of our subsequent immunity from taxation.
- e. Local taxing authorities should be given a courtesy notification of our sale of the property. Disputes between the tax authority over SBA's tax exemption may "cloud title" and have an inordinately depressing effect on the marketability of the property.

**NOTE:** When the SBA field office is unable to resolve a tax exemption issue, the matter must be referred through channels to the Office of Borrower and Lender Servicing as an exception to policy.

## 7. How Must the Agency Take Title to COLPUR Property?

Property acquired in liquidation must be titled as follows.

### a. SBA serviced accounts.

For these accounts, you must title acquired property in the name of "Administrator, U.S. Small Business Administration, an Agency of the United States of America."

### b. Participant serviced accounts.

Lenders may take title in their name or in the name of the Agency as noted above in order to qualify for Federal governmental tax immunity. If the lender takes title to property in their name you should provide a written justification (e.g. anticipation of prompt sale) in an SBA 327. (Also, see Chapter 11, "Collateral Purchased by SBA and Lender.")

**8. When is SBA Authorized to Pay Taxes on COLPUR?**

The SBA is authorized to pay prior tax liens securing payment of ad valorem taxes and penalties on real and personal property acquired by SBA after a determination that the payment is appropriate or advantageous to the SBA. Depending upon the individual circumstances, SBA may sell the property subject to the tax lien(s).

**9. How Do You Determine if SBA Should Pay Taxes on COLPUR?**

- a. The considerations for payment of prior taxes on COLPUR property are similar to those which should be evaluated in paying prior and junior taxes on loan collateral before acquisition as COLPUR property. (See paragraph 5, "What Issues Should You Consider when SBA has Junior Tax Liens on Collateral?")
- b. If a decision is made to pay the taxes, you must identify the amount to be charged to the loan account as well as the amount to be charged to the COLPUR account. (See Chapter 19, "Administrative Costs, Advances, Expenses, and Recoveries.")

**10. What Documentation is Required to Request Payment of Taxes on Loan Collateral or Colpur Property?**

**You must document (SBA 327) each determination to pay taxes on loan collateral or COLPUR property to include the following items.**

- a. **Recommending official must provide:**
  - (1) Findings and recommendations including data required for all liquidation disbursements (see Chapter 19. "Administrative Costs, Advances, Expenses, and Recoveries"); and
  - (2) Statement of the known or estimated value of the taxed property supports the intended tax payment.
- b. **Counsel's opinion which must provide that:**
  - (1) The taxes paid constitute an enforceable lien senior to SBA's interest; or
  - (2) The lien is in junior enforcement priority to SBA's claim but the approving official has determined payment is in SBA's best interest.
- c. Approval by the approving official.

- d. Tax authority certification that the taxes are assessed specifically on the loan collateral or COLPUR property.
- e. The original tax invoice approved for payment establishing the date for computation of penalty and interest charged, or a written request from lender for SBA to pay its ratable portion of a previous SBA approval of participant tax payment.

**NOTE:** The date the tax invoice quote is computed for should allow sufficient time for delivery of the Treasury check, and consider accrual of interest to date of delivery.

Alternatively the tax authority may accept a stated amount on a fixed date in the future.



## CHAPTER 21

**EFFECTS OF SENIOR COMPETING LIENS  
(NON-TAX LIENS)  
ON LOAN COLLATERAL AND COLLATERAL PROPERTY****1. What is SBA's Policy?**

When a foreclosure is being considered by SBA or a prior lienholder, you must promptly examine all liens on the property and reach an informed decision on how to deal with them. This chapter outlines foreclosure alternatives available to the Agency where our collateral is subject to senior liens.

**2. What Considerations Must You Make Prior to Initiating Lien Foreclosure on SBA's Collateral Subject to Senior, Non-tax Liens?****a. Relative priorities.**

The priorities of other competing liens in relation to SBA's interest.

**b. Extent of debt.**

What is the:

- (1) Principal balance;
- (2) Accrued interest and details of delinquency including current; and
- (3) Future costs and fees related to the prior lien(s).

**c. Value of shared collateral.**

Current liquidating value (forced sale) of all property in which SBA and competing creditors share a lien interest.

**d. Value of unshared collateral.**

Current liquidating value (forced sale) of obligor property free of SBA lien but has a lien by competing creditor.

e. **Adequacy of obligors.**

The identity and financial responsibility of the obligors and guarantors of the indebtedness secured by the priority lien. You should determine if those obligors and guarantors are liable on the SBA loan.

f. **Legal aspects.**

A review of counsel should be requested, commenting on the relative lien priorities and the validity and enforceability of those liens against the property, the obligors, and guarantors.

**NOTE:** Counsel should be consulted and their comments must be included in all authorizations (SBA 327) for payment of prior liens. All problems relating to SBA satisfying prior liens must be forwarded for counsel's comments. The final decision as to such action will be made by the approving official after consideration of counsel's comments.

3. **SBA Foreclosure "Subject To" Prior Lien.**

a. **SBA foreclosure without making payment to senior lienholder.**

This procedure involves SBA foreclosure without making payment to the senior lienholder. The foreclosure-purchaser at SBA/lender's sale takes legal title subject to the senior lien. This alternative when correctly handled may net a greater return as the purchaser has built-in financing in the amount of the prior lien.

- (1) For this alternative to operate effectively, you need to develop a working relationship with the senior lienholder. They must formally agree to "stand-by" deferring loan payments during SBA's foreclosure process.
- (2) In most cases, all debt service including the senior lienholder's loan, is in default status. You must resolve the competing interests prior to commencing foreclosure in order to resolve the doubts of potential bidders. Attention should be paid to applicable state "due on sale" provisions in the senior mortgage.
- (3) You may be called upon by prospective bidders to furnish information regarding amount and terms of the prior lien, whether the senior lien is assumable and other potential-buyer minimal requirements.

**b. Bargaining strategies.**

You frequently have junior lienholder-leverage available to you which should be directed toward the senior lienholder in an effort to obtain a degree of cooperation from them in the course of foreclosure proceeding.

- (1) You may enlist the reluctant cooperation of a prior lienholder to standby during our foreclosure by discussing junior lienholder rights of redemption where applicable under State law and the Federal right of redemption in 28 U.S.C. Sec. 2410. You should consult counsel regarding any reliance upon a right of redemption and obtain a written legal opinion from the supervisory attorney.
- (2) In some jurisdictions, the legal fees of the senior lienholder are subordinate to junior liens. You are advised to consult with counsel regarding the applicability of this procedure in your district.
- (3) Where the senior lienholder will not agree to refrain from starting its own foreclosure proceeding, and there is no "due on sale" provision in their loan documents, you may proceed to sale without senior lienholder standby-agreement and let the purchaser negotiate with the senior lienholder.

**4. SBA Foreclosure With Partial Payment to Senior Lienholder Where Loan Collateral Remains "Subject To" Senior Lien.**

a. This procedure involves SBA foreclosure where the Agency makes a partial payment to the senior lienholder. The purchaser, at SBA's foreclosure sale, takes title subject to the senior lien. This procedure may be favorable to SBA particularly where:

- (1) There is a questionable senior lien;
- (2) The SBA's equity value is uncertain; and
- (3) The necessity for advancing the sum for SBA's protective bid on the senior lien is eliminated.

b. You should agree with the prior lienholder about the following matters:

- (1) The number and amount of SBA payments to the prior lienholder;
- (2) The interest rate on the prior lien indebtedness; and

- (3) The redemption period available to the obligor or other competing lienholders.

**NOTE:** Care must be taken to avoid committing the Agency to further payments to the senior lienholder. No partial payments should be made except to permit a prompt SBA foreclosure.

**5. SBA Purchase of the Prior Lien for Face Value (Par) or at a Discount.**

- a. Purchase of a prior lien requires an additional expenditure of funds and added liquidation risks. Therefore, the non-purchase alternatives covered above are preferred liquidation procedures.
- b. Outright purchase by SBA of a prior lien at a discount is preferred to making full payment of the obligation secured by the prior lien.
- c. Prior liens must not be purchased or fully paid to carry a loan for the debtor's benefit. Where SBA purchases or pays for a prior lien you must:
  - (1) Start collection of the borrowers obligation including the sum expended to purchase the prior lien; and
  - (2) Obtain an opinion of SBA counsel which covers the legal aspects of the purchase transaction.

All transactional documentation must be reviewed by SBA counsel regarding legal form.

- d. Prior liens may be purchased if it is to improve the repayment ability of the loan through a documented workout which may reduce a potential loss to the Agency.
- e. Purchase of a prior lien must be approved under the "Rule of Two." The SBA 327 must justify and support the action reflecting that all of the elements of this section paragraph have been met.
- f. **Purchase limitations.**

You must exercise care in determining to purchase a prior lien and should consider the following:

- (1) Your appraisal information should be current and reliable and clearly reflect an obtainable equity for the SBA lien (i.e. substantially over and above the prior lien);
- (2) You must evaluate current market activity for the property type; and
- (3) Your anticipated recovery must be worth the risk, and the cost of purchase together with CPC costs must not exceed 75 percent of the current liquidating value of the property.

**g. Considerations where senior lienholder is in foreclosure.**

Where a senior lienholder is in foreclosure you should determine (after SBA has paid on or purchased the prior debt) whether SBA can:

- (1) Reinstate the original maturity of the senior debt;
- (2) Recover the accrued costs and fees;
- (3) Proceed with the pending foreclosure proceedings; or
- (4) Start foreclosure proceedings at a later date.

**h. Considerations where the participating lender is the senior lienholder.**

Your handling of a purchase of a prior lien held by the participating lender should follow the guidelines established above for any prior lienholder. However, you must not permit the lender to be the liquidating agent for the SBA guaranteed loan.

**NOTE:** You must fully document all such situations.

**6. SBA Foreclosure After Full Payment/Satisfaction of the Senior Lien Alternative.**

a. Full payment and satisfaction of the prior lien is clearly less desirable than:

- (1) Purchasing the prior lien for face value (Par) or discount;
- (2) Permitting the prior lienholder to foreclose and bidding at that foreclosure sale; or

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- (3) Relying upon applicable State and Federal redemption rights of the obligor and junior lienholders.
- b. Where you are forced to payoff the prior lien of a hostile or indifferent lienholder, you must carefully analyze the comparative costs.

**Those costs include:**

- (1) The time associated in conducting your own foreclosure sale; and
  - (2) Incurring a second set of foreclosure costs and fees.
- c. You must document your decision to payoff the prior loan in an SBA 327 to include a thorough analysis of the comparative costs and risks associated with advancing the purchase funds. You must obtain the opinion of counsel in the recommendation to payoff the prior lien.
- d. The primary purpose for purchasing a prior lien is to protect SBA's position and enhance liquidation recovery.

**NOTE:** Where enforcement action is not anticipated for completion within a year of lien payment, the expenditure must be handled as an "exception to policy."

**7. SBA Making a Protective Bid at a Senior Lienholder Foreclosure Sale.**

- a. Upon becoming aware of a senior lienholders foreclosure intentions, you must make the risk and cost analysis (best interests of SBA) required in the previous four alternatives. In the absence of a justification for an alternative cited above you are authorized to let the foreclosure occur. Your participation potentially involves the making of a protective bid for SBA's equity at the sale and a determination of the effect of statutory redemption rights (rights of original mortgager) in the circumstances.
- b. Considerations which warrant prior lien foreclosures with SBA protective bidding at sale include the following.
- (1) Counsel, for prior lienholders, frequently is able to obtain liquidation relief more efficiently than SBA counsel and the Department of Justice (U.S. Attorney).
  - (2) Avoidance of duplication of effort and costs and expenses.

- (3) Potential SBA equity erosion in favor of senior lienholder where SBA pays loan current.
- (4) The SBA acquisition at prior lienholder's sale may negate the application of pertinent state "anti-deficiency/choice of remedy/one cause of action" statutes which would apply if SBA conducted the foreclosure limiting our liquidation choices. Counsel should be consulted if you have questions regarding the application of State law.

**c. What supplemental support may SBA provide to a foreclosing prior lienholder?**

You are authorized to assist the prior lienholder by supplementing its advertising and foreclosure sales effort with the objective of expanding the potential pool of bidder/purchasers. The assistance should be made with advice of supervisory counsel and may involve a financial expenditure by SBA. In considering the amount of supplemental assistance provided, you are advised that it is better to err on the side of too much, rather than too little assistance.

**d. What are the benefits to SBA resulting from our supplemental support to the foreclosing lienholder?**

- (1) By enhancing notice through supplemental advertising, the senior lienholder's foreclosure sale may rise to the level of a comprehensive public sale.
- (2) Supplemental advertising and sales efforts may lend support to a decision to refrain from active participation in the foreclosure bidding process. Where the advertising results in a large interested bidding pool reflecting actual market interest in the property, it may be reasonable to let the property be sold for whatever it will bring.

**e. What are SBA's protective bid deposit procedures?**

- (1) When a decision has been made to bid at a prior lien foreclosure and a deposit is required, you are authorized to order a treasury check in the appropriate amount through the on-line CPC disbursement system.
- (2) All bid deposits should be held by the collateral cashier until signed-out by the SBA representative attending the sale.

- (3) Unused treasury checks must be returned promptly to OFO, Denver, for cancellation. In no event can the treasury bid check be held for more than 6 months.

**8. What Notice Requirements Must Be Satisfied Before SBA Purchases a Senior Lien?**

- a. You must attempt to notify all obligors, guarantors and parties known to have an interest or claim to the lien property of Agency activities regarding the purchase or liquidation of prior liens. You must also attempt notification to these individual persons of any SBA foreclosure sale.
- b. Notice to the interested parties is required as:
  - (1) The SBA should not expend public funds to protect an equity interest in property if the obligors, guarantors, or other interested parties are able to protect it; and
  - (2) The obligors and interested parties should be aware of the increased financial exposure they incur by SBA purchase of prior lien(s).

**9. What SBA Authorization(s) Must Loan Servicing Participants Receive Prior to Payment of a Senior Lien?**

- a. Lenders servicing liquidation accounts must obtain SBA approval to:
  - (1) Purchase a prior lien for face value (Par) -- payment in full of prior lien(s);
  - (2) Purchase a prior lien at a discount; or
  - (3) Pay defaulted installments on obligations secured by prior liens.
- b. You should evaluate the proposed participant's liquidation activities under "best interest of SBA" analysis as if being performed by SBA liquidation staff.
- c. Where the participant employs legal counsel the extent of the engagement and costs associated with the legal services provided must be reviewed by supervisory counsel.

**10. What Administrative and Accounting Requirements Exist When Purchasing Prior Liens?**

- a. The creation of a "purchased" prior lien on SBA accounting records and the subsequent administrative record of that account depends upon your submitting your

clear instructions regarding the purchase transaction to OFO, Denver. SBA purchase of prior liens must be taken for short term strategy reasons not for purposes of long-term payout.

- b. Prior liens paid in full or in-part by SBA (lien documents not assigned to SBA) represent expenditures made for protection of SBA's position and are appropriate care and preservation of collateral (CPC) expenses. They must be entered as recoverable expenses in the on-line CPC disbursement system. Interest will accrue on that expenditure at the note rate.
- c. Payments received by SBA on purchased prior liens must be recorded at the time they are received. The payment status and loan balance information on that obligation must be regularly maintained. You must establish a ledger for hand-posting payments. The SBA Form 1149, "Lender's Transcript of Account," is to be used for maintaining all other pertinent data. (see Appendix 10). You are additionally responsible to prepare and provide to the obligor each January for income tax purposes a statement of interest paid for the prior year.

**NOTE:** The COLPUR account may be transferred to a note receivable status using SBA 515 providing automatic account maintenance where the authorized payment terms reflect that such handling will be of practical benefit. (See Appendix 8)

- d. Where SBA is the successful bidder at a prior lienholder's foreclosure sale, the liquidation activity must be recorded as an acquisition action on SBA Form 297.

#### 11. What Documentary Reporting is Required When SBA Purchases a Prior Lien?

- a. You must prepare an SBA 327 where you determine to:

- (1) Purchase at par or at a discount a prior lien;
- (2) Pay defaulted installments on a prior lien; or,
- (3) Pay a prior lien in full.

- b. In addition to appropriate data justifying a disbursement, the 327 action must include:

- (1) The name and address of the prior lienholder;

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- (2) A description of the prior lien;
- (3) A detailed itemization of the principal obligation secured by the prior lien and interest calculated to the date of settlement;
- (4) Settlement date;
- (5) An itemization of outstanding payments; and
- (6) A statement classifying the payment as either an advance on the SBA loan account or an expense on the COLPUR account (part of the cost of acquisition).

**CHAPTER 22**  
**INSURANCE**  
**PROPERTY, LIFE, AND PUBLIC LIABILITY**

**1. Property and Hazard Insurance.**

**a. What are the SBA's general requirements for property and other hazard insurance coverage on collateral?**

- (1) The SBA's policy is to require that obligors on SBA direct and guaranty loans maintain appropriate hazard insurance, including fire and extended coverage insurance, on real and personal property securing the loans. The loan authorization should specify the insurance coverage required. When the loan authorization only states a general requirement, then the obligors should obtain and maintain fire and extended coverage insurance for:
  - (a) The insurable value of the real and personal property securing the loan;  
or
  - (b) The amount of the loan balance, whichever is less.
- (2) The insurance policy must include a mortgagee clause naming the SBA or the participant as loss payee.
- (3) The SBA's practice is not to purchase insurance, but participants may do so on loans they service. When they do, the SBA should share in the costs of the insurance if the premiums and the transaction appear to be reasonable.

**b. Who is responsible for providing evidence of insurance?**

Each borrower and obligor must deliver to the participant or to the SBA, whoever is servicing the loan, evidence that all insurance (including liability and business interruption insurance required by the loan documents) is in force with premiums paid.

**c. What form of evidence is acceptable to the SBA?**

Evidence may be in the form of:

- (1) A copy of a binder;
- (2) Copy of the policy; or,
- (3) A certificate of coverage.

Payment of premiums should be clearly indicated. The evidence of insurance must be furnished to the participant or to the SBA at loan closing.

**d. Who is responsible for maintaining required insurance?**

The borrower is responsible for maintaining required insurance from the time the loan is closed until the loan is paid in full. On SBA-serviced loans, a printed message on the reverse side of the SBA Form 1201, "Repayment Notice," advises each borrower of the responsibility to maintain hazard insurance. (See Appendix 12.)

**e. What happens if the borrower fails to maintain the required insurance?**

- (1) Failure to maintain required insurance is a serious default. It may be the basis for accelerating maturity of the loan.
- (2) If you believe that required coverage is not in force, you must contact the borrower to determine the facts. If insurance is not in force, you must take necessary steps to ensure that the coverage is restored.

**f. What should you do if you receive a notice of cancellation?**

Mortgagee or loss payable clauses ordinarily provide that the insurer must notify the mortgagee of impending cancellation or expiration of the policy. If SBA or the lender receives such a notice, SBA/lender should make prompt contact with the borrower and guarantors. The loan file should contain:

- (1) The notice;
- (2) An indication of the actions you have taken; and
- (3) The borrower's response.

**g. What do you look for when you review insurance policies when a loan is transferred into liquidation?**

- (1) When an account is transferred to liquidation, all existing policies must be reviewed to determine:
  - (a) Adequacy of coverage;
  - (b) Whether the mortgagee/loss payable clauses are in proper form to protect the Agency's interest; and
  - (c) Whether any situation exists (e.g., vacancy, abandonment) which must be reported to the insurance company as required by the terms of the policy.
- (2) If deficient, it should if possible be brought up to requirements by the participant or the obligors. When the Agency assumes servicing of the loan (e.g., SBA serviced XGP), all insurance coverage should be assigned to SBA. Also, the companies or their agents must be notified of the change.

**NOTE:** Lack of coverage should not be a basis for adjustment of a participant's claim if the participant has made reasonable efforts to keep coverage in force, or no loss resulted from the canceled or lapsed policy.

**h. What is the SBA's policy regarding mortgagee clauses?**

- (1) It is the SBA's policy, whenever hazard insurance is called for on an SBA-serviced account, to require an endorsement naming the mortgagee as a loss-payee. The endorsement must be in the form of the "New York Standard" or "Uniform Standard" mortgage clause or its equivalent. Generally, these are considered by the courts to be a separate contract between the insurer and the mortgagee. As in most contracts, each party has certain rights and responsibilities.

**(a) What are SBA's rights as a named mortgagee?**

The two principal mortgagee rights are:

- i. SBA does not suffer loss of coverage from acts or neglect of the insured; and

- ii. SBA is entitled to a notice period in which to remit unpaid premiums.
- (b) What are SBA's responsibilities for reporting matters to the insurer?
- i. If the insurance contract requires the mortgagee to notify the insurer of certain events specified in the contract when the mortgagee has actual knowledge of such events, then SBA must provide such notice. Typical of such events are:
    - 1) Change of ownership, interest or possession of the insured property;
    - 2) Appointment and qualification of a trustee in bankruptcy for the insured, or an assignment for benefit of creditors of the insured;
    - 3) Cessation of business operations for a specified time, usually 30 days or 60 days;
    - 4) Unoccupied building on the insured property, unguarded, left at risk, or abandoned;
    - 5) The initiation of foreclosure proceedings involving the insured property (Note: at commencement of foreclosure, you should notify the insurer and confirm that SBA mortgagee coverage will continue until title transfers to the purchaser at foreclosure); or
    - 6) A new usage of the premises which may increase the risk of the insurance company.
- (2) The obligation of the mortgagee to report such events, of which it has actual knowledge, is contractual. While the event may invalidate the policy as to the insured, the Uniform Standard Mortgage Clause preserves the insurance for the SBA. The failure of the SBA, as mortgagee, to notify the insurer of specified events it knows about may either cancel the policy, or else may be a breach of contract for which SBA will be liable to the insurer for damages.

**i. When may the amount of required insurance be reduced?**

The amount of required insurance coverage may be reduced at the request of the borrower or by decision of the loan officer when:

- (1) The remaining coverage is sufficient to protect the SBA's interest;
- (2) The insurer is not liable for payment of damages incurred before the reduction or cancellation;
- (3) Any worthwhile unearned premiums on the canceled amount are to be applied to the loan account (if practicable); or
- (4) The insurer agrees to the reduction in outstanding . . . . . coverage.

**j. Does the SBA purchase insurance in connection with direct or SBA-serviced loans?**

As a general practice, the SBA does not purchase insurance on property securing direct or SBA-serviced loans or COLPUR. The SBA is NOT a "self insurer". ("Self-insured" implies the existence of a reserve for losses or recourse to a blanket policy). Instead, the SBA simply chooses to assume the risk.

**(1) What do you tell the participant when SBA will not purchase insurance?**

For purchased SBA-serviced loans, you should notify the participant of the SBA's decision not to insure. You should also suggest that if the participant wants to obtain coverage for its insurable interest, the SBA will waive any right to share in any recovery under such special policy. (The participant will have to ascertain whether in its jurisdiction it has a legally insurable interest in the collateral and should be aware of the effect of coinsurance agreements.)

**(2) What are the exceptions when SBA may purchase insurance?**

The SBA may purchase insurance on SBA-serviced loans (and on Colpur) in the following situations:

- (a) When the value of the collateral will ensure full recovery, including the amount to be paid to purchase insurance;

- (b) When partial or total loss of the property may result in an enforceable claim against SBA as "mortgagee in possession" or otherwise;
- (c) When obligors from whom SBA can collect may be released from liability or the Agency might stand to lose other rights of recourse;
- (d) When maintaining reduced or no coverage may have an adverse "psychological" affect on (re)sale efforts. (In such situations, the enhanced (re)sale potential may easily justify the costs of the insurance coverage.) Consider also the risks created by visits by auction attendees or other prospective buyers; and
- (e) When ordered to do so by a court, the SBA must purchase the coverage necessary to comply with the order. If counsel is of the opinion that the order should be appealed, counsel must advise about the continuation of the coverage during the appeal process.

**k. May the participating lender purchase insurance when servicing a loan in liquidation?**

A participating lender who is handling a liquidation may purchase insurance if the lender would usually purchase insurance in such situations. SBA may share pro rata in the cost.

**l. How is the decision to purchase insurance made and approved?**

**(1) Joint decision.**

Ideally, the decision whether or not to purchase insurance should be a joint decision by the participating lender and SBA.

**(2) Advance determination by SBA.**

If the SBA decides that it does not wish to purchase insurance on a bank-serviced account, you must so notify the lender promptly. Your notification letter to the lender should advise that:

- (a) The SBA does not wish to purchase insurance on the lender-serviced loan;

- (b) The SBA waives any claim against the lender for failure to obtain insurance;
- (c) The lender is free to purchase insurance for its own account; and
- (d) The SBA waives any right to share in any recovery from any insurance it then purchases.

**(3) Prior lender action.**

At times, the lender might obtain coverage before it receives SBA's notice. (The purchase of insurance is a normal practice in the private sector. You must assume that the lender was acting in good faith, unless you have evidence otherwise.) In either instance, the SBA receives the benefit of the coverage. SBA should share in its cost if it appears to be reasonable.

**(4) Approval/ratification.**

The approving official may:

- (a) Approve the joint decision to purchase insurance;
- (b) Ratify the lender's independent action; or
- (c) Authorize the pro rata sharing of the premiums as a CPC expense.

**m. How do you request funds for payment of insurance premiums?**

Each determination to pay premiums for insurance coverage of collateral or COLPUR must be documented by an SBA 327. The SBA 327 must include the following.

- (1) The loan officer's findings and recommendations, including:
  - (a) Statement that the advance is for premium payment for hazard insurance on specific SBA collateral or COLPUR, and no other property;
  - (b) Indication that the policy carries all mortgagee and other clauses required by the SBA and is properly assigned; and

- (c) All the data required on disbursements. (See Chapter 19, "Administrative Costs, Advances, Expenses and Recoveries.")
  - (2) Opinion of counsel (if pertinent); and
  - (3) Approval of the approving official.
- n. How must the SBA use insurance loss proceeds?**
- (1) With a loan in liquidation or with COLPUR, you generally should not release insurance proceeds or use such funds to pay the costs of replacement or repair.
  - (2) If the loan's maturity has not been accelerated, you must apply such funds (or the balance remaining after authorized repairs) to the principal balance (inverse order of maturity).
  - (3) If the loan has been accelerated, apply the proceeds directly to principal. On COLPUR, the funds must be considered as recovery.
- o. When may SBA use loss proceeds for repairs?**

You may use insurance proceeds to repair the property when:

- (1) It is essential that the damage be repaired to preserve the property; or
- (2) It is evident that repairing or replacing the property will enhance its value by an amount at least equal to the amount of funds to be used.

**p. When may the SBA release loss proceeds to the borrower or others?**

**(1) Full release.**

Insurance loss proceeds may be released to borrowers, contractors, vendors, or other appropriate parties when it is in the best interests of the SBA. The approving official must obtain satisfactory evidence that:

- (a) The property has been repaired or replaced; and
- (b) All materialmen's or workmen's claims or liens on the property have been or will be discharged simultaneously with the payment of loss proceeds.

**(2) Partial releases.**

Partial releases may be made as the repair or replacement progresses, provided satisfactory arrangements have been made for the discharge of any materialmen's or workmen's liens that could arise.

**(3) Do-it-yourself repairs.**

You must exercise care when the borrower proposes to repair the collateral on a "do-it-yourself" basis, and to use the funds for other than application to the loan balance. Often the repairs are less than adequate, which adversely affects the value of the property.

**(4) Overlapping coverage.**

A borrower will often carry multiple insurance policies with combined coverage on collateral and non-collateral property. Insurance loss proceeds on non-collateral property may be released to borrowers. However, unless such funds are to be used to restore the property, the borrower should be encouraged to apply the proceeds to the indebtedness due on the loan.

**(5) Supplemental liens.**

You should obtain new or supplemental liens on replacement property acquired with insurance proceeds by the borrower.

**(6) Coordinating settlements conducted by participant.**

The servicing lender should coordinate with the SBA any settlements with the insurance company.

**q. How do you handle insurance checks or drafts presented to the SBA for endorsement?**

All checks and drafts issued in settlement of loss or damage to collateral, and presented to SBA for endorsement, must be delivered to and recorded by the collateral cashier. The collateral cashier must give prompt notice to the responsible loan officer. When the borrower requests release of such checks and drafts, the following instructions apply:

**(1) Checks/drafts more than excess of \$5,000.**

Release must be authorized by an SBA 327 upon determination that:

- (a) The loan is current or else arrangements to cure any default are in force; and
- (b) The property has been restored, replaced, or is not needed by SBA.

**NOTE:** Where substantial funds are to be released for repairing or replacing property, appropriate arrangements for clearing all materialman's and workmen's liens should be made.

**(2) Checks/drafts of \$5,000 or Less.**

Release may be authorized for good cause and accomplished as follows:

- (a) The loan officer or loan servicing assistant may, if authorized to release such funds, initial the check register and endorse the check; and
- (b) The collateral cashier then may return the check to the borrower. The collateral cashier must leave a copy of transmittal letter or receipt and a photocopy of the check in the loan file.

**(3) Paid in full loans.**

If the loan is paid in full, any remaining insurance funds should be released to the party entitled to receive them. Consult counsel if you have any questions.

**r. What are the particular insurance requirements for COLPUR?**

All COLPUR which is sold on terms or leased must be covered by hazard insurance, and be otherwise insured as follows.

**(1) COLPUR sold on terms.**

The purchaser of COLPUR sold on terms, or on a deferred payment basis, must provide hazard insurance. You should require the same type of coverage private industry would require on similar property. The amount of fire and extended coverage should be the lesser of:

- (a) The market value of the insurable property; or
- (b) The unpaid balance of the purchase price less the liquidating value of the land and uninsurable improvements.

The purchaser should deliver the policy(ies) to the SBA at the closing of the sale. The SBA should retain the policy(ies) until the deferred portion of the purchase price has been paid in full.

**(2) COLPUR which is leased.**

- (a) Lessees must obtain, at their own expense, hazard insurance (including public liability) in an amount satisfactory to the SBA.
- (b) The amount of fire insurance coverage should equal the market value of the building(s) and other insurable improvements.
- (c) The liability coverage should coincide with private industry requirements for similar situations.
- (d) The lessee should deliver the fire policies and evidence of the liability coverage to the SBA at the beginning of the lease period.

**s. How do you handle unearned premiums from prepaid insurance after liquidation of the collateral?**

When collateral is sold and is not acquired by the SBA, you should generally surrender any prepaid insurance in force for the unearned premium. You may also transfer such insurance to the purchaser in exchange for payment of the unearned premium.

**(1) COLPUR.**

As a general policy, prepaid insurance on property acquired by the SBA should be kept in force by agreement with the insurer until it expires or until the sale of the property. When the SBA sells the COLPUR, at the time of sale, you should surrender the insurance for the unearned premium, or else transfer it to the purchaser in exchange for payment of the unearned premium. For exceptions to this policy, see subparagraph 1.j., "What Are the Exceptions When SBA May Purchase Insurance?"

**(2) Application of reimbursed funds.**

You must apply all unearned (prepaid) premiums received upon surrender of the insurance on the principal loan balance.

**(3) Paid in full accounts.**

When a loan is paid in full, you may release prepaid insurance policies to the next appropriate party in interest (e.g., next loss payee, trustee in bankruptcy). Consult counsel when in doubt as to the next proper party.

**2. Life Insurance.**

**a. How should you handle life insurance policies assigned as collateral?**

- (1)** When life insurance is taken as collateral security for a loan or guaranty by either the Agency or a participant, the correct procedure is to obtain acknowledgment of the assignment by the home office of the insurance company. Note of the assignment is usually stamped on the policy.
- (2)** Assigned life insurance is collateral. The authority to use its cash reserves or to release, subordinate or realize upon an assigned policy is within the delegations of authority for loan servicing and liquidation. Use an SBA 327 to effect such actions.

**b. What should you consider when you review assigned life insurance policies?**

When an account is transferred to liquidation, you should promptly examine any assigned life insurance policies to determine their status, options, and cash surrender value. You may remind a participant servicing a loan in liquidation to perform a review, and you may request a report on the results.

**(1) Valid endorsement.**

An assignment may not be perfected without a valid home office endorsement on the life insurance policy. In such case, you should promptly contact the insurance company.

**(2) Beneficiary versus assignee.**

It is important that SBA be named assignee, rather than beneficiary, because the insured may change the beneficiary at will, but an assignment cannot be changed without the consent of the assignee.

**(3) Face value.**

Determine if the face value has changed since loan closing.

**(4) Reinstatement and disability clauses.**

Most policies have clauses which provide for premium waivers and paid up benefits in the event of disability. If the insured is disabled, SBA, with the cooperation of the insured, may be able to negotiate paid up coverage.

**c. Who is responsible for keeping the required life insurance in force?**

**The borrower must keep the required life insurance in force.** Other obligors, guarantors, the named insured, and the named beneficiary have an interest in maintaining the policy. The SBA/lender should notify them of significant events affecting the policy, particularly the status of premium payments.

**(1) Payment by SBA or participant.**

Generally, neither SBA nor the servicing lender should advance funds to pay premiums on life insurance assigned as security for loans. However, such payment may be authorized by the approving official on a case by case basis to protect the interests of SBA/lender. You must fully document the justification in an SBA 327.

**(2) Use of cash and loan values for premium payment.**

Many policies provide for accrual of cash surrender values (CSV), which the insured may withdraw for loans and/or premium payment. Dissipation of the CSV should be avoided. If it is in the interests of the SBA, the Agency may authorize use of the cash reserves to keep the policy in force.

**d. Must you keep a separate follow-up system for assigned life insurance policies?**

No. Insurers generally contact all possible sources, including assignees, of nonpayment of premiums and of proposed cancellation of the policy. Therefore, you do not have to maintain a separate tickler or follow-up system for assigned policies.

**e. What do you do after you receive notice of nonpayment or of cancellation?**

You should make prompt contact with the borrower and guarantors if you receive notice that a premium is unpaid or that the insurance policy will be canceled. The loan file should contain:

- (1) The "past-due" or cancellation notice;
- (2) An indication of the actions you have taken; and
- (3) All response obtained.

**f. May you authorize life insurance to be released, reduced or substituted?**

The borrower should retain required life insurance at least until the loan is seasoned and/or otherwise secured. You may authorize the face amount to be reduced as the loan balance declines (327 action). Releases, reductions, or substitutions may be authorized on a case by case basis in view of:

- (1) Other adequate collateral;
- (2) A clean payment record; or
- (3) Other positive credit factors.

**g. How do you dispose of lapsed life insurance policies?**

The terms of the policy and/or the assignment usually govern disposition of the policy upon lapse. Otherwise, lapsed policies which have no cash surrender value, no dividends, no reserves, and which cannot be reinstated at the original insuring age may, if requested, be returned to the owner.

**h. How may the SBA use life insurance benefits?****(1) Non-death benefits.**

On loans in liquidation status, you should apply all non-death benefits arising from assigned life insurance policies (e.g., cash surrender value, dividends, reserves, policy loans) to reduce the principal loan balance.

**(a) Cash surrender values.**

You should surrender assigned life insurance policies to the insurer in return for the total cash value in the event:

- i. All of the other collateral has or will be liquidated to effect recovery on the loan account;
- ii. A deficiency balance exists (or is anticipated), and the insured or other parties at interest will not maintain the premiums in a current status; or
- iii. It would not be in the SBA's best interests to advance funds or use the reserves for payment of the premiums.

**(b) Notification of obligors.**

You should notify insured and all obligors about the impending policy surrender. Consult with counsel to determine if consent of obligors and beneficiaries is necessary.

**(c) Dividends.**

Dividends on assigned life insurance policies may be:

- i. Released;
- ii. Left with the insurance company to purchase additional coverage;
- iii. Applied to future premiums; or

- iv. Applied to the principal balance of the loan (inverse order of maturity).

**(d) Cash reserve.**

The cash reserve of an assigned policy may be:

- i. Withdrawn for payment of regular premiums (i.e., a premium loan). This approach may be beneficial to SBA if the insured/obligor is experiencing serious health problems and SBA is inadequately secured;
- ii. Applied to the costs of converting the policy to "paid up" insurance in an acceptable face amount; or
- iii. Withdrawn and applied to the principal balance of the SBA loan.

**(e) Release the policy.**

With documented justification, you may release the policy to the owner if the insured obtains a maximum policy loan, pays the proceeds to SBA, and pays the SBA an additional payment equal to the difference between the available cash surrender value and the loan amount. Another option would be for the insured to obtain a policy loan, pay the proceeds to SBA, and agree to pay future premiums, and interest on the policy loan, while SBA continues to hold the policy as assignee.

**(2) Death benefits.**

You must apply death benefits from an assigned life insurance policy to the principal balance of the loan as a recovery on collateral, unless otherwise authorized by an SBA 327.

- (a) Requests to use the funds for another purpose should be denied unless the loan is expected to be fully paid from other sources.
- (b) Escrow.
  - i. If the policy was owned by a guarantor, you may consider:
    - 1) Placing the funds in a special escrow account; or

2) Releasing the funds to the owner in exchange for collateral of equal or higher value.

ii. Approval of such action should be based on the determination:

1) That application of the funds to the SBA loan could be unfair or inequitable; and

2) That the SBA's position in the loan does not support release of the funds without consideration, but neither does it require immediate application of the funds to reduce the loan balance.

### 3. **Liability Insurance. What is SBA's Policy on the Purchase of Liability Insurance?**

Generally, the SBA does not purchase liability insurance except as an incidental part of a hazard insurance policy. The exceptions are the same as those listed in subparagraph 1.j., "What Are the Exceptions When SBA May Purchase Insurance?"

#### a. **Borrower responsibility.**

To the extent that liability insurance is specifically required by the SBA, the borrower, term purchaser, or lessee is required to maintain it. However, as conditions change, such requirements may be adjusted (e.g., reduced, released) in the same manner as hazard insurance requirements.

#### b. **SBA-serviced accounts.**

Public liability claims arising from the SBA's use, maintenance, or ownership of property may sometimes be defended under the Federal Tort Claims Act. This factor supports the SBA's policy against specific purchase of public liability coverage.

#### c. **Lender-serviced accounts.**

If the participating lender is handling the liquidation of an account, the lender may purchase public liability coverage if such action is the regular practice of the lender in such situations. Notification, approval and reimbursement procedures are the same as in situations involving the purchase of hazard insurance.

**d. Term sales or leases of COLPUR.**

You should require term purchasers or lessees of COLPUR to obtain types, kinds, and amounts of insurance typical to private industry requirements for similar situations.

## CHAPTER 23

## DISCLOSURE OF LOAN INFORMATION

**1. What is SBA's Policy Governing Disclosure of Information About Loans?**

This chapter provides a very general overview as it relates to "Disclosure of Information" (Freedom of Information Act (FOIA), and Privacy Act Procedures.

If a request for information is pursuant to subpoena, litigation discovery, or otherwise related to litigation matters, you must consult with the SBA attorney handling the case.

**a. General guidance.**

The SBA has very specific policies and guidelines about disclosing information about our loans and loan programs to the public.

- (1) You should review those policies before you disclose any information.
- (2) You also must consult with the FOIA officer in your office or SBA counsel in any situation where you have a question about whether you should disclose information.

**b. Regulations and policies.**

- (1) The SBA's regulations at 13 CFR Part 102;
- (2) The SBA's policies at SOP 40 03, "Disclosure of Information" (Freedom of Information Act); and SOP 40 04, "Privacy Act Procedures;"

**c. General policy.**

The SBA's policy generally is to disclose as much information as possible to the public, under the "openness in Government" policy in the FOIA. However, there are laws that prohibit you from disclosing certain types of information.

**2. Types of Information Generally Available to any Requester Under the Freedom of Information Act (FOIA).**

You may disclose some types of information about SBA's loan programs, or from a specific loan file, to any requestor. Examples of this information include:

**a. Official SBA policies, decisions, and forms, including:**

- (1) Regulations and standard operating procedures (SOP);
- (2) Opinion Digest;
- (3) Size decisions;
- (4) SBA's annual reports;
- (5) SBA forms and publications; and
- (6) Addresses and telephone numbers of SBA offices;

**b. Some information about individual loans, including:**

- (1) Names of all SBA borrowers;
- (2) Original amount of the loan;
- (3) Type of loan (e.g., FA\$TRAK, CAPLines, etc.); and
- (4) Mailing address of a borrower.

**c. Information that is a matter of public record, for example:**

- (1) Recorded mortgages, deed of trusts, fixture filings, and financing statements (UCC-1); and
- (2) Pleadings and documents already filed with a court.

**d. Aggregate statistical information about SBA's loan portfolio, as long as you do not identify specific loan names, for example:**

- (1) Number of SBA loans made to a particular racial/ethnic group;

- (2) Number of SBA loans made to women;
- (3) Number of loans in default status; and
- (4) Number of loans made in a particular city, county, or State.

**3. Types of Information that is "NOT" Available to any Requestor.**

You must NOT disclose the following types of information, to any requestor.

**a. SBA's internal records which show SBA's decision-making process, for example:**

- (1) Certain information contained in the 327 actions;
- (2) SBA legal opinions and comments;
- (3) Letters between SBA personnel and personnel from other Federal agencies unless approval is given by the other Federal agency; and
- (4) Certain information contained in the SBA loan officer's reports.

**b. Some information about individual loans, for example:**

- (1) Status of the loan;
- (2) Racial/ethnic background of the borrower;
- (3) Gender of the borrower; and
- (4) Confidential business or financial information protected by exemption provided by FOIA or Trade Secrets Act, 18 U.S.C. § 1905.

**c. Information about a civil or criminal law enforcement investigation or prosecution, for example:**

- (1) Information which formed the basis for a referral to the Inspector General (IG);
- (2) Written reports made by an SBA employee to the IG;

- (3) Any information prepared by an SBA employee in support of an IG investigation; and
- (4) See Chapter 24, "Referrals to the Office of the Inspector General" for additional information on IG referrals.

**d. Information SBA has received from another Federal agency.**

You should direct the requester to that other agency.

**e. Information protected by FOIA or Trade Secrets Act, 18 USC § 1905.**

**4. What Must You Determine if You Receive a Request for Information Contained in a Loan File?**

**a. Who is the requestor?**

- (1) Where either the borrower or SBA's lending partner (bank or CDC) for the loan is the requestor, go to SOP 50 50, Chapter 5, "Specific Loan Servicing Actions".
  - (a) You may give out any of the information discussed in "Specific Loan Servicing Actions."
  - (b) If the requestor wants other information, use the guidelines in this chapter.
- (2) Where an entity other than the borrower or lender/CDC is the requestor, you should, generally, (if the request is NOT pursuant to subpoena or related to litigation) consider the request to be subject to FOIA. However, SBA handles requests from the following entities in special ways:
  - (a) Congress;
  - (b) Federal and State agencies;
  - (c) Law enforcement personnel; and
  - (d) SCORE volunteers.

For these types of requests, you must consult with SBA counsel or the appropriate FOIA officer for assistance in responding to the request.

**b. Does the request have to be in writing?**

- (1) If the request is subject to FOIA:
  - (a) The request must be in writing;
  - (b) The requestor must be reasonably specific in describing the records he/she wants; and
  - (c) The requestor must state that he/she is asking for the information under FOIA.
- (2) You should advise the requestor of these requirements, if the requestor asks for information over the telephone.

**c. Does the requestor have borrower's written authorization to have access to the borrower's loan file?**

- (1) The FOIA requires that SBA give advance predisclosure notification (Executive Order 12600) to a borrower before disclosing any business information contained in the loan file in response to a FOIA request.
- (2) Where the requestor wants business information about a borrower, it is very helpful (but not required) if the requestor has the borrower's written permission. This will expedite processing of the FOIA request.

Examples of business information are:

- (a) Business tax returns and financial statements;
  - (b) Loan applications; and
  - (c) Business credit reports.
- (3) Business information is classified as a trade secret or as commercial or financial information which may be protected from disclosure under "Exemption 4" of FOIA or the Trade Secrets Act (18 USC § 1905).

- (4) Where the requestor wants personal information about a borrower, you must NOT disclose this information unless you have the borrower's written permission.

Examples of personal information are:

- (a) Personal tax returns and financial statements;
  - (b) Home addresses; and
  - (c) SBA Form 912, "Statement of Personal History."
- (5) If the requestor is the borrower's attorney or other agent, the borrower must provide written authorization to SBA allowing a direct response.

**d. Is the loan file covered by the Privacy Act?**

- (1) What files are covered by the Privacy Act?
- (a) Generally, files covered or cross referenced by the Privacy Act are files which are filed under an individual's name or social security number.
  - (b) From time to time SBA designates specific categories of its files as covered by the Privacy Act. Examples of files which SBA currently has designated as covered are:
    - i. Disaster home loan files;
    - ii. Official personnel files (OPFs); and
    - iii. Litigation files.
  - (c) If you have any doubt about whether a certain file is covered, check with SBA counsel and SBA's Privacy Act System of Records. (Any records that the Government keeps which can be identified by name, social security number, or other identifier.)
- (2) Penalties for disclosure of information in a file covered by the Privacy Act.
- (a) Only disaster home loans are covered by the Privacy Act. They are subject to a misdemeanor criminal conviction and/or up to a \$5,000

fine if an individual knowingly discloses information from that file without proper authorization.

- (b) In order to avoid these potential penalties, you must be sure whether the loan file the requester wants is covered by the Privacy Act. Check the Privacy Act Systems of Records.

**e. Is the loan "in litigation" status?**

If a loan is "in litigation" status, you must consult with the SBA attorney assigned to the loan before you disclose any information about the loan to any party.

**f. Should you consult with SBA counsel?**

If you have any doubt about whether it is permissible for you to disclose any information to any party you must consult with SBA counsel.

**5. What Must You Do if You Receive a Subpoena for Your Testimony or for SBA Records?**

- a. Consult with SBA counsel before you accept delivery of any subpoena directed to you personally or to the Agency.**

- b. Advise SBA counsel immediately after you receive a subpoena.**

- (1) If you receive any subpoena that asks for records or for your testimony, you must advise SBA counsel immediately.
  - (a) In some situations, the time period for court filing deadlines starts from the date you received the subpoena.
  - (b) If you do not deliver the subpoena to counsel immediately, SBA might miss a court deadline. You could harm SBA's interests in some court proceedings.
- (2) The SBA policy requires SBA counsel to review every subpoena where SBA is not a named party in the lawsuit. (See 13 CFR § 102.12.) In all cases, SBA counsel must determine if SBA will comply, or may refuse to comply, with the subpoena.

- c. **You must cooperate in complying with a subpoena, in accordance with counsel's advice.**

Your cooperation may include:

- (1) Assisting counsel in gathering SBA records to respond to the subpoena; and
- (2) Testifying in a State or Federal court proceeding.

## CHAPTER 24

## REFERRALS TO THE OFFICE OF THE INSPECTOR GENERAL (OIG)

## 1. Referrals to the Inspector General.

- a. Except when otherwise instructed in writing by DOJ (or other Federal law enforcement agency) during a pending criminal investigation, SBA employees must immediately report to the Office of Inspector General (OIG) any known or suspected misconduct or irregularities involving SBA programs, program participants, or personnel.
- b. The purpose of the OIG referral process is to protect and maintain the integrity of SBA's programs.
- c. Under the IG statute, employees have the right and authority to report matters directly to the OIG, without prior supervisory approval.
- d. You may discuss the matter with your supervisor and/or SBA counsel prior to or as part of your referral. Often, this will be a good idea, especially when the suspected impropriety involves an outside party and may affect more than one program or loan. However, you are not required to do so.

## 2. What Matters Must You Refer to the IG?

## a. Improper conduct by SBA employees.

You must immediately advise the IG of actual or suspected improper conduct by an SBA employee, for example:

- (1) Solicitation or acceptance of a bribe or gift;
- (2) Violations of any local, State, or Federal law in connection with SBA's activities; and/or
- (3) Violations of any rule or regulation which provides for protecting or maintaining the integrity of SBA's programs and operations.

**b. Irregularities committed by any non-SBA party in connection with an SBA Program.**

You must immediately advise the IG of actual or suspected irregularities committed by persons other than SBA employees, for example:

- (1) Misrepresentations, fraud, and false statements, committed by an applicant, borrower, guarantor, or participating lender, or by any of their agents, attorneys, or representatives;
- (2) Irregularities involving the collateral for SBA transactions, or the proceeds from the collateral. Refer to paragraph 7, "What Are Areas That Commonly Generate IG Referrals?" for additional information/exceptions on this subject);
- (3) Misuse of loan funds or any other funds in which SBA has an interest; and/or
- (4) Any conduct which is the subject of an investigation by another Federal, State, or local agency, for example, the Federal Bureau of Investigations (FBI) or the local police department.

**c. Requests for the IG to conduct audits.**

You may refer to the IG for audit, any suspected violations committed by participating lenders or other parties participating in SBA's programs, for example:

- (1) Violations of SBA's regulatory requirements regarding loan servicing; and/or
- (2) Violations by an SBA office or program division of SBA's regulations regarding loan servicing.

**3. How do you Make an IG Referral?**

**a. Telephone report.**

- (1) The IG prefers that SBA employees report improprieties first by telephone.
- (2) You must report the suspected impropriety by telephone to the special agent in charge (SAC) of Investigations with responsibility for your geographical area; or, to the Inspector General Hotline. (See your SBA Telephone Book.)

- (3) The IG representative will listen to your description of the facts of the situation, and will advise you as soon as possible whether the IG will pursue an investigation. The IG may need to make preliminary inquiries or records search in order to make this decision.
- (4) If the IG decides to pursue an investigation or needs further information, the IG may ask you to prepare a written referral.

**b. Written referral.**

If the IG requests that you submit a formal referral, you must prepare a written referral for submission to the SAC or regional IG for investigations with responsibility for your geographic area.

**4. What is the Format and Content of a Written IG Referral?**

**a. Written referral format.**

Your written referral should consist of the following elements when applicable.

- (1) A brief heading to identify the matter you are reporting, for example, misrepresentation, missing collateral, or possible conversion of collateral.
- (2) The complete name and address of the borrower or subject of the report.
- (3) The social security number, tax identification number, date of birth (or approximate age) of the borrower or subject of the report, if known.
- (4) The loan, grant, contract, or transaction number if any.
- (5) A brief statement of the factual basis for the report.
- (6) A brief statement of the nature of the suspected irregularity, including the approximate date the incident occurred.
- (7) A brief statement of significant actions taken to date and the current status.
- (8) The estimated dollar value involved, if known, and the basis for the estimate.
- (9) If the irregularity concerns a loan application, indicate whether the loan was approved or declined, and the date of this action.

- (10) If the irregularity or misconduct concerns an approved loan:
- (a) The name, address, and tax identification number of the borrower and guarantor(s);
  - (b) The loan number;
  - (c) The amount and date of the loan approved and dates of disbursements, if any;
  - (d) The balance due;
  - (e) If the loan is delinquent, for how long;
  - (f) The participating lender's name, address, and percentage of participation; and
  - (g) Attach a copy of the loan officer's report.
- (11) If the borrower is not directly involved in the suspected irregularity, state the subject's personal or business relationship with the borrower, participating lender, contractor, or surety.
- (12) A brief statement as to whether the matters reported adversely affect SBA, any of SBA's employees, the loan applicant, the borrower, the participant, the contractor, or other claimant.
- (13) If the irregularity or misconduct concerns collateral:
- (a) Last known location of the collateral;
  - (b) Best available description of the collateral, including identification/serial numbers;
  - (c) Estimated value of the collateral at date of loan application, and at date of sale or other disposition (cite these dates specifically);
  - (d) Any known details about the disposition of the property and/or the proceeds from the property;

- (e) Any explanation given by the borrower or other parties involved in the disposition of the property; and
- (f) Any actions taken by SBA personnel to locate and recover the property, and the results of these actions.

**b. Supervisory review.**

You are NOT required to obtain supervisory review and clearance of the written referral (especially in a situation involving suspected misconduct by another SBA employee). You may obtain supervisory review and counsel comments, if you choose.

**c. Supplemental reports.**

If you discover new or additional information about a matter which you already have referred to the IG, you must prepare a supplemental report. about this information. Send this report to the IG representative identified as handling the matter already referred.

**5. What Happens After You Refer a Matter to the IG?**

**a. IG investigation.**

The IG may choose to conduct an investigation into the particular matter you referred. The IG may also investigate the effect that the matter referred may have on a wider scale, for example, in other SBA offices, in other SBA loans made by the same participating lender, etc. The purpose of the investigation is to discover any violations of regulations or laws. If the IG discovers any such violations, the IG may refer the matter to the U.S. Attorney's Office for criminal or civil prosecution, or may use the information to help SBA maximize recovery on a loan.

**b. IG audit.**

- (1) The IG may choose to conduct an audit of, for example, a participating lender, an SBA office or division, or an SBA program. In this context, the IG will be looking for regulatory and policy violations or problems.
- (2) The IG uses audit information to suggest to the appropriate SBA program management officials how to improve administration of the program, or to decide whether the situation warrants an IG investigation.

**c. IG referral to the U.S. Attorney's Office, Criminal Division.**

The Criminal Division of the U.S. Attorney's Office is responsible for enforcing Federal criminal laws, through criminal law enforcement prosecutions. Parties prosecuted under criminal laws would be subject to incarceration and/or monetary fines. Criminal prosecutions can occur simultaneously with civil enforcement proceedings.

**d. IG Referral to the U.S. Attorney's Office, Civil Division, as Affirmative Civil Enforcement (ACE) Division.**

- (1) The Civil Division of the U.S. Attorney's Office is responsible for enforcing Federal statutes and regulations through civil law enforcement proceedings.
- (2) The Government can obtain monetary damages through such proceedings. This sometimes includes treble damages (the amount of the loss to the Government is tripled).
- (3) Civil enforcement proceedings can occur simultaneously with criminal prosecutions.

**6. What are Your Ongoing Responsibilities After You Have Referred a Matter to the IG?**

**a. Protect SBA's interests and maximize recovery on the loan.**

- (1) After you have made a referral to the IG on a particular loan, you remain responsible for taking appropriate and timely action on that loan. You still must protect SBA's interests and maximize recovery on the loan.
- (2) However, some actions you want to take on the loan or regarding a participating lender may interfere with an IG investigation in progress, or prejudice a criminal proceeding.

In order to avoid any harm to SBA's interests in these matters, you must:

- (a) Consult with your IG representative before taking any action on the loan, for example, before conducting a bank review on a participating lender or before deferring loan payments on a loan.

Consult with the IG representative before you advise "ANY" non-SBA party of the existence/referral of an IG investigation into a particular

matter. Giving this information to the subject of an investigation could interfere with or jeopardize the investigation.

- (b) Maintain close contact with the IG Representative so that you will be aware of the status of the investigation or litigation proceeding. You can use this information to make informed decisions about the actions you should take on the loan or loan program.

**b. Coordinate with SBA counsel where U.S. Attorney's Office is involved.**

- (1) When SBA has previously referred a loan to the U.S. Attorney's Office, for debt collection or otherwise:
  - (a) You must submit your written referral to SBA counsel, instead of directly to the IG representative;
  - (b) The SBA counsel is responsible for sending the report to the U.S. Attorney's Office, and sending a copy of the report to the IG representative; and
  - (c) These procedures also apply to any supplemental reports you prepare.
- (2) When you become aware of a referral of a matter to the U.S. Attorney's Office for criminal or civil law enforcement, you must:
  - (a) Advise local SBA counsel. Counsel will act as liaison with the U.S. Attorney's Office, and will monitor the litigation proceeding on the loan. You should give local counsel copies of all reports you already have given to the IG; and or
  - (b) Give local SBA counsel a copy of any supplemental reports you give to the IG representative on the matter.

**7. What Are Areas That Commonly Generate IG Referrals?**

**a. Missing or converted collateral.**

- (1) The Small Business Act prohibits converting, disposing of, concealing, or removing collateral securing an SBA loan. The U. S. Attorney's Office can prosecute any violation of this law. The penalty is up to a \$5,000 fine and up to a 5 year jail term for the violator.

- (2) You must refer to the IG, any missing or converted collateral valued at more than \$5,000. You may refer missing or converted collateral valued at \$5,000 or less if you have any facts indicating that the collateral was stolen, converted, vandalized, or otherwise wrongfully disposed of. You should make a referral even where you think that the circumstances do not show that any party had the motive to convert the collateral. The IG has the final authority to determine whether the circumstances warrant an investigation.

**b. Missing borrowers or guarantors ("skips").**

You may refer to the IG, any situation involving missing obligors or guarantors, after local efforts to locate the individual have failed. The IG can run various information searches to assist you in locating the person. An example of this situation is where the borrower or guarantor is missing, and the loan funds are missing.

**c. Felony arrests and convictions of a borrower or guarantor.**

You must refer to the IG, any situation in which you discover that a party to the loan transaction has been arrested or convicted for a felony. The IG can obtain a criminal records check.

- (1) If the criminal records check reveals a past criminal history for the borrower, and the borrower did not report this information on his or her loan application forms, this omission may constitute a misrepresentation to the Government and fraudulent inducement of SBA to approve the loan.
- (2) The IG also might discover criminal activity which is under the purview of other agencies, for example, the Immigration and Naturalization Service (INS), the Drug Enforcement Agency (DEA), or the Internal Revenue Service (IRS). The IG may refer such matters to other Federal agencies, where appropriate.

# APPENDIX

EFFECTIVE DATE: DECEMBER 1, 1997



**APPENDIX 1**  
**SBA FORM 148, GUARANTY**

OMB Approval No. 3245-0201  
Expiration Date: 04-30-97



**SBA LOAN NO.**

**U.S. SMALL BUSINESS ADMINISTRATION (SBA)**  
**GUARANTY**

\_\_\_\_\_, 19\_\_\_\_

In order to induce \_\_\_\_\_ (hereinafter called "Lender") to make a loan or loans, or (SBA or other Lending Institution)

renewal or extension thereof, to \_\_\_\_\_ (hereinafter called "Debtor"), the Undersigned hereby unconditionally guarantees to Lender, its successors and assigns, the due and punctual payment when due, whether by acceleration or otherwise, in accordance with the terms thereof, of the principal of and interest on and all other sums payable, or stated to be payable, with respect to the note of the Debtor, made by

the Debtor to Lender, dated \_\_\_\_\_ in the principal amount of \$ \_\_\_\_\_ with interest at the rate of \_\_\_\_\_ per cent per annum. Such note, and the interest thereon and all other sums payable with respect thereto are hereinafter collectively called "Liabilities." As security for the performance of this guaranty the Undersigned hereby mortgages, pledges, assigns, transfers and delivers to Lender certain collateral (if any), listed in the schedule on the reverse side hereof. The term "collateral" as used herein shall mean any funds, guarantees, agreements or other property or rights or interests of any nature whatsoever, or the proceeds thereof, which may have been, are, or hereafter may be, mortgaged, pledged, assigned, transferred or delivered directly or indirectly by or on behalf of the Debtor or the Undersigned or any other party to Lender or to the holder of the aforesaid note of the Debtor, or which may have been, are, or hereafter may be held by any party as trustee or otherwise, as security, whether immediate or underlying, for the performance of this guaranty or the payment of the Liabilities or any of them or any security therefor.

The Undersigned waives any notice of the incurring by the Debtor at any time of any of the Liabilities, and waives any and all presentment, demand, protest or notice of dishonor, nonpayment, or other default with respect to any of the Liabilities and any obligation of any party at any time comprised in the collateral. The Undersigned hereby grants to Lender full power, in its uncontrolled discretion and without notice to the undersigned, but subject to the provisions of any agreement between the Debtor or any other party and Lender at the time in force, to deal in any manner with the Liabilities and the collateral, including, but without limiting the generality of the foregoing, the following powers:

- (a) To modify or otherwise change any terms of all or any part of the Liabilities or the rate of interest thereon (but not to increase the principal amount of the note of the Debtor to Lender), to grant any extension or renewal thereof and any other indulgence with respect thereto, and to effect any release, compromise or settlement with respect thereto;
- (b) To enter into any agreement of forbearance with respect to all or any part of the Liabilities, or with respect to all or any part of the collateral, and to change the terms of any such agreement;
- (c) To forbear from calling for additional collateral to secure any of the Liabilities or to secure any obligation comprised in the collateral;
- (d) To consent to the substitution, exchange, or release of all or any part of the collateral, whether or not the collateral, if any, received by Lender upon any such substitution, exchange, or release shall be of the same or of a different character or value than the collateral surrendered by Lender;
- (e) In the event of the nonpayment when due, whether by acceleration or otherwise, of any of the Liabilities, or in the event of default in the performance of any obligation comprised in the collateral, to realize on the collateral or any part thereof, as a whole or in such parcels or subdivided interests as Lender may elect, at any public or private sale or sales, for cash or on credit or for future delivery, without demand, advertisement, or notice of the time or place of sale or any adjournment thereof (the Undersigned hereby waiving any such demand, advertisement and notice to the extent permitted by law), or by foreclosure or otherwise, or to forbear from realizing thereon, all as Lender in its uncontrolled discretion may deem proper, and to purchase all or any part of the collateral for its own account at any such sale or foreclosure, such powers to be exercised only to the extent permitted by law.

SBA Form 148 (5-83) REF: SOP 70 50 USE 5-87 EDITION UNTIL EXHAUSTED

Federal Financing Program Provided on Recycled Paper

SBA FORM 148, GUARANTY (CONT.)

The obligations of the Undersigned hereunder shall not be released, discharged or in any way affected, nor shall the Undersigned have any rights or recourse against Lender, by reason of any action Lender may take or omit to take under the foregoing powers.

In case the Debtor shall fail to pay all or any part of the Liabilities when due, whether by acceleration or otherwise, according to the terms of said note, the Undersigned, immediately upon the written demand of Lender, will pay to Lender the amount due and unpaid by the Debtor as aforesaid, in like manner as if such amount constituted the direct and primary obligation of the Undersigned. Lender shall not be required, prior to any such demand on, or payment by, the Undersigned, to make any demand upon or pursue or exhaust any of its rights or remedies against the Debtor or others with respect to the payment of any of the Liabilities, or to pursue or exhaust any of its rights or remedies with respect to any part of the collateral. The Undersigned shall have no right of subrogation whatsoever with respect to the Liabilities or the collateral unless and until Lender shall have received full payment of all the Liabilities.

The obligations of the Undersigned hereunder, and the rights of Lender in the collateral, shall not be released, discharged or in any way affected, nor shall the Undersigned have any rights against Lender, by reason of the fact that any of the collateral may be in default at the time of acceptance thereof by Lender or later; nor by reason of the fact that a valid lien in any of the collateral may not be conveyed to, or created in favor of, Lender; nor by reason of the fact that any of the collateral may be subject to equities or defenses or claims in favor of others or may be invalid or defective in any way; nor by reason of the fact that any of the Liabilities may be invalid for any reason whatsoever; nor by reason of the fact that the value of any of the collateral, or the financial condition of the Debtor or any obligor under or guarantor of any of the collateral, may not have been correctly estimated or may have changed or may hereafter change; nor by reason of any deterioration, waste, or loss by fire, theft, or otherwise of any of the collateral, unless such deterioration, waste, or loss be caused by the willful act or willful failure to act of Lender.

The Undersigned agrees to furnish Lender, or the holder of the aforesaid note of the Debtor, upon demand, but not more often than semiannually, so long as any part of the indebtedness under such note remains unpaid, a financial statement setting forth, in reasonable detail, the assets, liabilities, and net worth of the Undersigned.

The Undersigned acknowledges and understands that if the Small Business Administration (SBA) enters into, has entered into, or will enter into, a Guaranty Agreement, with Lender or any other lending institution, guaranteeing a portion of Debtor's Liabilities, the Undersigned agrees that it is not a coparantor with SBA and shall have no right of contribution against SBA. The Undersigned further agrees that all liability hereunder shall continue notwithstanding payment by SBA under its Guaranty Agreement to the other lending institution.

The term "Undersigned" as used in this agreement shall mean the signer or signers of this agreement, and such signers, if more than one, shall be jointly and severally liable hereunder. The Undersigned further agrees that all liability hereunder shall continue notwithstanding the incapacity, lack of authority, death, or disability of any one or more of the Undersigned, and that any failure by Lender or its assigns to file or enforce a claim against the estate of any of the Undersigned shall not operate to release any other of the Undersigned from liability hereunder. The failure of any other person to sign this guaranty shall not release or affect the liability of any signer hereof.

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NOTE. — Corporate guarantors must execute guaranty in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership guarantors must execute guaranty in firm name, together with signature of a general partner. Formally executed guaranty is to be delivered at the time of disbursement of loan.

★ U.S. SPO: 1995-385-831/09106

**(LIST COLLATERAL SECURING THE GUARANTY)**

**APPENDIX 2**  
**SBA FORM 172, TRANSACTION REPORT ON LOAN SERVICED BY LENDER**

**SMALL BUSINESS ADMINISTRATION**  
**TRANSACTION REPORT ON LOAN SERVICED BY LENDER**

OMB Approval No.: 3245-0131  
 Expiration Date 9/30/95

1. Mail To: <b>SMALL BUSINESS ADMINISTRATION</b> <b>DENVER, CO 80259</b>		2. Lender's Name and Address  	
3. Loan Number  		4. Borrower's Name  	
5. Interest Rates  <div style="display: flex; justify-content: space-around;"> <span>_____ SBA</span> <span>_____ Lender</span> </div>		6. Percent Shares  <div style="display: flex; justify-content: space-around;"> <span>_____ SBA</span> <span>_____ Lender</span> </div>	
7. Date Repayment Received  <div style="display: flex; justify-content: center; gap: 20px;"> <span>/</span> <span>/</span> </div>		8. Installment Due Date Paid  <div style="display: flex; justify-content: center; gap: 20px;"> <span>/</span> <span>/</span> </div>	
9. Interest Period Paid From: / / To: / /		10. No. of Days Interest  _____	
<b>11. Application of Repayment:</b>			
	<b>TOTAL</b>	<b>LENDER SHARE</b>	<b>SBA SHARE</b>
Repayment Amount .....	\$ _____	\$ _____	\$ _____
a. To Interest .....	\$ _____	\$ _____	\$ _____
b. To Principal .....	\$ _____	\$ _____	\$ _____
c. Less: Service Fee * .....	\$ _____	\$ _____	\$ _____
d. Amount Remitted to SBA .....	\$ _____	\$ _____	\$ _____
* Compute Service Fee as follows: Multiply SBA's Share of Beginning Principal Balance by: (Number of Days Interest times Daily Factor). Daily Factor = .0000068 if SBA's Percent Share Exceeds 75% Daily Factor = .0000103 if SBA's Percent Share is 75% or less.			
<b>12. Principal Loan Balance:</b>			
	<b>TOTAL</b>	<b>LENDER SHARE</b>	<b>SBA SHARE</b>
a. Last Report ( / / )	\$ _____	\$ _____	\$ _____
b. Plus Principal Additions	\$ _____	\$ _____	\$ _____
c. Less Repayments/Credits	\$ _____	\$ _____	\$ _____
d. Ending Balance This Report	\$ _____	\$ _____	\$ _____
13. Comments:  		14. ----- <b>OFO USE ONLY</b> -----  T/C _____ Offline Code _____ Next Due Date / /	
15. Signature and Title  		16. Telephone No. ( )	
17. Report Date / /			
PLEASE NOTE: The estimated burden hours for the completion of this form is 10 minutes per response. If you have any questions or comments concerning this estimate or any other aspect of this information collection please contact, Chief, Administrative Information Branch, U.S. Small Business Administration, 409 3rd St., S. W. Washington, D.C. 20416 and OMB Clearance Officer, Paperwork Reduction Project (3245-0131), Office of Management and Budget, Washington, D.C. 20503.			
SBA FORM 172 (4-93) REF.: SOP 20 23 PREVIOUS EDITIONS OBSOLETE			



**APPENDIX 3**  
**SBA FORM 297, COLLATERAL PURCHASE REPORT**  
 SMALL BUSINESS ADMINISTRATION

COLLATERAL PURCHASE REPORT				
Name and Address of Borrower (City and State)			Collateral Purchased From:	
Loan No.	Type of Loan: <input type="checkbox"/> Direct <input type="checkbox"/> XGP <input type="checkbox"/> Prct. %	ColPur Serviced by: <input type="checkbox"/> SBA <input type="checkbox"/> Participant	Purchase is: <input type="checkbox"/> Partial <input type="checkbox"/> Full	Satisfaction of Debt
Type of Purchase: <input type="checkbox"/> Foreclosure Sale <input type="checkbox"/> Prior Lienholder <input type="checkbox"/> Other (Explain in Remarks) <input type="checkbox"/> Tax Redemption <input type="checkbox"/> Assignment				
PART I PURCHASE DATA				
COLLATERAL	Date Purchased	Purchase Price	Other Expenses	Current Collateral Liquidating Value
Land and/or Buildings		\$	\$	\$
Other		\$	\$	\$
<b>Total</b>		\$	\$	\$
Prior Liens (Inc. Taxes) Against ColPur: <input type="checkbox"/> None <input type="checkbox"/> Listed Below				
<u>Type of Lien</u>	<u>Amount</u>	<u>Status</u>	<u>Comments</u>	
Additional Description, Comment or Special Instructions, if any:				
Treasury check requested to pay for colpur <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required				
Loan Officer	Date	FTS #	Supervisory L/O	Date SBA Office
PART II SALES DATA				
COLLATERAL	DATE OF SALE	GROSS SALE PRICE AND/OR COLLECTIONS	OTHER EXPENSE NOT PREVIOUSLY REPORTED	
Land and/or Buildings		\$	\$	
Other		\$	\$	
<b>Total:</b>		\$	\$	
Sale of ColPur is: <input type="checkbox"/> Full <input type="checkbox"/> Partial      Sale Price is: <input type="checkbox"/> Cash <input type="checkbox"/> Note <input type="checkbox"/> Both				
Comment Re: Sales/Collection (Prior Lien Disposition, Other Expenses Deducted)				
Loan Officer	Date	FTS #	Supervisory L/O	Date SBA Office

Part I is for Purchase only. Part II is for sale of ColPur only, 297 required for each sale until all ColPur is sold.  
 SBA Form 297 (1-83) Ref: SOP 60 61 Use 6-81 Edition Until Exhausted  
 Copy: Original and pink to OAO      Yellow for Docket File

**SBA FORM 297, COLLATERAL PURCHASE REPORT (CONT.)****COLLATERAL PURCHASE REPORT**

Accurate records of the Agency's purchases and sales of property and of the expenses related thereto must be maintained. This form is the primary vehicle to accomplish the necessary control. The following instructions are provided to provide clarity and assure uniformity in the use of the form.

**Headings:** The heading information is primarily for account identification (name, address, type loan, etc.) and should be immediately accessible from the loan file.

**Collateral Purchased from:** Indicate name, and address of seller (Bankruptcy, trustee, sheriff sale, foreclosure, borrower, guarantor, etc.)

**Part I "Purchase Data":** This portion of the report must be completed promptly upon purchase of any colpur.

**"Land and/or Buildings":** Includes all real property and plants involving a combination of real property and equipment being held as a package. However, if the equipment constitutes, by far, the major value of the colpur or if separate sales are anticipated, the assets may be reported separately. If the purchase was accomplished by a single bid amount, it is usually better to report as a package. If the property was purchased in separate bids, it should be reported separately.

**"Other":** This category includes all assets purchased except realty. The variety of colpur types may include machinery, equipment, furniture, fixtures, accounts receivable, stock, etc.

**"Date Purchased":** Date of purchase for the purpose of this report does not have to correspond to the date the Agency acquires full legal title. Use the date the Agency is the successful bidder at the sale or the date of the written conveyance agreement, where applicable. Since that date may be in variance with the date of acquisition of legal title, the report date should not be used as the date of cleavage in computing the amount of any deficiency judgment, or in making any other computations concerning the personal liability of borrower or other obligors. In the event the Agency does not ultimately acquire full title to such property, it will be necessary to inform office of comptroller by a revised SBA Form 297.

**"Purchase Price":** The purchase price shall mean, in the case of a public sale, the bid price or amount of consideration set by the court having jurisdiction and, in the case of a voluntary conveyance, the consideration set forth in such agreement. Cost is increased to the extent of prior liens not extinguished through acquisition.

**"Other Expenses":** Report all actual expenses incurred which are attributable to the property and not recoverable from the borrower. For instance costs of the auction sale are usually attributable to the borrower's account, and to the extent that they are so attributable, should not be charged to the property. On the other hand, costs of winterizing, repairs, etc., incurred after acquisition are expenses of ownership. They cannot be charged to the loan account and should be expensed against the colpur.

**"Prior Liens":** Reflect the basic information regarding liens to which the property acquired is subject (i.e., "first mortgage, \$10,000, current," or "R/E tax, \$5,000, Past Due, Represents two years of pre acquisition taxes and penalties").

**"Additional Description, Comment, or Special Instruction Re Colpur":** This space may be used to provide any additional information or instruction to OAO regarding the property purchased. Indicate whether treasury check required to pay for colpur.

**Part II "Sales Data":** Part II is for sale of colpur only. A form 297 is required for each sale until all colpur is sold. Do not complete Part I if previously submitted. However, heading information should be provided on each report of sale.

**"Land and/or Buildings" and "Other":** The criteria for determination between these categories is, basically, the same as reflected above.

**"Date of Sale":** Indicate the actual date on which the Agency sold the property (i.e., closing date).

**"Gross Sales and/or Collections":** Reflect the total of all sales proceeds plus all income earned from the property. (A breakout is provided below to provide an analysis resulting in the net.)

**"Partial or Full Sale of Colpur":** Indicate by the use of the words "partial" or "full" whether the sale is a final and complete disposition or not. If colpur required more than one sale, 297 required for each sale until all colpur is sold.

**"Comments Re Sales/Collections":** Provide any comments necessary for a clear understanding of the transaction by OAO. Utilize the following structure in recapping the matter:

Gross Sales Price		XXXXX
Deductions:		
Prior Liens Paid	XXXXX	
Expenses of Sale		XXXXX
Net Collected:	XXXXX	
Cash	XXXXX	
Note		XXXXX





**APPENDIX 5**  
**SBA FORM 327, MODIFICATION OR ADMINISTRATIVE ACTION - STAMP**  
**EXAMPLE**

U.S. Small Business Administration	
	Action # _____
We concur with this request.	
_____	_____
Recommending Official	Date
_____	_____
Counsel	Date
_____	_____
Approving Official	Date
SOP _____	Paragraph # _____







**APPENDIX 7  
SBA FORM 489, JUDGMENT REPORT**

SMALL BUSINESS ADMINISTRATION		RCN 436
<b>JUDGMENT REPORT</b>		
Name and Address of Borrower:		Name and Address of Participant:
Loan No:	Type of Loan:	Percent Part:
	<input type="checkbox"/> Direct <input type="checkbox"/> GP <input type="checkbox"/> XGP	_____ %
Judgment Serviced By:		
<input type="checkbox"/> SBA <input type="checkbox"/> Participant		
<b>JUDGMENT</b>		
Perfected Against: (Name, address of each Debtor, including ZIP Code, Jurisdiction and County, etc.)		
1	2	3
Name: _____	_____	_____
Street: _____	_____	_____
City (and County): _____	_____	_____
State (and ZIP Code): _____	_____	_____
Judgment Debtor is: <input type="checkbox"/> Borrower <input type="checkbox"/> Guarantor <input type="checkbox"/> Other		
Date of Judgment: _____ Date Judgment Expires: _____		
Total Amount of Judgment:	\$ _____	
Judgment Interest Rate:	_____ % Annual	
Attorney and Court Fees:	\$ _____	
Comments:		
SBA Loan Officer	Date	FTS #
SBA Office & Code		
SBA Form 489 (11-82) Rev. SOP 50 51 Use 7-87 Edition Until Exhausted		Original to DAO (Attach Copy of Judgment) Yellow to Docket File

**SBA FORM 489, JUDGMENT REPORT (CONT.)****INSTRUCTIONS**

This form is necessary to 1) provide and record accurate computer data on the Agency's judgment activities and 2) set up a judgment in the accounting system. It is not necessary to make up a report on all judgments obtained. Only "money" judgments should be translated into a judgment report and sent to OAO. "Money" judgments usually take the form of deficiency judgments obtained against borrowers, guarantors, endorsers, etc. Judgments used in jurisdictions where it is necessary to obtain a "court order" to foreclose on a borrower and where no money is involved, should not be reported.

A copy of each judgment and Judgment Report should be retained in the docket file.

**Headings:** The heading information is primarily for account identification (name of borrower, loan no., participant, type of loan, percentage of participation, etc.). Also indicate whether the judgment is to be serviced by SBA or the participant.

**Judgment Perfected Against:** Indicate full name and complete address of each judgment debtor.

Indicate whether judgment debtor is: The borrower, a guarantor or other (if "other", insert the nature of the obligor). Specify exact date that judgment is effective as authorized by the court (or other jurisdiction) and the exact date judgment will expire.

If judgment was obtained by participant and assigned to SBA, a Form 489 "Judgment Report" is required. If debtor moves to a new location and recording/perfecting of a judgment is required in the new jurisdiction, a second Form 489 is not required, if previously submitted.

**APPENDIX 8**  
**SBA FORM 515, NOTE RECEIVABLE REPORT**

RCN 428			
SMALL BUSINESS ADMINISTRATION			
<b>NOTE RECEIVABLE REPORT</b>			
<u>Name and Address of Original Borrower:</u>		<u>Name and Address of Participant:</u>	
<u>Original Loan No.:</u>	<u>Type of Loan:</u> <input type="checkbox"/> Direct <input type="checkbox"/> GP <input type="checkbox"/> x GP	<u>Percent Participation</u> _____ %	<u>Note Receivable Serviced By:</u> <input type="checkbox"/> SBA <input type="checkbox"/> Participant
<u>Name and Address of Note Receivable Obligor:</u>		<u>Note Receivable Number:</u> NR- _____	
<u>Note Receivable Created By:</u>			
<input type="checkbox"/> Full or Partial Sale of Col. Pur. <i>(If Yes, Complete Form 297)</i>			
<input type="checkbox"/> Other (Compromise, Other Financing, Etc.)			
<u>Amount of Note Receivable:</u>		<u>Rate of Interest:</u>	
\$ _____		_____ % Per Annum	
<u>Date of Note Receivable:</u> _____		<u>Maturity Date:</u> _____	
<u>Note Receivable Repayment Terms:</u> <i>(Specify Exact Amount of Payment, Monthly, Quarterly, Etc.... and Due Date of 1st Installment, Etc....)</i>			
<u>Comments:</u>			
<u>SBA Loan Officer</u>	<u>Date</u>	<u>FTS #</u>	<u>SBA Office &amp; Code</u>
SBA Form 515 (12-82) Ref: SOP 50 51		White Copy to OAO (Attach Copy of Note Receivable)	
Use 5-82 Edition Until Exhausted		Yellow Copy to FOB	
		Pink Copy to Docket File	
U.S. G.P.O. 1988-018-100			



## APPENDIX 9

### SBA FORM 770, FINANCIAL STATEMENT OF DEBTOR

**FINANCIAL STATEMENT OF DEBTOR**  
(INSERT THE WORD "NONE" WHERE APPLICABLE TO ANY OF FOLLOWING ITEMS)

OMB Approval No. 3245-0012  
Expiration Date 10-31-87

1. NAME		2. DATE OF BIRTH (Month, Day and Year)		
3. ADDRESS (Include ZIP Code)		4. PHONE NO.	5. SOCIAL SEC. NO.	
6. OCCUPATION		SBA LOAN NUMBER	7. HOW LONG IN PRESENT EMPLOYMENT?	
8. EMPLOYER'S NAME		ADDRESS (Include ZIP Code)	PHONE NUMBER	
9. MONTHLY INCOME:		10. OTHER EMPLOYERS WITHIN LAST 3 YEARS		
Salary or wages \$ _____		Name	Address	
Commissions \$ _____				Dates of Employment
Other (state source) \$ _____				
Total \$ _____				
11. NAME OF SPOUSE		SOCIAL SECURITY NO.	12. DATE OF BIRTH (Month, Day and Year)	
13. OCCUPATION		14. HOW LONG IN PRESENT EMPLOYMENT?		
15. SPOUSE'S EMPLOYER (Name)		ADDRESS (Includes ZIP Code)	PHONE NUMBER	
16. MONTHLY INCOME OF SPOUSE:		17. OTHER EMPLOYERS WITHIN LAST 3 YEARS (Of Spouse)		
Salary or wages \$ _____		Name	Address	
Commissions \$ _____				Dates of Employment
Other (state source) \$ _____				
Total \$ _____				
18. OTHER DEPENDENTS: _____ NUMBER		23. FIXED MONTHLY EXPENSES: (TO NEAREST DOLLAR)		
Name	Relationship	Age	Rent or House Payment \$ _____	
_____	_____	_____	Utilities \$ _____	
_____	_____	_____	Food \$ _____	
_____	_____	_____	Interest \$ _____	
_____	_____	_____	Insurance \$ _____	
19. TOTAL MONTHLY INCOME OF DEPENDENTS (Except Spouse)			Debt repayments:	
\$ _____			Household furnishings \$ _____	
20. FOR WHAT PERIOD DID YOU LAST FILE A FEDERAL INCOME TAX RETURN?			Personal Loans \$ _____	
21. WHERE WAS TAX RETURN FILED?			Automobile \$ _____	
22. AMOUNT OF GROSS INCOME REPORTED			Doctors and Dentist \$ _____	
\$ _____			Other (Specify) \$ _____	
			TOTAL FIXED MONTHLY EXPENSES \$ _____	
24. ASSETS: (Fair Market Value)		(SHOW AMOUNTS TO NEAREST DOLLAR)		
Cash \$ _____		LIABILITIES:		
Checking accounts: (Show location) _____		Bills owed (grocery, doctor, lawyer, etc.) \$ _____		
Savings accounts: (Show location) _____		Installment debt (car, furniture, clothing, etc.) _____		
Cash surrender value of life insurance _____		Taxes owed:		
Motor Vehicles:		Income _____		
Make	Year	License No.	Other: (Itemize) _____	
_____	_____	_____	_____	
Debts owed to you: (Name of debtor) _____		Loans payable (to banks, finance companies, etc.) _____		
_____		Judgments you owe (Held by whom?) _____		
_____		_____		
Stocks, bonds and other securities: (Itemize) _____		Small Business Administration _____		
_____		Loans on Life Insurance _____		
Household furniture and goods _____		Mortgages on Real Estate _____		
Items Used in Trade or Business _____		Margin Payable on Securities _____		
Other Personal Property: (Itemize) _____		Other debts: (Itemize) _____		
_____		_____		
Real Estate: (Itemize) _____		Total Liabilities _____		
_____		Net Worth _____		
Other Assets: (Itemize) _____		Total _____		
_____		\$ _____		
TOTAL ASSETS: _____		CONTINGENT LIABILITIES \$ _____		
3				

**SBA FORM 770, FINANCIAL STATEMENT OF DEBTOR (CONT.)**

<b>25. LOANS PAYABLE:</b>					
Owed To	Date of Loan	Original Amount	Present Balance	Terms of Repayments	How Secured
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
<b>26. REAL ESTATE OWNED: (Free &amp; Clear)</b> Address		How Owned (Jointly, Individually, etc.)		Present Market Value	
				\$	
<b>27. REAL ESTATE BEING PURCHASED ON CONTRACT OR MORTGAGE</b> Address		Date acquired		Balance Owed	
				\$	
		Name of Seller or Mortgagee			
		Purchase Price		Date Next Cash Payment Due	
		\$			
		Present Market Value		Amount of Next Cash Payment	
		\$		\$	
<b>28. LIFE INSURANCE POLICIES:</b>					
Company		Face Amount	Cash Surrender Value	Outstanding Loans	
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
<b>29. LIST ALL REAL AND PERSONAL PROPERTY OWNED BY SPOUSE AND DEPENDENTS VALUED IN EXCESS OF \$200:</b>					
<b>30. LIST ALL TRANSFERS OF PROPERTY, INCLUDING CASH (BY LOAN, GIFT, SALE, ETC.), THAT YOU HAVE MADE WITHIN THE LAST THREE YEARS. (LIST ONLY TRANSFERS OF \$300 OR OVER.)</b>					
Property Transferred	To Whom	Date	Amount		
			\$		
			\$		
			\$		
<b>31. ARE YOU A CO-MAKER, GUARANTOR, OR A PARTY IN ANY LAW SUIT OR CLAIM NOW PENDING?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO    IF YES, GIVE DETAILS					
<b>32. ARE YOU A TRUSTEE, EXECUTOR, OR ADMINISTRATOR?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO    IF YES, GIVE DETAILS					
<b>33. ARE YOU A BENEFICIARY UNDER A PENDING, OR POSSIBLE, INHERITANCE OR TRUST, PENDING OR ESTABLISHED?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, GIVE DETAILS					
<b>34. WHEN DO YOU FEEL THAT YOU CAN START MAKING PAYMENTS ON YOUR SBA DEBT?</b>			<b>35. HOW MUCH DO YOU FEEL THAT YOU CAN PAY SBA ON A MONTHLY OR PERIODIC BASIS?</b>		
<p>With knowledge of the penalties for false statements provided by 18 United States Code 1001 (\$10,000 fine and/or five years imprisonment) and with knowledge that this financial statement is submitted by me to affect action by the Government, I certify that all the above statement is true and that it is a complete statement of all my income and assets, real and personal, whether held in my name or by another.</p> <p>Under the provisions of the Privacy Act, loan applicants are not required to give their social security number. The Small Business Administration, however, uses the social security number to distinguish between people with a similar or the same name. Failure to provide this number may not affect any right, benefit or privilege to which an individual is entitled by law but having the number makes it easier for SBA to more accurately identify to whom adverse credit information applies and to keep accurate loan records.</p> <p>Any person concerned with the collection of this information, its voluntariness, disclosure or routine under the Privacy Act may contact the Freedom of Information/Privacy Acts Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.</p>					
SIGNATURE _____				DATE _____	
-- NOTE: USE ADDITIONAL SHEETS WHERE SPACE ON THIS FORM IS INSUFFICIENT.					



SBA FORM 1149, LENDER'S TRANSCRIPT OF ACCOUNT (CONT.)**INSTRUCTIONS FOR COMPLETION  
OF TRANSCRIPT OF ACCOUNT**

1. NAME OF BORROWER Enter the trade name of borrower or the name of the borrower if a trade name is not used.
2. LOAN NUMBER Enter the ten-digit SBA loan number.
3. NAME OF LENDER Enter the name of the Lender.
4. AMOUNT OF LOAN Enter the total amount of the loan.
5. INTEREST DAY BASIS Enter the method used for the interest computation.  
Show 360/360, 365/365 or 365/350 to indicate day basis/interest factor.
6. REPAYMENT TERMS Enter the repayment terms provided in the note.  
Note dated \_\_\_\_\_ Maturity Date \_\_\_\_\_ Interest Rate \_\_\_\_\_ Principal and  
interest \_\_\_\_\_ payable \_\_\_\_\_ or Principal \_\_\_\_\_ plus interest payable \_\_\_\_\_
7. DATE Enter the date of each transaction on the loan account.
8. AMOUNT DISBURSED Enter the amount of each disbursement.
9. AMOUNT REPAYED Enter the amount of each repayment made by the borrower.
10. APPLICATION OF PAYMENT Enter the amounts applied to principal and interest for each repayment made by the borrower.
11. INTEREST RATE Enter the interest rate in effect at the time the payment was applied on loan account.
12. INTEREST PAID Enter the "from" and "to" dates used in computing the interest paid on the loan. These dates should be in consecutive order.
13. PRINCIPAL BALANCE Enter the principal balance after each transaction.
14. SIGNATURE AND TITLE Certification of official representative of the lender that the transcript of account is correct and shows the principal balance due on the loan and that interest has been paid to the date shown on the transcript.
15. DATE Enter the date of the certification.
16. Submit the White and Yellow copies to SBA with the letter requesting purchase. Retain the Pink copy for your files.

**APPENDIX 11**  
**SBA FORM 1150, OFFER IN COMPROMISE**

 <b>U.S. SMALL BUSINESS ADMINISTRATION</b> <b>OFFER IN COMPROMISE</b>		
<b>NAME AND ADDRESS OF OBLIGORS (proponents)</b>		<b>NAME AND ADDRESS OF BORROWER</b>
<b>SOCIAL SECURITY NUMBER(S)</b>	<b>LOAN NUMBER</b>	<b>LOAN BALANCE</b>
<b>SEE INSTRUCTIONS ON BACK OF THIS FORM BEFORE COMPLETING</b>		
<b>1. This offer is submitted by the undersigned to compromise a claim of the Small Business Administration resulting from a loan to the above borrower which is now fully due and payable and for which I (we) am alleged to be liable.</b>		
<b>2. In full settlement thereof I (we) hereby make the following offer:</b>          		
<b>3. The following facts and reasons are submitted as grounds for acceptance of this offer:</b>          		
<b>4. It is understood that this offer will be considered and acted upon in due course and that it does not afford relief from the obligation sought to be compromised unless and until it is accepted in writing by The Small Business Administration and there has been full compliance with the terms of the offer.</b>		
<b>With knowledge of the penalties for false statements provided by 18 United States Code 1001 (310,000 fine and/or five years imprisonment) and with knowledge that this proposal is submitted to affect action by the Government; I (we) declare that I (we) have examined this offer, including accompanying schedules and statements, and to the best of my (our) knowledge and belief, it is true, correct and complete.</b>		
<b>SIGNATURES OF PROPONENTS (Person(s) making the offer)</b>		
<b>SIGNATURE</b>	<b>DATE</b>	
<b>SIGNATURE</b>	<b>DATE</b>	

SBA Form 1150 (11-77) REF: SOP 5051

**SBA FORM 1150, OFFER IN COMPROMISE (CONT.)****COMPROMISE OFFER  
BASIC CHECK LIST****Instructions for Presenting Offer:**

The offer made in Item 2 should be clear and concise. Dollar amounts should be given first followed by an indication of any concessions anticipated from the Agency (release of lien, etc.). Lump sum payment is the preferred method of concluding a compromise settlement. Special requirements may apply to installment payment settlements (i.e., confess-judgment note, etc.).

Provide in Item 3, the basic reasons as to why a compromise settlement is necessary.

Provide, as an attachment hereto, a reasonably current, complete, sworn statement of income and expenses on SBA Form 770, "Financial Statement of Debtor." All transfers and/or acquisitions of real property and major items of personal property since the date the debt to SBA was created must be itemized. Show names and addresses of transferees, relationship to obligor (if any), and the type, amount and disposition of any consideration received.

In cases referred by the Department of Justice, a copy of DOJ Form DJ-35, "Financial Statement of Debtor" may be utilized instead of the aforesaid SBA Form 770. In such cases, a statement of any beneficiary status under a pending inheritance or an established trust should be included as an attachment thereto.

**Elements of a Workable Compromise Offer:**

1. Amount offered bears a reasonable relationship to the net amount recoverable through enforced collection.
2. No fraud or misrepresentation.
3. Full disclosure of financial capacity of obligor(s) has been made (SBA Form 770, etc.).
4. Borrower has ceased operations and all business collateral (assets) has been liquidated.
5. Participating bank, if any, concurs in the action.
6. Valuations provided for realty mortgaged to SBA or subject to judgment by SBA are supported.
7. Source of funds for payment of the offer clearly identified.

The items identified above are for general information and are provided primarily to assist in the proper development of a compromise package. While most cases can be decided using this "generally applicable" information, the Agency is not limited to these factors in any given matter.

**APPENDIX 12**  
**SBA FORM 1201, REPAYMENT NOTICE**



U.S. SMALL BUSINESS ADMINISTRATION

LOAN NUMBER:

	PAYMENT DUE DATE	INSTALLMENT AMOUNT	AMOUNT NOW DUE		
DATE OF LAST PAYMENT	AMOUNT OF LAST PAYMENT	AMOUNT TO PRINCIPAL	AMOUNT TO INTEREST	PRESENT PRINCIPAL BALANCE	

PLEASE CONTACT YOUR LOCAL SBA OFFICE IMMEDIATELY IF YOU HAVE ANY QUESTIONS ON YOUR ACCOUNT.



- o Please Return this Portion of Statement with Your Payment
- o Send Check or Money Order Payable To: Small Business Administration, Denver Co 80259-0001
- o Put Loan Number on All Payments to Ensure Your Account Is Credited Properly
- o Do Not Send Cash
- o No Tape, Paper Clips or Staples

LOAN NUMBER	DUE DATE	INSTALLMENT AMOUNT	AMOUNT NOW DUE	AMOUNT ENCLOSED

ADDITIONAL PRINCIPAL AMT \_\_\_\_\_

CHANGE OF ADDRESS INFORMATION

STREET \_\_\_\_\_

CITY \_\_\_\_\_

ST \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_

**SBA FORM 1201, REPAYMENT NOTICE (cont.)**

**PAYMENTS.** Payment must be made by check or money order payable in U.S. dollars. Payments received by SBA, Denver, CO 80259-0001 no later than 8:00 a.m. on a scheduled business day and accompanied by the RETURN (bottom) portion of this Payment Notice will be credited as of the day of receipt. Payments made at local SBA offices will be forwarded to SBA, Denver, CO 80259-0001 and credited when received at the Denver location.

**PREAUTHORIZED DEBIT.** To ensure that payments are made when due, arrangements can be made with most banks to debit the obligor's checking or savings account for the amount of the SBA payment in two ways:

1. Regular Payments. In this method, payments are automatically deducted as they come due. The obligor can stop the process at any time.
2. Single Payment. (Coming soon) In this method, payments are deducted only when the obligor so directs. There is no automatic feature to this method.

Both methods require preapproval. For details, call your SBA servicing office at the number shown on the front of this Payment Notice. Payments made this way are credited to the loan on the day they are deducted from the obligor's account.

**HOW INTEREST IS CALCULATED AND APPLIED.** Interest is calculated on the outstanding principal balance at the rate stated on the front of this Payment Notice using a 365-day year. Payments are applied first to accrued interest as of the date of receipt, and the balance, if any, to principal. For that reason, an obligor can save a considerable amount of money over the life of a loan by paying a "few days" early as opposed to a "few days" late.

**RETURNED CHECKS.** The full face amount of a returned check is added back to the principal balance of the loan. This amount can be sizable, resulting in a significant unpaid loan balance at the loan's scheduled maturity date.

**PREPAYMENT.** Most SBA loans may be paid in full at any time without penalty.

**DEFAULT.** In the event of default, SBA is authorized by the loan documents and/or the Federal Debt Collection Act of 1982, as amended, to take any and all of the following actions to protect the interests of the Government:

1. Foreclose on any real and/or personal property securing either the loan or the liability of any co-obligors or guarantors.
2. Report the delinquent status of the account to credit bureaus and to state and Federal agencies.
3. Refer the account to private collection agencies for collection activity against the borrower and/or any co-obligors or guarantors.
4. Offset any future Federal income tax refunds payable to the borrower and/or any co-obligors or guarantors.
5. Offset many types of Federal contract payments or benefits, including postal, civil service, and military salary or retirement payable to the borrower and/or any co-obligors or guarantors.
6. Refer the matter to the U.S. Department of Justice for appropriate legal action against the borrower and/or any co-obligors or guarantors.
7. Declare the debt as "income" and report it to the Internal Revenue Service for collection of Federal income taxes thereon.
8. Use the name and/or tax identification number of the borrower and/or any co-obligors or guarantors in computer matching efforts with other Federal agencies for debt collection and screening purposes.

**HAZARD INSURANCE AND PROPERTY TAXES.** Maintenance of adequate hazard insurance and prompt payment of property taxes on all assets pledged to SBA is a BORROWER RESPONSIBILITY. Failure to do so may be considered a default under the terms of the loan.

↓ Detach here and return lower portion with your remittance. Save upper portion for your records. ↓

**APPENDIX 13  
SBA FORM 1307, AUCTIONEER LOG**

<b>AUCTIONEER LOG</b>										
NAME _____		ADDRESS _____			CITY, STATE _____		ZIP _____			
TELEPHONE _____		QUALIFICATION BASIS _____								
No.	Borrower's Name/Location	Date Assigned	Anticipated Recovery	Type Loan	Sales Date	Gross Sale	Net Sale	Commission		Total Commissions Paid For Year
								%	\$	
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										

SBA Form 1307 (8-82)

SBA FORM 1307, AUCTIONEER LOG (CONT.)**AUCTIONEER LOG****INSTRUCTIONS FOR COMPLETING/MAINTAINING**

This form must be prepared and maintained on each auctioneer within the district office territory whose services are being utilized by the local office or who has requested that SBA consider his or her firm for future sales. The Log must be readily available for review by Regional or Central Office Review personnel and by the Agency's audit staff. If the district office determines that it will not use a particular firm, it must complete the heading information on the form and provide a narrative explanation on the body of the form as to its reasons for considering the firm as not qualified for SBA work. If a firm is selected to conduct SBA sales, each sale must be reflected in the columns provided for reporting as follows:

**BORROWER'S NAME/LOCATION.** Show the borrower's trade name or docket identification name and the city in which the assets to be sold are located.

**DATE ASSIGNED.** Show the date that the auctioneer's agreement was signed by the SBA approving official.

**ANTICIPATED RECOVERY.** Show the gross estimate of liquidation recovery expected from the sale of the collateral/assets being offered. Use outside appraisal figures if possible; otherwise, insert the loan officer's liquidation value estimate, which is the figure to be used as the basis for protective bid calculations before deductions. Insert the letter "A" if an appraiser developed figure or the letters "L/O" if the estimate was provided by a loan officer.

**LOAN TYPE.** Show the loan program type of account involved (i.e., DLH, DBL, EOL, 7a/GP, 7a/XGP, etc.)

**SALE DATE.** Show the scheduled date of the auction sale.

**GROSS SALE.** Report the actual gross sale amount obtained at the auction.

**NET SALE.** Show the net sale recovery to SBA, which is gross sale amount minus expenses and commissions paid.

**COMMISSION.** Show the commission paid for the auctioneer's services in both percentage and actual dollar terms.

**TOTAL COMMISSIONS PAID FOR YEAR.** Report the actual, cumulative amount of commissions paid to the auctioneer for the year to date.

**QUALIFICATION BASIS.** Show the basic bases for considering the auctioneer as generally qualified to sell for SBA, for example: Was on GSA list; Previous good experience; Known *commercial* sales conducted for other; Bonded and previously qualified; Storage facilities available; Used by bankruptcy court; etc. The Agency must use only qualified professionals to handle its sales activity, and the firm must have a commercial track record and be properly staffed with clerks, cashiers etc. to handle the type of sales anticipated.

**APPENDIX 14**  
**SBA FORM 1502, GUARANTY LOAN STATUS &**  
**LENDER REMITTANCE FORM**

U.S. SMALL BUSINESS ADMINISTRATION OMB No. 3245-0185 Guaranty Loan Status & Lender Remittance Form		F <input type="checkbox"/> Check box if secondary market payment reported in a late payment or prepayment D L D	
Lender's Name: _____ Lender's City, State, Zip: _____ Lender's Street Address: _____ Lender's Contact Person: _____ Contact Person's Telephone No.: _____ Contact Person's Fax No.: _____ Month Ending: _____		Interest Period: _____ From _____ To _____ # of Days _____ Calendar Basis _____ Guar. Portion Closing Balance _____ Remittance Penalty (if any) _____	
SBA GP Number _____ Lender Loan Number _____ Next Installment Due Date _____ Status Code (4-9) _____ Status Amt Disbursed on Total Loan _____ Status Code this Period (4-9) _____ Status Amt Disbursed on Total Loan _____ Interest Rate _____ Interest _____ Guar. Portion Interest _____ Guar. Portion Principal _____ Guar. Portion Pymt or Fee _____ Total to FTA _____	Undisbursed on Total Loan _____ Total to FTA _____ Guar. Portion Pymt or Fee _____ Guar. Portion Principal _____ Guar. Portion Interest _____ Guar. Portion Pymt or Fee _____ Total to FTA _____	Total: _____ Grand Total: _____ Total to FTA + Penalty _____ Check/Wire Amt: _____	Total: _____ Grand Total: _____ Total to FTA + Penalty _____ Check/Wire Amt: _____
Status Codes: 4 Delinquent 5 In Liquidation 6 Paid-in-Full 7 Transferred 8 Purchased by SBA 9 Fully Undisbursed			

SBA Form 1502 (version 7/96)



**APPENDIX 15**  
**SBA FORM 1979, LIQUIDATION PLAN FORMAT**  
**LIQUIDATION PLAN FORMAT**

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. **List name, address, phone number and estimate of fees of lender's counsel if attorney fees will be paid:** Include the hourly rate, estimated number of hours and a brief description of services to be provided.
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 nonjudicial 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. **Estimate of Liquidation Recovery:** Fill in actual or estimated expenses as applicable:

	Real Estate	Real Estate	Personal Property	Other: _____
Original Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Liquidation Value/Estimate	\$ _____	\$ _____	\$ _____	\$ _____
<b>Less senior liens/taxes:</b>				
1st: _____	\$ _____	\$ _____	\$ _____	\$ _____
2nd: _____	\$ _____	\$ _____	\$ _____	\$ _____
3rd: _____	\$ _____	\$ _____	\$ _____	\$ _____
<b>Estimated net value:</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>Expense Category</b>				
Real Estate Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Personal Property Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Environmental Reports (Phase 1 or 2)	\$ _____	\$ _____	\$ _____	\$ _____
Insurance Coverage	\$ _____	\$ _____	\$ _____	\$ _____
Legal Fees	\$ _____	\$ _____	\$ _____	\$ _____
Care & Preservation of Collateral	\$ _____	\$ _____	\$ _____	\$ _____
Escrow/Commissions	\$ _____	\$ _____	\$ _____	\$ _____
Storage/Pickup/Asset Marshalling	\$ _____	\$ _____	\$ _____	\$ _____
Trustee Foreclosure (if applicable)	\$ _____	\$ _____	\$ _____	\$ _____
Auction/Sale Expenses	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
<b>Projected recovery after expenses:</b>	\$ _____	\$ _____	\$ _____	\$ _____

**Note:** Attach copies of prior/current real and personal property appraisal summaries, copies of the field visit report/memo, and the executive summary of any environmental reports.  
 SBA Temporary Form No. 1979 (EXPIRES: 7/1/97)



**APPENDIX 16**  
**LOAN UNDERWRITING CRITERIA -- RISK MANAGEMENT DATABASE**

**1. Section 102 of the Small Business Programs Improvement Act of 1996 Requirements.**

Section 102 of the Small Business Programs Improvement Act of 1996 requires SBA to report on the performance of its business loan portfolio utilizing a Risk Management Database. To comply with this requirement, SBA must compile statistical data on every business loan SBA makes or guarantees, and must calculate certain key ratios for entry into the database along with collateral information for every loan that goes into default (e.g., is transferred into liquidation). By assessing the underwriting characteristics of each loan at the time of application, SBA may gain significant insight into causes of default.

**2. Information to be collected.**

The information to be collected includes ratios showing the applicant's financial condition at time of application, both on an actual and on a pro-forma basis and the net realizable value of collateral at the time of default (when a loan is placed in liquidation). Processing personnel must ensure that lenders know about the requirement to include the data with their liquidation plans on defaulted loans. SBA personnel will input the data for all loans transferred to liquidation.

The data to be collected include:

- a. Credit history indicator at the time of origination;
- b. Current ratio and debt to tangible net worth ratio at origination;
- c. Collateral analysis showing loan to value ratio for both fair market and liquidation values; and,
- d. The net realizable value of collateral at default.

**3. Ratios and Miscellaneous.**

To have a valid basis for comparison, the same methodology must be used by all offices to compute the ratios.

**a. Credit History Indicator (A, B or C).**

Use "A" if the credit rating is acceptable based on the normal credit review process; use "B" if the firm's credit rating is marginal; and "C" if the company is a new business with no credit history.

**b. Current Ratio (CA/CL).**

The current ratio is calculated by dividing the current assets by the current liabilities. The current ratio is a commonly used measure of short run solvency, the ability of the firm to pay its debts as they come due. The current liabilities (accounts payable, notes payable, current maturities of long term debt, and accrued expenses) are used in the denominator because these are considered to be the most urgent debts, requiring payment within a year or an operating cycle. The available resources to satisfy these obligations must come primarily from cash or the conversion to cash of other current assets.

- (1) The current ratio is a static measure based on the figures in the balance sheet at a particular date. It measures only the ability of current assets to meet current liabilities on that date. Usually, current assets are of a revolving nature since collected accounts receivables are replaced by new receivables, and the current liabilities are of a refunding nature -- the repayment of one is followed by the creation of another.
- (2) For "Projected at Origination" include the effect of the pending financing on the ratio components.

**c. Debt to Tangible Net Worth (TL/TNW).**

- (1) This ratio is calculated by dividing the total liabilities of the firm by the tangible net worth. It represents the proportion of the assets provided by creditors and the portion provided by owners. The debt to equity ratio measures the level of risk of the firm's capital structure in terms of the relationship between the funds supplied by creditors and owners.
- (2) The amount and proportion of debt in a firm's capital structure is extremely important to the creditor because of the trade-off between risk and return. Use of debt involves risk because debt carries a fixed commitment in the form of interest charges and principal repayment. Failure to satisfy the fixed charges associated with debt will result in bankruptcy. Interpretation of the ratio is that for every dollar of owners' funds, there is a certain amount from creditors. The higher the ratio, the greater the risk.
- (3) For "Projected at Origination" include the effect of the pending financing on the ratio components.

**d. Loan to Value - Fair Market.**

- (1) Actual at Origination: This percentage is derived from the approved loan amount divided by the total value of all loan collateral using market valuation.
- (2) Projected at Origination: Include loan collateral that will be obtained through the pending financing.

**e. Loan to Value - Liquidation.**

- (1) Actual at Origination: This percentage is derived the same way as "Loan to Value - Fair Market" except that liquidation values are used for the loan collateral instead of market valuation. The following percentages of market valuation should be used to determine liquidation value unless you can clearly establish a different value using available information:

Commercial Real Estate.....	75%	Machinery & Equipment.....	50%
Residential Real Estate.....	80%	Furniture & Fixtures.....	10%
Unimproved Land.....	50%	Accounts Receivable.....	20%
Leasehold Improvements.....	5%	Inventory.....	20%

- (2) Projected at Origination: Include collateral that will be obtained through the pending financing, using the above liquidation values.

**f. Net Realizable Value at Default.**

The net realizable value of loan collateral is the total recovery that can reasonably be expected from the sale of an asset. You should start with the above liquidation values for loan collateral, or other values that can be clearly supported by loan documentation. Outstanding senior liens should then be deducted along with any taxes owed. Next, subtract anticipated sales costs plus expenses that will be incurred for care and preservation of the asset during the sale process.

**4. Is this a Piggyback Loan?**

- a. Indicate by "Y" or "N" whether the loan is a "piggyback" as defined in SOP 50 10.
- b. If Yes -- Is the Same Lender Involved? If this is a piggyback loan, indicate by "Y" or "N" whether the participant is the same lender holding a senior lien position.

**5. Is this a RE Loan?**

Indicate by "Y" or "N" whether the loan purpose was real estate (e.g., a majority of the loan proceeds were used for the acquisition, construction or refinancing of real estate to be used in the business).

**6. Is There a Change in Ownership?**

Indicate by "Y" or "N" whether the SBA financing was made in connection with a change in ownership of the business which applied for the loan.



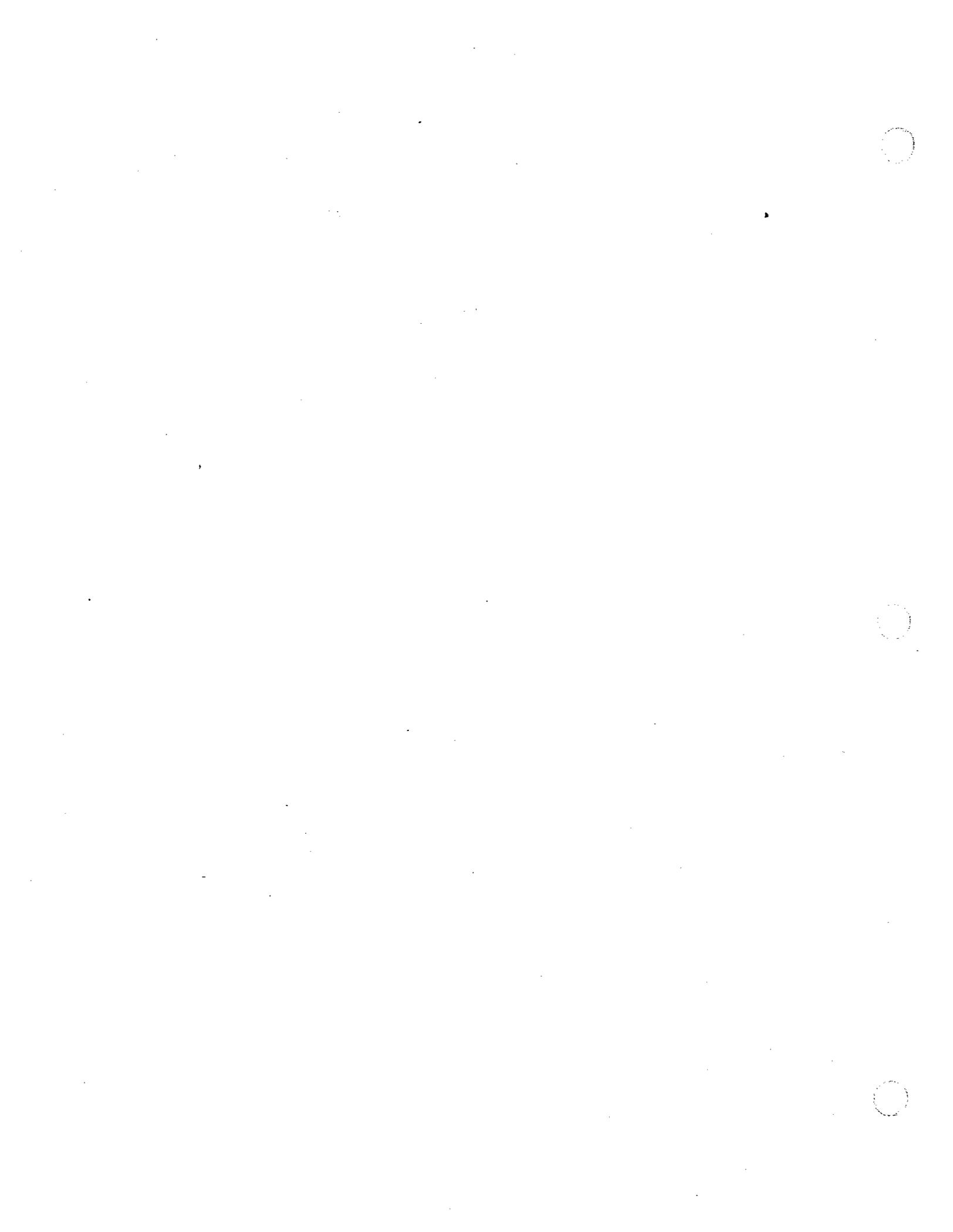
**APPENDIX 17**  
**GUARANTY PURCHASE CHECKLIST**

SBA Loan Number: \_\_\_\_\_ SBA Loan Name: \_\_\_\_\_

Instructions: Items pre-checked are mandatory for all purchases. Review the loan authorization in order to determine the need for additional documents. **Provide all documents on the checklist that are required by the loan authorization.** The order of the authorization and the checklist coincide. If a required item is not available, lender must provide a written explanation. Lender must **not** deliver or assign any original collateral documents to SBA unless directed to do so by SBA. **Where more than one loan is involved, please prepare a separate checklist and document set for each.**

**Note: For purchases under the Streamlined Guaranty Purchase Process (SBA share \$10,000 or less) go to next page.**

REQ'D Of Bank	<u>SBA USE ONLY</u> REC'D	NEED		
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>STANDARD DOCUMENTATION</b>
2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Written demand that SBA honor its guaranty
3	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wire transfer instructions
4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Certified Transcript of Account signed by lender; transcript must include payment receipt dates, interest rates in effect, amounts applied to principal and/or interest; transcript must show all transactions on borrower's account including liquidation receipts and expenses, along with date of default, interest rate at default, date to which interest has been paid and next installment due date.
5	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Executed Loan Authorization and any amendments
6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Note (SBA Form 147) with any Modifications/Amendments
				Settlement Sheets (SBA Form 1050). Attach evidence showing proceeds were used according to the Authorization and instructions on SBA Form 1050; include copies of cleared joint payee checks, bills of sale and paid invoices, as applicable
				<b>COLLATERAL REQUIREMENTS</b>
7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Security Agreements
8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	UCC Financing Statements filed with Secretary of State and/or County
9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	UCC Continuation Statements and Amendments
10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Landlord's Subordination / Waiver
11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	UCC Lien Searches, including copies of all filings at origination and default
12	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Reconciliation of original collateral with a unit value of \$1,000 or more (include description and serial numbers) to current inventoried collateral
13	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Certificate of Ownership and/or Certificate of Title on Vehicles / M&E / Manufactured Homes
14	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Recorded Deeds of Trust / Mortgages
15	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Title Insurance Policies and/or Certificates
16	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Guaranties (SBA Form 148)
17	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Evidence of guarantor consent for any material changes to the loan terms
				<b>INSURANCE AND PROPERTY REQUIREMENTS</b>
18	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Standard Flood Insurance Policy or documentation that shows property is not located in a special flood hazard area
19	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Hazard Insurance Policies (page showing insured, amount and mortgagee will suffice)
20	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Life Insurance Policies (pages showing insured and amount)
21	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Collateral Assignment of Life Insurance Policy (acknowledged by Insurance Company)
22	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Environmental Questionnaires on mortgaged and acquired property
23	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Phase I and/or Phase II Environmental Report (Summary and Recommendation pages only)
				<b>BUSINESS INFORMATION</b>
24	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	IRS Income Tax Verification
25	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lease Agreement (pages showing terms, lessee and signatures)
26	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Evidence of borrower equity injection (such as copies of cleared checks, bank statements, escrow closing statements, paid invoices) if equity injection is a condition of the loan authorization
				Standby debt agreement (if required by the loan authorization)
28	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Appraisals received at loan origination and liquidation



**ADMINISTRATIVE AND SERVICING DOCUMENTS**

- |    |                                     |                          |                          |  |
|----|-------------------------------------|--------------------------|--------------------------|--|
| 29 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Demand Letters   |
| 30 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Lender's credit memorandum and supporting documentation (PLP/SBAExpress early default loans)         |
| 31 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | SBA Form 912, Statement of Personal History, for each principal (PLP/SBAExpress early default loans) |
| 32 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | PLP/SBAExpress loan eligibility determination  |
| 33 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | LowDoc loan eligibility checklist and supporting documentation                                       |
| 34 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Liquidation Plan   |
| 35 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Site Visit Reports   |
| 36 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Itemized legal invoices, including hours per task and charge per hour                                |
| 37 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Copies of all legal pleadings, including bankruptcy filings  |
| 38 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Reports covering sale of collateral, including itemization of sale prices and expenses               |
| 39 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Liquidation Wrap-up Report with supporting documentation   |
| 40 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Risk Management Database information   |
| 41 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Other:   |
| 42 | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | Other  |

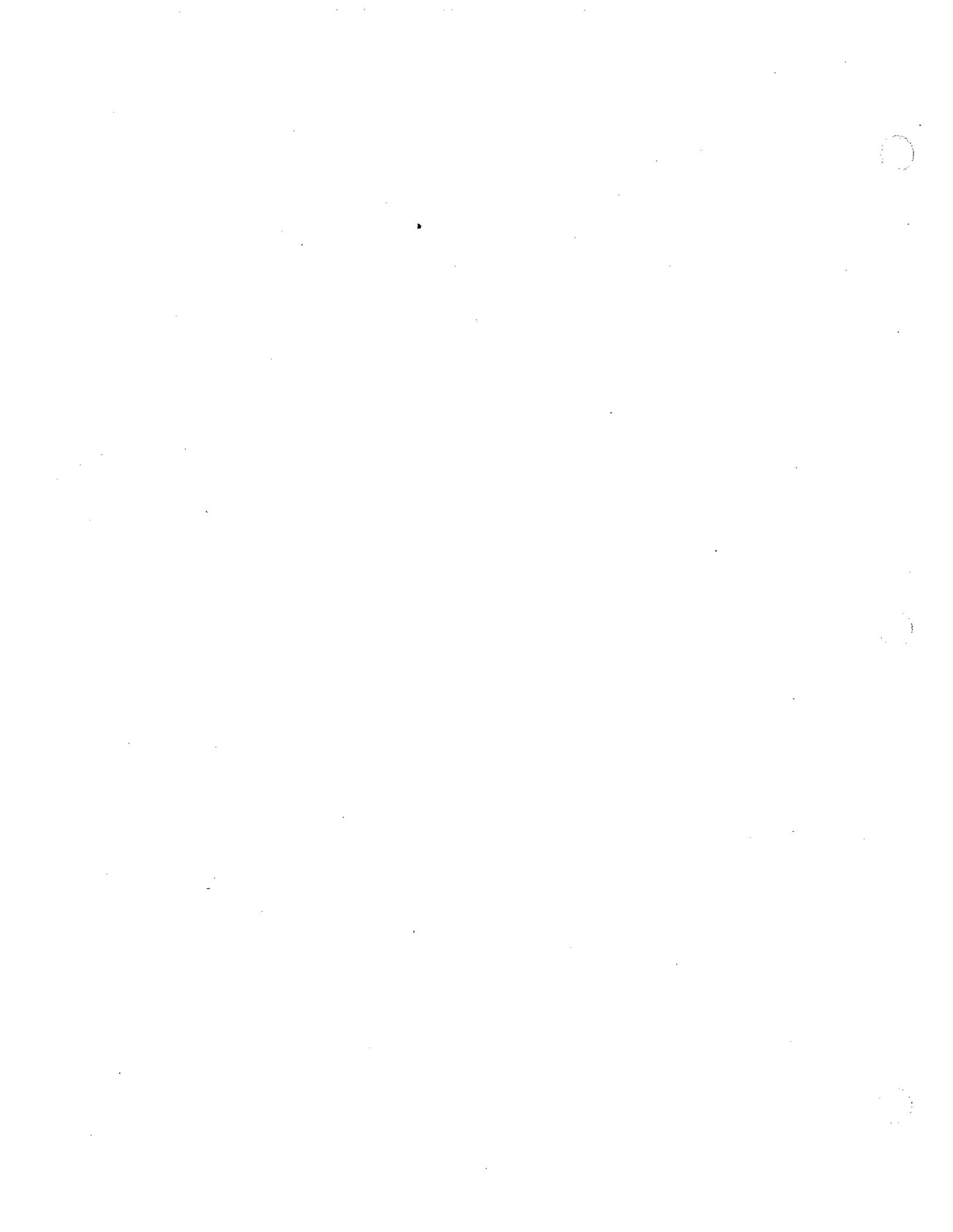
**IMPORTANT:** When instructed to transfer servicing to SBA and original documents are required, the Note (and any Modifications/Amendments), Guaranties, and Security Agreements must have the following typed on them and be signed and dated by the Lender: "Transferred and assigned to the U.S. Small Business Administration, an Agency of the U.S. Government, without recourse."

**CHECKLIST FOR STREAMLINED SMALL LOAN BALANCE PURCHASES (SBA share \$10,000 or less)**

- |   | REC'D                               | Of Bank                  | SBA USE ONLY             | REC'D NEED |   |
|---|-------------------------------------|--------------------------|--------------------------|------------|---|
| 1 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |            | Written demand that SBA honor its guarantee including date of default, interest-paid-to date, interest rate at time of default, and the next installment due date.  |
| 2 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |            | Wire transfer instructions  |
| 3 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |            | Certified Transcript of Account signed by lender <i>(must include the payment receipt dates, the interest rates in effect, and the amounts applied to principal and/or interest. The transcript must show all transactions on the borrower's account including liquidation proceeds and expenses)</i> |
| 4 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |            | Lender's documentation of eligibility (PLP, SBAExpress and Lowdoc loans only)   |
| 5 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |            | Copies of Note, executed Loan Authorization and any guaranties  |
| 6 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |            | Risk Management Database information  |
| 7 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |            | Lender certification that loan proceeds were disbursed in accordance with the loan authorization  |

**IF LIQUIDATION IS COMPLETE:**

- |   |                                     |                          |                          |  |
|---|-------------------------------------|--------------------------|--------------------------|--|
| 7 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Lender certification that liquidation is complete and that all avenues of collection have been completed |
| 8 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Final wrap-up report with information required by SOP 50 51 2  |



**APPENDIX 18**  
**FINAL WRAP UP REPORT FORMAT**

Borrower Name: \_\_\_\_\_ SBA Loan Number: \_\_\_\_\_

- [ ] 1. If SBA is purchasing its guaranty (or has already purchased its guaranty from Colson), provide: copies of the executed Loan Authorization; a certified transcript of account; a summary of major servicing actions and all changes and modifications to loan documents along with copies of all supporting loan documentation, including settlement sheets and all items listed in the "Checklist for Purchase Documents".
- [ ] 2. A complete accounting of all disbursements, payments, recoveries, and expenses during the liquidation process. SBA reserves the right to request copies of invoices on a case by case basis.
- [ ] 3. Copy of site visits reports or waivers.
- [ ] 4. Copy of Lender Liquidation Plan (with attachments as noted on SBA Form 1979).
- [ ] 5. 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.
- [ ] 6. Identify obligors and/or guarantors who are legally liable for the remaining deficiency balance of the loan. 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, past 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 obligors/guarantors.  
  

*Note: The purpose of gathering this information on loan principals is to enable SBA to make its mandatory update for each individual involved in the loan. This data is needed for post charge off activities conducted by SBA which may include; a) referral to DOJ Central Intake Facility (CIF) for litigation, b) referral to private collection agencies for continued collection activities, c) referral to IRS and Treasury for offset of any tax refund or other payments due the obligor, d) potential Federal salary/retirement offset, e) reporting deficiency balances to IRS as income, f) reporting to Credit Bureaus, or, g) inclusion on the federal debarment register (CAIVRS).*
- [ ] 7. If attorney fees are claimed for bankruptcy cases: provide copies of 341 Notice (Meeting of Creditors), court orders, discharge or dismissal notices, and documentation to support attorney fees.
- [ ] 8. If attorney fees are claimed for other litigation cases: provide copies of pleadings/motions, court orders, and documentation to support attorney fees.



**APPENDIX 19**  
**INVITATION TO BID AND TERMS AND**  
**CONDITIONS FOR SUBMITTING SEALED BIDS**

U.S. SMALL BUSINESS ADMINISTRATION  
 (Insert Name, Address, Zip Code and  
 Telephone Number of District Office.)

NOTICE OF  
 SEALED BID SALE  
 INVITATION TO BID  
 AND  
 TERMS AND CONDITIONS FOR SUBMITTING SEALED BIDS  
 FOR  
 INDUSTRIAL PROPERTY (REAL AND PERSONAL), JONESVILLE, INDIANA.  
 (FORMERLY SMITH MACHINE TOOL CORPORATION)

The U. S. Small Business Administration (hereinafter referred to as SBA) invites bids, subject to the terms and conditions hereof for the purchase from it of the following:

**Real Property:** Lots Nos. Nine and Ten in the A & B Addition to the Town of Jonesville, Lincoln County, Indiana, consisting of a rectangular tract of land comprising approximately two acres having a frontage of approximately 303 feet on Davis Street, which is paved, and a depth of approximately 295 feet along unimproved Miller Street.

**Land Improvements:** The land has been graded and improved with a gravel roadway and gravel parking area, water line, and approximately 300 feet of 12" sanitary and processing sewerage connected to the city mains. The front is landscaped.

**Building:** One story 80' x 200', concrete foundation and floor; exterior walls are of cinder concrete block; steel columns and steel girder roof supports, wood roof joists and deck; composition roofing; wood sash throughout; standard wiring; oil fired boiler; steam heat and three unit heaters; gross floor area approximately 16,000 square feet; erected in 1946.

**Personal property:** Machinery and equipment as listed on the schedule attached to the BID FORM. The BID FORM is attached hereto.

1. Bids will be considered for:
  - (a) The property in its entirety (both real and personal).
  - (b) Land, land improvements, and building only.
  - (c) Machinery and equipment, as a whole or a complete lot.
  - (d) Machinery and equipment, individual items or piecemeal.
  
2. BID FORM: Each bid for the purchase of this real property and/or personal property must be submitted on the BID FORM supplied by SBA, and must specify the sum offered. Each bid must be received by the U.S. Small Business Administration, at the address shown below, not later than 2:00 o'clock P.M., Central Daylight Savings Time, on May 16, 19\_\_. The bid must be

mailed or delivered in a sealed envelope. The enclosed Form OF 17, "Sealed Bid Label," shall be completed and pasted in the lower left hand corner of the envelope.

3. Each bid must be accompanied by money order, certified check or bank cashier's check, in the amount of five percent (5%) of the amount bid, payable to U.S. Small Business Administration. Such checks and money orders may be held by SBA uncollected, at the bidder's risk. Checks and money orders of unsuccessful bidders will be returned as soon as practicable.
4. The property listed herein and in the schedule attached to the BID FORM shall be taken to be correctly described as to the quantity and otherwise; and any error, misstatement or omission in the particulars shall not annul the sale or be a basis for any abatement or compensation on either side. Purchaser agrees to accept the property if same can in any way be identified by the description.
5. Upon notice from SBA of acceptance of part or all of any bid covering personal property only, the balance of funds, if any, to complete payment of the item or items must be paid upon request and delivery of property taken within five (5) days, or such other time as may be granted, and upon failure to comply, SBA shall have the right to forthwith rescind acceptance, and retain the deposit tendered with the bid as liquidated damages.
6. The property is offered for sale "as is, where is" without warranty or other representation as to title or condition. All bidders are urged to avail themselves of the opportunity to inspect the property for the purpose of becoming acquainted with the precise identity and physical condition thereof. A representative will be at the plant on May 13 and 14, 1954, and other times arrangements for such inspection can be made by communication with the undersigned.
7. Purchasers of personal property only must agree, with appropriate bond where required, not to damage or permit any damage to the building or to other equipment in removing purchased items, or in preparing purchased items for removal.
8. The instrument conveying personal property SBA shall provide that the purchaser will not be permitted to display such personal property for resale or to conduct auction sales thereof on the premises so long as the real property is owned by or in the possession of SBA.
9. The SBA will consider financing a portion of the purchase price of the property in its entirety or the land and building, providing general reputation and financial responsibility of the successful bidder are acceptable to SBA. If a bid providing for a term sale is accepted, the note evidencing the deferred payment shall bear interest at the rate of \_ percent (\_%) per annum, and shall be secured by a lien on the property sold, and shall provide for lump sum payments to be due on the first day of each month, such payments to be applied first to interest accrued to date of payment and the balance to principal. Bidders who intend to submit term offers should establish the acceptability of their financial responsibility (not the amount of their bid) prior to submission of their bid.
10. SBA reserves the right to reject any or all bids.
11. [Insert any special features applicable to the specific sale.

For example:

- a. State the approximate amount of unpaid taxes of assessments, whether the offering is subject thereto, a proration thereof, or payment by SBA.
- b. State whether the sale is subject to a lease or other rental arrangement. If so, include the pertinent provisions for occupant's disposition of chattels, if any, for moving, or a reasonable period to negotiate with the successful bidder.
- c. Advise on proration of rental proceeds, where applicable.
- d. State whether the sale is subject to mortgage. If so, the amount thereof, and whether purchaser must make arrangements with the mortgagee. Where prior liens have purchased but are still of record, indicate whether a release of satisfaction will be filed.]



**APPENDIX 20**  
**SAMPLE BID FORM**

ITB NO. \_\_\_\_\_

U.S. SMALL BUSINESS ADMINISTRATION  
BID FORM  
FOR THE PURCHASE OF REAL AND/OR PERSONAL PROPERTY

ADDRESS \_\_\_\_\_  
FORMERLY - SMITH MACHINE TOOL CORPORATION JONESVILLE, INDIANA

Date \_\_\_\_\_

U.S. Small Business Administration

\_\_\_\_\_

\_\_\_\_\_

Gentlemen:

The undersigned hereby bids the sum(s) set out in the space(s) provided, for the real and/or personal property in accordance with and subject to the terms and conditions set forth in ITB No. \_\_\_\_\_, which is incorporated herein and made a part hereof as through fully set forth.

BID PRICE

- (a) The property in its entirety  
(real and personal). \$ \_\_\_\_\_
- (b) Land, Land improvements, and  
Building only. \$ \_\_\_\_\_
- (c) Machinery and Equipment (as a whole or  
complete lot). \$ \_\_\_\_\_
- (d) Machinery and Equipment (individual items  
or piecemeal) as indicated in the  
following list of personal property:

Inventory

<u>No.</u>	<u>Quantity</u>	<u>Description</u>	
1.	1	Pratt & Whitney 12' Lathe, Model H	\$ _____
2.	1	Brown & Sharpe No. 2 Screw Machine 1" capacity	\$ _____

TOTAL AMOUNT OF BID \$ \_\_\_\_\_

Payable (check appropriate space):

\_\_\_ in cash on closing

\_\_\_ on terms, pursuant to paragraph \_\_\_ of ITB # \_\_\_

Bidder represents that he/she operates as (check appropriate space):

\_\_\_ A partnership consisting of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ A corporation (name) \_\_\_\_\_  
incorporated in the State of \_\_\_\_\_

\_\_\_ An individual (business name, if used) \_\_\_\_\_  
\_\_\_\_\_

Enclosed is a certified check, cashier's check, or postal money order in the amount of \$ \_\_\_\_\_, representing \_\_\_ per cent ( % ) of the total amount bid.

Very truly yours,

Address: (Print or Type) \_\_\_\_\_

\_\_\_\_\_ By \_\_\_\_\_  
(Street or P.O. Box) (Signature and Title)

\_\_\_\_\_ (City - State - Zip Code) \_\_\_\_\_  
(Type or Print Signer's Name)

\_\_\_\_\_ Telephone Number

\*\*\*\*\*

**CERTIFICATE OF CORPORATE BIDDER**

I, \_\_\_\_\_, certify that I am

\_\_\_\_\_ (official title) of the  
corporation name as bidder herein; that \_\_\_\_\_, who signed this bid on behalf of the  
bidder, was then

\_\_\_\_\_ (official title) of said corporation; that said bid was duly signed for and on behalf of  
said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) \_\_\_\_\_  
(Signature and title)

**APPENDIX 21**  
**SAMPLE ACCOUNTS RECEIVABLE**  
**COLLECTION LETTERS**

Letter #1  
(Revise as circumstances dictate)

SBA LETTERHEAD

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Date: \_\_\_\_\_

Re:

(Salutation)

The subject firm has granted the Small Business Administration, an Agency of the United States Government, a "Security Interest" in accounts receivable. The Agreement entered into authorizes the Small Business Administration to require payments to be made directly to it.

Your account is covered by this Agreement and demand is hereby made for full payment. Payments to any other person subsequent to the receipt of this demand will not discharge your indebtedness.

Full payment of the balance due of \$\_\_\_\_\_ must be made to this Agency at the above address, within ten days. Please make your check payable to the "Small Business Administration." A pre-addressed envelope is enclosed for your convenience.

If you have any questions, I can be reached at (use the office's Borrower Help Line 800 number).

Sincerely,

\_\_\_\_\_ (NAME)  
\_\_\_\_\_ (TITLE)

Letter #2  
(Revise as circumstances dictate)

SBA LETTERHEAD

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Date: \_\_\_\_\_

Re:

(Salutation)

As notified previously, the subject firm has granted the Small Business Administration, an Agency of the United States Government, a security interest in its accounts receivable. The right to receive such accounts receivable, of which yours is one, is now vested in the United States of America.

You have been notified that you are now indebted to United States Government in the amount of \$ \_\_\_\_\_. This amount is now past due. If, for some valid reason, you are not able to discharge this liability in full, contact the undersigned immediately. Your cooperation will forestall further action by this Agency.

Make your check payable to "Small Business Administration." A pre-addressed envelope is enclosed for your convenience in returning your payment.

If you have any questions, I can be reached at (use the office's Borrower Help Line 800 number).

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_  
(NAME)  
(TITLE)

Letter #3  
(Revise as circumstances dictate)

SBA LETTERHEAD

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Date: \_\_\_\_\_

Re:

(Salutation)

On (date of letter #1), we informed you of your outstanding debt to the U.S. Government as a result of certain accounts receivable that were pledged to secure a loan to

Subsequent correspondence to you requested the immediate payment of this debt to forestall any further action by this Agency to effect enforced collection.

This office now feels that adequate time has elapsed for you to remit this obligation in full to this Agency. Your failure to comply with this request will result in collection efforts by this Agency, which could include referring this matter to a private collection agency and/or the U.S. Department of Justice for legal action.

Make checks payable to "Small Business Administration." A pre-addressed envelope is enclosed for your convenience in returning your payment.

If you have any questions, I can be reached at (use the office's Borrower Help Line 800 number).

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_  
(NAME)  
(TITLE)



**APPENDIX 22**  
**SHARED APPRECIATION AGREEMENT FORMAT**

(This basic format should be tailored, as necessary, to satisfy the requirements of the individual situation.)

This Agreement is entered into between the U.S. Small Business Administration ("SBA") and [Borrower's name] ("Borrower") on [Date] and expires on [Date (maximum term is ten (10) years)].

Borrower is indebted to SBA for loan(s) as evidenced by the note(s) described below:

Date \_\_\_\_\_ Principal Amount \_\_\_\_\_  
 Interest Rate \_\_\_\_\_ Due Date \_\_\_\_\_

This Agreement is attached to the note(s) described above. As of the date of this Agreement, before write-down, the unpaid principal balance on this note (these notes) was \$ \_\_\_\_\_ and the unpaid interest balance was \$ \_\_\_\_\_. This note (These notes) was (were) modified by the following new note(s), which is (are) attached to the original note(s) described above.

Date \_\_\_\_\_ Principal Amount \_\_\_\_\_  
 Interest Rate \_\_\_\_\_ Due Date \_\_\_\_\_

The new note(s) described above are secured by the following real estate security instruments:

As a condition to, and in consideration of, SBA writing down the above amounts and restructuring the loan, Borrower agrees to pay SBA an amount according to one of the following payment schedules:

1. Seventy-five percent (75%) of any positive appreciation in the market value of the property securing the debt as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date the Borrower pays the debt in full, ceases operations or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.
2. Fifty percent (50%) of any positive appreciation in the market value of the property securing the debt above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the debt in full, ceases operations or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

The amount of recapture by SBA will be based on the difference between the value of the security at the time of disposal and the value of the security at the time this Agreement is entered into. If Borrower violates the term of this agreement, SBA will liquidate after Borrower has been notified of the right to appeal.

Present market value of the property securing loan(s) at time this Agreement was entered into: \$\_\_\_\_\_

U.S. Small Business Administration

By: \_\_\_\_\_  
(Borrower's Signature) (Print or Type Name)  
(Print or Type Name) Title: (Print or Type) \_\_\_\_\_

**APPENDIX 23**  
**PROTECTIVE BID -- REAL ESTATE -- ON PIPELINE SBA FORM 327**

MODIFICATION OR ADMINISTRATIVE ACTION SBA FORM 327 - PipeLine Version (4/94) - (CLARKSBURG/0390)			
NAME OF BORROWER <b>JONATHAN'S OF ORLANDO, INC.</b> 3425 Murdoch Avenue Anytown, U. S. A. 12345		PARTICIPANT	
LOAN NO.:	REPORT DATE:	ACTION #: 20	
APPROVAL DATE:	TYPE: 07 = Guaranty	INITIAL DISB. DATE: 08/25/87	
APPROVED AMOUNT:	SERVICED BY: S	FINAL DISB. DATE: / /	
% OF GUARANTY:	PURCHASE DATE:	TOTAL AMT DISB.:	
CURRENT BALANCE:	CLASSIFICATION: In Liquidation	SOP REF AND PARAGRAPH #:	
MATURITY DATE:	DATE TO LIQ.(IF APP.): 08/28/96	50 51 - 1	
	DATE CHG. OFF (IF APPL.): / /		
<b>REF.</b>			

**CAUSE FOR REPORT:** Consideration of bid position at real estate sale. Sale Date: \_\_\_\_\_ ; Time: \_\_\_\_\_ ; Location of Sale: \_\_\_\_\_  
 Auctioneer: \_\_\_\_\_

**COLLATERAL TO BE SOLD:**

**CONDITION OF PROPERTY:**

**APPRAISAL BY:** \_\_\_\_\_ Dated: \_\_\_\_\_

**MINIMUM BID:** \$ \_\_\_\_\_

	Fair Market Value	Forced Sale Value at 70% of FMV
<b>PROTECTIVE BID ANALYSIS:</b>	500000	350,000.00
Total Prior Liens (\$)	75000	75,000.00
Taxes Due (\$)	5000	5,000.00
Other (miscellaneous expenses, i.e. care and preservation, utilities, resale cost if acquired as COLPUR, etc.) (\$)	7500	7,500.00
<b>Available Equity (\$)</b>	<b>412,500.00</b>	<b>262,500.00</b>

**RECOMMENDATION OF PARTICIPANT:**

**COMMENTS:**

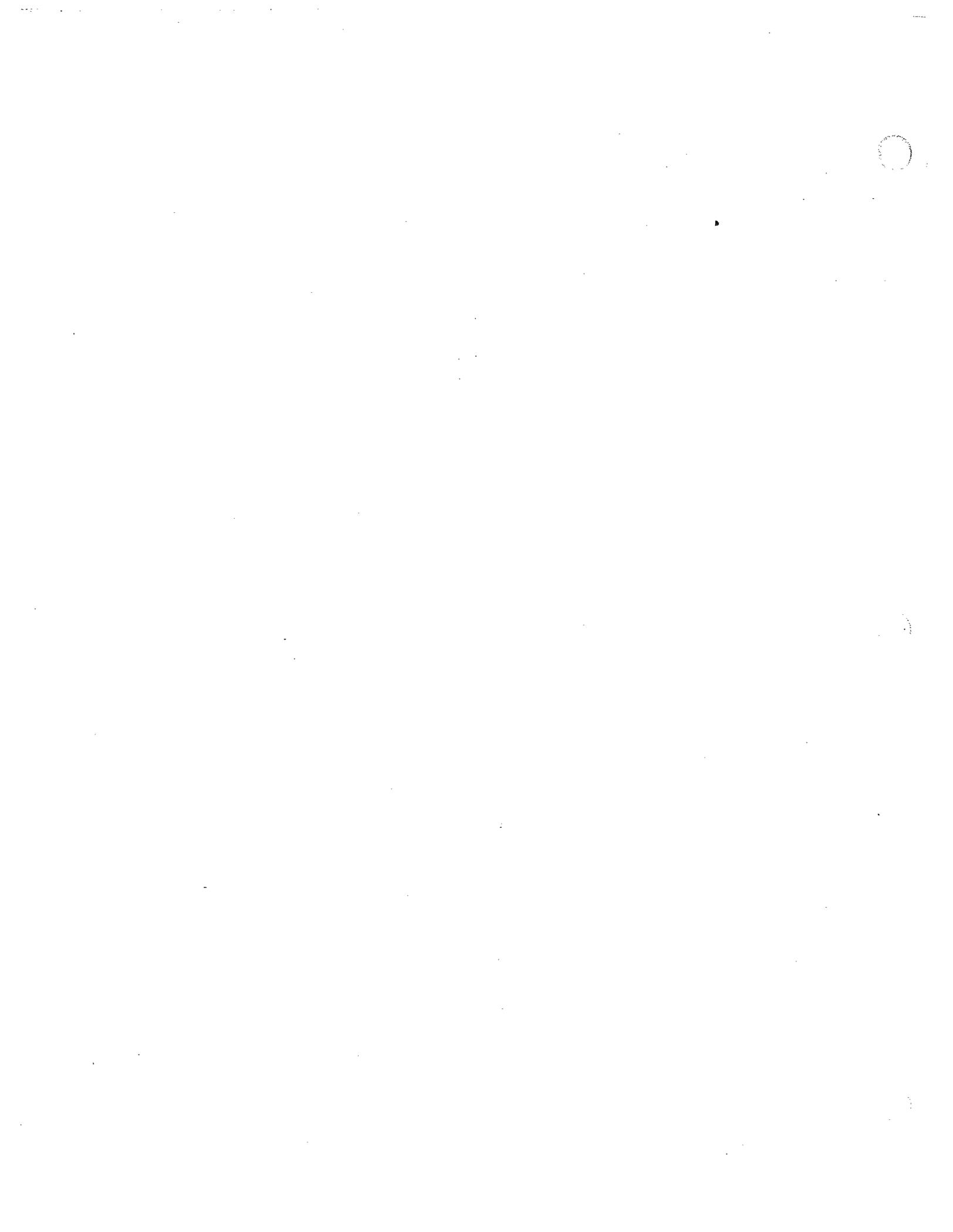
**RECOMMENDATION:** Approve a Protective Bid of \$.

\_\_\_\_\_  
 Liquidation L/O  
 Date: \_\_\_\_\_

Comments

I do ( ) I do not ( ) approve

\_\_\_\_\_  
 Date: \_\_\_\_\_



**APPENDIX 24**  
**PROTECTIVE BID -- PERSONAL PROPERTY**  
**ON PIPELINE SBA FORM 327**

<b>MODIFICATION OR ADMINISTRATIVE ACTION</b> SBA FORM 327 - PipeLine Version (4/94) - (CLARKSBURG/0390)			
NAME OF BORROWER <b>JONATHAN'S OF ORLANDO, INC.</b> ANYTOWN, U. S. A.		PARTICIPANT <b>XYZ BANK</b> ANYTOWN, U. S. A.	
LOAN NO.:	REPORT DATE: <b>January 16, 1997</b>	ACTION #: <b>21</b>	
APPROVAL DATE:	TYPE: <b>07 = Guaranty</b>	INITIAL DISB. DATE: <b>08/25/87</b>	
APPROVED AMOUNT:	SERVICED BY: <b>S</b>	FINAL DISB. DATE: <b>/ /</b>	
% OF GUARANTY:	PURCHASE DATE: <b>08/10/93</b>	TOTAL AMT DISB.:	
CURRENT BALANCE: \$	CLASSIFICATION: <b>In Liquidation</b>	SOP REF AND PARAGRAPH #:	
MATURITY DATE: <b>08/25/98</b>	DATE TO LIQ.(IF APP.): <b>08/28/96</b>	<b>50 51 - 1</b>	
	DATE CHG. OFF (IF APPL.): <b>/ /</b>		
<b>REF.</b>			

**CAUSE FOR REPORT:** Consideration of bid position at personal property sale. Sale Date: \_\_\_ ; Time: \_\_\_ ; Location of Sale: \_\_\_ . Auctioneer: \_\_\_\_\_ .

**COLLATERAL TO BE SOLD:** .

**CONDITION OF PROPERTY:**

**APPRAISAL BY:** \_\_\_\_\_ Dated: \_\_\_\_\_

**MINIMUM BID:** \$ \_\_\_\_\_

	Fair Market Value	Forced Sale Value at 50% of FMV *
<b>PROTECTIVE BID ANALYSIS:</b>	100000	50,000.00
Total Prior Liens (\$)	-0-	0.00
Taxes Due (\$)	-0-	0.00
Other (\$)	5000	5,000.00
Available Equity (\$)	95,000.00	45,000.00

\*Percentage used could range on average from 20 to 50% on personal property. This decision must be based on the type of personal property you are selling. If it is restaurant equipment - that which is an item readily available on the market - we would probably want to keep the liquidating value at 20%. On the other hand if it is heavy equipment in which there is a good demand, we might want to keep our liquidating value higher. The percentage has to be based on what you are selling and your general area.

**RECOMMENDATION OF PARTICIPANT:** .

**COMMENTS:** -

**RECOMMENDATION:** Approve a Protective Bid of \$.

\_\_\_\_\_  
Date: \_\_\_\_\_

Comments

I do ( ) I do not ( ) approve

\_\_\_\_\_  
Date: \_\_\_\_\_

**EFFECTIVE DATE: DECEMBER 1, 1997**



**APPENDIX 25**  
**UCC NOTIFICATION, PERSONAL PROPERTY SALE -- DIRECT LOAN**  
**EXAMPLE LETTER**

November 3, 1997

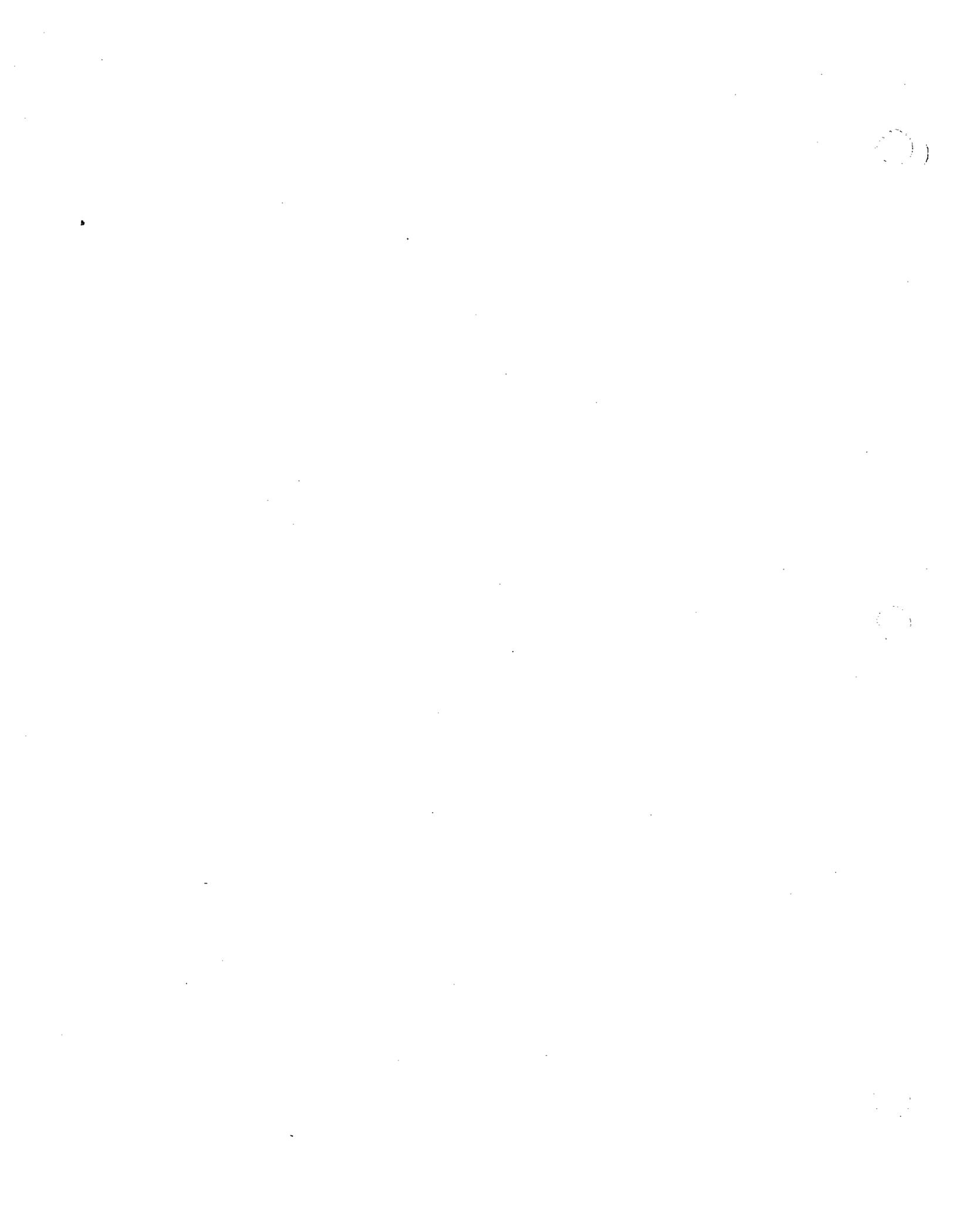
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Re:

Dear :

Pursuant to the appropriate provisions of the Uniform Commercial Code and the terms and conditions of Security Agreement(s) dated \_\_\_\_\_, between \_\_\_\_\_, Debtor, and Small Business Administration, Secured Party, default having been made in payment of the indebtedness secured thereby; this Agency will sell at public auction all of debtor's (list of collateral to be sold) at (location of sale), at (time of sale) on (date of sale), 19 \_\_\_\_.

Sincerely,



APPENDIX 26  
UCC NOTIFICATION, PERSONAL PROPERTY SALE -- XGP LOAN  
EXAMPLE LETTER

November 3, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Doe  
123 Main Street  
Anytown, U.S.A. 12345

Re:

Dear :

Pursuant to the appropriate provisions of the Uniform Commercial Code and the terms and conditions of Security Agreement(s) dated \_\_\_\_\_, between \_\_\_\_\_, Debtor, and Small Business Administration, Secured Party as an assignee of (Bank's name), default, having been made in payment of the indebtedness secured thereby; this Agency will sell at public auction all of debtor's (list of collateral to be sold) at (place of sale), at (time of sale) on (date of sale), 19 \_\_\_\_\_.

Sincerely,



**APPENDIX 27**  
**RECOMMENDED COMPROMISE REPORT FORMAT**

(Use SBA Form 327. Include only the following items which are applicable and/or necessary to explain the recommendation to the approving authority.)

1. **CAUSE FOR REPORT:** "To submit for consideration a (cash/term) compromise offer of \$\_\_\_\_\_."
2. **PROPOSING OBLIGORS:** Show full name(s) of offeror(s), their relationship to each other, if appropriate, and whether borrower, assumptor, limited or full guarantor.
3. **FINANCIAL STATEMENTS OF OFFEROR(S):** Attach the F/S submitted with the original loan application plus the current SBA Form 770, DJ-35, and/or other pertinent information available. Compare the financial statements and narratively explain each material change. What happened to the stock previously held? What happened to the home? Other real estate? What did debtor do with the proceeds? (If the obligor is really trying in good faith to effect a settlement you can obtain all the necessary information.)
4. **ASSETS NOW OWNED:** Provide a schedule reflecting the forced sale value of each major item. Reflect amount of prior liens and outstanding taxes. Identify the estimated costs of enforced collection. Conclude with the net estimated recovery from all assets.
5. **HISTORY OF THE ACCOUNT:** Summarize the pertinent features of the loan and the reasons for problems.
6. **HISTORY OF OFFEROR(S):** Give the age and general health, if known, of each offeror. Show educational background, trade, profession, current position held, present earnings and number of dependents. Identify the extent of involvement each had in the business and the extent of cooperation provided in achieving the best possible recovery from business assets.
7. **FRAUD OR MISREPRESENTATION:** Explain any apparent effort to place assets beyond the reach of SBA or any instance of misrepresentation or possible fraud. If the case was referred to OIG, summarize the situation and state briefly the results.
8. **CONCURRENCE OF PARTICIPATING LENDER:** State position of the participant regarding the offer and any other relevant comments.
9. **DEPARTMENT OF JUSTICE (U.S. ATTORNEY) RECOMMENDATION:** If DOJ is involved and has provided comment regarding the offer, include appropriate remarks.
10. **SOURCE OF FUNDS FOR PAYMENT OF THE AMOUNT OFFERED:** List pertinent details on any assets being sold to raise the funds. If the funds are being obtained via a loan, state what collateral is being offered for the loan.
11. **EXTENT OF NEGOTIATIONS:** Describe the negotiation process which resulted in the offer at hand.

12. COMMENTS OF LIQUIDATION OFFICER: Provide an objective analysis of the situation and an explanation of all pertinent factors. Comment on the extent of negotiation. Set out any information that has a material bearing on the case. Provide all the facts. Outline how net present value of forced collection was determined. This section should fully justify your recommendation.
13. RECOMMENDATION OF LIQUIDATION OFFICER: If approval is recommended, state what other action will be needed to finalize this debt (e.g., other guarantors to pursue, assets which have not yet been accounted for, charge off).  
  
NOTE: If charge off is appropriate after settlement, a separate SBA Form 327 must be used. A charge off report cannot be combined with any other action.
14. "LITIGATIVE PROBABILITIES" OPINION AND RECOMMENDATION OF SBA COUNSEL:  
(Self-explanatory).
15. COMMENTS AND RECOMMENDATION OF LINE SUPERVISOR:  
(Self-explanatory).
16. COMMENTS AND FINAL ACTION OF APPROVING OFFICIAL when the field office has delegated authority to approve the action.
17. COMMENTS OF HEADQUARTERS CLAIMS REVIEW COMMITTEE (HCRC) and final action when HCRC is required to take action. (See Chapter 17, "Compromise Actions")

NOTE: The SBA Form 327 should not be distributed until after receipt of the agreed upon consideration in order to avoid premature recording of the transaction and/or application of funds as a charge off recovery.

**APPENDIX 28**  
**IRS TAX REFUND OFFSET PROGRAM**

## **GUIDE TO THE IRS TAX REFUND OFFSET PROGRAM**

### **GENERAL**

The **IRS Tax Refund Offset Program (TROP)** was initiated by the Deficit Reduction Act of 1984. The Cash Management Improvement Act Amendments of 1992 mandated the use of tax refund offset by all federal agencies, and expanded the program to include businesses in 1995. SBA's regulations on offset are contained in 13 CFR §140.

### **LIMITATIONS PERIOD**

There is a 10-year limitation on referral of delinquent debts for IRS tax refund offset. For direct loan obligors, the time period is 10 years from the date SBA's right of action accrues (when a loan becomes delinquent). For guarantors, offset must occur within 10 years from the date of written demand for payment. This demand must have occurred within a timely manner after the guaranteed loan became delinquent (no later than the limitations period for enforced collection on the loan, generally 6 years). Please consult with counsel if there is a question concerning limitations. Receipt of voluntary payments can generate a new delinquent date, thus establishing a new 10-year limitation. If no voluntary payments are received within a 10-year period, a 1099C will be issued, and SBA can no longer pursue collections, although voluntary payments may be accepted at any time.

### **WHAT ACCOUNTS ARE INVOLVED?**

#### **(1) DISASTER HOME LOANS**

SBA automatically refers all disaster home loans that are **over 180 days past due** (regular servicing, liquidation or charged-off). Accounts coded by a servicing office as "**do not refer**" for reasons including compromise, in dispute, work out, bankruptcy, or otherwise not legally enforceable are excluded. Accounts with a balance of less than \$100 are not referred. Obligors who are eligible for federal salary offset (i.e., an active or retired federal or U.S. Postal Service employee) are excluded from referral. See Attachment 1 for instructions on preventing the referral of a consumer or business account.

#### **(2) GUARANTORS**

A PMN record is required for each guarantor a servicing office wishes to refer, as well as the completion of screen PMMU01. These procedures are explained in Section IV, Chapter 10, of the SBA Data Communications Systems User Manual, "**Loan Portfolio Management & Debt Servicing Systems, Federal Tax Refund Offset Program (PMM)**". This chapter can be accessed through the SBA Bulletin Board.

#### **(3) BUSINESS LOANS**

The following criteria must be met for referral:

Loan must be Direct or XGP (SBA-serviced only until further systems changes are made) Identified by an EIN (LAUD13, Field 032). Loans in **regular servicing or liquidation** must be coded manually by the servicing office to be referred. Applicable codes for referral are: 34,35,36,45,46,94,96. Loans in charge-off status will be referred automatically.

### **CREDIT BUREAU REFERRAL**

All obligors who are on the certification tape sent to IRS in January, will also be reported to credit bureaus. Data provided to credit bureaus include: name, address, social security number, loan amount, account status, and payment history. The data on delinquencies may be retained by credit bureaus, as a matter of record, up to seven years.

### **REFERRAL vs CERTIFICATION**

Our offset program makes a sweep of our loan accounting and PMM databases and extracts those delinquent accounts that meet SBA selection criteria. These criteria are established following Department of Treasury, IRS, and OMB rules, regulations, and statutes. During the **Pre-offset phase** of the offset program, IRS compares our data to its master file. If a match occurs (name control and TIN), they provide us with an address that must be used to notify the obligor. Numerous rejects occur during pre-offset. IRS may reject an account because it is being offset by another agency, there may be bankruptcies we are not aware of, there is an on-going investigation, etc. During annual certification, additional factors are considered in obtaining a match, **for example, businesses not required to file a Form 1120 tax return (corporations), will not be certified.**

### **DISCLOSURE OF TAXPAYER INFORMATION**

By statute, tax information disclosed by the IRS to federal agencies is to be used by employees of the agency receiving the information only for the purposes of, and to the extent necessary, to establish appropriate agency records, locate any person for whom a refund offset is sought, or in any litigation or administrative procedure resulting from such an offset. Agencies are not authorized to further disclose return information (which is defined by IRS as borrower identity, the amount being offset, and information concerning joint returns.)

SBA is required by the Internal Revenue Code to adhere to the following safeguard requirements at all times:

1. Maintain a system of records,
2. Maintain a secure place of storage,
3. Restrict access to return information,
4. Provide other safeguards as necessary, and
5. Dispose of return information upon completion of use (hard copies should be shredded).

### **NOTICE TO DEBTORS**

About October 1 of each year, the required 60-day notice is mailed to all borrowers and guarantors identified for IRS offset. The mailing will consist of the "Notice to Debtors" (Attachment 2), along with a special SBA Form 1201, "Repayment Notice," which is sent to obligors using addresses provided by IRS. Receipt is presumed, unless the notice is returned by the postal service as undeliverable. If SBA's name control and social security number (SSN) do not match with IRS's master file, no address is provided and these accounts are, therefore, **not eligible** for offset. However, SBA will send a notice to those accounts not matched using the address in its database since voluntary payments may be generated.

The notice advises that the obligor (borrower/guarantor) will be referred for tax refund offset and reported to credit bureaus. We further advise that the balance of accounts not repaid can be reported to IRS as income. To avoid referral to the IRS and credit bureaus, borrowers and guarantors have 60 days from the presumed date of receipt of the first notice (5 days after mailing) to pay the loan in full, negotiate a repayment agreement, or support in writing the basis for any dispute concerning the amount owed.

### **IRS COORDINATORS**

To minimize the impact on servicing office personnel, and to provide a single focus for this program, the borrowers/guarantors are directed by the 60-day notice to contact a toll-free number (1-800-736-6048) at SBA's Birmingham Disaster Home Loan Servicing Center. Since some debtors may elect to call their local servicing office. Each servicing office should identify an "IRS Coordinator" to handle such inquiries and to cooperate with the Birmingham staff, telephone (205) 731-0979.

Records of contacts by borrowers shall be maintained in the Delinquent Loan Collection System (DLCS) or the Liquidation/Litigation Tracking System (LLTS), as appropriate.

Each designated IRS coordinator or Liquidation Chief will be provided with a list of obligors who are potential referrals for IRS tax refund offset. This list must be reviewed to ensure that all accounts listed are still eligible for referral.

### **DELETING DEBTORS FROM REFERRAL TO IRS**

Debtors who pay off their balance in full, bring their account(s) current or agree to a repayment plan prior to December 11, will be removed from the offset process. For consumer and business accounts, deletion because of bankruptcy, compromise, notification of death, or work out, is accomplished by the IRS coordinator properly coding the account using screen LAUD13, Field 073. The PMM system must be used to remove guarantors (PMMI00-menu screen). Payment plans should be established using SBA Form 327, "Modification or Administrative Action." Charged-off loans and loans in liquidation with approved payment plans should be returned to regular servicing for follow up and to have 1201 repayment notices issued, once a regular pattern of payments has been established. The repayment notice can be reinstated by using LAUD13, Field 623.

**To prevent referral to IRS, you must delete an obligor by December 15.** Offset of an obligor can be prevented even after the certified tape has been sent, through the above procedures. SBA updates the list of potential offset candidates weekly. However, **if an obligor informs you of a legitimate reason why they should not be offset and have already filed their tax return, it may be too late to prevent offset.** Contact the Office of Borrower & Lender Servicing to request that a refund be issued.

LAUD13 (field 031) is used to correct a social security number, and LAUD13 (field 032) for EINs. LAUD02 can be used to change name or address. **The PMM System must be used to record, update, or review data on guarantors.** There is also a screen that must be completed to recall a guarantor. All screens are accessed via the PMMI00 menu. Information reported to credit bureaus is captured on screen PMBI01.

For additional instructions and appropriate codes, refer to the LAUD help screens, the SBA-DCS handbook, and the PMM Systems manual.

### **DISPUTE REVIEW PROCEDURES**

All borrowers and guarantors who dispute their debt must be given due process. General guidelines for the review of debtor disputes are provided in Attachment 3. The Birmingham office can accept payments and will work with general inquiries from all obligors. Letters received in Birmingham disputing SBA's claim may be sent to the appropriate servicing office for review and action. In the interest of maintaining uniformity of approach, staff from the Birmingham office will be available to discuss any questions on the offset process with servicing offices.

### **INQUIRIES**

Questions about the IRS tax refund offset program may be directed to the Birmingham Servicing Center (205-731-0979) or the Office of Borrower & Lender Servicing. Legal inquiries may be directed to the Office of General Counsel.

#### Attachments:

- 1--Deletion from Referral to IRS
- 2--Notice to Debtors
- 3--Dispute Resolution Guidelines
- 4--Sample Letter

ATTACHMENT 1

## DELETION FROM REFERRAL TO IRS

The Department of Justice (DOJ) directs our attention to serious problems created when debts that are referred to it for litigation, are also referred to the IRS for refund offset. Please review your loans to ensure that the appropriate loan status comment code has been entered. Codes 36 and 96 should be used in litigation situations only after a judgment has been obtained, the account has been returned to SBA, and collection on the judgment is sought through IRS offset.

UPDATING A LOAN RECORD: Use the LAUD or PMM system, as appropriate to make changes. You **MUST** use the PMM system to input, update, or review guarantor data. Refer to the SBADCS Users Manual or on-line help screens for further instructions.

The following codes WILL PREVENT REFERRAL or RECALL A LOAN after referral:

21--Consumer deceased	69--Bankruptcy Chap. 13
31--Dispute/review	73--Disputed claim
33--Refer to coll agency	76--Settlement in Full
37--Litigation/don't refer	79--Bankrupt
43--Judgment Sat/don't refer	81--Deceased
51--Dscnt'd prepayment made	84--Paid in Full
64--Pd acct/was chg off	88--Disability
67--Bankruptcy Chap. 7 or 11	93--Judgment/don't refer
68--Compromised	99--Workouts/don't refer

**ATTACHMENT 2****(NOTICE TO DEBTORS)**

Dear Obligor:

By law, federal agencies are required to refer delinquent debt to the Internal Revenue Service (IRS) for income tax refund offset. This is official notice that SBA intends to refer you to the IRS as a delinquent borrower or guarantor.

**What are the Consequences?:** (1) Any federal income tax refund to which you might be entitled may be retained for application against your overdue account/obligation with SBA. (2) SBA will also report you to credit bureaus, providing them with information about your delinquent obligation, including your name, address, social security number, loan amount, account status and payment history. Your ability to obtain future credit may be hindered since information on accounts reported as delinquent may be retained by credit bureaus for a period up to seven years. (3) If your account is not repaid, SBA will report the unpaid balance to the IRS as income to you (1099C). The IRS may assess additional taxes against the amount reported, which you will be required to pay.

**To Avoid Referral:** Send payment in full to SBA, or send a substantial partial payment, within sixty (60) days of this notice. If you do so, SBA will not send your name to the IRS or credit bureaus. The amount you owe and your loan number are indicated on the enclosed form. You must include your loan number on your check or money order to ensure proper credit.

**If you have a Dispute:** You have the right to present evidence that all or part of debt is not due, or is not legally enforceable. You also have the right to dispute any information that SBA will send to credit bureaus; however, you must do so, in writing, within sixty (60) days. You must also include copies of any documents which show that the debt is not past due or is not legally enforceable (such as canceled checks, SBA letters, court orders showing a discharge in bankruptcy, or other debt resolution). Send your evidence to:

Small Business Administration  
P.O. Box 12247  
Birmingham, AL 35202-2247

**Joint Income Tax Returns:**

If you file a joint federal income tax return but have no legal responsibility for this debt, you may be entitled to receive a portion of the joint refund. You should request Form 8379, "Injured Spouse Claim and Allocation", from the IRS before filing your return. Instructions are included on the form.

If you have any questions about this notice, call SBA toll-free at 1-800-736-6048.

Enclosures:

SBA Form 1201 (repayment notice w/attached payment coupon)  
Mailing Envelope

**ATTACHMENT 3****DISPUTE RESOLUTION GUIDELINES****I. Review by Birmingham Servicing Center**

Birmingham will review all mail it receives from debtors. Simple disputes will be resolved in the Birmingham Center; complex situations will be referred to the local servicing office.

**II. Deletion of Debtors Disputing Claim**

All debtors having a valid dispute shall be coded for removal from the IRS referral list by the IRS Coordinator by appropriate method, pending resolution of any disputed claim. Servicing offices must, upon receipt, delete the names of any debtors whose dispute is to be handled by that office. Debtors must be notified that their name(s) have been deleted pending review. A sample letter is provided (see Attachment 4).

**III. Rule of Two and Concurrence of Counsel**

The responsible loan officer shall review each claim and make a recommendation after considering documentation submitted by the debtor and SBA's records. No oral hearing or face-to-face meeting is required. The loan officer shall document his or her recommendation on Form 327. The line supervisor, or other individual with delegated authority shall take final action on the recommendation in accordance with the "rule of two." Counsel should concur if legal issues are involved. In the event of disagreement among the three parties, standard procedures for review shall apply. However, no dispute may be resolved against the debtor unless counsel states that the debt is past due and legally enforceable. Once the appropriate concurrences have been obtained, no further right of appeal need be granted.

**IV. Definitions**

A. Past Due. According to IRS criteria, any debt which has not been accelerated is past due for purposes of this program if it has been delinquent for at least three months. Any loan which has been accelerated is considered to be due and remains past due until paid in full or until SBA renews, extends or re-amortizes the loan. For policy reasons, SBA has chosen to include debts in regular servicing and in liquidation only if they are 180 or more days delinquent (consumer loans).

B. Legally Enforceable (Time Limits). A debt is legally enforceable if the Agency is not barred from bringing a collection action against the individual before any state or federal court or administrative agency. The Debt Collection Act of 1982 allows federal administrative offset up to 10 years after default. For SBA's purposes, no guarantors of loans which have been delinquent for more than 16 years may be referred to IRS (i.e., offset must occur no later than ten years from the time SBA made written demand on the guarantor, which had to take place within six years of the loan's becoming delinquent). Non-judgment debts are legally enforceable by offset for 10 years, while judgment debts may be enforced beyond that time, but are limited to 10 years in this project.

C. Legally Enforceable (Other). Debts which are not barred by a statute of limitations may be unenforceable for other reasons such as: discharged by a bankruptcy court, debts of a decedent whose estate is closed, or debts which have been compromised.

V. Offers to Compromise or to Reestablish Payment Plans

Many debtors will respond to the notice of potential offset by making offers in compromise or reestablishing a payment plan. To protect the rights of debtors and the integrity of this collection effort, such offers should be carefully and fairly considered. Reasonable offers by a debtor should be met with diligent efforts to consider the matter before the IRS referral deadline. Birmingham will "work out" the cases it receives, and servicing offices will consider any offers they receive. Birmingham and servicing office personnel must consult on all workouts to ensure that debtors are not negotiating with both offices simultaneously.

VI. Notice of Decision

The servicing office must notify the debtor, in writing, of its decision. Denials of disputes should include a finding that the debt is past due and legally enforceable. Any debtor whose name is deleted from possible IRS referral for any reason should be notified of that outcome, but should be advised in a manner which will not lead the debtor to believe that the debt has been satisfied. Counsel should review the letter to insure that SBA does not give up the right to pursue such debtors in the future through routine collection, litigation, administrative offset, referring the debt to IRS as income, or any other debt collection initiative.

**ATTACHMENT 4****SAMPLE LETTER**

(Borrower Removed from Referral Pending Review)

(Debtor's Name and Address)

Dear Obligor:

The Small Business Administration previously notified you of its intention to request the Internal Revenue Service (IRS) to offset your 1995 income tax refund payable in 1996. This letter acknowledges receipt of your objection to our proposed action and informs you that your name will be not be referred to the IRS/credit bureaus while your dispute is under review.

You should submit relevant evidence which proves that you do not owe this Agency the amount claimed or which shows that you are making payments as agreed. Such evidence might include canceled checks, letters from this Agency, or court documents. If you intend to send additional information please advise me within 5 days of this letter at the address above. This additional evidence must be received in this office by **November 24, 1995**. I will review your materials and make a decision which may be evaluated by a supervisor and an attorney. The resulting decision will be final.

We will also consider a reasonable offer to repay this debt. Such an offer, at a minimum, should contain a **substantial lump sum payment**, to be followed by significant, regular payments. If the offer, or payment in full, is received by **December 11**, your name will be deleted from the IRS referral list.

Loan Officer's Name,  
Title, Telephone Number



**APPENDIX 29**  
**CLAIMS COLLECTION LITIGATION REPORT (CCLR)**

**CLAIMS COLLECTION LITIGATION REPORT (CCLR)**  
*(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)*

<b>1. Agency Claim No.</b>	<b>2. Date</b>
<b>THE CLAIM AT A GLANCE</b>	
<b>3. To: (Use Complete Address)</b>	<b>4. From: (Use Complete Address)</b>  U.S. Small Business Administration 200 West Santa Ana Boulevard, Suite #700 Santa Ana, California 92701
<b>5. Debtor's Name &amp; Address:*</b>	
* (If a FORECLOSURE, insert address of property here so claim will be referred to USAO where property is located.)	
<b>6. Debtor's SSN/EIN:</b>	<b>7. Default Date:</b>
<b>8. SOL Expiration Date:</b>	<b>9. Basis for SOL Expiration Date:</b>
<b>10. Referred for:</b>  <input type="checkbox"/> Enforced Collection <input type="checkbox"/> Judgement Lien Only <input type="checkbox"/> Renew Judgement Lien Only <input type="checkbox"/> Renew Judgement Lien & Enforce Collection <input type="checkbox"/> Program Enforcement <input type="checkbox"/> Foreclosure Only <input type="checkbox"/> Foreclosure & Deficiency Judgement  <input type="checkbox"/> <u>DOJ Concurrence for:</u>  <input type="checkbox"/> Compromise (4 CFR 103) <input type="checkbox"/> Suspension (4 CFR 104) <input type="checkbox"/> Termination (4 CFR 104)  <b>10a.</b> <input type="checkbox"/> <b>DEBTOR IN BANKRUPTCY:</b> Chapter: <input type="checkbox"/>	<b>11. Amount of Claim:</b>  a. Total Principal Due \$ __  b. Total Interest Due \$ __ Through _____  c. Total Administrative Charges Due \$ <u>Filing fees and court costs</u>  d. Total Penalty Charges Due \$ <u>Collection Expenses</u>  e. Total amount of Claim \$ principal ( _____ )+ interest accruing after ( _____ )+ court costs, filing fees and any other collection expenses. _____%  <b>12. Annual Rate of Interest</b> _____%  <b>13. Compromise Amount or %</b> \$ <u>N/A at this time.</u>
<b>14. Basis of Claim:</b>  <input type="checkbox"/> Claim evidenced by note, guaranty, or surety obligation; OR <input type="checkbox"/> Claim not evidenced by note but by the following statute or regulation:	<b>15. Agency Contact:</b>  Name: __  Phone Nos.: __

CLAIMS COLLECTION LITIGATION REPORT (CCLR) (cont.)

Page 1 of 7

INSTRUCTIONS FOR COMPLETING  
THE REVISED CLAIMS COLLECTION LITIGATION REPORT (CCLR)

Section 105.2 of the Federal Claims Collection Standards, 4 CFR 101-105, requires that all claims referred to the Department of Justice (DOJ) or U.S. Attorneys' Offices (USAO) be accompanied by a CCLR. By referring this claim you certify that your agency has complied with the appropriate collection requirements of 4 CFR 101-104. All applicable sections of the CCLR **MUST** be completed. **INCOMPLETE CCLRS WILL BE RETURNED.** This CCLR package **MUST** contain **AT LEAST** the items listed in **BLOCK 59** of this form.

SPECIFIC INSTRUCTIONS

These instructions are keyed to the numbered blocks on the CCLR. Agencies forwarding claims should fill in blocks 1-58, as appropriate, blocks 60 and 61, and block 67. If the primary debtor is an individual, it may not be necessary to furnish the information called for in blocks 26-33. Conversely, if the debtor is a company you may skip blocks 16-25. If this is a foreclosure case, you must also fill in blocks 46-50.

**DOJ/USAO personnel who receive claims should fill in blocks 62-66 and mail the "Acknowledgement Form" back to the referring agency.**

THE CLAIM AT A GLANCE

1. Agency Claim No.: Insert the number your agency uses to identify this claim here, at the top of each page this CCLR, and in block 61 on page 7 of this CCLR.
2. Date: Insert date you send this CCLR to DOJ or to DOJ's Central Intake Facility (CIF).
3. To: Insert name and complete mailing address of the USAO in whose district the debtor resides (or in a foreclosure case, the district in which the property is located), or the DOJ Division to which you are referring this claim. (SEE CCLR MAILING DIRECTIONS ON "PAGE 6" OF THESE INSTRUCTIONS.)
4. From: Insert name and complete mailing address of the agency office referring the claim.
5. Debtor's Name & Address: Insert first, middle and last name, and full address, of the primary individual debtor, or the full name and address of a company debtor here. **But, if this is a foreclosure case, insert the address of the property to be foreclosed on here,** and the debtor's address, if different, in block 46. If the property to be foreclosed on has no street address, be sure to give directions to property on block 58 or on a CCLR Supplementary Data Sheet.
6. Debtor's SSN/EIN: If an individual is liable for the debt, insert the individual's Social Security Number (SSN) here. If a company is liable for the debt, insert both the individual's SSN and the company's EIN.

**CLAIMS COLLECTION LITIGATION REPORT (CCLR) (cont.)**

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**CCLR**

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

1. Agency Claim No.

**THE INDIVIDUAL DEBTOR**

16. Debtor's Full Name:

17. AKA:

18. Date of Birth:

19. Home Phone No. (Include Area Code):

20. Employer's Name &amp; Address:

21. Debtor's Job Title:

22. Work Phone No. (Include Area Code):

23. Debtor's Salary: \$ \_

_	Gross	_	Weekly	_	Monthly
_	Net	_	Biweekly	_	Annually

24. Best place for Marshal to serve process by personal delivery:  
 (Do Not give P.O. Box) \_ Home \_ Work  
 \_ Other (Specify)

25. Name of person who verified above data, date verified and  
 how verified:

**THE COMPANY DEBTOR**

**NOTE:** If this claim is to collect a debt owed by any entity other than an individual person, such as a company, partnership, corporation, etc., additional information will be required. In such cases, insert the data called for in blocks 26-33 below and use CCLR Supplementary Data Sheets to furnish additional information, as appropriate.

26. Debtor's Full Name:

27. Debtor's Address:

28. DBA:

29. Phone No. (Include Area Code):

30. Type of Business:

31. Date &amp; State of Incorporation:

**CCLR INSTRUCTIONS (CONT'D)**

7. **Default Date:** Insert date the debtor originally defaulted on the loan, note, or other obligation, unless the debtor later "cured" that default. In such a case, insert date of the last "uncured" default which resulted in this claim being referred for litigation.
8. **SOL Expiration Date:** Insert date you believe the Statute of Limitations (SOL) for filing suit on this claim will expire.
9. **Basis for SOL Expiration Date:** Insert the basis for your calculation of the SOL expiration date; i.e., date of last voluntary payment (involuntary payments such as IRS tax refund offsets do not count), written acknowledgement of the debt, first demand, date lender or guarantor assigned this claim to your agency, etc.
10. **Referred for:** Insert "X" in appropriate box to indicate what you want DOJ/USAO to do with this claim. If referred for DOJ/USAO to do with this claim. If referred for DOJ concurrence only, insert "X" in appropriate box to show whether concurrence sought for compromise, suspension, or termination. **NOTE: IN ADDITION TO ANY OTHER BOX YOU CHECK IN BLOCK 10, IF DEBTOR HAS ALREADY FILED A PETITION IN BANKRUPTCY, INSERT "X" IN BOX 10a AND FOLLOW INSTRUCTIONS FOR 10a SET FORTH BELOW.**

**Enforced Collection:** Means you want DOJ to get a judgement against the debtor and pursue all available post-judgement remedies (wage garnishment, liens filed against property, etc.) **Required data:** Blocks 1-15; 16-25 or 26-33; 34-45, if applicable; 51-56; 57-58, if applicable 60-61; and 67.

**Judgement Lien Only:** Means you only want DOJ to get a judgement against the debtor, record the judgement as a lien against debtor's property, and return it to you for surveillance, IRS refund offset, et. DOJ will not pursue any post-judgement collection remedies on these cases. **Required data:** Blocks 1-15; 16-20; 24-25 or 26-33, as appropriate; 34-45, if applicable; 60-61; and 67.

**Renew Judgement Lien Only:** Means that you already have a judgement against the debtor for this claim but the judgement lien is about to expire and all you want DOJ to do is renew the lien and return it to you. **Required data:** Blocks 1-15; 16-17 or 26-27 as appropriate; 60-61; and 67.

**Renew Judgement Lien and Enforce Collection:** Means that your judgement lien is about to expire and you want it renewed, and, you have now found some debtor assets which you want DOJ to pursue collection of the renewed lien. **Required data:** Blocks 1-15; 16-25 or 26-33; 34-45, if applicable; 51-56; 57-58, if applicable; 60-61; and 67.

**Program Enforcement:** Means you are referring a claim for less than the minimal referral amount in 4 CFR 105.4, but you want DOJ to collect it because it is important to the enforcement of some agency program. **Required data:** Blocks 1-15; 16-25 or 26-33; 34-45, if applicable; 51-56; 57-58, if applicable; 60-61; and 67.

**Foreclosure Only:** Means you want DOJ to foreclose on the debtor's real estate and/or other property which is collateral for the loan which is now in default. You do not, however, want DOJ to try to get a deficiency judgement against the debtor if the amount recovered from the sale of the property is less than the amount of your claim. **Required data:** Blocks 1-15; 34-45, if applicable; 46-50; 54-56; 57-58, if applicable; 60-61; and 67.

**Foreclosure & Deficiency Judgement:** Means you want DOJ to foreclose on property which is collateral for the loan and get a deficiency judgement against the debtor if the proceeds from the foreclosure are less than the amount of your claim against the debtor. **Required data:** Blocks 1-15; 16-25 or 26-33; 34-45 if applicable; 46-50; 51-56; 57-58, if applicable; 60-61; and 67.



**CCLR INSTRUCTIONS (CONT'D)**

**DOJ concurrence for Compromise, Suspension, or Termination:** Means you only want DOJ to concur with your proposed action on the claim. **Required data:** Blocks 1-15; 16-25 or 26-33; 34-45, if applicable; 51-56; 57-58, if applicable; 60-61; and 67.

- 10a. **Debtor in Bankruptcy:** Insert "X" here if you have received an "ORDER FOR MEETING OF CREDITORS," or any other notice that debtor has filed a bankruptcy petition. THEN INSERT AN "X" IN THE APPROPRIATE BOX TO INDICATE CHAPTER 7, 11, 12, OR 13. In such cases, if you have not already filed your "Proof of Claim" with the Bankruptcy Court, you may use the attached form (BOF 10) to do so. Checking this box means you want DOJ/USAO to seek relief from the automatic stay, or take other appropriate action in the bankruptcy proceedings, to further protect your interests.

Attach to this CCLR a copy of the notice that you got from the Bankruptcy Court and a copy of the "Proof of Claim" you filed. **Required data:** Blocks 1-15; 16-25 or 33, as appropriate; 34-45, if applicable; 46-50, if applicable; 51-56; 60-61; and 67.

11. **Amount of Claim:** Insert figures called for in spaces (a)-(d) and total them in space (e). Also, insert date through which you calculated the interest due in the second line of space (b).
12. **Annual Rate of Interest:** Insert annual rate of interest applicable to this claim. If you have the daily rate at which interest accrues on this claim prior to judgement, also furnish that rate in Block 58 or on a CCLR Supplementary Data Sheet.
13. **Compromise Amount:** Insert minimum dollar amount, or percentage of the total of this claim, you will accept to compromise or settle it.
14. **Basis of Claim:** Insert "X" in appropriate box to indicate whether this claim is evidenced by a note, guaranty, or some other written obligation, and, if not, cite law or regulation giving rise to the claim.
15. **Agency Contact:** Insert the name and FTS and Commercial phone numbers of the person at your agency the DOJ/USAO person assigned to the claim should contact of questions arise about it. **THIS MUST BE SOMEONE KNOWLEDGEABLE ABOUT THIS CLAIM!**

**THE INDIVIDUAL DEBTOR**

16. **Debtor's Name:** Insert primary individual debtor's full name. (**Note:** If the primary debtor is married but his or her spouse is not a co-debtor, guarantor, or co-signer, use a CCLR Supplementary Data Sheet to furnish the data called for in blocks 16-25 on the debtor's spouse, in addition to the data you furnish on the primary individual debtor.)
17. **AKA (Also Known As):** Insert any other name(s) debtor known to have used, including maiden name if applicable, and the name debtor used on the note or loan application involved in this claim if different from debtor's name in blocks 5 and 16.
18. **Date of Birth:** Insert debtor's date of birth.
19. **Home Phone No.:** Insert debtor's home phone number, including the area code.
20. **Employer:** Insert full name and address of debtor's employer. Don't forget part-time jobs, if debtor "moonlights."

**CLAIMS COLLECTION LITIGATION REPORT (CCLR) (cont.)**

Page 4 of 7

**CCLR***(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)***1. Agency Claim No.****FORECLOSURES**

**NOTE:** If this claim is referred for foreclosure only or foreclosure and a deficiency judgement, the following additional data will be required. In such cases, insert the data called for in blocks 46-50 below and use CCLR Supplementary Data Sheets to furnish additional information, as appropriate.

46. Debtor's Address:

47. Mortgage Recording Information:

County

Date of Recording

Volume (Liber)

Page Number (Folio)

48. Property Occupancy:

Debtor Resides on Property: Yes  No Property is Abandoned: Yes  No Property occupied by tenant: Yes  No 

49. If recovery of chattels is included in the foreclosure, list the chattels here and provide more detailed information on the CCLR Supplementary Data Sheet:

50. List other Federal liens against property:

**DEBTOR'S ABILITY TO PAY**

51. The debtor/co-debtor owns or is buying the following real estate or other property (cars, boats, etc.):

52. Assets in which the Government has a secured interest:

53. Other Assets: (savings/checking accounts, provide bank and/or credit union name(s) and address(es) and account number(s); deceased debtor's estate, provide administrator/executor information; other sources of income):

**CCLR INSTRUCTIONS (CONT'D)**

21. **Debtor's Job Title:** Insert debtor's job title/description.
22. **Work Phone:** Insert debtor's work phone number, including the area code.
23. **Salary:** Insert debtor's salary, indicate whether gross or net, and how often paid.
24. **Service Site:** Insert "X" to indicate where Marshal can serve summons and complaint on debtor personally. If other than home or work addresses above, specify where.
25. **Verify By:** Insert name of person who verified the data above, the date verified, and how verified.

**THE COMPANY DEBTOR**

26. **Name:** Insert full name of company debtor.
27. **Address:** Insert company debtor's complete address.
28. **DBA:** Insert any other name company debtor may use such as "Doing Business As."
29. **Phone:** Insert company debtor's phone number, including the area code.
30. **Type of Business:** Insert the form of debtor's business, such as, corporation, sole proprietorship, partners, etc. If partnership, use CCLR Supplementary Data Sheet to list names and addresses of all partners.
31. **Date and State of Incorporation:** If debtor is a corporation, insert date incorporated and state of incorporation.
32. **Service Agent:** Insert name, phone number, and address of agent authorized to accept service of summons and complaint for debtor, if applicable.
33. **Verification:** Insert data called for on person who verified above data on company debtor. It is particularly important to verify that a company debtor is still in business.

**CO-DEBTOR(S) / GUARANTOR(S) / CO-SIGNER(S)**

34. **Name(s):** Insert full name(s) of any co-debtor(s), guarantor(s), and/or co-signer(s) who may also be liable for this debt if you want DOJ/USAO to try to collect all or part of it from them. **NOTE:** If the debtor is married but his or her spouse is not a co-debtor, guarantor, or co-signer, use a CCLR Supplementary Data Sheet to provide the data on the spouse as requested in Instruction #16 above.
35. **SSN/EIN:** Insert Social Security Number(s) or Employer Identification Number(s) of any co-debtor(s), guarantor(s), and/or co-signer(s).
36. **AKA (Also Known As):** Insert any other names used by co-debtor(s), guarantor(s), and/or co-signer(s).
37. **Date of Birth:** Insert birth date(s) of any co-debtor(s), guarantor(s), and/or co-signer(s).

**CLAIMS COLLECTION LITIGATION REPORT (CCLR) (cont.)**

Page 5 of 7

**CCLR***(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)*

1. Agency Claim No.

**AGENCY CLAIM HISTORY**

54. Date of last demand for payment to debtor and summary of debtor's response:

55. Details of any compromise or settlement offers made by, or to, the debtor and any response thereto:

55. Summary of collection actions taken by agency:

**ADDITIONAL INFORMATION**

57. For HHS loans: Medical or other professional association locator data:

58. Additional agency comments:

59. AGENCY CHECK LIST: CCLR package must contain:In General:

- CCLR
- Certificate of Indebtedness
- Credit Report
- Payment History, If Any
- Original Notes or Other Evidence of Debt, Including Assignments, If Any
- Summary of Collection Actions Taken by Agency

Debtor in Bankruptcy:

- Proof of Claim, or Copy Thereof, Attached

For Foreclosures:

- CCLR
- Credit Report
- Original Promissory Note
- Original Real Estate Mortgage
- Original Statement of Account/Affidavit of Amount Due
- Title Evidence, If Available
- Directions To Property If No Street Address Available
- Chattel Lien Searches if Chattels Involved

**CCLR INSTRUCTIONS (CONT'D)**

38. **Home Address & Phone No.:** Insert complete home address(es) and phone number(s) of any co-debtor(s), guarantor(s), and/or co-signer(s).
39. **Employer:** Insert full name(s) and address(es) of any employer(s) of co-debtor(s), guarantor(s), and/or co-signer(s).
40. **Work Phone No.:** Insert work phone number(s), including area code(s), for any co-debtor(s), guarantor(s), and/or co-signer(s).
41. **Job Title:** Insert job title/description of any co-debtor(s), guarantor(s), and/or co-signer(s).
42. **Salary:** Insert salary of any co-debtor(s), guarantor(s), and/or co-signer(s), indicate whether gross or net, and how often paid.
43. **Service Site:** Insert "X" to indicate where Marshal can serve co-debtor(s), guarantor(s), and/or co-signer(s) personally. If other than home or work address(es) provided, specify where.
44. **Basis for Liability:** Insert facts giving rise to any co-debtor's, guarantor's and/or co-signer's liability for this debt, including any family relationship to the primary debtor.
45. **Verified By:** Insert name of person who verified data on co-debtor(s), guarantor(s), and/or co-signer(s), the date verified, and how verified.

**FORECLOSURES**

46. **Debtor's Address:** Insert debtor's complete address if different from property address in Block 5.
47. **Mortgage Recording Information:** Insert county in which mortgage recorded, date of recording, and the liber (book or volume) and folio (page number) of the recording.
48. **Property Occupancy:** Check "yes" or "no" to questions about the current occupancy of the property. If property occupied (even if by a tenant), occupant's name(s) are necessary to institute foreclosure proceedings. If necessary, use CCLR Supplementary Data Sheet to furnish occupancy status.
49. **Chattels:** If chattels (any property except real estate, such as cars, boats, farm equipment, etc.) are to be recovered in the foreclosure, list them in the space provided or use CCLR Supplementary Data Sheets if necessary. Be sure to specify what county or counties in which such chattels are located.
50. **Other Federal Liens:** Insert here the names of any other Federal agencies which also have liens or claims against the same property which is collateral for the debt owed your agency.

**DEBTOR'S ABILITY TO PAY**

51. **Debtor Property:** Insert data on any real estate or other property, such as cars, boats, etc., the debtor(s) and/or co-debtor's, etc., own or are buying. DOJ/USAO need data on property against which liens can be filed to enforce collection of this claim. Include data on the value of the property, the county or counties in which it is located, any other liens, and what equity is available to satisfy this claim.
52. **Assets:** Insert data on any debtor assets in which the Government has a secured interest which may be sold to pay this claim.

**CLAIMS COLLECTION LITIGATION REPORT (CCLR) (cont.)**

Page 6 of 7

**CCLR**

*(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)*

1. Agency Claim No.

**CCLR SUPPLEMENTARY DATA SHEET**

Use this sheet to provide any additional information which might help locate those from whom the claim might be collected and any assets which might be available to satisfy a judgement in favor of the United States. Please indicate the number(s) of the block(s) in the CCLR which any additional data is intended to supplement.

**CCLR INSTRUCTIONS (CONT'D)**

53. **Other Assets:** Insert data on any other assets the Government might be able to attach to pay this claim, such as bank or credit union addresses and account numbers, etc. This data may be obtained from any checks your agency may have received from the debtor.

**AGENCY CLAIM INFORMATION**

54. **Last Demand Date:** Insert date of last demand on debtor to pay this claim and summary of the debtor's response to that letter.
55. **Compromise:** Insert details of any compromise or settlement offers made by, or to, the debtor and any responses to them.
56. **Collection Actions Taken:** Insert data on actions taken by your agency to collect this claim up to this point.

**ADDITIONAL INFORMATION**

57. **HHS Loans:** Insert data on medical and/or other professional memberships, etc., which might help locate the debtor.
58. **Additional Comments:** Insert any additional comments or information which might help locate the debtor collect this claim. Use CCLR Supplementary Data Sheet(s) if required.
59. **Check List:** Check appropriate spaces to ensure that this CCLR package is complete.

**CCLR MAILING INSTRUCTIONS**

After you have completed this CCLR, and the debt for litigation in the *TOTAL PRINCIPAL DUE, Block 11a*, is \$500,000 or more, mail this CCLR to:

**COMMERCIAL LITIGATION BRANCH  
Civil Division  
U.S. Department of Justice  
P.O. Box 875  
Ben Franklin Station  
Washington, DC 20044**

After you have completed this CCLR, and the debt for litigation in the *TOTAL PRINCIPAL DUE, Block 11a*, is less than \$500,000, mail this CCLR to:

**U.S. Department of Justice  
Central Intake Facility  
Suite 220  
1110 Bonifant Street  
Silver Spring, MD 20910-3312**

**CCLR**

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

1. Agency Claim No.

**ACKNOWLEDGMENT FORM**

..... (FOLD HERE)

**DOJ/USAO ACKNOWLEDGEMENT TO AGENCY**

60. Debtor's Full Name:

61. Agency Claim Number:

62. DOJ/USAO Number: \_\_\_\_\_

63. Received by DOJ/USAO on: \_\_\_\_\_

64. Received at DOJ/USAO by: \_\_\_\_\_  
(Print Name)

65. Questions?  
Contact: \_\_\_\_\_  
(Print Name & Phone Number (Include Area Code) of DOJ/USAO Contact)

..... (FOLD HERE)

66.

[Empty rectangular box for handwritten notes]

67.

**U.S. SMALL BUSINESS ADMINISTRATION  
200 WEST SANTA ANA BVD., SUITE #700  
SANTA ANA, CA 92701**

**CCLR INSTRUCTIONS (CONT'D)**

60. Debtor's Name: Insert debtor's full name in this block on the "ACKNOWLEDGEMENT FORM."
61. Agency Claim No.: Insert the number your agency uses to identify this claim.
67. Agency Address: Referring agency should insert its address in this space so that it will show through the window of a window envelope when folded along the lines indicated.

**(TO BE COMPLETED BY THE PERSON AT DOJ/USAO WHO RECEIVES THE CLAIM)**

62. DOJ/USAO number: Insert the DOJ/USAO number used to identify this claim.
63. Receipt Date: Insert date this claim was received at DOJ/USAO.
64. Recipient's Name: Print name of DOJ/USAO person who actually received this claim.
65. Contact: Print name and phone number of DOJ/USAO person the agency should contact if questions arise about this claim.
66. DOJ/USAO RETURN ADDRESS: The person at DOJ/USAO who receives this claim should insert the receiving office's return address in this space so that it shows through the upper window of an envelope with two windows. Then, detach the last page of this CCLR (PAGE 7 of 7), fold it along the lines indicated, insert the entire page into a window envelope so that the agency's address in Block #67 will show through the window of the envelope, and mail the ACKNOWLEDGEMENT back to the referring agency.
67. Agency Address: If the referring agency forgot to insert its address here, DOJ/USAO person acknowledging this claim should insert referring agency's address in this space so that it will show through the lower window of a two (2) window envelope.

**APPENDIX 30**  
**DETERMINING PRESENT VALUE**

What is "Present Value?"

The SBA liquidation officer is faced with the necessity of calculating present value (or discounting, as it is also called) in situations involving compromises, the sale of notes and/or Colpur, and in bankruptcy or other negotiations. By definition, present value is the current worth of future sums of money. It is an accepted fact that money has a time value and, therefore, acceptance of a lesser amount of cash today would be the equivalent of receiving a greater amount of cash in the future, either in a lump sum or through periodic payments. Perhaps this concept is best exemplified by the old adage, "a bird in the hand is worth two in the bush."

A typical question is, "What is the cash equivalent today of one dollar to be received, say, nine years hence?" If the probability of receiving that \$1 in the future is high, and the immediate cash received could earn 8% compounded annually, the answer would be 50 cents. Fortunately, the answer has been pre-calculated in a compound interest table entitled, "PRESENT VALUE OF \$1." In this table, the discount factor is shown for each dollar to be received at a certain period in the future and at various percentages, reflecting the degree of assigned risk.

PRESENT VALUE OF \$1 (Abbreviated)

<u>Periods</u>	<u>1%</u>	<u>8%</u>	<u>10%</u>	<u>12%</u>	<u>20%</u>
8	0.923	0.540	0.567	0.404	0.233
9	0.914	0.500	0.424	0.361	0.194
10	0.905	0.463	0.386	0.322	0.162
*					
24	0.788	0.158	0.102	0.066	0.013

**NOTE:** To determine the factor for monthly payments at an annual interest rate, first divide the interest rate by 12 to find the monthly discount rate. The factor will be found by referencing the number of months (periods) involved under the discount rate.

Example - Monthly payments to be received over 2 years at 12% per annum would be computed by dividing 12% by 12 (1%) and locating the factor for 24 periods (0.788).

The percentage used to reflect the risk associated with future payment is referred to as the discount rate. The greater the risk, the higher the discount rate assigned (and the lower the present value). In the example cited above, the risk is extremely small. The 8% figure merely reflects the Government borrowing rate (base rate) in effect at the time. This interest rate could be earned by either the offeror or offeree, depending upon which retains the cash, by investing in Government securities. If the risk of receiving that dollar in the future is much greater, then the offeree might accept fewer dollars immediately. For example, if an additional 12% were added to the basic 8% to reflect increased risk, then the discount

rate would be 20%. By looking at the column for 20% discount in the foregoing abbreviated table, it can be seen that one dollar due nine years hence is worth approximately 19 cents today. Thus, if the liquidation officer were to determine that an expected recovery was nine years into the future, a compromise based on discount rates of 8% to 20% would yield 50 cents to 19 cents per dollar of the estimated net recovery.

### GUIDELINES FOR COMPUTING APPROPRIATE DISCOUNT RATE

Although the process of determining present value is a relatively simple matter of utilizing the present value tables, there is a judgment factor which can significantly affect the final valuation. That factor is the discount rate, which must be determined by the SBA liquidation officer. The base for determining the discount rate is the cost of money to the Government (generally in the range of eight to nine percent). To this foundation should be added, for example, the SBA liquidation officer's estimate of the impact of certain variables, such as estimated costs of administration, repayment risks, value of collateral and/or guaranties.

The following chart provides some guidelines to assist in calculating the discount rate.

### SELECTION OF AN APPROPRIATE DISCOUNT RATE

	<u>% Range</u>	
A. Cost of Money - Base Rate (assumed)	8 - 9	___%
ADD:		
(The greater the negative impact, the higher the percentage.)		
B. Administrative Costs	0 - 3	___%
C. Risks of Repayment (Examples are: Industry outlook, and borrower's capability to manage.)	0 - 10	___%
D. Risks of Realization (Value of Collateral or Guaranties)	0 - 5	___%
TOTAL (Discount Rate)	8 - 27	___%

**NOTE:** The above ranges are for illustration purposes and are not intended to represent limits imposed by the Agency.

### EXAMPLES INVOLVING PRESENT VALUE

The following examples illustrate how present value is computed for various situations, including both single sum settlements and a series of unequal payments over a period of time. In these examples, the tables at the end of this discussion are used.

Example 1

A Debtor in Possession advises you that he is contemplating proposing a Plan which would give SBA a lump-sum payment of \$150,000, payable five years from now. After evaluating the situation, you conclude that the risk factors involved are substantial and justify a discount rate of 25% (Say, Base Rate 8% + Risk of Repayment 12% + Risk of Collateral 5%). What cash settlement amount would be appropriate?

This example involves the present value of a single sum payable in the future. The discount factor is taken from the Present Value of \$1 table at 25% at period five.

<u>PAYMENT</u>	<u>AMOUNT</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
End of year 5	\$150,000	.32768	\$49,152

The minimum cash settlement would be \$49,152. If the liquidation officer negotiates for a settlement of \$60,000, this would equate to a discount rate of about 20% for the \$150,000.

Example 2

A guarantor offers to pay SBA the sum of \$15,000 five years from now in satisfaction of liability. You determine that a discount rate of 10% would be applicable. (Say, Base Rate 8% + Risk of Repayment 2%). What would be an appropriate cash settlement?

The discount factor in Table 1 for five periods at 10% is .62092. This factor times the promised payment yields a present value of \$9,313.80. The minimum cash settlement would be \$9,313.80. A negotiated settlement of \$10,000 would equate to a discount rate of approximately 8.5%.

Example 3

An SBA guarantor proposes to make the payments listed below to SBA in satisfaction of a \$10,000 deficiency. The liquidation officer has determined that no way exists to enforce collection beyond what is being offered. However, the guarantor might possibly be able to borrow a lesser amount from a relative and settle with SBA once and for all. What would be an acceptable cash payment to SBA? At 10% discount? At 15% discount? At 25% discount?

The factors in the following chart are taken from Table 1:

TABLE OF PRESENT VALUE AT 10%

<u>PAYMENT</u>	<u>AMOUNT</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
End of Year 1	\$ 2,000	.90909 (1 pd @ 10%)	\$ 1,818
End of Year 2	2,500	.82645 (2 pd @ 10%)	2,066
End of Year 3	3,000	.75131 (3 pd @ 10%)	2,254
End of Year 4	<u>2,500</u>	.68301 (4 pd @ 10%)	<u>1,707</u>
	\$10,000		\$ 7,845

TABLE OF PRESENT VALUE AT 15%

<u>PAYMENT</u>	<u>AMOUNT</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
End of Year 1	\$ 2,000	.86957 (1 pd @ 15%)	\$ 1,739
End of Year 2	2,500	.75614 (2 pd @ 15%)	1,890
End of Year 3	3,000	.65752 (3 pd @ 15%)	1,973
End of Year 4	<u>2,500</u>	<u>.57175 (4 pd @ 15%)</u>	<u>1,429</u>
	\$10,000	2.85498	\$ 7,031

TABLE OF PRESENT VALUE AT 25%

<u>PAYMENT</u>	<u>AMOUNT</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
End of Year 1	\$ 2,000	.80000 (1 pd @ 25%)	\$ 1,600
End of Year 2	2,500	.64000 (2 pd @ 25%)	1,600
End of Year 3	3,000	.51200 (3 pd @ 25%)	1,536
End of Year 4	<u>2,500</u>	<u>.40960 (4 pd @ 25%)</u>	<u>1,024</u>
	\$10,000		\$ 5,760

In this example, at a 10% discount rate, the present value is \$7,845 (or 78.5%) of the total to be paid. At a 15% rate, the present value drops to \$7,031 (or 70.3%), and at 25% the present value is \$5,760 (or 57.6%). As can be seen, the discount rate has a significant impact on the present value. If the collateral offered by the borrower has a value in excess of the amount to be paid, the liquidation officer might use the 10% rate. In the more likely circumstances of inadequate security and a significant risk as to the obligor's ability to make the payments as scheduled, it is not unusual to find a rate of 25%. In this example (depending on the discount rate used), a cash settlement of \$5,760 and \$7,031 or more would be appropriate.

Present Value of Annuities

Up to this point, we have been discussing present value of a single lump sum payment or a series of unequal payments. An annuity is a series of equal payments made over equal periods of time. An example is the equal amortization payment required on most SBA loans. In general, SBA deals with ordinary annuities or annuities in arrears (which means that the payment occurs at the end of the period).

If we know the number of payments to be made, the interest rate, and the amount of each payment, we can calculate the present value of the annuity. When calculating the present value of the annuity, compound tables are used (instead of discount tables) to determine the present value of money scheduled to be received in the future. Note that Table 2 contains factor values greater than \$1, while those in Table 1 are less than \$1.

In Example 3, there was an irregular amount to be paid in each period. If the borrower had offered to pay \$2,500 per year for each of the four years, then the offer would have been an annuity and the following would have applied:

FACTORS FROM TABLE 2

<u># of PERIODS</u>	<u>PAYMENT PER PERIOD</u>	<u>DISCOUNT RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
4	\$2,500	10%	3.1699	\$7,924
4	2,500	15%	2.8550	7,138
4	2,500	25%	2.3616	5,904

The present value amount can also be calculated by discounting each payment as was done in Example 3. The following table illustrates the computations to be used for a discount rate of 25%: (Note that the total of the factors in the table is identical to the factor for the present value of an annuity for four periods at 25% as shown above.)

FACTORS FROM TABLE 1 FOR THE PRESENT VALUE OF \$1 AT 25%

<u>PAYMENT</u>	<u>AMOUNT</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
End of Year 1	\$ 2,500	.80000	\$ 2,000
End of Year 2	2,500	.64000	1,600
End of Year 3	2,500	.51200	1,280
End of Year 4	<u>2,500</u>	<u>.40960</u>	<u>1,024</u>
	\$10,000	2.36160	\$ 5,904

Example Involving AnnuitiesExample 4

A compromise offer is received from a guarantor. After evaluation of the circumstances, the liquidation officer concludes that the guarantor's income will allow her to pay \$100 per month. She will retire in two years and then no longer have sufficient income to make payments to SBA. The liquidation officer determines that a discount rate of 12% will apply. (Say, Base Rate 8% + Repayment Risk 4%).

What lump sum cash settlement would be appropriate?

This example involves an annuity of \$100 per month for 24 months at an annual rate of 12%. This 12% must be divided by 12 to get the monthly interest rate of 1%. By referring to Table 2, it can be determined that the present value of an annuity of \$100 for 24 periods at 1% is \$2,124.

<u># of PERIODS</u>	<u>PAYMENT PER PERIOD</u>	<u>DISCOUNT RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
24	\$100	1%	21.2434	\$2,124

The minimum cash settlement would be \$2,124.

Examples of Present Value In Cases of a Single Payment, Series of Unequal Payments, and/or Equal Payments (Annuities Combined).

Example 5

A defaulted SBA borrower is in Chapter 11 bankruptcy. The outstanding balance due SBA is \$400,000. The collateral consists of machinery and equipment in a leased building. The M&E is general purpose and heavy-duty. It has an estimated enforced collection value of approximately \$125,000 and, with proper maintenance, should have only a modest drop in resale value over the next three to four years. The guarantors have no assets. At present, the business is operating at about one-half of plant capacity. A competitor has indicated an interest in a joint venture with the borrower to manufacture a new and unproven product. After reviewing the facts, the potential partner has concluded that the debt load is too high. He feels that the firm's debt must be restructured if there is to be any chance for success. In a discussion with the borrower and the prospect to develop an acceptable plan of reorganization, SBA is offered \$100,000 upon approval of the plan and the choice of additional sums as set out below:

- Option A - Payment of \$195,000 as a lump sum in six years.
- Option B - Payment of \$150,000 in equal quarterly payments at six percent over a six year period.
- Option C - Payment of \$175,000 at six percent over six years; monthly payments of interest only for the first 36 months and equal monthly payments of P&I over the remaining 36 months.

Assume:

The cost of money to the Government is eight percent.

The cost of administration of the compromise is estimated to be two percent.

Because of the adverse impact on the financial structure of the incoming company, no additional collateral can be offered. The collateral does not cover the debt at the outset, but, as the debt is paid down, SBA's exposure will reduce. Accordingly, you assign a Risk of Realization of five percent.

You feel that the revised company will benefit from the expanded distribution system the new partner will bring with it. However, the new product has not been test-marketed, and its success, therefore, is not certain. You determine that the Risk of Repayment requires a discount rate of ten percent.

Thus, the total discount rate is 25% (i.e., Base Rate 8% + Administrative Risk 2% + Risk of Realization 5% + Risk of Repayment 10%).

OPTION A

This option involves two payments, one immediately for \$100,000 and one for \$195,000 at the end of six years. Since single payments are involved, the factors in Table 1 are used. (The factor for immediate payment is 1.00000.)

<u># of PERIODS</u>	<u>PAYMENT</u>	<u>DISCOUNT RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
0	\$100,000	25%	1.00000	\$100,000
6	195,000	25%	.26214	<u>51,117</u>
				\$151,117

Although the total amount to be received over the six-year period is \$295,000, the elements of time and risk reduce its present value to \$151,117.

OPTION B

This option involves an immediate payment of \$100,000 and 24 quarterly payments of \$7,489 over six years. The \$7,489 payment is the amount required to amortize \$150,000 at 6% per annum. Since this is an annuity, Table 2 is used to determine the discount factor. Because payments are quarterly, the discount rate of 25% is divided by four to obtain a quarterly discount rate of 6.25%. In Table 2, the discount factor for 6% at 24 periods is 12.5504, and the discount factor for 7% is 11.4693. It is necessary to interpolate to determine the present value.

<u># of PERIODS</u>	<u>PAYMENT</u>	<u>DISCOUNT RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
0	\$100,000	25%	1.00000	\$100,000
-----				
[Interpolation:				
1-24	7,489	6%	12.5504	\$ 93,990
	7,489	7%	<u>11.4693</u>	<u>85,894</u>
		Difference:	1.0811	8,096
		Divide by 4:	.2702	\$ 2,024
Adjust 6% by 0.25% = 12.5504 minus 0.2702 = 12.2802]				
-----				
1-24	7,489	6.25%	12.2802	<u>91,966</u>
			Present Value:	\$191,966

Total amount to be received:

Immediate payment	\$100,000
Quarterly payments	<u>179,736</u> (\$7,489 X 24)
	\$279,736

Although the total amount to be received over the six-year period is \$279,736, the elements of time and risk reduce its present value to \$191,966.

OPTION C

This option involves (1) an immediate payment of \$100,000; (2) a series of interest payments of \$875 per month for 36 months ( $\$175,000 \times .005$  - which is 6% per annum per month); and (3) a series of monthly payments of \$5,324 to amortize the \$175,000 over 36 periods at 6% per annum. These final payments must be discounted to the beginning of year four and then discounted to the present.

<u># of PERIODS</u>	<u>PAYMENT</u>	<u>DISCOUNT RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
0	\$100,000	25%	1.0000	\$100,000
1-36	875	25%	25.1514	22,007
37-72	5,324	25%	25.1514	yields 133,904
Final Year	133,904	25%	0.5120	<u>68,559</u> \$190,590

(The present value of the payments from periods 37-72 is at the beginning of year four. Therefore, the \$133,904 must then be discounted to the present from Table 1 for 3 years at 25%.)

Total amount to be received:

Immediate payment	\$100,000
Interest payments	31,500 ( $\$875 \times 36$ )
P & I payments	<u>191,664</u> ( $\$5,324 \times 36$ )
	\$323,164

Although the total amount to be received over the six-year period is \$323,164, the elements of time and risk reduce its present value to \$190,566.

RECAP:

<u>OPTION</u>	<u>PROJECTED RECEIPTS</u>	<u>PRESENT VALUE</u>
A	\$295,000	\$151,117
B	\$279,736	\$191,966
C	\$323,164	\$190,566

In this example, Option B has the greatest present value. However, in the best interests of all parties, the possibility of obtaining an immediate payment in the range of \$190,000 to \$195,000 in full satisfaction of the SBA debt should be explored. (Perhaps the equipment now pledged to SBA could be the major part of a collateral base securing a new loan to fund the transaction.)

Example 6

Colpur is offered at sale with these terms: 20% down payment; interest rate of 12% on the balance; equal monthly payments of principal and interest for ten years. One buyer is willing to pay \$100,000 on the stated terms. However, another buyer is interested in paying cash, but has said that he will not go to \$100,000. To begin negotiations, the liquidation officer needs the present value of the stated term offer.

The stated terms are \$20,000 down, plus 120 payments of \$1,148 (\$80,000 at 12%/12 for 120 periods = 80,000 times the factor of .01435 = \$1,148).

a. Assuming a discount rate of 15%, what is the present value of the stated term offer?

# of PERIODS	<u>PAYMENT</u>	DISCOUNT <u>RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
0	\$20,000	15%	1.00000	\$20,000
1-120	1,148	15%	63.31800	<u>71,156</u>
				\$91,156

b. After negotiations with the cash buyer, a "final" offer of \$92,000 is received. The original term offeror, in an effort to make his bid more attractive, revises his proposal. He offers to keep the amortization at ten years, but with a five year balloon payment. What is the present value of the new proposal?

The initial payment would be the same, \$20,000 down, but the present value of the new payments (60 payments of \$1,148, and a balloon payment of \$51,598) must be determined.

# of PERIODS	<u>PAYMENT</u>	DISCOUNT <u>RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
0	\$ 20,000	15%	1.0000	\$20,000
1-60	1,148	15%	42.0348	48,256
61	51,598	15%	0.4972	<u>25,653</u>
				\$94,909

(The balloon payment must be discounted to its present value.)

### Example 7

In the process of foreclosing on the assets of a business, the following facts are developed. The remaining amount of the loan is \$345,000. The collateral for the loan is appraised at \$150,000 and is not expected to change in value during the period of eighteen (18) months that will be necessary to get clear marketable title. The immediate costs to secure the property are \$750. CPC expenses will be \$1,200 per month. Taxes, penalties and interest are expected to be \$12,600 at the time of sale. All guarantors have been discharged in bankruptcy.

A local investor indicates a desire to purchase the SBA note. Assuming a discount rate of 12% what would be the appropriate selling price for the liquidation officer to recommend?

The single receipt of \$150,000 for sale of collateral at the end of 18 months is discounted by the factor for 1% (12%/12) from Table 1 for 18 periods out. The CPC costs of \$1,200 per month are discounted with the factor of 1% (12%/12) from Table 2. The payment for taxes, penalties, and interest will be made the time of sale and are discounted at 1% (12%/12) from Table 1 for 18 periods.

<u>PERIOD</u>	<u>RECEIPT/ PAYMENT</u>	<u>DISCOUNT RATE</u>	<u>FACTOR</u>	<u>PRESENT VALUE</u>
18	\$150,000 Receipt	12%	0.83602	\$126,750
0	750 Cost	12%	1.00000	( 750)
1-18	1,200 Cost	12%	16.39830	(19,678)
18	2,600 Cost	12%	0.83602	(10,533)
				\$ 94,442

An appropriate selling price would be \$94,500, or more.

**APPENDIX 31**  
**PRESENT VALUE - TABLE 1**

Present Value of \$1 : PVIF = 1/((1+%)^Period)										
Periods	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%
1	.99010	.98039	.97087	.96154	.95238	.94340	.93458	.92593	.91743	.90909
2	.98030	.96117	.94260	.92456	.90703	.89000	.87344	.85734	.84168	.82645
3	.97059	.94232	.91514	.88900	.86384	.83962	.81630	.79383	.77218	.75131
4	.96098	.92385	.88849	.85480	.82270	.79209	.76290	.73503	.70843	.68301
5	.95147	.90573	.86281	.82193	.78353	.74726	.71299	.68058	.64993	.62092
6	.94205	.88797	.83748	.79031	.74622	.70496	.66634	.63017	.59627	.56447
7	.93272	.87056	.81309	.75992	.71068	.66506	.62275	.58349	.54703	.51316
8	.92348	.85349	.78941	.73069	.67684	.62741	.58201	.54027	.50187	.46651
9	.91434	.83676	.76642	.70259	.64461	.59190	.54393	.50025	.46043	.42410
10	.90529	.82035	.74409	.67556	.61391	.55839	.50835	.46319	.42241	.38554
11	.89632	.80426	.72242	.64958	.58488	.52679	.47509	.42888	.38753	.35049
12	.88745	.78849	.70138	.62460	.55684	.49697	.44401	.39711	.35553	.31863
13	.87866	.77303	.68095	.60057	.53032	.46884	.41496	.36770	.32618	.28966
14	.86996	.75788	.66112	.57748	.50507	.44230	.38782	.34046	.29925	.26333
15	.86135	.74301	.64186	.55526	.48102	.41727	.36245	.31524	.27454	.23939
16	.85282	.72845	.62317	.53391	.45811	.39365	.33873	.29189	.25187	.21763
17	.84438	.71416	.60502	.51337	.43630	.37136	.31657	.27027	.23107	.19784
18	.83602	.70016	.58739	.49363	.41552	.35034	.29586	.25025	.21199	.17986
19	.82774	.68643	.57029	.47464	.39573	.33051	.27651	.23171	.19449	.16351
20	.81954	.67297	.55368	.45639	.37689	.31180	.25842	.21455	.17843	.14864
25	.77977	.60953	.47761	.37512	.29530	.23300	.18425	.14602	.11597	.09230
30	.74192	.55207	.41199	.30832	.23138	.17411	.13137	.09938	.07537	.05731
40	.67165	.45289	.30656	.20829	.14205	.09722	.06678	.04603	*	*
50	.60804	.37153	.22811	.14071	.08720	.05429	*	*	*	*
60	.55045	.30478	.16973	.09506	.05354	*	*	*	*	*

## PRESENT VALUE - TABLE 1 (CONT.)

Present Value of \$1 : $PVIF = 1/((1+i\%)^{\text{Period}})$												
Periods	12%	14%	15%	18%	20%	25%	28%	32%	36%	40%		
1	.89286	.87719	.86957	.84746	.83333	.80000	.78125	.75758	.73529	.71429		
2	.79719	.76947	.75614	.71818	.69444	.64000	.61035	.57392	.54066	.51020		
3	.71178	.67497	.65752	.60863	.57870	.51200	.47684	.43479	.39754	.36443		
4	.63552	.59208	.57175	.51579	.48225	.40960	.37253	.32939	.29231	.26031		
5	.56743	.51937	.49718	.43711	.40188	.32768	.29104	.24953	.21493	.18593		
6	.50663	.45559	.43233	.37043	.33490	.26214	.22737	.18904	.15804	.13281		
7	.45235	.39964	.37594	.31393	.27908	.20972	.17764	.14321	.11621	.09486		
8	.40388	.35056	.32690	.26604	.23257	.16777	.13878	.10849	.08545	.06776		
9	.36061	.30751	.28426	.22546	.19381	.13422	.10842	.08219	.06283	.04840		
10	.32197	.26974	.24718	.19106	.16151	.10737	.08470	.06227	.04620	.03457		
11	.28748	.23662	.21494	.16192	.13459	.08590	.06617	.04717	.03397	.02469		
12	.25668	.20756	.18691	.13722	.11216	.06872	.05170	.03574	.02498	.01764		
13	.22917	.18207	.16253	.11629	.09346	.05498	.04039	.02707	.01837	.01260		
14	.20462	.15971	.14133	.09855	.07789	.04398	.03155	.02051	.01350	.00900		
15	.18270	.14010	.12289	.08352	.06491	.03518	.02465	.01554	.00993	.00643		
16	.16312	.12289	.10686	.07078	.05409	.02815	.01926	.01177	.00730	.00459		
17	.14564	.10780	.09293	.05998	.04507	.02252	.01505	.00892	.00537	.00328		
18	.13004	.09456	.08081	.05083	.03756	.01801	.01175	.00676	.00395	.00234		
19	.11611	.08295	.07027	.04308	.03130	.01441	.00918	.00512	.00290	.00167		
20	.10367	.07276	.06110	.03651	.02608	.01153	.00717	.00388	.00213	.00120		
25	.05882	.03779	.03038	.01596	.01048	.00378	.00209	.00097	.00046	.00022		
30	.03338	.01963	.01510	.00697	.00421	.00124	.00061	.00024	.00010	.00004		
40	.01075	.00529	.00373	.00133	.00068	.00013	.00005	.00002	*	*		
50	.00346	.00143	.00092	.00025	.00011	.00001	*	*	*	*		
60	.00111	.00039	.00023	.00005	.00002	*	*	*	*	*		

**APPENDIX 32**  
**PRESENT VALUE OF AN ANNUITY - TABLE 2**

Periods	Present Value of an Annuity \$1 Per Period for periods: $PVIF = (1 - (1/(1+i)^n)) / i$									
	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%
1	.99010	.98039	.97087	.96154	.95238	.94340	.93458	.92593	.91743	.90909
2	1.97040	1.94156	1.91347	1.88608	1.85941	1.83339	1.80802	1.78326	1.75911	1.73554
3	2.94099	2.88388	2.82861	2.77509	2.72325	2.67301	2.62432	2.57710	2.53129	2.48685
4	3.90197	3.80773	3.71710	3.62990	3.54595	3.46511	3.38721	3.31213	3.23972	3.16987
5	4.85343	4.71346	4.57971	4.45182	4.32948	4.21236	4.10020	3.99271	3.88965	3.79079
6	5.79548	5.60143	5.41719	5.24214	5.07569	4.91732	4.76654	4.62288	4.48592	4.35526
7	6.72819	6.47199	6.23028	6.00205	5.78637	5.58238	5.38929	5.20637	5.03295	4.86842
8	7.65168	7.32548	7.01989	6.73274	6.46321	6.20979	5.97130	5.74664	5.53482	5.33493
9	8.56602	8.16224	7.78611	7.43633	7.10782	6.80169	6.51523	6.24689	5.99525	5.75902
10	9.47130	8.98259	8.53020	8.11080	7.72173	7.36009	7.02358	6.71008	6.41766	6.14457
11	10.36763	9.78685	9.25262	8.76048	8.30641	7.88687	7.49867	7.13896	6.80519	6.49506
12	11.25508	10.57634	9.95400	9.38507	8.86325	8.36384	7.94269	7.53608	7.16073	6.81369
13	12.13374	11.34837	10.63496	9.98665	9.39357	8.85268	8.35765	7.90378	7.48690	7.10336
14	13.00370	12.10625	11.29607	10.56312	9.89864	9.29498	8.74547	8.24424	7.78615	7.36669
15	13.86505	12.84926	11.93794	11.11839	10.37966	9.71225	9.10791	8.55948	8.06069	7.60608
16	14.71787	13.57771	12.56110	11.65230	10.83777	10.10590	9.44685	8.85137	8.31256	7.82371
17	15.56225	14.29187	13.16612	12.16567	11.27407	10.47726	9.76322	9.12164	8.54363	8.02155
18	16.39827	14.99203	13.76351	12.65930	11.68959	10.82760	10.05909	9.37189	8.75563	8.20141
19	17.22601	15.67846	14.32380	13.13394	12.08832	11.15812	10.33560	9.60360	8.95011	8.36492
20	18.04555	16.35143	14.87747	13.59033	12.46221	11.46992	10.59401	9.81815	9.12855	8.51356
25	22.02316	19.52346	17.41315	15.62208	14.09394	12.78336	11.65358	10.67478	9.82258	9.07704
30	25.80771	22.39646	19.60044	17.29203	15.37245	13.76483	12.40904	11.25778	10.27365	9.42691
40	32.83469	27.35548	23.11477	19.79277	17.15909	15.04630	13.39171	11.92461	10.75736	9.77905
50	39.19612	31.42361	25.72976	21.48218	18.25593	15.76186	13.80075	12.23348	10.96168	9.91481
60	44.95504	34.76089	27.67568	22.62349	18.92929	16.16143	14.03918	12.37655	11.04799	9.96716

PRESENT VALUE OF AN ANNUITY - TABLE 2 (CONT.)

Present Value of an Annuity \$1 Per Period for periods: $PVIF = (1 - (1 + i)^{-n}) / i$										
Periods	12%	14%	15%	18%	20%	25%	28%	32%	36%	40%
1	.89286	.87719	.86957	.84746	.83333	.80000	.78125	.75758	.73529	.71429
2	1.69005	1.64666	1.62571	1.56564	1.52778	1.44000	1.39160	1.33150	1.27595	1.22449
3	2.40183	2.32163	2.28323	2.17427	2.10648	1.95200	1.86844	1.76629	1.67349	1.58892
4	3.03735	2.91371	2.85498	2.69006	2.58873	2.36160	2.24097	2.09567	1.96580	1.84923
5	3.60478	3.43308	3.35216	3.12717	2.99061	2.68928	2.53201	2.34521	2.18074	2.03516
6	4.11141	3.88867	3.78448	3.49760	3.32551	2.95142	2.75938	2.53425	2.33878	2.16797
7	4.56376	4.28830	4.16042	3.81153	3.60459	3.16114	2.93702	2.67746	2.45498	2.26284
8	4.96764	4.63886	4.48732	4.07757	3.83716	3.32891	3.07579	2.78595	2.54043	2.33060
9	5.32825	4.94637	4.77158	4.30302	4.03097	3.46313	3.18421	2.86815	2.60326	2.37900
10	5.65022	5.21612	5.01877	4.49409	4.19247	3.57050	3.26892	2.93041	2.64945	2.41357
11	5.93770	5.45273	5.23371	4.65801	4.32706	3.65640	3.33509	2.97759	2.68342	2.43826
12	6.19437	5.66029	5.42062	4.79322	4.43922	3.72512	3.38679	3.01332	2.70840	2.45590
13	6.42355	5.84236	5.68315	4.80951	4.53268	3.78010	3.42718	3.04040	2.72676	2.46850
14	6.62817	6.00207	5.72448	5.00806	4.61057	3.82408	3.45873	3.06091	2.74027	2.47750
15	6.81086	6.14217	5.84737	5.09158	4.67547	3.85926	3.48339	3.07644	2.75020	2.48393
16	6.97399	6.26506	5.95423	5.16235	4.72856	3.88741	3.50265	3.08822	2.75750	2.48852
17	7.11963	6.37286	6.04716	5.22233	4.77463	3.90993	3.51769	3.09713	2.76287	2.49180
18	7.24967	6.46742	6.12797	5.27316	4.81219	3.92794	3.52945	3.10389	2.76681	2.49414
19	7.36578	6.55037	6.19823	5.31624	4.84350	3.94235	3.53863	3.10901	2.76972	2.49582
20	7.46944	6.62313	6.25933	5.35275	4.86958	3.95388	3.54580	3.11288	2.77185	2.49701
25	7.84314	6.87293	6.46415	5.48691	4.94759	3.98489	3.56397	3.12198	2.77650	2.49944
30	8.05518	7.00266	6.56598	5.51681	4.97894	3.99505	3.56926	3.12425	2.77750	2.49980
40	8.24378	7.10504	6.64178	5.54815	4.99660	3.99947	3.57124	3.12495	2.77777	2.50000
50	8.30450	7.13266	6.66051	5.55414	4.99945	3.99994	3.57141	3.12500	2.77778	2.50000
60	8.32405	7.14011	6.66515	5.55529	4.9999	3.99999	3.57143	3.12500	2.77778	2.50000





APPENDIX 34  
IRS/SBA  
MEMORANDUM OF UNDERSTANDING

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The Internal Revenue Service (IRS) and the Small Business Administration (SBA) have an increasing mutuality of concern regarding a variety of small business firms with which both are involved. Internal Revenue Service is concerned about such firms becoming delinquent in payment of taxes and the resultant cost and potential embarrassment to the firm and/or the government. Small Business Administration is concerned for the success of these businesses and resultant payback of loan funds. It is felt that an appropriate and timely exchange of information regarding these situations will have beneficial consequences for all concerned. Such a joint exchange should, of course, be mindful of the potential sensitivity involved in these cases and be pointed especially toward accomplishment of overall government goals as against the limitations imposed by individual agency viewpoints.

This agreement is therefore designed to provide a means of mutual cooperation and restraint to the end that tax and loan obligations of small business establishments can be more effectively serviced and the borrower/taxpayer more assured of future success. It is fully expected that, cooperatively applied, these arrangements will provide within both agencies an overriding intent to adopt the course of action which best serves the Government's overall purpose and protects its investment. It is also anticipated that the educational and support services of both agencies will be made available to the extent possible. The means for exchange of appropriate information and mutual cooperation and support as delineated below, should be utilized to the fullest and expanded on at local levels to the extent feasible.

It is agreed that all prior written understandings between IRS (Collection Division) and SBA are hereby revoked. From this date, relations between IRS and SBA and the duties and responsibilities of each shall be governed by this agreement. It involves central and field offices of both agencies and will require the full support of each.

1. **Scope.** This agreement will be restricted, on the IRS side, to **FICA and withholding taxes (as required by disclosure statutes) but will involve all SBA business loans (direct, participation and guaranteed.)**
2. **As a condition of approving any loan application, SBA will require the applicant to:**
  - a. **Furnish SBA with an Employer Identification Number (EIN) issued by IRS.**
  - b. **Agree to pay any outstanding Federal taxes from loan proceeds.**
3. **SBA (through Reports Management Division) shall supply to IRS a printout of all new business borrowers on a monthly basis.**  
A format agreeable to both agencies (Name, Loan Number, Employer Identification Number, Amount of Loan, etc.) will be devised and utilized.
4. **Upon receipt of the SBA printout, IRS will review its Business Master File (BMF) to assure that these businesses are listed. Appropriate action will be taken by IRS to ascertain that statutory provisions for tax return filing and payment requirements are complied with by the loan recipient.**

IRS/SBA  
MEMORANDUM OF UNDERSTANDING (CONT.)

5. Loan recipients who fail to meet statutory filing and payment requirements will be contacted by IRS Collection personnel to ensure that the liability has not been satisfied and make demand for payment. If payment cannot be effected, prior to any enforcement action (including filing of Notice of Lien), IRS will contact the District SBA official and apprise him of the situation.
6. SBA will make an assessment of the potential of the taxpayer and, if some hope for success is apparent, will work with IRS to solve the tax delinquency problem. In doing so, they will consider all methods at their disposal to make a cash flow available to satisfy the delinquent taxes, such as deferment of loan payments, payment by participating banks, assignments of collateral, supplemental loans, etc. The SBA review and response to IRS will be made as quickly as possible but in no event longer than 30 days from the date notified by IRS.
7. Under normal circumstances IRS will refrain from taking enforcement action (such as lien filing, levy, etc.) during the 30 day period allowed for SBA review. However, there will be instances where, in the judgment of IRS, the interest of the Service must be protected and such constraints cannot be effected. In such cases, IRS will notify SBA of the imminent enforcement action planned.
8. Inter-agency contacts will be between local counterparts (IRS-Chief, Collection and Taxpayer Service Division; SBA-Chief, Loan Administration). Inconsistency in district geographical jurisdictions will be made compatible as a result of this agreement. If mutual agreement cannot be achieved at the local level, SBA should be afforded the opportunity to appeal to higher levels as appropriate.
9. Upon written request from the Administrator (SBA) to the Commissioner (IRS), the IRS may, at the discretion of the Commissioner, make available copies of FICA and withholding tax returns necessary to the satisfactory conclusion of collection action in severely defaulted accounts of substantial size. The request must indicate reasons to believe that such information will be beneficial and that all other means of obtaining the information have been exhausted.
10. IRS personnel and general tax information materials will be made available (through IRS regional offices) for SBA training sessions in which a discussion of Federal taxes would be appropriate.

Both IRS and SBA reserve the right, on reasonable notice, to discontinue the arrangements herein contemplated in whole or in part, it being the express intention that the arrangements shall be and continue to be mutually satisfactory

s) Donald C. Alexander  
Commissioner  
Internal Revenue Service

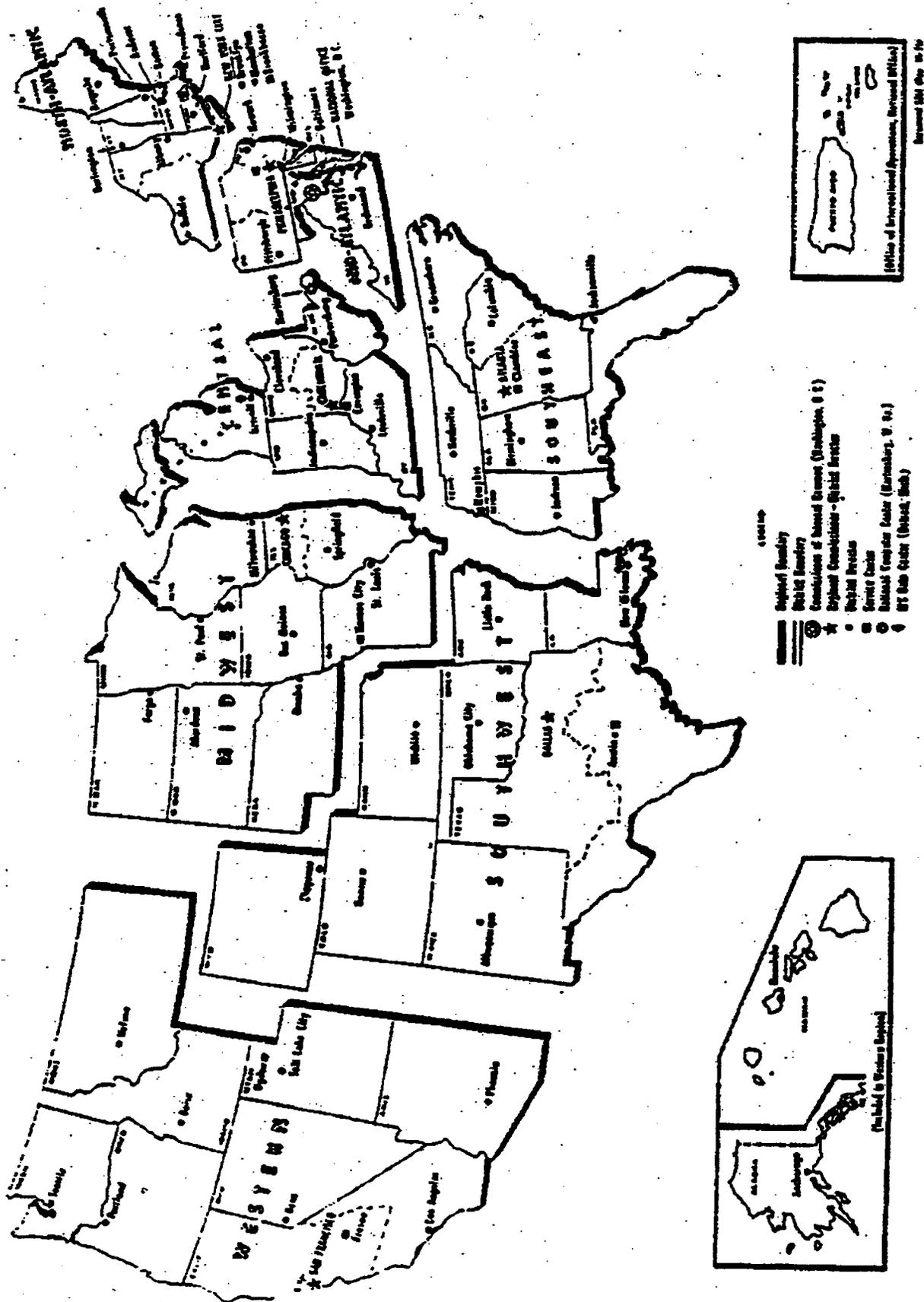
(s) Thomas S. Kleepe  
Administrator  
Small Business Administration

Date: July 9, 1975

Date: Aug. 9, 1975

IRS/SBA  
MEMORANDUM OF UNDERSTANDING (CONT.)

Map of Internal Revenue Regions and Districts





APPENDIX 35  
IRS  
OPERATIONAL AGREEMENT BETWEEN IRS AND SBA

BETWEEN  
THE INTERNAL REVENUE SERVICE (IRS)  
AND  
THE U.S. SMALL BUSINESS ADMINISTRATION (SBA)

In 1974, the IRS and SBA entered into a Memorandum of Understanding (MOU) in an effort to assure that SBA loan recipients complied with federal employment tax filing and payment requirements to the highest degree practicable. In the MOU, the two agencies agreed that, because of their mutuality of concern, they would continue to cooperate, support each other and exchange information, as appropriate.

The most recent exchange of information between IRS and SBA reveals that some of the operational and procedural arrangements outlined in the MOU have become outdated, counterproductive or otherwise unworkable. This Operational Agreement is a continuation and enhancement of the MOU. Although the MOU continues to be the master agreement between the agencies, where there is a disagreement in the procedural or operational processes set forth in the two documents, those listed herein shall prevail.

It continues to remain true that when a firm has an SBA loan, noncompliance with federal employment tax filing and payment requirements can adversely affect the interests of both agencies. From the IRS perspective, a small business firm which is pyramiding its federal tax liabilities must be brought into compliance. If the taxpayer will not voluntarily resolve the tax delinquency, enforcement action may be necessary. Such action could jeopardize repayment of the firm's SBA loan. Since both agencies have the common goal of

IRS  
OPERATIONAL AGREEMENT BETWEEN IRS AND SBA (CONT.)

- 2 -

protecting the Government's overall interests, they herein agree to continue the spirit of cooperation in an effort to assure that enforcement action by IRS does not unnecessarily reduce SBA's potential recovery. In furtherance of this goal, lines of communication will be strengthened between the two agencies at every level.

At the national level, liaison will be established between the office of the Assistant Commissioner (Collection) (IRS) and the Office of the Associate Administrator for Finance and Investment (SBA). These officials, or their designees, will meet periodically to discuss areas of mutual concern. At a minimum, meetings should be held twice a year.

At the regional level, liaison will be established between the Office of the Assistant Regional Commissioner (Collection) (IRS) and the Office of the Regional Administrator (SBA). Mutually agreed upon meetings between these officials, or their designees, to discuss problems concerning either agency will be held on an "as needed" basis. To foster a better understanding of the goals and concerns of SBA and IRS, regional offices of both agencies will exchange training materials and provide personnel to address each other's training sessions on an "as agreed" basis.

At the district level, liaison will be established between designated district coordinators from each agency. Communication at this level is most critical because it is here that specific case problems must be expeditiously resolved. The IRS district coordinator should contact the SBA district

IRS  
OPERATIONAL AGREEMENT BETWEEN IRS AND SBA (CONT.)

- 3 -

coordinator when enforcement action is contemplated and it is learned that the taxpayer has an outstanding SBA loan. The SBA district coordinator should contact the IRS district coordinator if it is known that a borrower is delinquent in filing or paying federal taxes.

Upon receiving notice from IRS of pending enforcement action, SBA will, within a time frame agreed to at the district level, evaluate the taxpayer's potential to fully pay the tax delinquency. If SBA believes that the delinquent small business firm is financially viable, it will consider all methods at its disposal to make cash flow available to satisfy the delinquent taxes, including deferment or reduction of loan payments; payment by participating banks; subordination, release or assignment of collateral; supplemental loans; etc.

Normally, after notifying SBA, IRS will refrain from taking enforcement action (including the filing of a federal tax lien) during the agreed upon evaluation period. If SBA determines at any time during the evaluation period that the taxpayer is not financially viable, it should so advise IRS immediately.

Notwithstanding the above described process of notice, delay and evaluation, it is jointly recognized that there will be instances where, in the judgment of IRS, the government's interests would be jeopardized by delay. In such cases, IRS will notify SBA of the imminent enforcement action planned.

IRS  
OPERATIONAL AGREEMENT BETWEEN IRS AND SBA (CONT.)

- 4 -

The SBA and IRS will each issue procedures to their respective field personnel to implement the intent of this Operational Agreement.

Both SBA and IRS reserve the right, on reasonable notice, to discontinue or modify the arrangements set forth in both this Operational Agreement and the MOU. It is the express intention that the relationship between IRS and SBA shall be and continue to be mutually satisfactory.

William Wauken  
Assistant Commissioner  
(Collection)  
Internal Revenue Service

April 6, 1987  
DATE

Eric T. Gollman  
Associate Administrator for  
Finance and Investment,  
Small Business Administration

March 12, 1987  
DATE

APPENDIX 36  
IRS SPECIAL PROCEDURE FOR DISCHARGE OF LIEN

IRS SPECIAL PROCEDURE FOR DISCHARGE OF LIEN

5700 Special Procedures

page 5700-12.1  
(6-14-90)

**5718.43 (11-15-85)**  
**Certain Government Agency Discharges**

**5718.431 (11-18-88)**  
**General**

(1) To reduce litigation costs and make property readily marketable, the Veterans Administration (VA), Small Business Administration (SBA) and Federal Housing Administration (FHA) have agreed to accept title to property subject to a junior Federal tax lien provided the payment (if any) required to secure a discharge of the property from the tax lien does not exceed the increased cost which would be incurred by them if a mortgagee elected to foreclose by a judicial, rather than by a nonjudicial, proceeding.

(2) Upon receipt of such requests, the Service will cooperate in discharging from junior Federal tax liens, property acquired by these agencies in connection with their Loan Guaranty or Direct Loan Salvage operations.

(3) The procedure prescribed in this subsection is applicable only with respect to applications received from the VA, SBA, or FHA requesting the discharge from a junior Federal tax lien of property which has been or is to be acquired by the VA, SBA or FHA. It does not apply where the United States has already been joined as a party to a judicial foreclosure proceeding, or when the insured mortgagee forecloses and has not assigned the mortgage or deed of trust to the VA, SBA or FHA.

**5718.432 (11-18-88)**  
**Applications for Discharge**

(1) Applications for certificates of discharge submitted by the VA, SBA or FHA will be submitted in duplicate, when they have been notified that the mortgagee has acquired the property and has conveyed it or elected to convey it to the VA, SBA or FHA.

(2) The property will have been appraised by a designated or staff appraiser of the VA, SBA or FHA based on the market value of the property at the time of foreclosure, and such appraisal will be accepted as the fair market value of the property in determining the Government's interest under the Federal tax lien. Field investigation will not be required.

(3) The amount shown in the concluding paragraph of the application serves only to place a ceiling on the amount the particular agency may pay for the issuance of a discharge. In no event

should this amount be construed to be the amount offered for the discharge. If it is determined that the Federal tax lien interest has value in excess of the amount which the VA, SBA or FHA is legally permitted to pay they should be advised and the discharge application file closed.

(4) In accordance with an agreement with VA and FHA, when it has been determined that a notice of lien had been filed more than 30 days prior to a nonjudicial sale, an application for the discharge of the property will be made. No notice will be given under IRC 7425 in these cases.

**5718.433 (11-15-85)**  
**Issuance of Certificate of Discharge**

(1) If it is found that the Federal tax lien interest is valueless, Form 669-C shall be delivered to the VA, SBA or FHA and the duplicate associated with the application.

(2) If it is determined that the Federal tax lien interest has value, the SPT shall prepare in quadruplicate a statement setting forth the exact amount required for the requested discharge. The original and two copies of the statement should be sent to the VA, SBA or FHA.

(3) Upon receipt of a statement signed by a responsible official of the VA, SBA or FHA Regional Office that the amount required for the issuance of a certificate of discharge is satisfactory, Form 669-B shall be delivered to the VA, SBA or FHA. No payment will be made at the time of delivery, but will be deferred until the certificate is filed with the proper recording official.

(a) When the certificate is properly filed, the VA, SBA or FHA will forward payment, in the form of a U.S. Treasury Check, to the District Director.

(b) If payment is not received within sixty days after the date the certificate was delivered, a follow-up should be made to determine the approximate time payment will be received.

(4) In the event the VA, SBA or FHA does not acquire the property or agree to accept it from the mortgagee, the certificate will be returned to the district director for cancellation. The canceled certificate will be associated with the application for discharge.

MT 5700-29

**5718.433**  
IR Manual



APPENDIX 37  
IRS  
SUGGESTED FORMAT FOR APPLICATION FOR DISCHARGE OF  
JUNIOR IRS LIEN

SUGGESTED FORMAT FOR APPLICATION  
FOR  
DISCHARGE OF JUNIOR IRS LIEN

[Modify as circumstances dictate]

CERTIFIED MAIL  
RETURNED RECEIPT REQUESTED

SBA LETTERHEAD

District Director of Internal Revenue  
Attn.: Chief, Special Procedures Staff  
[Address]

Re: Application for Certificate of Discharge  
IRS Special Procedure 5718.43

Dear Sir:

The U.S. Small Business Administration (SBA) proposes a Public Foreclosure Sale of the property hereinafter described on which you claim lien, as follows:

<u>FILING INFORMATION</u> (e.g., Court, Book No., Page No., IRS Reference Number(s))	<u>DATE FILED</u>	<u>IRS LIEN AMOUNT</u>
--	-------------------	------------------------

Name of Taxpayer on IRS Notice \_\_\_\_\_  
Residence or place of business on IRS Notice: \_\_\_\_\_

Property to be sold:

[Describe or note that description is attached]

Time and Place of Sale: \_\_\_\_\_

Terms of sale: Cash to the highest bidder.

Computation of Value to IRS:

\$ _____	(Market Value) (Appraised Value) of the Property.
_____	Liens Ahead of SBA
_____	Amount Due SBA
	Liens Behind SBA. but Prior to IRS

IRS  
SUGGESTED FORMAT FOR APPLICATION FOR DISCHARGE OF  
JUNIOR IRS LIEN (CONT.)

- Page 2 -

Inasmuch as the IRS lien(s) is (are) valueless, it is requested that you execute a Certificate of Discharge and send it to the undersigned. A pre-addressed envelope, which requires no postage, is enclosed for your convenience.

We will send you an accounting of the sale for your records, and will notify you in the unlikely event there is any recovery for IRS.

Sincerely,

---

Supervisory Loan Specialist

Enclosure

APPENDIX 38

IRS

SAMPLE BORROWER LETTER TO IRS

SAMPLE BORROWER LOCATOR LETTER TO IRS



**U.S. SMALL BUSINESS ADMINISTRATION**

SAN FRANCISCO DISTRICT OFFICE  
211 MAIN STREET, 4TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105-1988

May 6, 1993

Internal Revenue Service  
Disclosure Office  
450 Golden Gate Avenue  
STOP SF 2-7-31  
San Francisco, CA 94102

SBA Loan No: \_\_\_\_\_

Loan Officer's Name: \_\_\_\_\_

Please furnish this Agency with the mailing address, if available, for the following taxpayer or verify that the address given is the most current mailing address according to your records.

Name: \_\_\_\_\_  
aka: \_\_\_\_\_

Last known  
Address: \_\_\_\_\_  
\_\_\_\_\_

Social Security No.: \_\_\_\_\_

The U. S. Small Business Administration is an Agency of the Federal Government. I certify that the information requested involves a claim for money or property arising out of the activities of this Agency and for the performance of this Agency's official duties including, but not limited to the collection of outstanding debts owed to the U. S. Government and is requested pursuant to 26 USC 6103(m) (2) and in accordance with sections 3711, 3717, and 3718 of Title 31 of the U.S.Code. The undersigned has been delegated such authority by virtue of Codes of Federal Regulations, 13 CRF 101-3-2, Part IV - Portfolio Management Program, Section A, a copy of which is attached hereto. The information will be used by proper agency officers, employees or agents in locating the taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717 and 3718 of Title 31 of the U. S. Code.

Thank you for your assistance in this matter. A return envelope is enclosed for your convenience in responding to this request.

U.S. Small Business Administration



APPENDIX 39  
MASTER AUCTIONEER AGREEMENT

This Agreement made between \_\_\_\_\_, of \_\_\_\_\_, hereinafter referred to as "Auctioneer," and the U.S. Small Business Administration, hereinafter referred to as "SBA," witnesseth that the parties do hereby agree as follows:

1. From time to time the SBA shall contract with the Auctioneer to sell at public auction certain specified property of which SBA is lienholder, mortgagee in possession, or owner, with right to sell. The terms and conditions of this agreement shall apply to each and every auction as contracted between the parties.
2. It is understood and agreed that the Auctioneer is not an employee or agent of SBA, but is an independent contractor engaged to perform certain duties.
3. Auction sales shall be conducted in the name of SBA.
4. The Auctioneer agrees to provide adequate inspection time prior to each sale and to hold its auctions during regular business hours in a readily accessible location according to commercially reasonable business practices.
5. The Auctioneer shall receive from SBA, as a commission for its services, a percentage of the gross sale price on all consummated sales to third parties confirmed by SBA. The SBA also shall reimburse the Auctioneer for actual and necessary expenses in connection with the sale which may include such costs as cleaning, arranging, cataloging, advertising, cartage to place of sale, and minor repairs to enhance saleability. The commission percentage and limits on reimbursable expenses for each sale shall be set forth in a written agreement (contract) between the parties prior to the sale.
6. The Auctioneer and its employees shall not, directly or through agents, purchase property at any auction sale conducted hereunder.
7. The terms and conditions of all auctions shall provide that:
  - (a) SBA reserves the right to accept or reject any bid and the right to participate in the bidding.
  - (b) All property is to be sold on an "as is, where is" basis without warranty or representation of any kind or nature.
  - (c) Purchasers shall be liable for any damages to property of others resulting from the removal of purchased items from the sale site.
8. Except as expressly authorized in writing by the SBA, all property will first be offered for sale in bulk and then piecemeal. The highest bulk bid will be held in reserve until the conclusion of the sale. At that time, the highest bulk bid may be accepted by the SBA, unless the aggregate proceeds from the piecemeal sale exceed the highest bulk bid (including any established differential or cost factor), in which case, the bulk bid will be rejected and the piecemeal bids accepted.
9. All sales shall be for cash, certified funds payable to SBA (and the Auctioneer if necessary) or pre-approved credit authorized by SBA. The acceptance by Auctioneer of any other form of payment shall be at the sole risk of the Auctioneer.
10. Prior to commencement of the sale, the Auctioneer will provide SBA with a duplicate copy of the lot listing the Auctioneer will use in conducting the sale.

- 11. The Auctioneer shall maintain a record of the name and address of all registered bidders at each sale and shall supply SBA with a report reflecting the purchaser and sale price of each item or lot and the total number of registered bidders.
- 12. The Auctioneer shall promptly deliver to SBA a report itemizing the actual expenses to be reimbursed. A copy of any circulars, brochures, newspaper ads, or other advertising of the sale shall be attached to the report.
- 13. It is recognized by the parties that the proceeds of each specific sale of SBA property or collateral is the property of the Federal Government. Proceeds of each sale shall be held in a separate, interest bearing, SBA-named, escrow account and shall not be commingled with any other funds.
- 14. The proceeds of sale shall be delivered to SBA in either of two ways:
  - (a) Payment of the gross proceeds immediately after the conclusion of the sale. In this event, the Auctioneer's expenses and commissions will be paid after receipt by SBA of an itemized statement/invoice and a detailed accounting of the sale; or
  - (b) Payment of the net proceeds of the sale, plus escrow interest accrued, as soon as practicable (as determined by SBA) after the date of sale. Only the authorized expenses of sale, such as Auctioneer's commission, advertising, transportation to place of sale and other cost as authorized by SBA, may be deducted from the gross proceeds.
- 15. The Auctioneer shall procure, and maintain at all times, a general liability insurance policy in the minimum amount of \$1,000,000, covering such events as bodily injury and property damage. Evidence of insurance coverage shall be provided to SBA.
- 16. The Auctioneer shall procure at its own expense a fidelity bond in the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) issued by a surety company licensed to do business in the State of \_\_\_\_\_ insuring SBA against loss caused by Auctioneer's failure to faithfully perform its duties and/or to accurately account for the sale proceeds from all property. The amount of the bond is at the sole discretion of SBA and may be amended at any time by written notice to the Auctioneer.

U.S. SMALL BUSINESS ADMINISTRATION

\_\_\_\_\_  
Auctioneer

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Auctioneer's Tax ID Number: \_\_\_\_\_

APPENDIX 40  
SAMPLE AUCTIONEER CONTRACT

Re: Borrower Name: \_\_\_\_\_  
Loan Number: \_\_\_\_\_

This contract, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, by and between the U.S. Small Business Administration (hereinafter called SBA), an agency of the United States of America, and \_\_\_\_\_ (hereinafter called Auctioneer).

Incorporation by Reference

Auctioneer and SBA expressly agree that the provisions of a certain Master Auctioneer Agreement dated \_\_\_\_\_, 19 \_\_, entered into between Auctioneer and SBA are binding upon parties to this contract, their successors and assigns, and that the provisions of said Master Auctioneer Agreement are incorporated herein by reference and expressly made a part hereof.

Place of Sale

The auction sale shall be held at \_\_\_\_\_ o'clock \_\_.M., [date], at [address] \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

Property to be Sold

Auctioneer is hereby contracted by SBA to sell the following described property at public auction:

[Insert or attach legal description of real property and/or a listing summary with location of personal property.]

Compensation of Auctioneer

- a. Commission on Property Sold: In consideration of the performance of this contract by Auctioneer, the acceptance of the bids, and the consummation of sale, Auctioneer shall receive and the SBA shall pay \_\_\_\_\_ percent (\_\_\_%) of the total amount realized from the sale of the SBA related property.
- b. Commissions/Fees if the Property is Not Sold: In the event that the sale is not consummated for any reason, or SBA exercises its right to reject all bids, or SBA is the successful bidder, the Auctioneer shall receive only a flat fee of \$ \_\_\_\_\_, plus actual out of pocket expense.
- c. Receipt/Control of Proceeds:  
Proceeds to be held by Auctioneer in a separate, interest bearing, SBA-named account, pending check clearances and preparation of the accounting of sale. Net to be remitted to SBA with said accounting.  
  
Proceeds to be taken by SBA at the sale. Approved expenses and commissions/fees to be paid by SBA after receipt of an accounting of the sale and an itemized invoice for the authorized expenses and fee.
- d. Expense of sale: All expenses hereafter stated are maximum expenses to be incurred by the Auctioneer in executing the

subject auction sale. Any expense which exceeds said maximum expenses must be approved by SBA in writing.

Advertising	
Newspaper	\$ _____
Trade Journals	\$ _____
Brochures	\$ _____
Postage & Mailing	\$ _____
Sub Total	\$ _____
Other (Describe)	\$ _____
Other (Describe)	\$ _____
Total Expenses	\$ _____

Report of Sale

Auctioneer agrees to submit to the SBA within \_\_\_\_\_ (\_\_\_\_\_) days after sale, a lot-by-lot accounting of the sale together with an itemization of all out of pocket expenses incurred by Auctioneer incident to such sale. Such out of pocket expenses shall be evidenced by original receipts, invoices, and other information as SBA may require.

Duration of Contract

This contract shall be binding upon, and inure to the benefit of, the parties hereto, their successors and assigns, as of the date of its acceptance by the SBA and shall remain in force until terminated.

\_\_\_\_\_ [Type or Print Firm Name] \_\_\_\_\_  
 Federal Tax Number

By: \_\_\_\_\_  
 [Auctioneer's Address] \_\_\_\_\_ Lic. No. and State \_\_\_\_\_ Date \_\_\_\_\_  
 [Telephone No.] \_\_\_\_\_

Accepted by SBA at \_\_\_\_\_, \_\_\_\_\_  
 City State  
 U.S. Small Business Administration

By: \_\_\_\_\_  
 Name Date  
 \_\_\_\_\_  
 Title

**APPENDIX 41**  
**SAMPLE ACCEPTANCE LETTER FOR SALE OF PROPERTY**

**SBA LETTERHEAD**

NAME OF OFFEROR  
ADDRESS:

Dear Mr./Ms. \_\_\_\_\_:

This office is in receipt of your offer to purchase the property described herein, on the following terms:

Description of Property: (Describe real estate by its correct legal description and chattels by name, number, etc. If necessary, attach list containing legal and other description of real estate and identification of chattels, and refer to it in the body of the letter; i.e., property described in the attached list (brochure, etc.) which is a part of this advice of acceptance.)

Terms: (Show selling price and closing date. If a term sale, cite down payment, balance due, lien instrument, interest rate, monthly payments, and term.)

Your offer as described above has been accepted.

(Note: Insert instructions for closing.)

Please acknowledge receipt of the foregoing by signing the enclosed copy of this letter and returning it to this office in the enclosed pre-addressed, postage-paid envelope.

Sincerely,

\_\_\_\_\_  
[Title]

Receipt acknowledged:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Date) \_\_\_\_\_





3. In consideration of performance under the contract, the contractor shall be paid by the SBA the sum of \_\_\_\_\_, (\$ \_\_\_\_\_), which shall constitute full payment of any expenses of any kind or nature incurred by the contractor in performing hereunder. In the event court testimony is necessary, it will be furnished by the contractor at the rate of \$ \_\_\_\_\_ per day.
4. The contractor shall not divulge and shall take all responsible steps to insure that no member of his staff or organization divulges any information concerning such appraisal reports to any person other than a duly authorized representative of the SBA or a person authorized in writing by the SBA to obtain such information.
5. The contracting office may, at any time by written order, make any charges in this contract which may affect the contents, scope or number of copies of the appraisal reports to be delivered hereunder of the time for delivery. If such changes justify an increase or decrease in the amount provided to be paid by provision 3 of this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly.
6. The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the SBA shall have the right to annul this contract without liability, or, in its discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.
7. Equal Employment Opportunity. If this contract exceeds \$10,000.00, the provisions contained in the Equal Employment Opportunity Clause, SBA Forms 601A, attached hereto, are made a part hereof.
8. At the time for receipt and acceptance thereof, the appraisal report to be furnished by the contractor as specified in provision 2, above, shall become and remain the sole property of the SBA.
9. The performance of work under this contract may be terminated, in whole or in part, wherever the SBA shall determine that termination is in its best interest, by delivery to the contractor of a notice of termination at least three days

prior to the effective date of termination. The contractor agrees to cease all work, to turn over to the SBA all data, maps, photographs, and to submit to the SBA a claim for work performed prior to termination. The SBA shall pay the contractor an equitable price for work performed prior to termination, such price not to exceed a fair proportion of the original contract price.

\_\_\_\_\_ U.S. SMALL BUSINESS ADMINISTRATION  
Contractor

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_ Date

Contractor's Tax ID Number: \_\_\_\_\_



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