



SBA Information Notice

TO: All Employees

CONTROL NO.: 5000-954

SUBJECT: Changes to SOP 50 51 2 and
SOP 50 50 4 for 7(a) Loan
Guaranty Purchase Reviews

EFFECTIVE: 4/19/2005

By this Notice, we are announcing a completely revised Chapter 13 and Appendix 17 in SOP 50 51 2 and a revision to Chapter 9 and Appendix 26 in SOP 50 50 4 concerning guaranty purchase reviews, denials of liability, and suits against participant lenders. These changes are intended to improve the quality, consistency and timeliness of guaranty purchase decisions. Copies of the revisions are attached to this Notice for your information.

Changes to SOP 50 51 2, Loan Liquidation and Acquired Property

Changes incorporating SBA Policy Notice 5000-831, 7(a) Loan Guaranty Purchase Policy (effective date 10/2/02)

SBA has issued a completely revised Chapter 13 of SOP 50 51 2 for 7(a) loan guaranty purchase reviews, denials of liability and suits against participant lenders primarily to incorporate the policies and guidance originally set forth in Policy Notice 5000-831. The revised Chapter 13 also reflects the additional changes described below. This chapter applies to both pre-purchase and post-purchase reviews.

SBA also has issued a new Appendix 17 to SOP 50 51 2, the Guaranty Purchase Checklist, which was issued along with Policy Notice 5000-831 and thereafter was further updated. The revised Guaranty Purchase Checklist also replaces the checklist found in SOP 50 50 4, Appendix 26. The Office of General Counsel will be making a conforming change to SOP 70 50 3, Appendix 5a.

Additional Changes

- Modification to reflect the Administrator's delegation of authority to the Associate Deputy Administrator for Capital Access to deny liability on a loan guaranty, and to approve the initiation of a lawsuit to recover funds on a previously paid guaranty. This delegation was published in the Federal Register on August 25, 2003 (68 FR 51048) (Chapter 13, Paragraph 2).
- Incorporation of procedures for repairs as set forth in SBA Procedural Notice 5000-898, Adjustments to 7(a) Loan Guaranty Purchases (effective date 12/16/03) (Chapter 13, Paragraph 6).

EXPIRES: 7/1/2005

PAGE 1 of 3

SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

- Incorporation of policy on reviews of lender eligibility decisions and reviews of loans that go into early default or have early loan problems for loans made under the *SBAExpress* pilot program so that these loans will be treated the same as PLP for these purposes. (Chapter 13, Paragraph 15).
- Clarification of effect on purchase review if lender does not follow the instructions outlined in Procedural Notice 5000-725 (later restated in Procedural Notice 5000-753) for verification of borrower financial information in the event of delay by IRS in providing tax transcripts (Chapter 13, Paragraph 21).
- Clarification of what constitutes acceptable verification by a lender of a borrower's required cash equity injection, including the new requirement that a lender must also verify the source of the cash used for the equity injection when the injection is material to the borrower's operation (Chapter 13, Paragraph 24).
- Explanation of two additional factors SBA will consider when a lender fails to obtain a listing of collateral at the time a loan is made: any loss of rights in collateral and the effect on liquidation proceeds (Chapter 13, Paragraph 27).
- Definition of timely lender site visits (Chapter 13, Paragraph 28).
- Incorporation from Procedural Notice 5000-700 of how loans are flagged in the Guaranty Repair Tracking System (Chapter 13, Paragraph 29), and how flagged issues are resolved.

This list highlights the significant changes to Chapter 13 (other than those originally in Policy Notice 5000-831), but is not exhaustive. You should review the revised SOP chapter to familiarize yourself with all the changes.

Changes to SOP 50 50 4, Loan Servicing

SBA also has revised paragraph 4.c.(1) of Chapter 9 of SOP 50 50 4 and Appendix 26 regarding the documentation required from lenders when they submit a request that SBA honor its guaranty. Paragraph 4.c.(1) has been revised to read as follows:

4. c. Copies of loan closing instruments.

(1) The lender must provide SBA with copies of the executed loan authorization, note and guaranties and, as needed to process a specific purchase request, the lender must also provide copies of collateral documentation with evidence of required lien position, standby agreements, evidence of equity injection, assignment of life insurance, and other documentation required by the authorization and guaranty purchase checklist in Appendix 26.

The balance of Chapter 9 (and also portions of Chapter 10) of SOP 50 50 4 are still applicable to guaranty purchase reviews and should be read in conjunction with the revised Chapter 13 of SOP 50 51 2.

If you have any questions about this notice, please contact Walter Intlekofer, 202-205-7543, or for legal questions, Eric Benderson, 202-205-6636, or Amy Mertz Brown, 202-205-6803.

James E. Rivera
Associate Administrator for Financial Assistance

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 SBA*Express* 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.

If a cash equity injection is material to the borrower's operation, the lender must verify and document both: (1) the existence of the cash injection as mentioned above, AND (2) the source of the cash used for the equity injection, so that it can

reasonably be presumed that the funds will be used for business purposes. In this section, the word “material” shall mean any equity injection that is greater than 1/3 of the amount of the loan or \$200,000, whichever is less. If the cash injection is not considered material to the borrower’s operation, the lender is required to verify and document only the existence of the cash injection, but not 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.

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	SBA USE ONLY REC'D	NEED	
			<u>STANDARD DOCUMENTATION</u>
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Written demand that SBA honor its guaranty
2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wire transfer instructions
3	<input checked="" 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.
4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Loan Authorization and any amendments
5	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Note (SBA Form 147) with any Modifications/Amendments
6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	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
			<u>COLLATERAL REQUIREMENTS</u>
7	<input type="checkbox"/>	<input type="checkbox"/>	Security Agreements
8	<input type="checkbox"/>	<input type="checkbox"/>	UCC Financing Statements filed with Secretary of State and/or County
9	<input type="checkbox"/>	<input type="checkbox"/>	UCC Continuation Statements and Amendments
10	<input type="checkbox"/>	<input type="checkbox"/>	Landlord's Subordination / Waiver
11	<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"/>	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"/>	Certificate of Ownership and/or Certificate of Title on Vehicles / M&E / Manufactured Homes
14	<input type="checkbox"/>	<input type="checkbox"/>	Recorded Deeds of Trust / Mortgages
15	<input type="checkbox"/>	<input type="checkbox"/>	Title Insurance Policies and/or Certificates
16	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Guaranties (SBA Form 148)
17	<input type="checkbox"/>	<input type="checkbox"/>	Evidence of guarantor consent for any material changes to the loan terms
			<u>INSURANCE AND PROPERTY REQUIREMENTS</u>
18	<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"/>	Hazard Insurance Policies (page showing insured, amount and mortgagee will suffice)
20	<input type="checkbox"/>	<input type="checkbox"/>	Life Insurance Policies (pages showing insured and amount)
21	<input type="checkbox"/>	<input type="checkbox"/>	Collateral Assignment of Life Insurance Policy (acknowledged by Insurance Company)
22	<input type="checkbox"/>	<input type="checkbox"/>	Environmental Questionnaires on mortgaged and acquired property
23	<input type="checkbox"/>	<input type="checkbox"/>	Phase I and/or Phase II Environmental Report (Summary and Recommendation pages only)
			<u>BUSINESS INFORMATION</u>
24	<input checked="" type="checkbox"/>	<input type="checkbox"/>	IRS Income Tax Verification
25	<input type="checkbox"/>	<input type="checkbox"/>	Lease Agreement (pages showing terms, lessee and signatures)
26	<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
27	<input type="checkbox"/>	<input type="checkbox"/>	Standby debt agreement (if required by the loan authorization)
28	<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)

- | REQ'D
Of
Bank | <u>SBA USE ONLY</u> | <u>REC'D</u> | <u>NEED</u> | |
|---------------------|-------------------------------------|--------------------------|--------------------------|---|
| 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 |

- (2) If the loan is sold in the secondary market, you should strongly encourage the lender to repurchase it from the secondary market before making demand on SBA to honor the guarantee.
- (3) The borrower is in default on any installment of principal or interest for more than 60 days (or less if SBA agrees) and the default has not been cured prior to the lender making demand on SBA to purchase.
- (4) The SBA may agree to purchase a loan from the lender, or may request that the lender make demand on SBA, if the loan is less than 60 days past due when:
 - (a) The loan is classified “in liquidation” or “in liquidation-litigation” status; or
 - (b) The SBA invokes its unilateral purchase privilege per paragraph 11 of the 750 agreement (e.g., if SBA decides to purchase and assume servicing of the loan). This decision might arise if the lender has been taken over by FDIC or if there is a conflict of interest between the lender and SBA. (See paragraph 9-13, “What is SBA’s Unilateral Purchase, and When Should SBA Invoke It?”)
- c. For information on all special loan programs, see the Chapter 6, “Special Programs.”

4. Information Required from a Lender.

To complete its purchase request the lender must submit the following.

- a. Written demand letter.**
- b. Certified transcript of account.**

Use SBA Form 1149, Lender’s Transcript of Account, or similar display that reflects the payment receipt dates, the interest rate(s) in effect, the amounts applied to principal and/or interest, and the interest-paid-to date. The transcript must reflect all transactions on the borrower’s account. The lender must certify that the transcript is “a true and correct copy.”

- c. Copies of loan closing instruments.**

- (1) The lender must provide SBA with copies of the executed loan authorization, note and guaranties and, as needed to process a specific purchase request, the lender must also provide copies of collateral documentation with evidence of required lien position, standby agreements, evidence of equity injection, assignment of life insurance, and other documentation required by the authorization and guaranty purchase checklist in Appendix 26.

- (2) If SBA has decided to assume servicing concurrent with the purchase of the guaranty the lender must assign to SBA the original documents mentioned in the previous paragraph. (For the procedure in taking over servicing from the lender, see paragraph 9-17 titled, "Transfer of Loan Servicing from Lender to SBA.")

5. When Must the Lender Submit the Complete Purchase Request?

- a. Regulations:

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...**
...(8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;...
- b. SBA has no obligation to purchase a loan if the lender has failed to demand purchase within 120 days after the maturity of the loan. The regulations, as stated above, override the 750 agreement which allows 1 year from the date of the loan. The regulations also apply to lines of credit.
- c. The lender must submit the complete purchase request, including the demand, transcript, and closing documentation to SBA within 120 days of the earliest uncured payment default (defined in paragraph 9-6 titled, "Determining the Earliest Uncured Payment Default"), or SBA will pay only 120 days of accrued interest.

Note: This does not apply to loans sold in the secondary market.

6. Determining the Earliest uncured Payment Default.

- a. Regulations:

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

APPENDIX 26
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	SBA USE ONLY REC'D	NEED	
			<u>STANDARD DOCUMENTATION</u>
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Written demand that SBA honor its guaranty
2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wire transfer instructions
3	<input checked="" 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.
4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Loan Authorization and any amendments
5	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Note (SBA Form 147) with any Modifications/Amendments
6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	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
			<u>COLLATERAL REQUIREMENTS</u>
7	<input type="checkbox"/>	<input type="checkbox"/>	Security Agreements
8	<input type="checkbox"/>	<input type="checkbox"/>	UCC Financing Statements filed with Secretary of State and/or County
9	<input type="checkbox"/>	<input type="checkbox"/>	UCC Continuation Statements and Amendments
10	<input type="checkbox"/>	<input type="checkbox"/>	Landlord's Subordination / Waiver
11	<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"/>	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"/>	Certificate of Ownership and/or Certificate of Title on Vehicles / M&E / Manufactured Homes
14	<input type="checkbox"/>	<input type="checkbox"/>	Recorded Deeds of Trust / Mortgages
15	<input type="checkbox"/>	<input type="checkbox"/>	Title Insurance Policies and/or Certificates
16	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Guaranties (SBA Form 148)
17	<input type="checkbox"/>	<input type="checkbox"/>	Evidence of guarantor consent for any material changes to the loan terms
			<u>INSURANCE AND PROPERTY REQUIREMENTS</u>
18	<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"/>	Hazard Insurance Policies (page showing insured, amount and mortgagee will suffice)
20	<input type="checkbox"/>	<input type="checkbox"/>	Life Insurance Policies (pages showing insured and amount)
21	<input type="checkbox"/>	<input type="checkbox"/>	Collateral Assignment of Life Insurance Policy (acknowledged by Insurance Company)
22	<input type="checkbox"/>	<input type="checkbox"/>	Environmental Questionnaires on mortgaged and acquired property
23	<input type="checkbox"/>	<input type="checkbox"/>	Phase I and/or Phase II Environmental Report (Summary and Recommendation pages only)
			<u>BUSINESS INFORMATION</u>
24	<input checked="" type="checkbox"/>	<input type="checkbox"/>	IRS Income Tax Verification
25	<input type="checkbox"/>	<input type="checkbox"/>	Lease Agreement (pages showing terms, lessee and signatures)
26	<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
27	<input type="checkbox"/>	<input type="checkbox"/>	Standby debt agreement (if required by the loan authorization)
28	<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)

- | REQ'D
Of
Bank | <u>SBA USE ONLY</u> | <u>REC'D</u> | <u>NEED</u> | |
|---------------------|-------------------------------------|--------------------------|--------------------------|---|
| 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 |