SBA

SOP 50 50 4

LOAN SERVICING

Office of Financial Assistance
Borrower and Lender Servicing
U.S. Small Business
Administration

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CHAPTER 1

WHAT DOES THIS STANDARD OPERATING PROCEDURE (SOP) COVER, AND HOW IS IT ORGANIZED?

1. What is the Purpose of this SOP?

The purpose of this SOP is to provide guidelines for servicing activities for loans made under the 7(a), 504, and direct business loan programs by:

a. SBA personnel;

b. Participating lenders; and

c. Certified Development Companies (CDC).

2. How is this SOP Organized?

a. This SOP provides both the regulations and the policy you need to know to perform your job in loan servicing.

b. The applicable Code of Federal Regulations (CFR) are cited in the various sections of the SOP where they apply.

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. The term **"You"** refers to the recommending official (loan officer). The term recommending official is defined in the Chapter 2, "How Does SBA Service Loans?" All references other than "YOU" (recommending official) will be identified in the text.

3. What are the Sources of Authority and Guidance for Servicing Activity?

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

(1) Small Business Act;

(2) Code of Federal Regulations;

(3) SBA policy and procedures, including SOPs and Notices that are issued and amended periodically; and

(4) 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) This SOP provides the text of the regulations related to loan servicing contained in CFR, Title 13 "Business Credit and Assistance," Part 120 "Business Loans" **(13 CFR Part 120).**

NOTE: The **"MANDATORY"** words in the CFR are **"SHALL," "WILL,"** and **"MUST."**

The subsections of **13 CFR Part 120** which pertain to loan servicing are provided in the corresponding sections of this SOP. Other parts and sections of 13 CFR which relate to loan servicing are:

(a) **13 CFR Part 101.104** which contains current policy on the delegations of authority for loan administration;

(b) **13 CFR Part 102** which pertain to disclosure regulations under the Freedom of Information and Privacy Act of 1974; and

(c) **13 CFR Part 105** which contains the "Standards of Conduct."

c. What do you need to know about SBA policy in this SOP?

(1) This SOP provides 7(a), 504, and direct business loan policies to follow for servicing all loans. These policies were established based on sound lending practices derived from the experience of SBA loan servicing officials like you. On occasion, SBA policy may not adequately address a special circumstance you are handling. In those cases, you may be able to justify an exception to policy while still practicing prudent lending standards.

(2) The policies in this SOP are applicable to all SBA loans classified as in "regular servicing" status (which include loans undergoing "intensive servicing") and are serviced by:

(a) SBA;

(b) Lender; or

(c) Certified Development Company (CDC).

(3) For SBA loans classified as "in liquidation" status, refer to SOP 50 51, "Loan Liquidation & Acquired Property."

d. What do you need to know about the 750 agreement (Loan Guaranty Agreement)?

(1) The SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)," is SBA's contract with the lenders in the 7(a) Program. You should read it along with any supplemental agreements and understand it fully. You should refer to them whenever you have a question of what is expected of the SBA or the participating lender.

(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, FA$TRAK Program;" and

(g) SBA Form 750B or SBA Form 750 for use in the LowDoc and CAPLines programs.

CHAPTER 2

HOW DOES SBA SERVICE LOANS?

1. What is a Servicing Action?

A servicing action is any action that changes the existing terms of the loan. Generally, a servicing action results from a request from the borrower for SBA-serviced loans, and from the lender or CDC for loans serviced by them. Servicing actions generally require that loan servicing "recommending" and "approving" officials complete an SBA Form 327, "Modification or Administrative Action" (327 action).

2. Who Has Authority to Take Servicing Actions on SBA Loans?

a. Who can recommend a loan servicing action?

The recommending official.

A recommending official is an SBA staff member who has met the requirements outlined in the Delegations of Authority published in the Federal Register, and who is authorized by his/her supervisor to take such actions. (This is usually the servicing loan officer.)

b. Who can approve a loan servicing action?

The approving official.

An approving official is an SBA staff member who has met the requirements outlined in the Delegations of Authority published in the Federal Register, and who is authorized by his/her supervisor to take such actions. (This is usually the line supervisor.)

c. Who can approve servicing requests not otherwise delegated to an approving official?

(1) This SOP will identify the actions which will require a higher level of approval (e.g., actions requiring the approval of the AA/FA or designee).

(2) Approval authority for actions related to loans classified as "in liquidation" are identified in SOP 50 51, "Loan Liquidation & Acquired Property."

d. **<u>Supervisory attorney</u> is defined as follows:**

(1) District counsel in a district office;

(2) Senior litigation counsel in the litigation units and administrative law litigation units.

(3) Supervisory attorney in the Santa Ana Disaster Loan Servicing and Liquidation Office and 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).

e. **What is the Rule of Two approval process?**

(1) **What is the "Rule of Two?"**

All servicing actions taken under delegated authority must reflect the recommendation(s) of the recommending official who initiated the action and approval by an approving official [e.g., using SBA 327, Liquidation Litigation Tracking System (LLTS) screens, etc.]. Both officials must be certified under the delegation of authority to take the action. This process is called the "**Rule of Two**." **<u>(Special actions that may be approved under the "Rule of Two" or require the authority of the Claims Review Committee are discussed in the SOP 50 51, Chapter 17, "Compromise Actions.")</u>**

NOTE:

It is important to recognize that you must carefully exercise this loan servicing authority.

(a) Prudent lending practices must always be followed. All actions must be consistent with applicable loans and regulations.

(b) Servicing actions must be taken only if:

i. It will assist the small business in solving the problem and improve its ability to repay the loan; and

ii. It will assist the Agency in realizing maximum recovery.

(2) What happens if your recommendation for action is NOT approved by the approving official?

(a) If your approving official does NOT approve your recommendation for action, he or she must add comments and recommendations to your 327 action and refer the case 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 concurrence with a prior recommendation is reached.

(3) Example:

(a) You are an economic development specialist, and you recommend a subordination in a 327 action to your approving official, for example, the assistant district director for economic development (ADD/ED).

(b) If the ADD/ED approves your 327 action, the action is final and the subordination is approved.

(c) If the ADD/ED declines the action, he or she must refer the action to the second level of authority which, for example, is the deputy district director (DDD). If the DDD concurs with either your recommendation or that of the ADD/ED, the action is final. For example, if the DDD concurs with your recommendation to approve the subordination, the subordination is thereby approved. However, if the DDD concurs with the ADD/ED's decision to decline the subordination, the subordination is declined.

(d) If the DDD does not uphold either recommendation, and recommends yet another action, such as a shared security interest, the DDD must refer the action to the next highest level of authority. In this example, the DDD would refer the action to the district director (DD).

Note: Regardless of title, all officials must have appropriate Delegation of Authority from the associate administrator for financial assistance (AA/FA).

f. What actions can you approve WITHOUT the rule of two?

Any SBA employee who has completed the Commercial Credit Course - Level I may, when authorized by his/her supervisor, unilaterally:

(1) Correct obvious typographical errors in loan authorizations;

(2) Extend disbursement periods on partially disbursed loans;

(3) Release the cash surrender value or dividends to pay premiums due on insurance policies;

(4) Extend initial principal payment dates;

(5) Adjust interest payment dates; and

(6) Release equipment (or hazard insurance checks) where the total value being released does not exceed $5,000.

g. How do you handle a request for reconsideration?

You should handle requests for reconsideration of proposals in the same manner as the original proposal with the "Rule of Two" process. You must submit the request to the next level of authority.

h. How do you handle a non-deserving verbal request for a servicing action?

You may reject any verbal request for loan servicing which is grossly lacking in merit or supporting documentation. You do not need to write a recommendation or refer the case to an approving official. You must document the request and your action in the Delinquent Loan Collection System (DLCS).

i. How do you handle exceptions to policy?

(1) Any servicing action which is not in full compliance with mandatory policy ("must" sections) is an "**EXCEPTION TO POLICY**." Final authority to approve an exception lies with the AA/FA or designee.

(2) If you are recommending a 327 action which is an exception to policy, you must:

(a) Justify fully in the 327 action the reason for deviating from standard policy;

(b) Route the 327 action through SBA counsel;

(c) Route the 327 action through your approving official for action; and

(d) If concurrence is obtained, have your approving official refer the action to the AA/FA or designee for action.

j. How do you handle servicing actions when an SBA employee or an employee's relative is the obligor?

You must refer all requests for substantial relief from an SBA employee or "close relative" of an SBA employee who is an obligor on a loan, through the chain of command, to AA/FA for final action.

(1) Substantial relief actions include the release of an obligor on a loan, substantial restructuring of payments, substantial release of collateral, etc. When in doubt, consider the requested action to be substantial.

(2) Regulations:

13 CFR 120.10.
Definitions.

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

3. Which 327 Actions Must SBA Counsel Review?

a. Legal counsel must review all 327 actions involving the following activities (exceptions 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 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 action with issues regarding legal compliance; and

(22) Substantive revisions to the loan authorization;

NOTE: Other exceptions may be noted in Chapter 6, "Special Loan Programs."

b. Counsel must refer all purely credit issues or administrative aspects to the servicing division.

c. For lender-serviced loans, the lender is responsible for the proper 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.

4. 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.

CHAPTER 3

ADMINISTRATIVE ASPECTS FOR LOAN SERVICING

1. Transferring Loans to the Commercial Loan Servicing Centers (CLSC).

a. Which loans must a field office/processing center transfer to a CLSC?

(1) A field office (district, branch, or the PLP processing center) must transfer all SBA loans, whether serviced by SBA, a lender, or a CDC to the appropriate SBA CLSC.

BEFORE you transfer a loan, the loan must:

(a) Be fully disbursed (any undisbursed balance must be canceled before a transfer);

(b) Be current in payments (under 30 days past due);

(c) Be in "regular servicing" status;

(d) Have the guaranty fee paid; and

(e) For SBA-serviced loans secured by personal property collateral or fixture filings, be current on Uniform Commercial Code (UCC) National Financing Statement filings with the appropriate data input. You must:

i. Continue all UCCs which have lapsed or will lapse within 6 months of the transfer;

ii. Input the UCC-1 refiling dates into the SBA's "Loan Accounting Update Display (LAUD)" database screens, specifically on the LAUD30 screen.

NOTE: For CDC-serviced loans, CDCs must track and file the UCCs and submit them to SBA for signature.

(2) You must also transfer all loans that:

(a) Are classified as "returned to regular servicing" status; and

(b) Have been returned to regular servicing status, because the borrower has made at least three payments as agreed.

NOTE: EWCP is an exception to this policy for loans being transferred to the CLSC. (Refer to Chapter 6, "Special Loan Programs," paragraph 9 titled "Export Working Capital Program (EWCP)" subparagraph -- "Servicing responsibilities" for additional information.)

(3) The locations of SBA commercial loan servicing centers are:

(a) Little Rock.

U.S. Small Business Administration
Commercial Loan Servicing Center
2120 Riverfront, Suite #100
Little Rock, AR 72202

Little Rock services loans for Regions I, II, III, IV, and VI.

(b) Fresno.

U.S. Small Business Administration
Commercial Loan Servicing Center
2719 N. Air Fresno Dr., Suite 107
Fresno, CA 93727-1547

Fresno services loans for Regions V, VII, VIII, IX, and X.

b. What loans must the field office retain?

(1) Loans which require special servicing action at the field office level.

(2) Loans that are not fully disbursed.

(3) Loans for which the loan status does not show "regular servicing."

(4) Loans that have been paid-in-full or charged-off.

(5) Loans with potential problems which have an erratic payment history or loans with ongoing or anticipated problems.

(6) Loans classified as "in-liquidation/litigation."

NOTE: Litigation files must be retained by the field office.

c. What loans will the CLSC transfer to the field office?

(1) Loans which are 60-120 days or more past due and for which a workout plan in the CLSC is not possible, [unless the CLSC determines that the lender/CDC/small business company (SBC) has a viable workout plan in place (or being developed)];

(2) Loans to be classified as "in liquidation," "in liquidation-litigation," or "in litigation;"

(3) Loans (when requested) for which the field office is processing a new SBA loan application (alternately, the field office may request comments of CLSC); and

(4) Loans which the field office could better handle, for example:

(a) Complicated loan workouts;

(b) SBA-serviced loans which are chronically past due;

(c) Loans with an irregular payment plan which requires frequent adjustment; or

(d) Loans requiring a manual accounting system.

d. When do you transfer loans between field offices or between commercial loan service centers?

(1) From time to time, you will need to request that another field office or CLSC accept responsibility for further action on a loan. An example is when a borrower moves outside of your jurisdiction.

(2) A field office or CLSC must accept a valid transfer of a loan and should perform any reasonable task on a non-transferred loan for another field office.

(3) A loss generated under any transferred account will be attributed to the transferring office.

2. Lender/CDC/Office of the Inspector General (OIG) Reviews.

Refer to Appendix 30, "Loan Policy and Program Oversight Guide for Lender Reviews," in this SOP for the policy and procedures for lender and CDC reviews.

In the event that an OIG's investigation raises questions regarding SBA's obligation to honor it's guaranty for an SBA guaranteed loan, the field office will follow the same guidelines as noted in Appendix 30, paragraph VII.D., titled "Loan Deficiency Notification." If the results of the OIG review go to OFA instead of the field office, OFA will provide the field office with the appropriate information to comply with Appendix 30.

3. What Actions May You Take if the Lender/CDC is Not Properly Servicing its Loans?

a. You have the responsibility to report and act on the findings of your field reviews.

b. Regulations for 7(a) lenders:

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.

See Subpart D in SOP 50 10, "Business Loan Program - Loan Processing" for additional information.

c. Regulations for CDCs:

(1) 13 CFR 120.982
Correcting CDC servicing deficiencies.

SBA may require corrective action, including the transfer of existing or pending financings to another CDC in good standing. SBA must notify the CDC in writing of any servicing, reporting or collection deficiencies and the corrective actions to be taken. SBA may instruct the CSA to withhold service and late fees and may assess the CDC up to $250 per day for expenses incurred by SBA to correct the deficiencies. If non-compliance continues for 90 days, SBA may take the fees as compensation for its efforts to obtain compliance.

(2) 13 CFR 120.983
Transfer of CDC servicing to SBA or another CDC.

If a CDC fails to correct servicing deficiencies, or is unable or unwilling to service its portfolio, SBA may assume the servicing or require the transfer of all or part of the CDC's portfolio to

another CDC within or adjoining the deficient CDC's Area of Operations. If there is no suitable CDC, SBA may approve a transfer to another entity. Future service fees from transferred loans will be paid to the transferee. In addition, the CDC's processing authority will be temporarily suspended.

(3) 13 CFR 120.984

Suspension or revocation of CDC certification.

(a) Suspend or revoke.

The AA/FA may suspend or revoke the CDC's certification if a CDC:

(1) Violates a statute, an SBA regulation, or the terms of a Debenture, authorization, or agreement with SBA;

(2) Makes a material false statement, knowingly misrepresents, or fails to state a material fact;

(3) Fails to maintain good character;

(4) Fails to operate according to prudent lending standards;

(5) Fails to correct servicing, collection, reporting, or other deficiencies; or,

(6) Is unable or unwilling to operate in accordance with the requirements of this part.

(b) Transfer portfolio.

Upon suspension or revocation, the CDC must transfer its remaining portfolio and any 504 applications or financings in process to another CDC designated or approved by SBA. If a pending 504 financing is completed after a transfer, any deposit must also be transferred. Any fees must be apportioned by SBA between the two CDCs in proportion to services performed.

(c) Provide written notice.

SBA must give written notice to the CDC at least 10 business days prior to the effective date of a suspension or revocation, informing the CDC of the opportunity for a hearing pursuant to part 134 of this chapter.

4. Setting Up Lender and CDC File.

a. Each field office and Commercial Loan Servicing Center (CLSC) must create and maintain a "Lender File" and a "CDC File" for each lender and CDC that participates with SBA in the market served by the office. Use SBA Form 232, the standard SBA loan file folder. The details listed below are to be used as a guide for the field offices. The CLSCs will use these files to maintain correspondence and general loan servicing

information for a specific lender or CDC.

b. Divide the file into six sections which will contain material as follows.

(1) <u>Section I</u> - Guaranty Agreements.

(a) For a 7(a) lender, a copy of the executed SBA Form 750, "Loan Guaranty Agreement" and supplemental loan guaranty agreements.

(b) For a CDC, a copy of the certification letter with any amendments, such as change in service area or approval under the Accredited Lender Program (ALP).

(2) <u>Section II</u> - Annual Report.

Current lender or CDC annual statement/report.

(3) <u>Section III</u> - Examiner's Reports.

(a) Lender Review Report (Appendix 30, "Loan Policy and Program Oversight Guide for Lender Reviews").

(b) "Chron" type summaries of lender telephone contacts.

(c) Other formal or informal reports by SBA personnel who contact or are contacted by lender.

(4) <u>Section IV</u> - Correspondence.

Copies of general correspondence to/from lender. (Do not include correspondence relating only to a specific loan.)

(5) <u>Section V</u> - Loan Servicing Documents.

Quarterly Guaranty Loan Status Report (which the SBA Form 1502 has replaced), or any loan status report for a lender or CDC. [Note: The SBA Form 1502 will not be sent to the field offices but to the fiscal transfer agent (FTA).] This information will be input into the SBA database electronically and available to the field offices via the computer terminal. (See Chapter 15, "Loan Collection Monitoring & Reports.")

(6) <u>Section VI</u> - Miscellaneous Documents.

General information regarding the lender or CDC, including newspaper clippings and other information not accommodated in other sections of file.

5. SBA Field Visits to Borrowers with Lender or CDC-Serviced Loans.

a. Generally, a field visit to the borrower for an SBA guaranteed or development company loan will be made by the lender or CDC. However, you may make a field visit on behalf of SBA if a lender, CDC, or borrower requests your presence or if you conclude that a field visit by SBA is necessary.

b. You should make the visit jointly with the lender or CDC loan officer. If that is not possible, advise the lender or CDC that you intend to conduct a field visit. Report the visit on the Delinquent Loan Collection System (DLCS).

c. Refer to SOP 50 51 for additional information. It is in Chapter 8, "Lender-Serviced Liquidations" in paragraph 8 titled, "What Steps Should SBA Take after Being Notified of an Adverse Event?"

6. SBA Field Visits to Borrowers for SBA-Serviced Loans.

For information on this topic, refer to SOP 50 51. It is in Chapter 6, "SBA Serviced-Liquidations" in paragraph 5 titled, "Mandatory Field Visit Requirements."

7. What Fees Does SBA Charge a Lender?

a. <u>Servicing Fees</u>.

(1) Regulations:

13 CFR 120.220 (c).
Fees that Lender pays SBA.

The Lender shall also pay SBA an annual service fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

(2) This fee was effective as of October 13, 1995, for all loans approved on that day and forward.

b. <u>Review Fees</u>

(1) Regulations:

13 CFR 120.454.
PLP performance review.

SBA may review the performance of a PLP Lender. SBA may charge the PLP lender a fee to cover the costs of this review.

(2) SBA's PLP review center will conduct periodic reviews of PLP lenders. The regulations permit SBA to assess a fee for a PLP review.

8. What Fees Can a Lender Charge?

a. Fees charged by lender to borrower.

(1) Extraordinary servicing fees.

(a) Regulations:

13 CFR 120.221 (h).
Fees which the Lender may collect from a loan applicant.
Extraordinary servicing.

Subject to prior written SBA approval, if all or part of a loan will have extraordinary servicing needs, the Lender may charge the applicant a service fee not to exceed 2 percent per year on the outstanding balance of the part requiring special servicing.

(b) An example of extraordinary servicing is the special servicing required on an Asset Based Line of Credit, under the umbrella of the CAPLines program where the lender must conduct field audits of inventory and accounts receivable, collect receivables, and maintain cash collateral accounts.

(2) Out-of-pocket expenses.

(a) Regulations:

13 CFR 120.221 (c).

Fees which the Lender may collect from a loan applicant.

Out-of-pocket expenses.

The Lender may collect from the applicant necessary out-of-pocket expenses such as filing or recording fees.

(b) Expenses incurred by the lender may be added to the loan balance while SBA's guaranty is outstanding with SBA's approval (except for PLP, LowDoc, and FA$TRAK). For loans sold in the secondary market, they may NOT be added to the loan balance prior to SBA purchasing the guaranty.

(3) Late payment fee.

(a) Regulations:

13 CFR 120.221 (d).

Fees which the Lender may collect from a loan applicant.

Late payment fee.

The Lender may charge the Borrower a late payment fee not to exceed 5 percent of the regular loan payment.

(b) Is the fee mandatory?

i. No, the late fee is optional; and

ii. Lenders may charge less than 5 percent.

(c) When can the lender charge the late fee?

The late fee may be collected if the lender receives a payment more than 10 days after its due date. For example, if the payment is due on the 5th, the lender can collect the late fee if the payment is received on or after the 16th.

(d) Who is responsible for collecting the late fee?

It is the lender's responsibility to collect the late fee from the borrower. The lender must not add the late fee to the principal amount of the loan under any circumstances.

(e) Does the lender have to share the late fees collected with the investor if the loan has been sold in the secondary market?

No. The late fee belongs to the lender and is not shared with the investor.

(f) What happens to the late fee if the loan is purchased by SBA?

The lender must not add late fees to the transcript of account submitted by the lender for purchase of the guaranty. **The SBA will not be responsible for paying any late fees.** If SBA purchases a loan, SBA will permit the lender to collect late fees from the borrower which were owed at the time of purchase, but only AFTER SBA has been paid in full. The lender must apply all scheduled loan payments first to interest and then to principal.

(4) <u>What fees are prohibited?</u>

Regulations:

13 CFR 120.221 (e).
Fees which the Lender may collect from a loan applicant.

No prepayment fee.

The Lender may not charge a fee for full or partial prepayment of a loan.

b. Fees charged by lender to SBA for servicing purchased loans.

(1) The lender may deduct a servicing fee for collecting and remitting SBA's share of a borrower payment on a loan where SBA has purchased the guaranty (an XGP loan).

(2) The lender must compute the fee based on SBA's participation in the loan and the number of days of interest collected. (For method of computing fee, see SBA Form 172, Transaction Report on Loan Serviced by Lender.) A lender must not collect a servicing fee from principal received (for example, payment from liquidation proceeds).

(3) The lender deducts the service fee prior to remitting SBA's share of a payment to

SBA. The lender must use SBA Form 172 to remit payment to SBA.

(4) The lender must submit XGP loan payments for loans in regular servicing status to the SBA's Denver Finance Center (DFC) in Denver, within 15 days from the date the lender receives the funds from the borrower. Denver will notify electronically the appropriate district office of the receipt of funds.

(5) Reviews of lenders participating in the Preferred-Lender Program (PLP) and Certified-Lender Program (CLP) will include a review for compliance with the 15-day payment period. Lenders that are found not to be making timely payments may be subject to corrective actions by the Agency.

(6) Servicing and liquidation expenses paid by the lender must be customary and reasonable for the services obtained and consistent with local practice. The SBA will examine expenses during lender reviews and at the time of guaranty purchase or completion of liquidation to ensure that they meet these guidelines. Particular emphasis will be placed on review of legal expenses.

9. What Fees Relate to Certified Development Companies (CDC) and to CDC Loans?

a. Some of these fees are:

(1) Servicing fee;

(2) Late fees; and

(3) Assumption fees.

b. See Subpart H, "Development Company Loan Program" in SOP 50 10, "Business Loan Program - Loan Processing," for a detailed explanation of all fees relating to CDCs and CDC loans.

10. How Do You Suspend/Terminate/Reinstate CDC Servicing Fees?

a. If the CDC does not comply with its servicing responsibilities in accordance with the requirements of the regulations and of this SOP, the SBA may:

(1) Suspend or terminate the CDC's servicing fees;

(2) Take such action as provided in SBA's regulations, quoted in this chapter; and

(3) Take necessary action to correct any servicing deficiency. A CDC may be liable for administrative expenses as a result of a servicing deficiency that could cause serious harm to SBA.

b. Notification of deficiency.

(1) If you identify a deficiency, you must contact the CDC to resolve any problem/misunderstanding. A deficiency may exist with respect to an individual loan, multiple loans or the total portfolio of the CDC.

(2) If the deficiency is not corrected, you must submit written notice to the CDC. This notification must describe the nature of the deficiency and recommended actions to resolve the problem.

(3) If no response is received from the CDC within 15 days, you must send a second letter by Certified Mail-Return Receipt Requested to the CDC clearly specifying the consequences involved.

(4) If the CDC responds that efforts to correct the servicing problem(s) were attempted without results due to lack of cooperation or failure by the SBC(s), the CDC and SBA will work together to resolve the problem. Responsible, good faith efforts by the CDC and SBA should avoid the need for further action against the CDC.

c. Suspension of servicing fees.

(1) If the CDC is unable to resolve its servicing deficiencies or does not submit the required reports within the specified time frame, it is negligent in performing its servicing responsibilities. The district office/Servicing Center must proceed to suspend or terminate the CDC's servicing responsibilities and fees. These fees will continue to be collected and remitted to the Agency. If another CDC should take over servicing, then it will receive the fees collected.

(2) If based on the inability to resolve deficiencies you decide by 327 action to seek termination of CDC Certification (described in paragraph 4) titled "What Actions May You Take if the Lender/CDC is Not Properly Servicing its Loans?"), you should suspend the CDC's servicing responsibilities and fees during the process of revocation of CDC certification.

(3) You must process your recommendation to suspend CDC servicing fees by a 327 action for approval/decline under the rule of two. The 327 action must identify

the reason for the suspension and identify the CDC to which servicing and servicing fees are to be transferred. If a CDC is not available to assume servicing responsibility, servicing must be transferred to SBA. If approved, you must provide written notification to the CDC, the Central Servicing Agent (CSA), and the reciprocating field office/Servicing Center cooperating in the servicing of the CDC's portfolio. You must send a copy of the 327 action and fee suspension notice to the AA/BLS.

d. Reinstatement of fees.

You must process a reinstatement of servicing fees by a 327 action. If approved, you must provide written notice to the CDC and the CSA of the effective date of the reinstatement. Such action must be processed and approved under the rule of two. You must send a copy of the 327 action and fee reinstatement notice to the AA/BLS.

e. 327 distribution.

You must file the original 327 action in the lender (CDC) case file with a copy in the loan case file(s).

f. Termination of servicing fees.

(1) Termination of servicing fees will result only from suspension or termination of the CDC's certification.

(2) When a termination action is taken, you must assign all or part of the CDC's portfolio to another responsible CDC or, if necessary, to SBA. In this case, the assignor CDC will have no rights to any further fees. These fees will be paid to the transferee.

g. Transfer of servicing fees to SBA.

(1) SBA will perform the servicing functions if a CDC is no longer performing these functions and SBA cannot transfer the portfolio to another CDC.

(2) You must submit written notice to the CSA to transfer the servicing fees to SBA. Your notification must identify the CDC of record and the effective date of transfer to SBA. Upon notification, the CSA will remit servicing fees to the Denver Finance Center (DFC) in Denver,CO.

h. Collection of administrative expenses from the CDC.

(1) If the CDC does not rectify a negligent situation after having been notified to do so, you may charge the CDC with the administrative costs/expenses incurred by SBA to correct the servicing deficiencies.

(2) You should base administrative costs/expenses on time and charges necessary to correct a deficiency. The amount charged on a per diem basis must not exceed $250 per day. You must credit the CDC for any suspended servicing fees collected by the SBA.

CHAPTER 4

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GENERAL

LOAN SERVICING REQUESTS AND ACTIONS

1. General Guidelines for Loan Servicing and SBA's Policy on Lender Servicing.

a. It is SBA's policy that all lenders must service and liquidate all loans which were approved on or after October 1, 1997. For loans approved before October 1, 1997, all lenders are expected to service and liquidate a loan when they have asked SBA to honor its guaranty.

b. This chapter provides a description and guidance for processing of servicing requests received from borrowers, lenders, and certified development companies (CDCs). For most servicing actions, the process is the same for lenders, CDCs and SBA personnel. Actions delegated to the lender or the CDC must follow the same requirements. Exceptions to this general policy are noted.

c. As you follow the guidance of this SOP, we ask that you remember three factors:

(1) The individuality of each business;

(2) Your loan servicing responsibility; and

(3) The general steps for loan servicing.

d. Each small business is unique. For that reason, you must:

(1) Analyze all servicing actions within the context of the situation; and

(2) Consider what is in the best interest of the small business borrower and the SBA.

e. You must follow accepted standards of prudent lending. Loan servicing includes monitoring or reviewing:

(1) Borrower's business operations, as generally reflected in the borrower's financial statements and other information;

(2) Borrower's loan repayment history;

(3) All actions must be commercially reasonable; and

(4) Lender's servicing and liquidation actions must be consistent with the lender's procedures on non-SBA loans.

f. Loan servicing assistance involves:

(1) Recognizing a borrower's opportunity for growth;

(2) Recognizing a problem or potential problem early;

(3) Identifying the basic reason for a servicing action; and

(5) Determining the solution and taking appropriate action.

2. What is the Objective of Loan Servicing Actions?

Loan servicing should reflect a positive outlook to meet the short and long term needs of the small business. You must recognize the possible results of your action (or inaction) on the ultimate success of the borrower.

You are responsible for:

a. Servicing actions necessary to support the normal growth of the business; and

b. Evaluating and responding to problems which may arise; this may require providing relief to the borrower through modification of loan terms.

3. What are Indicators of Potential Servicing Problems?

a. The loan servicing function starts at the time of initial disbursement. You should continuously monitor your portfolio for warning signals.

b. Warning signals include:

(1) Payment default notices or checks returned for insufficient funds (NSF);

(2) Requests for relief in loan terms and conditions;

(3) Cash flow problems (e.g., placement of borrower on Cash On Delivery by suppliers);

(4) Adverse changes or declining financial/economic trends in the trade;

(5) Cancellations of life or hazard insurance policies;

(6) Death or illness of a principal(s);

(7) Tax problems (local, State, or Federal; especially failure to pay "withholding" taxes);

(8) Substantive changes in officers, managers, ownership, control, or method of operation;

(9) Fire or loss of collateral due to natural disasters;

(10) Legal actions;

(11) Loss of contracts; and

(12) Borrower's failure to submit financial statements timely.

c. Business loan delinquencies in excess of 60 days should trigger intensive servicing activity by the loan officer since this is a prime symptom of underlying problems. This SOP provides more guidance regarding problem loan workouts in Chapter 7, "Workout and Intensive Servicing Responsibilities of Field Offices and Service Centers."

4. How Should You Prepare a Response to a Servicing Request?

a. You must be familiar with all documents which contain the terms and conditions for the loan (e.g., notes; mortgages; loan, guaranty, and participation agreements).

b. Documentation, terms and conditions vary with different loan programs. You should be familiar with the loan programs and their required documents. For individual loan servicing actions, you may need to review the following:

(1) Loan application and related documents;

(2) Processing Loan Officer's report;

(3) Authorization;

(4) Settlement Sheet (for follow-up if counsel's review indicates problems); and

(5) All documents supporting the loan (Note, lien instruments, evidence of insurance, etc.).

5. What is Required in the Servicing Request to SBA?

In general, requests for all servicing actions should address a common set of elements from which you can make a decision. For lender/CDC-serviced loans, the lender/CDC must submit to SBA the information necessary to support the proposed action. For SBA-serviced loans, you must tell the borrower what information to submit.

a. Each servicing request to SBA must include the following:

(1) A statement of the proposed action.

(2) A description of why the request is needed.

(3) A summary of the analysis of the business, including analysis of financial statements.

NOTE: For SBA-serviced loans, you should request that the borrower submit year-end and interim statements, if available.

(4) Summary of prior servicing experience with the borrower.

(5) Identification of guarantors/co-makers and a statement as to whether their consent for the proposed action has been or will be obtained.

(6) A summary of the impact/benefit of the action on the business.

(a) Will the proposed action address the needs or solve the problem of the business?

(b) Will the action protect the interests of the lender/CDC and SBA?

(7) For loans sold in the secondary market, the lender/ALP-CDC must state whether they have obtained approval from the FTA.

b. For lender/CDC-serviced loans, a copy of their internal credit memorandum may be used if it provides the information necessary for you to consider their servicing requests. To help with preparation of servicing requests, the SBA's CLSCs have suggested loan servicing formats for use as a guide for submitting the requests. You may request a copy of the guide from either of the centers.

c. For development company loans, the CDC should also provide the status of the participating third party loan and indicate whether the third party lender concurs with the recommended action.

6. What are Additional Requirements for Actions Affecting the Loan Collateral?

It is SBA's policy to protect its interests by maintaining responsible control over collateral items pledged to secure the loan. For issues regarding adjustments to the collateral, it is necessary for you to fully review the benefits and risks.

a. Servicing request.

For all actions which affect "collateral," you must address the following items in addition to those listed in paragraph 4-5 titled, "What is Required in the Servicing Request to SBA?":

(1) Summary of prior collateral actions approved by the lender/CDC unilaterally that SBA has not acknowledged; and

(2) Summary analysis of collateral before and after the requested change.

b. Valuation of collateral.

(1) Appraisals.

A recent appraisal prepared by a qualified appraiser must indicate the fair market value of the collateral. If an appraisal is not available, you must identify the alternative form of valuation (such as net book value, property tax assessment, internal valuation, etc.).

(2) Valuation of collateral.

Generally, you calculate the net realized value of collateral by applying the following liquidation percentages to the fair market value (if you use alternative liquidation values, please justify):

Real Property:	Commercial RE	.75%
	Residential RE	80%
	Unimproved Land	50%
Business Assets (net of Depreciation):		
	Machinery/Equipment	50%
	Furniture/Fixtures	10%
	Accounts Receivable/Inventory	.20%
	Leasehold Improvements	.05%

c. Best interests of borrower.

(1) You should not use abundance of collateral as a reason to approve a servicing request if the action is not in the best interests of the borrower and SBA.

(2) Similarly, you should not decline a servicing request if the action is in the best interests of the borrower/SBA when the lack of collateral is the sole reason for the decline.

7. Uniform Commercial Code (UCC) National Financing Statement Renewing, Modifying, or Releasing Security Interests Responsibilities.

a. General guidance.

(1) Security interests (commonly known as "liens") in personal property collateral and many types of non-real estate business assets, are created through the borrower's execution of a Security Agreement.

(2) To ensure the enforceability of the lien, against other creditors and in the event that the borrower files bankruptcy, a creditor must "perfect" its lien through a UCC financing statement filing.

(3) The form and procedure for the filing of the Financing Statements vary from state to state. Consult with local counsel regarding the form and procedure for your state.

b. SBA-serviced loans.

(1) Each UCC filing has an expiration date. The term of the UCCs vary for different states. Within 6 months prior to the expiration date, you must file a continuation of the UCC filing. The form and procedure for doing so vary from state to state.

NOTE: <u>If you file a continuation earlier than 6 months prior to the expiration of the UCC, it will not be executed.</u>

(2) SBA maintains a database for tracking the filing of UCCs. At the time of loan closing, SBA files its UCCs and places a record of that transaction in its database. You then are responsible for monitoring the expiration date for each UCC filing.

(3) Certain loan servicing actions such as partial releases, subordinations, assumptions and changes in form of borrower's legal entity may require an amendment to the security interest. You must prepare and record a UCC amendment. The form and procedure for doing so vary from state to state.

(4) If there is a release of the lien or the loan is paid-in-full, you must prepare a termination of the UCC filing.

c. Lender-serviced loans.

For lender-serviced loans, the lender is responsible for filing, monitoring, and releasing the UCCs. In some circumstances, the lender may approve the release of a lien under Unilateral Authority (see paragraph 4-11 titled, "What Lender Actions Must have SBA's Approval.").

d. CDC-serviced loans.

(1) The CDC must prepare and record the appropriate UCCs at the time of loan closing.

(2) The CDC is responsible for monitoring the expiration dates of UCCs.

(3) For paid-in-full development company loans, the Central Servicing Agent (CSA) provides a letter confirming that the loan has been prepaid.

(4) For continuations, amendments and terminations, the CDC must prepare and send the appropriate UCC Form for execution by the SBA. The SBA will sign and return the UCC(s) to the CDC for recording. The CDC must return the recorded UCC(s) to the SBA for placement in the borrower's collateral file.

8. What is the SBA Form 327, Modification or Administrative Action?

The term "Modification or Administrative Action" refers to an action to modify the authorization 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 effect 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.)

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

a. SBA Form 327.

SBA Form 327 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 loan specialist or loan servicing assistant (LSA) originating the report.

(1) The recommending official's 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 the decision.

b. 327 stamp format.

You may accomplish routine or uncomplicated changes in the authorization by using a 327 stamp.

(1) 327 stamp.

(a) The 327 stamp is a stamp format which can be affixed to incoming borrower/lender/CDC correspondence to reflect SBA action. You may use the 327 stamp in those cases where you are not required to distribute the action to DFC.

(b) 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.

(c) In some cases, you may use the 327 stamp for administrative actions that are not in response to bank or borrower requests (e.g., submissions of a request corrections to DFC).

(2) 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 327 form/stamp the applicable SOP chapter and paragraph number that provides authority for the action. If you take more than one action with a 327 form/327 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 SBA Form 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.

(2) The originating office will forward the action to the next office (e.g., branch to district, district/service center to BLS) with a copy retained by the originating office pending final action. The report must include the comments and recommendations 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) Where 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 case folder.

9. Maintaining Record of Servicing Requests, Actions, and Loan Account Communications.

a. General guidance.

You must maintain records of all servicing requests, actions approved/declined and other communications regarding loans. Such records are critical to loan servicing personnel in all offices that service the lender/CDC/borrower loan account.

(1) SBA's CLSC will receive all current fully disbursed loans from the originating offices (see Chapter 3, "Administrative Aspects for Loan Servicing" for information on transferring loans to the CLSC). CLSC personnel must have access to as much information as is available in order to make prudent servicing action decisions.

(2) On occasion, the servicing center will transfer the loan back to the originating office. In those cases, the originating office will need to have access to information received by the servicing center. This information will be in the form of documentation in the file and in the Delinquent Loan Collection System (DLCS).

(3) Similarly, SBA will have occasion to receive loans for servicing from lenders or CDCs and will expect good records from them.

b. Servicing request/action log.

(1) The servicing centers must maintain a log of all servicing requests.

The log should identify the:

(a) Requestor;

(b) Name of the borrower;

(c) Loan number;

(d) Type of loan;

(e) Date the request was received;

(f) Date the action was taken; and

(g) Whether the action was approved or declined.

(2) With the possibility that both an originating office and a servicing office will receive inquiries on the same loan, the log provides a basis to track the status of actions.

c. Computerized database of communications.

(1) You must record all servicing requests and actions in the DLCS. The computerized database allows any SBA employee to view the PMQD26 screen for the details of servicing activity for the loan. This is especially important for personnel in the originating office if the docket file is at a service center, and vice-versa.

(2) Similarly, if you receive any letters or telephone calls regarding a specific loan account where the contents of the communication may be important for future servicing actions, you must summarize the communication into the DLCS database for that borrower.

(3) If you receive communications on a loan not being serviced in your office, you should forward a copy of the communication to the servicing office. This could be a copy of the letter or summarization of a phone call in an E-Mail message. The servicing office would then be responsible for updating the DLCS system.

(4) With the exception of CLP and CDC/ALP Loans (which have shorter response times), district offices should actively complete and respond to servicing requests within 10 working days. Such servicing actions must be documented in the file and in DLCS as described in paragraph 4-9.c.

10. What are Seasoned Loans?

a. The term "seasoned" loan applies to a borrower's loan that has demonstrated excellent repayment history over a period of time. For this reason, servicing requirements should generally be less stringent for "seasoned" loans. However, you must exercise care to avoid abuse of the classification.

b. If you recommend an action based on the "seasoned" loan classification, you must identify this classification in the 327 action.

c. "Seasoned" loans are those loans (direct, guaranty, or CDC) which meet the following criteria:

(1) At least 4 years have elapsed since the loan was funded, or for loans under

7 years, where the original principal balance has been reduced at least 25 percent.

(2) The loan has been paid "as agreed" for the past 12 months.

(3) Collateral is at or near "approval" levels, subject to any approved modifications.

(4) The financial statements are favorable.

(5) The account is satisfactory in all other respects.

11. What Lender Actions Must Have SBA's Approval?

a. Imposed by regulation:

13 CFR 120.513.
What servicing actions require the prior written consent of SBA?

Except as otherwise provided in a Supplemental Guarantee Agreement with the Lender, SBA must give its prior written consent before the Lender takes any of the following actions:

(a) Alters substantially the terms or conditions of any Loan Instrument (for example, any increase in the principal amount or change in the interest rate, or action conferring a Preference on the Lender);

(b) Releases collateral having a cumulative value in excess of 20 percent of the original loan amount;

(c) Accelerates the maturity of the note;

(d) Sues upon any Loan Instrument;

(e) Compromises or waives any claim against any Borrower, guarantor, obligor or standby creditor arising out of any Loan Instrument; or

(f) Increases the amount of any prior lien held by the Lender on the collateral securing the loan.

b. SBA policy also requires prior written approval when there is:

(a) The acquisition or purchase of environmentally impaired property; and

(b) Any contested litigation and litigation involving fees over $3,000.

12. What is Unilateral Authority?

a. To help streamline delivery of its financial services to small businesses, SBA places increased reliance on its private sector lending partners. The SBA encourages its lending partners to utilize "unilateral authority" (i.e., without prior written consent of SBA) whenever possible.

b. **It is important to recognize that you, the lender, and ALP-CDC must NOT exercise "unilateral authority" indiscriminately.**

(1) Prudent lending/credit practices must always be used.

(2) Unilateral actions can(_) be taken only when they:

(a) Assist the small business in solving a problem;

(b) Assist in its ability to repay the loan;

(c) Will not adversely affect the interest of the lender/SBA; and

(d) Are in compliance with all applicable laws and regulations.

(3) Remember that certain terms and conditions were placed in the loan and agreed to by all parties (borrower, lender, and SBA):

(a) To ensure repayment ability and success of the small business; and

(b) As a condition to the approval of the loan.

c. Accredited Lender Program CDC-serviced loans.

(1) SBA authorizes unilateral authority to ALP-CDCs similar to that of regular 7(a) lenders. All CDCs are accountable for the servicing of their loans. At the time of debenture funding, CDCs assign their loans and collateral documents to the SBA.

(2) ALP-CDCs may act under this unilateral authority if:

(a) The SBA retains the notes and collateral documents;

(b) The SBA requires the ALP-CDC to prepare the legal documents for SBA signature at the local SBA field office or service center; and

(c) The SBA counsel reviews the documents for legal sufficiency.

13. What Actions May the Lender/ALP-CDC Approve with Unilateral Authority?

Lenders and ALP-CDCs have unilateral authority to make adjustments in the terms and conditions of a loan if SBA does not consider the action to be "substantial" and the action does not confer a preference on the lender/ALP-CDC.

The lender/ALP-CDC must notify SBA on all actions that they take using unilateral authority. They must also document the borrower's file for all unilateral actions taken.

The following is a listing of allowable unilateral actions lenders/ALP-CDCs may take without the prior written consent of SBA. This is not all inclusive, but rather a compilation of the most frequently occurring loan servicing actions.

Appropriate circumstances for unilateral actions include:

a. Correcting obvious typographical errors.

Correct obvious typographical errors in the loan authorization.

b. Providing pay off figures.

Provide pay off figures to the borrower (the lender/ALP-CDC is not required to provide or send a copy to SBA).

c. Modifying financial statement requirements.

The lender/ALP-CDC may:

(1) Waive audited financial statements, for seasoned borrowers, using prudent credit practices, or change the audit requirement to compilation and/or review where,

(a) In the judgement of the lender/ALP-CDC, the business is not of a size and type to warrant such statements; or

(b) The cost would be prohibitive to the borrower.

(2) Grant waivers for only 1 year at a time and must reserve the right to reinstate the requirement in the event of loan default.

(3) Approve changes in financial statement frequency and/or due date requirements, as necessary consistent with prudent lending/credit practices.

d. Deferment of principal and/or interest payments.

A deferment is defined as the postponement of scheduled loan payments of principal and/or interest to a later date.

(1) Loans NOT sold on the secondary market.

For lender-serviced loans NOT sold on the secondary market, the following applies:

(a) The lender may defer the borrower's payments of principal and/or interest. The principal payment may be deferred to the next month or further (e.g., to the maturity of the note). However, interest continues to accrue even if the payment of interest is deferred. When the next scheduled payment is due, it will be allocated to interest first then to principal. The interest payment is not deferred to the end of the note.

(b) The amount deferred must not exceed a cumulative total of 6 months during the life of the loan or a cumulative value in excess of 20 percent of the original amount of loan, whichever is less.

(c) The lender must retain deferment documentation in the loan file, including current financial statements.

(2) <u>Loans sold on the secondary market.</u>

For a loan sold on the secondary market, using the SBA Form 1086, "Secondary Participation Guaranty Agreement":

(a) The lender may grant a one time deferment of up to 3 consecutive months without written consent of SBA/holder.

(b) The lender must promptly notify SBA/holder when the lender takes this action.

NOTE: <u>On deferment actions for which the lender has unilateral authority (mentioned earlier), the request for approval only needs to be submitted to the FTA and not SBA.</u>

(3) <u>ALP-CDC-serviced loans.</u>

The ALP-CDC may approve up to 6 months (cumulative) of payment deferment

or 20 percent of the original amount of the loan whichever is less.

(a) The ALP-CDC may approve a deferment only if the borrower can reasonably project that it will bring current the deferred amount within 5 years after the deferment period.

(b) The ALP-CDC must NOT defer development company loan payments to the end of the loan term.

(c) The ALP-CDC must send notification of the deferment to the SBA servicing office and the CSA.

(4) <u>Interest accrual notification.</u>

The lender/ALP-CDC must notify the borrower that interest continues to accrue during any period of the deferment. When payments resume:

(a) For 7(a) loans, the payments will be applied first to accrued interest; and

(b) For CDC loans, the payments will be applied to the loan in the following order:

i. Accrued fees;

ii. Interest; and

iii. Principal.

(5) Consent of borrower and guarantors.

The lender/ALP-CDC must obtain written consent of the borrower, all guarantor(s) and FTA, as appropriate.

(6) Reinstatement of default.

If a loan was in default when a deferment was approved, and the borrower has not made the first payment by the time the deferment expires, the loan will be reclassified as in default.

e. Release of collateral.

The lender/ALP-CDC may release collateral up to a cumulative value of 20 percent of

the original loan amount. To do this the lender/ALP-CDC must determine the value of the collateral to be released at the time of the decision to release. The borrower should use proceeds from release of collateral for business purposes. The lender/ALP-CDC should rarely give favorable consideration to release business assets in order to provide funds for personal reasons.

There must be ample indication that:

(1) The remaining collateral or enhanced repayment ability is reasonable in relation to the outstanding loan balance; and

(2) The release will not materially interfere with the operation of the business or decrease the value of the other collateral securing the loan; or

(3) The action is clearly necessary for the survival of the business, and future repayment from profits are anticipated.

NOTE: The lender/ALP-CDC must obtain written consent of all guarantor(s) and advise the SBA servicing office of the release of collateral.

f. Substitution of collateral.

The lender/ALP-CDC may:

(1) Substitute automotive or other minor equipment (with equal or greater value) taken as partial collateral for the loan.

(2) Substitute equal, or greater equity, in like kinds of collateral, (e.g., exchange of real property excluding the primary real estate for the location of the principal business operation).

g. Subordinations to senior liens.

(1) The lender/ALP-CDC may permit the subordination of collateral for refinancing of senior liens held by another lender if:

(a) The refinancing is on more favorable terms for the borrower; and

(b) The borrower does not receive any funds from the refinancing (e.g., there is no increase in the principal balance of the senior lien, except for reasonable closing costs of refinancing).

(2) The lender/ALP-CDC is responsible for ensuring that this action does not adversely affect the priority of the lender/ALP-CDC/SBA lien.

(3) For development company third party loans (e.g., first lien holder), the ALP-CDC must ensure that the term of the refinanced third party loan equals or exceeds the term of the original third party loan. The participating third party loan must not be replaced by a loan under a Federally funded program (e.g., an SBA 7(a) guaranteed lender loan).

h. Changes to life insurance or hazard insurance requirements.

(1) The lender/ALP-CDC may make changes to life insurance or hazard insurance requirements in accordance with the lender's own standard practices.

(2) On current loans, the lender/ALP-CDC may release insurance proceeds for the repair or replacement of damaged collateral.

(3) Cash surrender value of life insurance may be released, subject to the restriction noted in this section in the earlier sub-paragraph 13.e, "Release of collateral."

(4) The lender/ALP-CDC must NOT make any changes to Federal flood insurance coverage that is in effect, or might become applicable, without obtaining the prior written consent of SBA.

i. Adjustments to the installment amount.

(1) The lender may adjust the installment amount to allow for correct amortization of the balance as a result of interest rate changes or anticipated balloon balances. This adjustment may be made only upon written consent of the borrower, all guarantors, and the secondary participant, if any.

NOTE: This provision does not affect variable interest rate loans that already have the provision to increase or decrease the payment amount, to an amount necessary to amortize the principal remaining unpaid after any scheduled interest rate change under the terms of the note.

(2) An ALP-CDC must not make any adjustment to the installment amount for a development company loan. However, the ALP-CDC may approve such an adjustment for the participating third party loan.

j. Make loans to the borrower which do not affect the collateral.

The lender/ALP-CDC may make loans to the borrower which do not affect the collateral lien position supporting the SBA guaranteed loan. This includes purchase-money loans for business assets and loans subordinate to the SBA guaranteed loan.

k. Assumptions -- Approve a borrower's change in form of organization.

(1) The lender/ALP-CDC may authorize the assumption of an SBA loan when a borrower changes its form of organization, provided there is:

(a) No release or subordination of existing collateral;

(b) No release of original obligor(s) or guarantor(s) (no change in ownership or management); and

(c) No decrease in equity position of the business as a consequence of the assumption. (An example of this is when a partnership is converted to a corporation, and the same partners now have the same percentage ownership in the corporation as they had in their partnership.)

(2) The lender/CDC must ensure that the guarantee of the original borrower and guarantors are maintained.

(3) For CDC loans, the ALP-CDC must notify the CSA of the change and provide required tax identification information.

l. Adjustments to management covenants.

The lender/ALP-CDC may, using prudent credit practices, approve adjustments to management covenants (e.g., limitations on compensation, fixed assets, working capital maintenance levels, lease liabilities, or dividend payment), if the loan:

(1) Is seasoned;

(2) Has not been extended or deferred within 24 months before the date of the adjustment request; and

(3) Reflects that repayment ability/cash flow exists for all debt including the SBA guaranteed loan after the adjustments to the management covenants have been made.

m. Accept prepayments.

(1) For lender-serviced loans, the lender may accept partial or full prepayments of the

loan account. For loans approved by SBA after February 14, 1985, and sold on the secondary market, the **lender must give 10 business days advance notice to the secondary holder or FTA of any intended prepayment of the note. Refer to SBA Form 1086 for further details.**

(2) For development company loans, the ALP-CDC may approve the partial or full prepayment of the participating third party loan.

NOTE: The lender/ALP-CDC should direct specific questions relating to loan servicing to the SBA field office or servicing center having the delegated authority to service.

CHAPTER 5

SPECIFIC LOAN SERVICING ACTIONS

1. Servicing Actions During the Disbursement Period.

a. The Finance Division (FD) retains the loan until it is fully disbursed. FD is responsible for the loan until it is:

(1) Fully disbursed;

(2) Transferred into "Regular Servicing" status; and

(3) Transferred to the Commercial Loan Servicing Center (CLSC).

b. Chapter 3, "Administrative Aspects for Loan Servicing" provides additional guidance for transferring a loan to a CLSC.

c. Six common actions that occur before transfer of a loan to a CLSC are:

(1) Increases in the balance of an outstanding loan;

(2) Extension of disbursement period;

(3) Cancellation of undisbursed balance;

(4) Change in use of proceeds;

(5) Response to an adverse change; and

(6) Collection of guarantee fees.

2. Preparation and Submission of a Servicing Request.

For the preparation and the submission of a request of all actions noted in this chapter, you must follow the guidance set out in Chapter 4 "General Loan Servicing Request and Actions" in paragraph 4 "How Should You Prepare a Response to a Servicing Request?" and paragraph 5 "What is Required in the Servicing Request to SBA?"

3. Requests for Information.

a. General guidance.

A common loan servicing action involves responding to a request for information. If you are unsure whether the request is being made by a duly authorized representative of the borrower, you should request written authorization from the borrower. For other parties or for information requests not covered in this section, follow the disclosure policy guidelines in Chapter 13, "Disclosure of Loan Information."

For lender or CDC-serviced loans, the borrower should contact the participating lender/CDC directly.

b. Loan payoff amount.

(1) <u>Lender-serviced loans.</u>

The lender must provide the loan payoff amount to the borrower.

(2) <u>Development company loans.</u>

The CDC must provide the loan payoff amount to the borrower.

(a) If the debenture has not been purchased, the Central Servicing Agent (CSA) must provide the loan payoff amount to the CDC.

(b) If the debenture has been purchased, SBA will provide the loan payoff amount to the CDC.

(c) However, if the loan has been transferred to SBA for servicing, SBA will respond to the borrower.

(3) <u>SBA-serviced loans.</u>

You can obtain loan payoff amounts locally by accessing the Agency database in the PMQD09 screen (Accounting Pay Off Data). This display provides the principal balance, accrued interest as of the specified date and the daily interest accrual.

c. Statement of account.

For an SBA-serviced loan, you must request an SBA Form 596 B, "Certified Statement Account," from Denver, OFO. Usually, you will only need this certification in a loan involving litigation, court action, etc. The statement indicates the principal outstanding loan balance, accrued interest to a specified date, and the daily interest accrual. This form, when completed, is signed off by an official in the Office of the Chief Financial Officer (CFO).

d. Transcript of account.

(1) <u>Lender-serviced loans.</u>

The lender will provide a transcript of account to the borrower.

(2) <u>Development company loans.</u>

The CDC will provide a transcript to the borrower.

(a) If the debenture has not been purchased, the CSA will provide the transcript to the CDC.

(b) If the debenture has been purchased, SBA will provide the transcript to the CDC.

(3) <u>SBA-serviced loans.</u>

You have two alternatives:

(a) <u>History of payments.</u>

A history of payments (principal and interest) is available from SBA's database in PMQD11 screen. For most situations, this information should fulfill the borrower's request.

(b) <u>Official transcript.</u>

OFO manually prepares an official transcript SBA Form 466, "Transcript of Account" (Appendix 8). It may cover the entire period from loan inception to current date or a specific period only (e.g., last 12 months).

It includes:

i. All applicable disbursements and collection transactions and dates;

ii. The application of payments to principal and interest; and

iii. Ending principal and interest balances.

As this report can be lengthy and time consuming to prepare, you should request transcripts only when necessary. In most cases it is not necessary to reconcile all transactions from inception. You should determine the last date that the borrower and SBA's records were in agreement and work from that point.

You should NOT request a transcript if a borrower's concern is whether SBA has received a particular payment. You should first determine if the SBA database, PMQD11, shows receipt of the payment. If not, you should request a transcript only for the specific time period involved.

e. Credit/audit confirmations.

When an auditor or someone seeking credit confirmation contacts you, you must verify that the borrower has provided written authorization to release the requested data.

(1) For lender/CDC-serviced loans, the lender/CDC will respond.

(2) For SBA-serviced loans, you must respond. You should provide this information from the computer database, if possible, (e.g., PMQD09, PMQD10, PMQD11, etc.).

f. Statement of loan account/interest paid.

(1) <u>SBA-serviced loans.</u>

(a) SBA Form 1032, "Statement of Loan Account," (Appendix 16) is mailed annually by Denver, OFO, in late January, to all SBA direct and SBA-serviced borrowers, primarily for income tax purposes. It is used for loans paid in full and charged-off in the previous calendar year. It is, also, used for loans charged-off in the previous calendar year if interest was collected. This statement is not sent for active loans or loans charged-off in prior years. The report indicates the loan's principal balance as of the end of the calendar year, the year end balance of accrued or prepaid interest, and total amount of interest paid during the calendar year.

(b) SBA Form 1201, "Repayment Notice," (Appendix 22) is also used to report the same details as in SBA Form 1032 for all loans with an outstanding principal balance as of December 31. These details will be reported on this statement for the months of January, February, and March. The primary purpose of this form is to serve as a payment notice to SBA borrowers.

For telephone inquiries from the borrower, the PMQD10 screen display provides calendar year to date interest paid.

(2) <u>Development company loans.</u>

For development company loans, the CSA mails an annual statement to all borrowers, with a copy to the CDCs.

g. Change in name or address of borrower.

(1) <u>Active loans.</u>

When a borrower/lender/CDC notifies you of a change in the name or address of a borrower, you must:

(a) Change all "in-house" records as appropriate;

(b) Forward the change to the collateral cashier; and

(c) Consult with SBA counsel for the need to amend the debtor's name and address in any financing statement which was previously filed to perfect the SBA security interest in collateral.

Name and address changes must be processed immediately to avoid misdirected or undelivered mail.

(2) <u>Loans in liquidation or possible liquidation.</u>

If a borrower ceases business operations or vacates the business premises, you should:

(a) Identify a current, accurate mailing address; or

(b) Consider using the current address of the owner, principal, partner, or

principal officer of the corporation or guarantor.

If the new address is not available (responsible individual, etc.), consider using the local field office address. This action must be recorded in DLCS.

h. Return of documents to borrowers.

At the request of the borrower, you may recommend returning only the documents that were clearly NOT used in the approval process and NOT required for servicing the loan. All other documents must be maintained in the borrower's file.

4. Pre-Authorized Debits (PADs).

a. What is a pre-authorized debit?

Pre-authorized debit (PADs) are the mechanism by which loan payments are automatically withdrawn from the borrower's bank account and paid to the lender, CDC or SBA. All borrowers are encouraged to utilize PADs for their monthly loan payments. This payment procedure:

(1) Reduces manpower requirements for SBA, lenders and CDCs; and

(2) Results in more timely application of payments.

b. How do you process PADs?

(1) For lender or CDC-serviced loans, the borrower must contact the lender or CDC.

(2) For SBA serviced loans, the SBA-DCS Manual (which can be located in the SBA Intranet) provides instructions for establishing a PAD. If you need assistance accessing or downloading portions of the manual contact your information resource manager (IRM) for assistance.

5. Release of Collateral.

a. What is a release of collateral?

A release of collateral occurs when SBA or, when authorized, a lender or CDC, releases the security interest or lien on specific loan collateral. The request may be for a full release of all collateral or a partial release of only a portion of the collateral. A release of

collateral requires legal review.

b. How do you process a release of collateral?

(1) General guidance.

To release collateral, you must make a credit decision regarding the impact of the release on the interests of the borrower, lender, and SBA. Generally, the borrower must maintain collateral coverage:

(a) At or near the "approval" level; or

(b) At an amount to protect the remaining balance of a seasoned loan.

However, primary consideration must be repayment ability from profits and cash flow, and not liquidation of assets.

(2) Lender-serviced loans.

You are not required to review, or recommend for approval, the release documents. The SBA relies on the lender's attorney to review documents for legal sufficiency.

(3) CDC loans.

The CDC must prepare the collateral release documents for execution by SBA. The CDC will be responsible for recording the release.

(4) SBA-serviced loans.

The SBA will prepare the required collateral release documents. You should work with counsel to ensure that documents are legally sufficient.

c. SBA counsel review of 327 actions for collateral release.

(1) The SBA counsel must review all 327 actions involving release of SBA collateral for SBA-serviced and development company loans.

(2) Counsel must determine if notice to or consent of the guarantor(s) is required and determine the consequences, if any, of noncompliance by the Agency for SBA-serviced loans.

6. Subordination of Collateral/Lien.

a. What is a subordination of collateral?

A subordination occurs when a third party is permitted to take a superior lien on specific collateral on an SBA loan.

b. There are generally three types of subordination requests:

(1) A request to subordinate SBA's/lender's lien on specific collateral to a third party for a specific period of time.

(2) A request by a lender to increase the amount of financing which has a superior lien to an existing SBA lien.

(3) A request to allow an extension of an existing subordination of an SBA lien. If the extension is for the purpose of refinancing, you will not need to prepare a complete analysis when the refinancing is for the loan balance plus normal refinancing costs.

c. How do you process a subordination of collateral?

(1) <u>Lender/CDC-serviced loans.</u>

(a) You must review the request and supporting documentation to ensure that the lender/CDC addressed the critical elements and necessity of the recommended action to the survival or growth of the business.

(b) Lender-serviced loans will not require SBA approval or signature on the subordination documents. The SBA relies on the lender's attorney to

review documents for legal sufficiency.

(2) <u>CDC loans.</u>

The CDC must prepare the subordination documents for execution by the borrower, third party lender and SBA. The CDC must use its counsel to prepare any necessary documents. The SBA counsel must review the documents for legal sufficiency.

(3) <u>SBA-serviced loans.</u>

You must additionally work with counsel to prepare required subordination documents for execution by the borrower, the third party lender and the SBA.

NOTE: <u>You must follow the same guidelines for the "Release of Collateral" when considering a subordination of collateral.</u>

d. SBA counsel review of subordination 327 actions.

The SBA counsel must review all 327 actions involving subordination of SBA collateral.

7. Substitution of Collateral.

a. What is a substitution of collateral?

A substitution of collateral occurs when you allow the lender/CDC/SBA to take a security interest in one item or type of collateral while releasing its interest in another item or type of collateral previously taken.

b. How do you process a substitution of collateral?

(1) <u>General guidance.</u>

You may recommend approving a substitution of collateral where:

(a) The collateral being substituted is similar in nature (e.g., the substitution of one piece of real estate for another -- NOT to include the primary real estate for the principal business operation) and provides equal or greater equity; or

(b) The replacement collateral has a higher level of confidence (e.g., a cash collateral account or real estate as compared to leasehold improvements or receivables).

(2) <u>SBA-serviced loans.</u>

The SBA will prepare the required collateral substitution documents.

(3) <u>CDC loans.</u>

The CDC must prepare the collateral substitution documents for execution by SBA. The CDC will then be responsible for recording of the documents as needed.

(4) <u>Lender-serviced loans.</u>

You are not required to recommend approval of the substitution documents. The SBA relies on the lender's attorney to review documents for legal sufficiency.

c. SBA counsel review of 327 actions for substitution of collateral.

SBA counsel must review all 327 actions involving substitution of collateral.

8. Deferments of Loan Payments.

a. Regulations.

CFR 120.530.

Deferment of payment.

SBA may agree to defer payments on a business loan for a stated period of time, and use such other methods as it considers necessary and appropriate to help in the successful operation of the Borrower. This policy applies to all business loan programs, including 504 loans.

b. What is a deferment?

(1) A deferment is a postponement of a payment (principal and/or interest) to a later date without causing the loan to be considered late or in default. The purpose of a

deferment is the enhancement of a borrower's cash flow to assist the borrower in responding to short term needs.

(2) You must not grant a deferment for the sole purpose of statistical reduction of the SBA's delinquency rate.

Note: Deferments should be used only where it appears that it will assist the borrower in solving a temporary cash flow problem.

c. When and how do you approve a deferment?

(1) You may recommend approving deferment of future loan payments. Generally, you must not approve deferment of more than 6 months in the future. No single deferment action must exceed 1 year of future payments. A 1 year deferment should be used only when absolutely necessary and with strong justification.

(2) You may recommend approving a deferment of delinquent loan payments only if:

(a) The borrower has a workout plan that will allow the loan to be repaid through regular installments (returning the loan to regular servicing); and

(b) It appears that the deferment will solve the problem.

This should only be used as an exception.

(3) Before approving a deferment or an extension of a deferment, the borrower should provide you with updated financial statements [e.g., the last year end and interim (current within 90 days) financial statements] If the borrower's request is in response to a natural disaster, fire, or other loss of facilities, you may waive the requirement for financial statements.

(4) SBA and lender-serviced loans.

(a) You (or lender/ALP-CDC under unilateral authority) may recommend approval of a deferment of payments until the maturity of the loan. You or the lender should notify the borrower that the deferred amount will result in:

i. A balloon payment at maturity, or

ii. The need to extend the maturity of the loan.

(b) As an alternative, the borrower may establish a payment plan to return the loan to the regular payment schedule before loan maturity.

(5) Lender-serviced loans sold on the secondary market.

The lender must receive approval from the FTA and SBA if the borrower's request exceeds the lender's unilateral authority as noted in paragraph 4-13 titled "What Actions May the Lender/ALP-CDC Approve with Unilateral Authority?"

(6) CDC loans.

(a) You can recommend a deferment on a CDC loan only if the borrower can reasonably project that they will bring current the deferred amount within 5 years after the deferment period.

(b) You may recommend deferring CDC loan payments until the end of the loan term **only** if the debenture has been purchased.

(c) You must send notification of the deferment to the SBA servicing office and the Central Servicing Agent (CSA).

(d) You should submit SBA Form 1614, "Loan Information Request," to the CSA to request the amount deferred and the amount of catch-up payments based on what you believe the borrower will be able to pay. The CSA Status of Portfolio Report will show the loan status as "D" for under deferment or "C" for under the loan catch-up period.

d. Does interest accrue during a deferment?

(1) Yes, interest will continue to accrue during the deferment period. You must inform the borrower that payments will apply to accrued interest first and then to principal following the deferment period.

(2) If the borrower makes partial loan payments during the deferment period:

(a) For 7(a) loans, the payments will be applied first to accrued interest; and

(b) For CDC loans, the payments will be applied to the loan in the following order:

i. Accrued fees;

ii. Interest; and

iii. Principal.

(3) In some cases, you may want to approve deferment of principal only. However, particularly during the early years of a loan, this may not grant significant relief to the borrower. You should consider the deferment of principal and interest if the cause for the deferment is justified.

e. Borrowers called to active military duty.

(1) You should assist borrowers in adjusting their SBA obligation in contemplation of military service. The SBA does not have a policy to defer payments solely because a borrower enters the service. You should consider each case individually on the basis of the borrower's ability to continue payments on the loan. Factors to consider include:

(a) Size and structure of the company;

(b) Whether the business can continue (e.g., leased, other managers available, etc.); and

(c) Affect on the collateral with a possible shutdown of the business.

(2) You should be aware that under the Soldier's and Sailor's Relief Act (50 Appendix U.S.C., 526), no obligation bearing interest of over 6 percent per year incurred by a person in military service before that person went into the service shall, during any time that person is in military service, bear interest over 6 percent, unless a court rules that the person's ability to pay such interest is not materially affected because of such military service.

If this issue comes up, consult with SBA counsel.

f. If the first payment following the deferment is missed.

The lender or CDC must immediately notify SBA if the borrower misses the first payment following the deferment period.

If this occurs, you must make a determination as to whether to grant another deferment or to transfer the loan into intensive servicing/loan workout.

9. Inter-Creditor Agreements.

a. What is an inter-creditor agreement?

When two or more lenders make separate loans to a borrower with commonality of loan purpose and/or collateral, the lenders enter into an "Inter-Creditor Agreement" to delineate their:

(1) Rights to the collateral;

(2) Responsibilities for loan servicing; and

(3) Rights/responsibilities in the case of a borrower default on one or all of the loans.

b. How do you process inter-creditor agreements?

(1) You must carefully review the complete inter-creditor agreement to ensure that:

(a) SBA's collateral lien positions are not adversely affected; and

(b) You agree with the rights and responsibilities for loan servicing and possible default.

(2) If the borrower requests a collateral action (subordination, substitution, release, etc), you must have written concurrence that all parties are in agreement.

(3) The inter-creditor agreement must be reviewed by the SBA counsel.

10. Assumption of a Loan by an Unrelated Party.

a. What is an assumption of a loan?

An assumption of a loan occurs when one legal entity takes on the contractual obligation of another legal entity. This usually occurs when a business or residence (if a disaster home loan) is sold.

b. What are some of the different types of assumptions?

(1) When the borrower changes form of legal entity, see paragraph 4-13.k. titled "Assumptions -- Approve a borrower's change in form of organization."

(2) If an individual is looking to purchase a business in which they are currently employed and in which they hold a key management position, you may not need to conduct a detailed credit analysis as required for individuals not associated with the firm.

c. How do you process a loan assumption?

(1) You must:

(a) Identify the reason for the assumption. Except for unilateral authority actions, the assumption must have prior approval of the SBA.

(b) Analyze an assumption request in the same way that you would analyze a new loan application. To guide you through this process you are

strongly encouraged to use the lender checklist and loan assumption worksheet when considering an assumption. (Appendix 29, "Loan Assumption Guidelines")

(c) Have counsel review the assumptor's form of legal entity and related organizational documents.

(d) Check the assumption agreement to identify the terms of the assumption for all parties.

(e) NOT release existing obligors from liability, except in rare cases and if the assumptor is "reasonably equal" or better in the areas of both financial and business experience. This release must be supported in the 327 action.

(2) If there is any indication of the existence of an environmental hazard, you must NOT release an existing obligor(s) or other personal collateral pledged as security unless additional equivalent collateral is offered for substitution.

(3) If the existing obligor is receiving substantial income from the transaction and there is doubt whether the assumptor is "reasonably equal," you should not release the existing obligor and should obtain a stand-by agreement if a note was executed for these funds.

(4) Development company loans:

(a) <u>Regulations:</u>

13 CFR 120.937.

Assumption.

A 504 loan may be assumed with SBA's prior written approval.

(b) <u>The CDC must:</u>

i. Identify the status of the participating third party loan (first mortgage) and obtain the lender's concurrence for the assumption if the lender will remain as the third party lender for the assumptor.

ii. Submit the SBA Form 1614, "Loan Information Request," CSA to obtain the assumption loan balance.

iii. Notify the CSA when the assumption is approved.

iv. Provide the CSA with an IRS Form W-9, Request for Taxpayer Identification Number and Certification, indicating the assumptor's identification number and name, the pre-authorized debit form, and a copy of the assumption agreement including the agreement to comply with the servicing agent agreement.

d. SBA counsel review of 327 actions for loan assumptions.

(1) The SBA counsel must review all 327 actions involving assumptions.

(2) The SBA relies on the lender's attorney to review documents for legal sufficiency.

11. Processing "Paid in Full" Loans.

When a loan is "paid in full," you must release all collateral of any nature, unless the collateral is pledged to secure another loan.

a. SBA-serviced loans.

Generally, you should process the release only after receipt of SBA Form 397, "Notice of Fully Paid Account," (Appendix 7) from DFC. However, at the borrower's request prior to receipt of the SBA 397, you may recommend approval of the release of collateral by

327 action if:

(1) Payment in full is by certified or cashier's check; or

(2) Payment in full is by check from an attorney or escrow agent, and you are confident that no problems will be encountered in collecting any outstanding balance.

b. Development company loans.

Generally, you will process the release of collateral only after receiving a memorandum from the CSA confirming receipt of funds to pay the loan in full.

c. Lender-serviced loans.

The lender is responsible for releasing collateral for lender-serviced loans. The SBA relies on the lender's attorney to review documents for legal sufficiency.

d. Reinstatement of a loan.

There may be circumstances where a loan is mistakenly reported as paid in full by a lender. For guidance on how to reinstate an SBA guaranty on a loan see Chapter 10, "Miscellaneous Issues Regarding Participating Loans," in paragraph 3, "Reinstating an SBA Guaranty."

12. Proceeds from Condemnation of a Borrower's Collateral.

You must determine whether the loss of the property being condemned will adversely affect the operation of the business.

a. If the borrower uses the proceeds from the condemnation to replace the condemned property, you may release the proceeds:

(1) To the borrower, if the borrower documents the replacement and you have the required liens on the replacement property; or

(2) To a trustee, if the trustee will release funds as the borrower replaces the collateral and will file the required liens on the replacement property.

b. You may release the proceeds to the borrower without consideration, if:

(1) The property condemned is not significant to the operation of the business;

(2) The loss does not adversely affect the value of SBA's collateral; and

(3) The proceeds from the condemnation are not significant (less than $5,000 or 10 percent of the loan whichever is greater).

13. Release of, or Changes to, a Standby Agreement.

For you to be able to recommend a borrower's request to make a full or partial payment to a standby creditor, you must:

a. Prepare an SBA Form 327.

b. Weigh the original reasons for requiring the standby agreement against the present ability of the borrower to pay the standby creditor.

c. Consider the risk, if any, to full and timely repayment of the SBA loan. You must analyze the effect of the change on the cash flow of the business in conjunction with all other debts (including SBA's).

d. For this action to be approved, cash flow/repayment ability for all debts, including debts on SBA loans, must exist. You must base your actions on at least 3 months of adequate cash flow/repayment ability.

14. Guarantor Release/Substitution.

You may, using a 327 action, recommend the release of a secured or an unsecured guaranty, or accept other guaranties or collateral of any worthwhile type, in substitution for a secured or an unsecured guaranty being released.

a. Guarantor's obligation for repayment.

Personal guaranties on SBA Form 148, Guaranty, are guaranties of payment of the entire indebtedness unless specifically limited or qualified. When a loan becomes significantly delinquent, guarantors should be advised of their obligation and requested to cure the default or see that the borrower makes arrangements to do so. If it is apparent that the borrower's financial condition will not allow payments to keep the loan current, and the guarantors have the financial ability to make payments, they should be required to do so. The SBA guaranty forms provide that guarantors must furnish financial statements on

request. Accordingly, if there is any question as to the ability of the guarantors to furnish aid to the borrowers, statements should obtained.

b. Criteria to be considered before effecting release.

The following points must be considered before taking any actions to release or substitute guarantees.

(1) <u>The status of the loan.</u>

It should be current in all respects without a history of unjustified delinquencies, unpaid taxes, or deferment of installments.

(2) <u>Written requests.</u>

The field office must have a written request from the borrower, the guarantor to be released, or the proposed substitute.

(3) <u>Consent of other parties.</u>

The written consent of all parties (e.g., other guarantors, standby creditors, etc.) must be obtained before the transaction is finalized.

(4) <u>Opinion of counsel.</u>

You must obtain the opinion of counsel showing that no legal rights of the Agency will be adversely affected.

(5) <u>Sale or reorganization.</u>

Where a request is received for the release of a guarantor because of reorganization or sale of the firm, you must obtain full information as to the terms and conditions of the proposed transaction. You must take care to ensure that the guarantor's position is not improved at the expense of SBA, or that a possible loss to the guarantor is not passed on to the Agency. Wherever possible, you/lender/CDC should urge the parties to pay off the debt to SBA (or apply any available cash to it), and require the guarantee to the extent of the cost paid to him/her (limited guarantee). The guarantor should not be permitted to substitute SBA for his or her ownership position.

(6) Evaluation of substitute guarantors.

Before you recommend accepting a substitute guarantor in place of the original, you should analyze/compare the values of the guarantors. The borrower must furnish personal financial statements and any other information satisfactory to the approving official.

(7) Claim against estate of deceased debtor.

(a) Generally you should file a claim against the estate of the deceased debtor (guarantor obligor), via SBA Form 327.

(b) You do not need to transfer the case file to "In Liquidation/Litigation" for the sole purpose of filing a Proof Of Claim unless there is other justification, such as business ceased operation or other legal consideration (bankruptcy, etc.).

(c) The approving official should NOT approve the release of a claim unless:

i. The death has had no adverse affect on the business operation;

ii. The loan is seasoned;

iii. The experience satisfactory; and

iv. The collateral is reasonably adequate to secure the remaining loan balance.

v. Any such release of claim must have supporting written documentation. You may consider recommending placing the proceeds from claims in an escrow account for equitable distribution at a later date depending on business viability, remaining collateral and other assurances of full repayment of the remaining loan balance.

(d) SBA and lender-serviced loans and development company loans.

The 327 action for release of a guarantor must have SBA counsel's review. (You may approve the addition of a guarantor without counsel's review.)

15. Extension to the Maturity of the Borrower's Loan.

a. Maximum maturities based on the Small Business Act.

(1) For 7(a) loans, the maximum term is 25 years, which includes renewals and extensions.

(2) For 7(b) loans (disaster loans), the maximum term is 30 years, which includes renewal and extensions. Under the law, if the Agency determines it is necessary to avoid severe financial hardship, it can approve an extension of the maturity not to exceed 5 years at a time, up to a maximum of 30 years.

b. Justification for extension of maturity.

As a general rule, you may extend the maturity of a loan (but not beyond the statutory maximums) if the borrower is not able to pay off the loan balance at the original note maturity date, because the borrower received a deferment(s), or reduction in loan payments, during the term of the loan which resulted in a balloon at the end of the note.

c. Special exception.

Loans having "maximum" maturities as stated above, may be renewed, or the maturity extended, for additional periods not exceeding 10 years as an aid to the orderly liquidation of the loan. This provision does not require that a loan be classified as "In Liquidation" or that a foreclosure action be initiated. It permits extensions of maturity beyond the stated "maximum" for orderly repayment of the

debt. **<u>This provision may be used only when absolutely necessary and primarily for the benefit of the Agency.</u>**

d. Regulations:

13 CFR 120.531.

Extension of maturity.

SBA may agree to extend the maturity of a loan for up to 10 years beyond its original maturity if the extension will aid in the orderly repayment of the loan.

e. Loans sold in the secondary market.

The lender must obtain written approval of the registered holder (through the FTA) prior to submitting the request to SBA.

f. CDC loans.

You must not extend the maturity until SBA purchases the debenture and transfers the loan servicing to SBA.

g. Lender-serviced loans.

(1) Regulations:

13 CFR 120.524(a).
When is SBA released from liability on its guarantee?

(8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;...

(2) The lender must submit to SBA a written request for an extension or reinstatement of maturity.

(3) The SBA guaranty expires 120 days after the maturity date of the note. An extension of the maturity automatically extends the guaranty. The SBA is not obligated to purchase the guaranteed portion of a loan if the lender did not demand purchase or request to extend the maturity within 120 days after maturity.

h. SBA-serviced and CDC loans.

You must submit an amendment to a note to SBA counsel for review.

16. Interest Rate Changes.

a. Lender-serviced loans.

For changes to the borrower's interest rate which result in an increase to the rate, the lender must have SBA's prior written consent. This does not apply to the prime feature of a variable rate loan. The lender must have SBA's approval to increase the spread on a variable rate loan. (e.g., prime + 1 -- The "prime" rate can be adjusted according to the note and authorization. The spread "+1" must not be increased without SBA's approval.)

b. Loans sold in the secondary market.

The lender must have written approval from the registered holder (through the FTA) for an interest rate change.

c. CDC loans.

The interest rate can **NOT** be changed, unless all of the following items have been met:

(1) The loan has been transferred into liquidation or workout status;

(2) The SBA has purchased the debenture; and

(3) Servicing has been transferred to SBA.

d. Interest rate increases.

You should NOT recommend approval for an increase in the interest rate unless the increase results in an overall lower cost to the borrower. [e.g., Where two outstanding loans had different rates and had been refinanced into one loan (decreasing the rate for one and increasing the rate for the second) resulting in a reduced combined payment and cost to the borrower.]

e. For SBA serviced loans, including development company loans transferred to SBA, you must work with SBA counsel to prepare the amendment to the note.

17. Other Loan Repayment Term Changes.

a. You may recommend approving a change in the frequency of payments (e.g., from monthly to quarterly, seasonal, annual, etc.). The change should not result in a change in the amount of principal reduction, unless other factors indicate that the

change is desirable. (See Chapter 7, "Workout and Intensive Servicing Responsibilities of Field Offices and Service Centers.")

For any change in payments, you must consider the impact on the cash flow of the borrower.

b. You may recommend approving a change in loan payments as a part of a loan workout plan.

18. Hazard Insurance Requirements.

a. Every borrower must maintain hazard insurance coverage as required in the loan authorization. The policy must reflect appropriate loss payee clauses covering the lender/CDC/SBA.

b. SBA-serviced loans.

Each month the SBA Form 1201, "Repayment Notice," reminds the borrower of his/her responsibility to maintain hazard insurance.

c. Lender and CDC-serviced loans.

The lender/CDC is responsible for monitoring each loan to ensure that the borrower is maintaining insurance at the required levels.

d. You may recommend approving a reduction in coverage only if the loan is seasoned and the assets covered by the insurance have been sold or depreciated.

e. If, during the life of a loan, circumstances are such that adequate insurance (or assignment of interest in insurance) on collateral is not obtainable or is available only at an exorbitant cost, the loan file must contain a memorandum explaining the unavailability of coverage.

f. It is the general practice of SBA not to purchase or maintain payments on hazard insurance on property securing a loan. However, purchase by SBA of insurance coverage may be necessary when:

(1) The value of the collateral appears to reasonably assure ultimate recovery of the full amount of borrower's debt including advances made to purchase insurance;

(2) It is necessary to preserve a third party guaranty;

(3) Damage to the property may result in the owner or other obligors having a right to recourse against SBA as "Mortgagee in Possession" or otherwise;

(4) The value of the Agency's collateral equity is substantial;

(5) The potential for consequential loss is significant;

(6) The period of SBA purchased coverage is clearly limited; and

(7) The obligors are not in a position to pay the necessary premiums.

g. When a decision has been made not to purchase/maintain insurance, a 327 action is not required. In the event of special circumstances, SBA purchase of insurance might be advisable. In all instances where you decide to recommend purchasing insurance, a simultaneous determination must be made (on the same 327 action) as to the advisability

of a reclassification of the account to "In Liquidation" status.

NOTE: Refer to SOP 50 51, Chapter 22, "Insurance: Property, Life, and Public Liability" for additional information.

19. Life Insurance Requirements.

a. Each borrower must maintain life insurance coverage as required in the loan authorization. The policy must reflect appropriate loss payee clauses covering the lender/CDC/SBA. The SBA generally requires reducing term life insurance. However, you may accept other forms of insurance such as whole life or universal life.

b. You may recommend approving a reduction in coverage as the balance is reduced and the loan becomes seasoned.

c. The SBA does not generally purchase or maintain payments on life insurance for the loan.

d. If, during the life of a loan, circumstances are such that adequate insurance (or assignment of interest in insurance) on a principal is not obtainable or is available only at an exorbitant cost, the loan file must contain a memorandum explaining the unavailability of coverage.

e. Notice to guarantors and beneficiaries.

You must advise all guarantors in writing immediately when you receive notice of cancellation of assigned life insurance on the life of any borrower, principal of borrower, or other guarantor.

You must consult with counsel to determine if the consent of other parties, such as beneficiaries or guarantors, is necessary for actions affecting life insurance used as collateral.

f. If the insured party will not continue payment of premiums, you should consider surrendering the policy to the issuing company for the cash surrender value to protect against invocation of automatic premium loans. Prior to surrendering any policy, you should give each guarantor an opportunity to pay the premiums. You must apply proceeds on the loan inverse order of maturity (i.e., to the end of the note), transaction code 304 (Collection of Loans-Repayment by Borrower-Inverse Order of Maturity).

g. Lender and CDC-serviced loans.

The lender and CDC are responsible for monitoring all loans to ensure that the borrower

is maintaining insurance at the required levels.

NOTE: Refer to SOP 50 51, Chapter 22, "Insurance: Property, Life, and Public Liability" for additional information.

20. Proceeds of Life Insurance upon Death of Insured.

a. Proceeds upon death of insured.

You must apply proceeds of life insurance on the principal of the loan without advancing the payment date [process payments using "code 304," inverse order of maturity (IOM)].

b. You may consider requests (by 327 action) for the release of funds for other purposes if:

(1) There is evidence that the release of funds would serve a valid business purpose and the business and loan remain viable; or

(2) The death of the insured has no serious effect on the management of the business and full payment is anticipated in accordance with the repayment terms.

c. You may recommend approving placement of funds in an escrow/collateral account with proper controls if:

(1) The policy was owned by a guarantor;

(2) The application of funds would result in an unfair or inequitable situation; and

(3) The collateral/repayment situation is not strong enough to allow release or weak enough to require immediate application of the funds.

(4) Funds placed in such an escrow account may be considered for future release if the borrower demonstrates repayment ability, or if the items noted above have been overcome. The request for release would be processed as described in paragraph 5-5 titled, "Release of Collateral."

NOTE: You should only consider the release of these funds in rare circumstances with strong justification.

21. Claims Against Estates of Deceased Borrowers/Guarantors.

When a borrower or guarantor dies, you should file your claim against the estate of the deceased. You should use an 327 action to initiate the claim. You do not need to transfer the loan into "In Liquidation/Litigation" just to file a Proof Of Claim, unless there is other justification, (e.g., a business has ceased operation or there are other legal considerations such as bankruptcy filings.)

a. You may recommend not filing a claim by a 327 action if:

(1) The death has no adverse affect on the business operation;

(2) The loan is seasoned and SBA's experience with the business is satisfactory (including current management); and

(3) The collateral is reasonably adequate to secure the remaining loan balance.

Any release of claim must be supported by written documentation.

b. You may recommend placing claim proceeds into an escrow/collateral account for release and equitable distribution at a later date if:

(1) The business is viable, but the loan is not seasoned;

(2) The remaining collateral is NOT reasonably adequate to secure the loan balance; and

(3) You do NOT have other assurances of full repayment of the remaining loan balance.

Funds placed into an escrow account may be considered for future release if the borrower demonstrates repayment ability. The request for release would be processed as described in paragraph 5-5 titled, "Release of Collateral."

22. Flood Insurance Requirements.

a. Background.

(1) The National Flood Insurance Program (NFIP) is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act). The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas (SFHA) if their community participates in the NFIP. An SFHA is an area within a flood plain having a 1 percent or greater chance of flood occurrence in any given year. The SFHAs are

delineated on maps issued by the Federal Emergency Management Agency (FEMA) for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.

(2) The 1973 Act amended the NFIP by requiring the regulators of the lenders to issue regulations governing the lending institutions they supervise (regulated lending institutions or regulated lenders). These regulations directed lenders to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (security property) if the security property was located, or was to be located, in an SFHA in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers that their security property is located in an SFHA and of the availability of Federal disaster assistance with respect to the property in the event of a flood.

(3) The National Flood Insurance Reform Act of 1994 comprehensively revised the Federal flood insurance statutes. It is intended to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal Government, taxpayers, and flood victims.

b. Requirements.

(1) When any loan secured by improved real estate or a mobile home and any personal property is located in a special flood hazard area (SFHA), as determined by the Federal Emergency Management Agency (FEMA), and if the community participates in the NFIP, the borrower is required to obtain flood insurance. The policy must reflect a loss payee clause covering the lender/CDC/SBA as appropriate.

(2) After the loan is made, the borrower must maintain such flood insurance for the life of the loan. This means that if a lender (for example, a participating lender in a 7(a) loan, or the SBA, for a direct/disaster loan) increases, extends or renews the loan, it must review the adequacy of flood insurance coverage. The lender must use FEMA Form 81-93, Standard Flood Hazard Determination Form, to ascertain whether the property is in an SFHA in which flood insurance is available. The Form may be used in a printed, computerized, or electronic manner, and the lender must retain a completed copy in its files.

c. Amount of flood insurance.

The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property. Flood insurance coverage is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

d. Forced placement of flood insurance.

If the lender, or a service provider acting on behalf of the lender, determines at any time during the life of a loan, that the building or personal property securing the loan is not covered by flood insurance or is covered by an inadequate amount of flood insurance, the lender or its service provider must notify the borrower that the borrower must obtain flood insurance. If the borrower fails to obtain flood insurance within 45 days, the lender or its service provider must purchase the insurance on the borrower's behalf at the borrower's expense. The borrower can be charged for the cost of premiums and fees incurred in purchasing the insurance.

e. Reduction in coverage.

You may recommend a reduction in flood insurance as you release affected collateral, but the amount of the insurance must not go below the required amounts as set forth above.

f. Events which trigger a review of the adequacy of flood insurance coverage.

The events that trigger a lender's obligation to review the adequacy of flood insurance coverage is the making, increasing, extending, or renewing of a loan. This means that a loan purchase is **not** an event that triggers the obligation to make a flood hazard determination. Thus, when SBA purchases the guaranteed portion (XGP), it has no obligation to ascertain flood insurance coverage. Similarly, the purchaser of a loan in the secondary market does not have such obligation.

g. Unavailability of flood insurance.

If a borrower had the requisite flood insurance at the commencement of the loan, and the community drops out of the NFIP, it is possible that flood insurance would no longer be available for the remaining life of the loan. If such is the case, this information must be maintained in the lender's file to explain the subsequent unavailability of flood insurance coverage.

h. General rule to provide notice of flood insurance requirement when ColPur is

transferred.

If you/lender transfer collateral [i.e. it is collateral purchased or acquired by SBA or its participating lender (ColPur) through SBA liquidation action], you/lender are required under the National Flood Insurance Reform Act of 1994 to provide notice to the transferee.

(1) <u>ColPur.</u>

This requirement applies to commercial, personal, or residential property for which:

(a) Federal flood disaster assistance has been provided;

(b) Such assistance was conditioned upon the owner obtaining flood insurance; and

(c) The borrower did not obtain or maintain flood insurance.

(2) <u>Notice.</u>

Before you or the lender transfers such property, you must notify the transferee of the requirement to obtain and maintain flood insurance.

i. Lender and CDC-serviced loans.

(1) The lender and CDC are responsible for monitoring each loan to ensure that the borrower is maintaining insurance at the required levels.

(2) Lenders and CDCs have no unilateral authority for changes to flood insurance requirements.

23. Proceeds from Insurance Claims for Losses on Collateral.

a. You must promptly deliver, to the collateral cashier, all checks and drafts:

(1) Issued in settlement of loss or damage to collateral; and

(2) Presented to SBA for endorsement, including those presented by "walk-in" borrowers.

The collateral cashier will notify the responsible loan officer.

b. You must use a 327 action to recommend the release of checks for more than $5,000. You must put a photocopy of the check in the loan file.

Your 327 action should document that:

(1) The loan is current, or you have made satisfactory arrangements to cure any defaults; and

(2) The property has been repaired, restored, or replaced or was excess to borrower/SBA needs, or you have designated a lender/CDC or other party to monitor repair or replacement of collateral and to serve as trustee to release funds as necessary.

c. If the request is for the release of $100,000 or greater to replace or repair property, you must require documentation to ensure discharge of materialmen's or workmen's liens against the property (except for required ongoing payments during the construction period to the appropriate contractors).

d. For release of checks for settlement of losses of $5,000 or less:

(1) If there is not a good reason for withholding endorsement, you may initial the check register and endorse the check, if authorized to perform this function; and

(2) The collateral cashier may return the check to the borrower. You must place a copy of the letter (if used) and a copy of the check in the loan file.

e. When the borrower's loan is paid-in-full, you must promptly release any remaining balance of insurance funds.

24. Borrower Financial Statements: Changes in Form or Frequency.

a. The loan authorization generally requires the borrower to periodically submit balance sheets and profit and loss statements. The SBA does not require financial statements for disaster business loans with balances less than $5,000 or for any disaster home loans.

b. There are generally four types of financial statements. Three types of financial statements are prepared by an **independent** accountant. They are audited, reviewed, and compiled financial statements. There are also the internally prepared statements that are prepared by the business itself.

(1) Audited.

Audited financial statements are prepared by and verified by an independent auditor. They include a study and evaluation of internal accounting control. The accountant/auditor will provide an opinion of the statements based on an examination made in accordance with generally accepted auditing standards (GAAS) and may include any other tests that the auditor may deem necessary.

Opinion statements must be prepared by an independent public accountant who is certified, licensed or registered in the State or local jurisdiction. The accountant is independent when neither he/she nor an immediate family member has a material, managerial, or financial interest, directly or indirectly in borrower's business operation other than as an accountant.

An accountant's unqualified opinion is his/her statement that the data submitted fairly represents the financial condition of the business.

(2) Reviewed.

An accountant performs inquiry and analytical procedures (e.g., limited testing of accounts) that provide a reasonable basis for the accountant to express limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with generally accepted accounting principals (GAAP). A review would not include a study and evaluation of internal accounting control and other aspects of an opinion audit. Consequently, a review may disclose certain important matters but not necessarily all matters that would be disclosed in an audit.

(3) Compiled.

A compilation involves the accountant putting together the financial statements of a firm **without** auditing or expressing **any** opinion on the statements.

(4) Internal.

Internal statements are prepared by the borrower for which there are no minimum accounting standards.

c. Borrower's certification.

(1) A borrower's certification is a statement by the owner, a general partner, or an authorized officer of a corporate borrower that to the best of his/her knowledge the data submitted fairly represents the business financial condition.

(2) You should require a Borrower's Certification when the loan balance exceeds $100,000, and:

(a) The financial statements have a qualified opinion (e.g., the data was not verified) or the accountant otherwise disclaims responsibility for the fairness of the statements and data. The qualified statements should be addressed as notes in the financial statements. When the qualification is based on limitations of scope, it should be addressed in the auditors report.

(b) The financial statements are a compilation or internally prepared statements.

(3) If a qualified opinion is provided for a loan over $100,000, the borrower should satisfactorily explain the reasons for the qualified statements.

d. You should review the financial statements. If no substantially adverse information and/or trend is evident, you should place a comment in the Delinquent Loan Collection System (DLCS) that the statements have been reviewed. If you see an adverse trend or other information, you should determine if a full reconciliation is necessary. You may consider referral to one of the resources available to the borrower (e.g., SCORE, SBDC, etc.). The following are some problem indicators:

(1) Operating losses;

(2) Deficit or negative net worth;

(3) Excessive salaries, dividends, and owner's equity withdrawals;

(4) Excessive increase or decrease in accounts receivable (A/R) or inventory;

(5) Excessive increase or decrease in accounts payable (A/P) and notes payable (N/P);

(6) Slow collection of A/R and slow payments of A/P; and

(7) Tax liabilities of any substance.

e. Form of statements required.

(1) You may require audited year end statements to properly analyze the condition of the business due to the size of the loan or the complexity of the business. You should use discretion in requiring audited statements because of the high cost to the borrower.

(2) Interim statements may be accepted as presented with the accountant's or the borrower's certification that they are correct and complete. You should analyze interim statements submitted with a loan servicing request.

(3) A borrower may not have available financial statements to support a requested servicing action. In this case, you may accept other financial information such as income tax returns, credit reports, etc.

f. If audited statements are required and if the loan is seasoned, you may recommend:

(1) Waiving audited financial statements, or changing the audit requirement to compilation or review where, in your judgement:

(a) The business is not of a size and type to warrant such statements;

(b) The payment and servicing history is satisfactory; or

(c) The cost would be prohibitive to the borrower.

(2) Granting waivers for only 1 year at a time and must reserve the right to reinstate the requirement in the event of loan default.

(3) Recommending approving changes in financial statement frequency and/or due date requirements, as necessary.

25. Loan Agreement Management Compliance Covenants (Salary/Dividend Limits, Performance Ratios, etc).

a. An authorization may include covenants that:

(1) Restrict the borrower's authority to increase salaries, grant bonuses and distribute dividends without lender/SBA approval; and

(2) Require the borrower to obtain approval for deviations from business performance ratios for working capital, debt to equity, etc.

b. For seasoned SBA-serviced loans, you may recommend waiving theses requirements with justification if the action is consistent with prudent lending/credit practices as discussed in paragraph 4-12 titled, "What is Unilateral Authority?"

26. Assignment of Interest in a Loan/Transfer of Loan(s).

The assignment of an interest in a loan occurs when a loan is transferred from one lender to another. The "Guaranty Agreement" provides that either party may assign its rights or obligations in any guaranteed loan within certain constraints as follows.

a. Assignment with consent.

Either party may assign, in whole or in part, its rights or obligations under the guaranty agreement in any guaranteed loan with the prior written consent of the other party. This includes transfers pursuant to secondary participation agreements. See Chapter 8, "The Secondary Market for Guaranteed Loans," for more details.

b. Assignment with notice.

For the lender (or holder of the note), "Assignor," to be able to make assignment to other lending institutions "Assignee," the Assignor lender must:

(1) Provide written notice of the assignment to SBA;

(2) Retain an unguaranteed interest of not less than 10 percent of the outstanding principal amount of the loan;

(3) Have no greater rights than the Assignee; and

(4) Continue to deal solely with SBA as to the entire loan.

c. Assignment without notice.

The lender may, without notice to SBA, use any guaranteed loan as security for:

(1) Treasury tax and loan accounts;

(2) The deposit of public funds;

(3) Uninvested trust funds; or

(4) Discount borrowing at the Federal Reserve Bank, provided:

(a) The lender has not sold or otherwise assigned any part of the guaranteed loan; and

(b) The lender retains full authority to perform its responsibilities under the guaranty agreement.

d. Assignment by lender of its entire participation.

With respect to guaranteed loans, you may recommend approval of an assignment by a lender of its entire interest in a loan to another qualified lender (loan transfer), provided Counsel determines this Agency's legal rights will not be adversely affected by the assignment.

(1) Procedure when the assignment does not affect legal rights.

When an original lender makes an assignment of its entire interest in a loan to another qualified lender:

(a) The original lender may remain obligated for any deficiencies which may result from its closing or servicing the loan; or

(b) The purchasing lender may assume that obligation.

In either instance, the Agency's legal rights will not be affected.

(2) Procedure when the assignment may affect legal rights.

If the original lender refuses to remain liable or the purchasing lender will not assume liability for deficiencies in the loan that may have resulted in the closing or servicing of the loan up to the time of transfer, transfer of the loan must not be approved.

e. Assignment by lender of a portion of its participation in an immediate participation loan.

A lender may assign a portion of its share in a loan to another qualified lender with SBA's prior written consent. In such cases, you must receive:

(1) An agreement from the original participating institution that it will remain liable under the participation agreement as if such assignment(s) had not been made; and that SBA may deal solely with it regarding portion(s) assigned.

(2) An agreement from the assignee that any and all security it holds, or receives to further secure the loan, must also secure the interests of the original participant and SBA, and that it will not reassign its interest in the loan or any portion thereof except to the original lender without written consent of SBA.

27. Transfer of Loans between Participating Lenders.

a. You must use a 327 action (rule of two) to recommend approval of a transfer of an individual loan (including more than one loan to the same borrower) from one lender to another. If the sale (transfer) of loans is a result of a whole bank or a branch being sold, the transfer may be approved under the rule of two. A request to approve a transfer for more than one loan (except for loans to the same borrower) must be sent to the AA/FA or designee for approval. When processing an action for transfer, you must address the following items:

(1) Did the borrower request the transfer, and will it benefit the borrower?

(2) What is the purpose of the transfer?

(3) When transferring a loan, the lender must notify the borrower of the details of the transfer.

(4) Does the lender acquiring the SBA guaranteed loan have an executed SBA Form 750, "Loan Guaranty Agreement?" (Also, identify the type of lender, e.g., CLP, PLP, LowDoc, etc.)

(5) Is the transfer in compliance with the paragraph 26, "Assignment of Interest in a Loan/Transfer of Loan(s)?" [i.e., Is the loan being transferred without recourse, or is the original lender (Assignor/transferor) remaining liable for actions that may have occurred on the loan from the closing or servicing of the loan up to the time of transfer?]

(6) For transfer of a loan sold in the secondary market, both the buying and the selling lenders must provide written notification to the fiscal transfer agent (FTA) of the transfer and of SBA's approval.

b. You must not permit a lender to act as a "clearing house" for any other lender (e.g., lender "A" packages a loan under its name and submits it to SBA on behalf of lender "B." Then, after the loan is approved, lender "A" transfers the loan to lender "B"). Transfers between branches of the same lender do not require SBA's approval.

c. With all transfers, you must review the computer database (PMQD screens) to determine

whether the loan being transferred has been erroneously marked paid-in-full(PIF). If it has been marked PIF, you will need to reinstate the loan. When a transfer is approved, advise the lender that on the SBA Form 1502, Guaranty Loan Status & Remittance Form, the lender must mark the loan as "Transferred" NOT paid in full, "PIF."

d. Only the AA/FA, or designee can approve transfers of multiple loans for multiple borrowers from one lender to another lender. Your request for approval must address the items identified in this section.

NOTE: Transfer of loans being submitted to the AA/FA for approval must have a recommendation for approval under the rule of two from the field office.

e. Counsel review and comment on all loans transferred to another lender.

f. The lender transferring (selling) the loan may charge a fee to another participating lender assuming the loan which must not be passed on to the borrower. The lender may charge the borrower for out of pocket expenses it incurs in connection with the transfer of the loan (e.g., for legal documentation, filing fees, etc.). The lender must not charge the borrower for costs unrelated to the out of pocket expenses except for a minimal transfer fee ($500 - $1,000 depending on loan size and the time the loan was in the lender's portfolio) if applicable.

g. For FDIC transfers see the Chapter 12, "Federal Deposit Insurance Corporation Takeover of a Participating Lender," for guidance regarding servicing of loans held by the FDIC.

28. Surrender of CDC Certification & Transfer of Portfolio.

13 CFR 120.981

Voluntary transfer and surrender of CDC certification.

A CDC may not transfer its certification or withdraw from the 504 program without SBA's consent. The CDC must provide a plan to SBA to transfer its portfolio. The portfolio may only be transferred with SBA's written consent. If a CDC desires to withdraw from the 504 program, it must forfeit its portfolio to SBA. SBA may conduct an audit of the transferring or withdrawing CDC.

For guidance on accepting the surrender of a CDC's certificate and transfer of the portfolio, see SOP 50 10, Business Loan Program, Loan Processing.

29. Assistance Provided to Existing Borrowers who Suffer Losses in a Declared Disaster.

Obligor(s) who have suffered a total or near total physical loss may require exceptional assistance. Accordingly, and notwithstanding any limitations to the contrary in the governing SOP, the approving official may, when the physical loss suffered in a disaster is total or near

total, approve an obligor(s) or participant's request to take all or a portion of the following actions:

a. Direct loans.

(1) Defer payments up to six months without review of obligor(s) financial statements. The deferred period may:

(a) Retroactively start as of the date of the disaster; and

(b) Be extended for up to a total of 12 months.

(2) Waive interest on the loan (i.e., reduce it to 0 percent) during the deferred period.

(3) After the deferment period, adjust the interest to the lowest rate necessary to provide for:

(a) The obligor(s) survival; and

(b) The Agency's recovery.

The adjusted rate may apply whether or not the obligor(s) obtains a disaster loan.

(4) Extend and/or balloon the loan's maturity consistent with obligor(s) ability to repay without regard to the life of the collateral.

b. Guaranty loans.

When requested to do so by the lender, you must initiate immediate action to purchase the loan from the lender or the secondary market, as applicable. A post-purchase review must be done and the lender should retain servicing.

As of the date of purchase, the approving official may:

(1) Waive interest which will accrue on SBA's share of the loan, after the date of purchase only. The deferral period may be extended for up to a total of 12 months.

(2) After the deferral period, you may adjust the interest on the SBA share to the lowest rate necessary to provide for:

(a) The obligor(s) survival; and

(b) The Agency's recovery.

(3) The adjusted rate may apply whether or not the obligor(s) obtain a disaster loan.

For the protection of all parties, the note should be:

(a) Amended to reflect the period of no interest; and

(b) Amended to reflect the adjusted interest rate.

(4) Join the participant in extending or ballooning the loan's maturity consistent with obligor(s) ability to repay without regard to the life of the collateral.

(5) Sell SBA's portion (the guaranty portion) of the loan back to the participating lender.

(a) The lender may sell (or resell) SBA's share on the secondary market after the payments have been maintained as agreed for 12 consecutive months. The payments made by the borrower to the SBA, prior to SBA selling its portion back to the lender, can be included as part or all of the required 12 months of payments.

(b) Unless all parties agree otherwise, the interest rate to be charged by the lender will continue at the adjusted rate.

NOTE: The lender is expected to agree with any relief in interest rates granted to the borrower. If they do not agree to reduce the interest rate on their share of the loan, then the Agency may reduce SBA's share unilaterally with a 327 action. The lender must share in any deferment of payments and/or extension of maturity. The assistance proposed must not be used in situations where the primary purpose is to benefit a guaranteed lender that is otherwise in a position to sustain a loss.

c. SBA/FDIC loans with payments going to Colson Services Corp. (Colson).

(1) When the guaranty is held by the secondary market investors the following must be done:

(a) Request payment transcript from Colson;

(b) Take necessary steps to purchase the guaranteed portion and grant the same type of relief as for guaranty loans;

(c) Conduct a post-purchase review;

(d) Enable SBA to service loan; and

(e) Advise obligor(s) that payments are to be sent directly to SBA.

NOTE: A pre-purchase review must be done if one was not performed at the time SBA took over servicing and if the guaranty is not being held by the secondary market investors.

(2) In servicing/liquidation of the loan, SBA must unilaterally take any action deemed necessary to protect the Government's interests in the loan.

(a) Whose consent is not required when protecting the government's interest?

The Agency does NOT need the consent of:

i. Colson;

ii. FDIC; and

iii. Subsequent purchaser of FDIC's interests.

(b) What do SBA's actions apply to?

The SBA's actions apply to both the unguaranteed and the previously guaranteed portions of the loan. The lender's share of any expenses will be offset against future recoveries.

(3) Can the previously guaranteed portion be reinstated?

No, under current SBA policy, the previously guaranteed portion cannot be reinstated. (This policy applies only if the loan is with FDIC.)

d. Development company loans.

(1) When the borrower and the CDC request that SBA purchase the debenture, you must immediately initiate such action.

(2) Beginning on the date of the purchase, you may waive interest which will accrue on the SBA share of the loan after the date of the purchase, but cannot waive interest which has already accrued prior to the purchase. The deferment period

may subsequently be extended for up to a total of 12 months.

(3) After the deferment period, you may adjust the interest on the SBA share to the lowest rate possible to provide for the borrower's survival and the SBA's recovery. The rate may be adjusted even if the borrower does not obtain a disaster loan. For the protection of all parties, the note should be amended to reflect the period of no interest and/or the adjusted interest rate, as applicable.

(4) After you purchase the debenture, you must treat the loan as you would any SBA serviced loan.

CHAPTER 6

SPECIAL LOAN PROGRAMS

1. General Guidance.

This chapter provides specific guidance on those regulations, policies, and procedures for the 7(a) and 504 Programs. This chapter identifies the areas that are different from what has been stated in the other chapters and does not intend to repeat the general guidance already included elsewhere in this SOP.

2. Participation 7(a) Loans.

a. Regulations and policies.

The 7(a) Loan Program is governed by:

(1) 13 CFR Part 120.

(2) The SBA Form 750 agreement between SBA and the lender, and any supplemental guaranty agreement.

3. Direct 7(a) Loans.

a. Purpose and authority.

The SBA has statutory authority to make direct loans to certain categories of recipients. However, SBA has not received funding for direct loan programs for several years. Some examples of the special authorized, but unfunded programs are:

(1) Disabled Assistance Loans (DAL), formerly known as Handicapped Assistance Loans (HAL).

(2) Vietnam Veterans (Non-Disabled) (NVV), Vietnam Veterans (Disabled) (DVV), and Other Veterans (Disabled) (DOV).

(3) Low Income Individual Loans, formerly Economic Opportunity Loans (EOL).

For further information on the various special loan programs, see SOP 50 10.

b. Servicing.

Servicing direct loans is solely the responsibility of SBA, so these loans will require more attention than lender-serviced guaranteed loans.

4. Certified Lenders Program (CLP) - Servicing.

a. What is the CLP Program?

Regulations:

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.

b. CLP loans - type of lender.

(1) The CLP lenders must service loans approved under the CLP Program in the same manner as loans approved under the Guaranteed Loan Program (GP).

(2) Preferred Lenders Program (PLP) lenders must service loans approved under the CLP program, in accordance with the PLP Program. See paragraph 6-5.b. titled, "PLP Lenders - SBA regulations regarding servicing responsibilities."

c. SBA revocation of a Lender's CLP status.

Regulations:

13 CFR 120.442.
Suspension or revocation of CLP status.

The AA/FA may suspend or revoke CLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include a loan performance record unacceptable to SBA, failure to make the required number of loans under the expedited procedures, or violations of applicable statutes, regulations or published SBA policies and procedures. A CLP Lender may appeal the suspension or revocation made under this section under procedures found in part 134 of this chapter. The action of the AA/FA remains in effect pending resolution of the appeal.

5. Preferred Lenders Program (PLP) - Servicing.

a. What is the PLP Program?

Regulations:

13 CFR 120.450.
What is the Preferred Lender's 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 approval by SBA.

b. PLP lenders - SBA regulations regarding servicing responsibilities.

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.

c. General servicing requirements.

(1) The PLP lenders must service <u>all</u> SBA-guaranteed loans in their portfolio in the same manner that they service the non-guaranteed loans in their portfolios. The policies and procedures used for loan servicing must be based on prudent and responsible lending practices.

(2) The PLP lenders must be able to demonstrate, to SBA's satisfaction, that a servicing action taken on an SBA loan is consistent with:

(a) Actions taken on loans in the lender's non-guaranteed portfolio; and

(b) Generally accepted commercial banking standards.

(3) The SBA loans must receive the same level of case control, attention, responsibility, and professionalism as the non-guaranteed loans.

(4) There are several non-routine actions that a PLP lender must NOT take unilaterally, without SBA's prior written approval.

They must NOT:

(a) Take 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.

(b) Compromise with any obligor for less than the full amount due of the principal loan balance outstanding. 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.

(c) Title property in the name of the Agency without SBA's prior written approval. The lender must not acquire title (in their name or the Agency's) to environmentally impaired property (property which exceeds the minimum action levels established by relevant regulatory agencies).

(d) Transfer a loan to another lender.

(e) Sell or pledge more than 90 percent of a loan.

(5) The lender must notify the Agency in writing when unilateral changes are made that will require the Agency to make changes to the SBA database (such as changes to interest rate, maturity, etc).

(6) Adverse situations.

Refer to SOP 50 51, Chapter 10, "Special Programs," in paragraph 10-5 titled Preferred Lender Program (PLP)" for information on this topic.

(7) The SBA Revocation of a Lender's PLP Status.

Regulations:

13 CFR 120.455.
Suspension or revocation of PLP status.

The AA/FA may suspend or revoke PLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to make the required number of loans under the expedited procedures, or violations of applicable statutes, regulations or published SBA policies and procedures. A PLP lender may appeal the suspension or revocation made under this section under procedures found in part 134 of this chapter. The action of the AA/FA remains in effect pending resolution of the appeal.

6. Low Documentation Loan Program (LowDoc) - Servicing.

a. What is the purpose of the LowDoc Program?

LowDoc is:

(1) An expedited process under the Agency's 7(a) Guaranty Loan Program, for loans in amounts of $150,000 or less;

(2) A financing vehicle which relies on the character and credit history of the borrower and the experience and judgment of the lender; and

(3) A streamlined loan application process, which reduces SBA paperwork.

b. LowDoc - servicing responsibilities.

(1) The lender must service its LowDoc loans using generally accepted commercial banking standards of loan servicing employed by prudent lenders. The lender must not use lower standards for LowDoc loans compared with other loans in the

lender's portfolio of similar size and type.

(2) The lender may take all servicing actions without approval from SBA (unilaterally) that it deems prudent and necessary on non-liquidation loans except for the following non-routine actions.

They must not:

(a) Take 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.

(b) Compromise with any obligor for less than the full amount due of the principal loan balance outstanding. 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.

(c) Title property in the name of the Agency without SBA's prior written approval. The lender must not acquire title (in their name or the Agency's) to environmentally impaired property (property which exceeds the minimum action levels established by relevant regulatory agencies).

(d) Transfer a loan to another lender.

(e) Sell or pledge more than 90 percent of a loan.

(3) The SBA expects the lender to perform unilateral servicing actions without concurrence by or notification to SBA, although the lender must retain documentation regarding the actions in the lender's loan files.

(4) As an exception to the rule, the lender must notify the Agency when unilateral changes are made that will require the Agency to make changes to the SBA database (such as changes to interest rate, maturity, etc).

c. LowDoc loan purchases.

(1) How much interest SBA will pay.

The SBA will pay a maximum of 120 days of accrued interest.

(2) When SBA will purchase its guaranty.

Generally, except for bankruptcy situations, SBA will not honor its guaranty on a LowDoc loan until the lender has:

(a) Liquidated all personal property; and

(b) Indicated in writing how it will pursue real property assets or other sources of recovery, including personal guarantors.

(3) <u>Exceptions to SBA's policy on when to purchase.</u>

The SBA may approve exceptions to this policy on a case-by-case basis if the lender submits to SBA:

(a) An adequate explanation for any delay; and

(b) A satisfactory recovery plan showing how and when the lender will liquidate all remaining assets.

NOTE: <u>This exception/deviation from policy must be approved by the DD or designee at the field office level.</u>

(4) <u>Procedures for purchase.</u>

(a) The SBA will make payment on its guaranty only after SBA has reviewed and approved all documentation supporting the making, closing, servicing, and liquidation of the loan.

(b) For loans sold in the secondary market, SBA strongly urges the lender to purchase from the holder and SBA will purchase from the lender as indicated above. However, SBA may immediately purchase from the secondary market holder if necessary.

d. Submission of a LowDoc liquidation plan.

Refer to SOP 50 51, "Loan Liquidation and Acquired Property," Chapter 10, "Special Programs."

7. FA$TRAK Loan Program - Servicing.

a. What is the purpose of the FA$TRAK Program?

(1) The FA$TRAK Program allows lenders to use their own forms and procedures to approve, close, service and liquidate loans up to $100,000 in exchange for a reduced guaranty of 50 percent. Eliminating the requirements that the lender use SBA forms and follow SBA's application procedures, allows lenders to reduce their loan administration cost, thus encouraging lenders to make smaller loans. FA$TRAK loans are processed in SBA's PLP Processing Center. The Lender may take all servicing actions without approval from SBA (unilaterally)

that it deems prudent and necessary on non-liquidation loans except for those actions noted below.

b. FA$TRAK lender's servicing responsibilities.

(1) Servicing authority delegated to FA$TRAK lenders.

A lender must service all FA$TRAK loans using generally accepted commercial banking standards of loan servicing employed by prudent lenders. Lenders must use the same standards for servicing FA$TRAK loans as they would use for other loans in their portfolios of similar size and type.

(2) Authority not delegated to FA$TRAK lenders.

There are several non-routine actions that a Fa$trak lender must NOT take unilaterally, without SBA's prior written approval.

They must NOT:

(a) Take 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.

(b) Compromise with any obligor for less than the full amount due of the principal loan balance outstanding. 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.

(c) Title property in the name of the Agency without SBA's prior written approval. The lender must not acquire title (in their name or the Agency's) to environmentally impaired property (property which exceeds the minimum action levels established by relevant regulatory agencies).

(d) Transfer a loan to another lender.

(e) Sell or pledge more than 90 percent of a loan.

(3) The lender must notify the SBA office servicing a loan when it is transferred to liquidation status (i.e., the lender determines that enforced collection procedures must be pursued to effect repayment).

(4) Any action taken during the liquidation of a loan must be fully documented. The SBA will review liquidation actions as part of the general review of a lender's use of the FA$TRAK Program. It is not necessary to provide a liquidation plan to SBA.

(5) The SBA reserves the right to purchase its guaranty prior to liquidation and to liquidate the loan using SBA personnel, however, it is expected that this right will be used only in very unusual circumstances.

(6) The SBA expects the lender to perform unilateral servicing actions without concurrence by or notification to SBA, although the lender must retain documentation regarding the actions in the lender's loan files.

(7) As an exception to the rule, the lender must notify the Agency in writing when unilateral changes are made that will require the Agency to make changes to the SBA database (e.g., changes to interest rate, maturity, etc).

(8) The lender, as part of their unilateral action, may release collateral as necessary. To avoid the perception of a preference for the FA$TRAK lender, care should be taken to fully document and justify any release of collateral for an SBA guaranteed loan that will subsequently be pledged for a conventional loan from the lender.

c. 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"). It is not necessary for the liquidation plan required in the final wrap up report to be submitted to SBA for FA$TRAK loans.

d. 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**.**

8. CAPLines Loan Program - Servicing.

a. What is the purpose of the CAPLines Loan Program?

(1) CAPLines is an umbrella program which includes all SBA's short term working capital loan or line of credit programs, except those dedicated entirely to exporting. (See Appendix 28.)

(2) There are five sub-programs under the CAPLines umbrella, each designed to address different short-term credit situations:

(a) Seasonal CAPLines (CAS).

This program finances seasonal upswings in a borrower's business, by financing the seasonal increases in the trading assets (receivables and inventory).

(b) Contract CAPLines (CAC).

This program finances a business' estimated direct short-term working capital needs in order to perform on assignable contract(s).

(c) Builders CAPLines (CAB).

This program finances the direct costs for construction or renovation of residential or commercial buildings that will be offered for sale upon completion, by small general contractors.

(d) Standard Asset Based CAPLines (SAB).

This program finances the cash cycle of qualified small businesses.

(e) Small Asset Based CAPLines (SMAB).

This program also finances the cash cycle of qualified small businesses, for a maximum loan amount of $200,000.

b. Guidelines governing servicing of CAPLines.

(1) CAPLines Program Servicing Guidelines (See Appendix 28.)

(2) CAPLines Program Servicing Guidelines, Exhibit 1, Explanation of Servicing Standards in Appendix 28.

c. CAPLines - servicing responsibilities.

(1) In addition to SBA's general servicing requirements, each CAPLines sub-program has special servicing requirements. See Appendix 28 for further guidance.

(2) Loan servicing personnel must be familiar with both the unique and general requirements that are applicable to each sub-program when servicing loans made under the CAPLines Program.

(3) The SBA loan servicing personnel must monitor CAPLines loans for the following:

(a) To ensure that lender submits all reports and documents, as required by the loan authorization and program guide; and

(b) To ensure that the documents provided demonstrate that the lender is servicing the CAPLines loan in accordance with the loan authorization and program guide.

d. Increases in CAPLines loan amounts.

(1) The SBA does not consider a Caplines loan to be fully disbursed until one cash cycle before maturity.

(2) The SBA may increase a CAPlines loan in the same manner as SBA would for any partially disbursed loan, except that:

(a) The amount of the increase must be limited to one-third of the original loan amount; and

(b) SBA may grant an increase only one time.

(3) An increase is subject to maximum permissible loan amounts. See SOP 50 10, "Business Loan Program, Loan Processing," for further guidance.

(4) An increase in a CAPLines loan amount is subject to an additional guaranty fee.

(5) Only Financing Division (FD) personnel have the authority to approve an increase.

(6) The lender must justify any request for an increase in a CAPlines loan amount.

9. Export Working Capital Program (EWCP) - Servicing.

a. What is the purpose of the EWCP Program?

The EWCP Program is designed to assist small businesses who need export working capital loans in amounts of $750,000 or less. EWCP loans provide short-term working capital to finance the acquisition and production of goods and services being exported, the accounts receivable of such foreign sales, or standby letters of credit. The loans finance either a single transaction or a series of transactions. The EWCP loan can either be a term loan or a revolving line of credit.

b. Regulations governing EWCP loans.

Regulations:

13 CFR 120.344.

Unique requirements of the EWCP.

(a) An applicant must submit cash flow projections to support the need for the loan and the ability to repay. After the loan is made, the loan recipient must submit continual progress reports.

(b) SBA does not limit the amount of extraordinary servicing fees, as referenced in 120.221(b), under

the EWCP.

(c) SBA does not prescribe the interest rates for the EWCP, but will monitor these rates for reasonableness.

c. Servicing responsibilities.

(1) The Lenders must use the same degree of prudence in servicing their SBA guaranteed EWCP loans as they do for other loans in their portfolio.

(2) Because EWCP loans are short-term and have unique characteristics, the SBA loan officer who approved the EWCP loan must oversee lender servicing of the loan. Even if the loan officer is housed in a U. S. Export Assistance Center (USEAC), servicing will remain with that officer.

(3) PLP lender.

(a) The PLP lenders do not have unilateral authority to take the following non-routine actions on EWCP loans:

They must NOT:

(i) Take 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.

(ii) Compromise with any obligor for less than the full amount due of the principal loan balance outstanding. 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.

(iii) Title property in the name of the Agency without SBA's prior written approval. The lender must not acquire title (in their name or the Agency's) to environmentally impaired property (property which exceeds the minimum action levels established by relevant regulatory agencies).

(iv) Transfer a loan to another lender.

(v) Sell or pledge more than 90 percent of a loan.

(b) The PLP lender must notify the Agency in writing when unilateral changes are made that will require the Agency to make changes to the SBA database (e.g., changes to interest rate, maturity, etc).

(c) Adverse situations.

Refer to SOP 50 51, Chapter 10, "Special Programs," in paragraph 10-5 titled "Preferred Lender Program (PLP)" for information on this topic.

d. Reporting requirements.

Lenders must submit SBA Form 1502," Guaranty Loans Status & Lender Remittance Form," to FTA monthly for all EWCP loans.

e. Renewal of line of credit maturity.

(1) An EWCP loan with a term of more than 1 year must have an annual renewal provision. For renewal of the loan, the borrower must provide the following information to the lender within 30 days of the anniversary date of the loan: current financial statements and projected cash flow statement covering the renewal period.

(2) The lender must review the information and determine whether an adverse change has occurred that will jeopardize the borrower's ability to perform transactions funded by the EWCP loan.

(3) Where the lender finds no adverse change, the lender may renew the line of credit, and notify the borrower and SBA of the renewal.

(4) Where the lender determines an adverse change has occurred, the lender must notify the borrower that the line of credit will not be renewed and must specify a date for termination of the line. The lender must notify SBA of this action.

f. Lender request for purchase of SBA's guaranty.

(1) If there is an uncured default, the loan must be classified as in liquidation. Non-

PLP lenders may make demand on SBA to honor their guarantee at this point. PLP lenders must follow the guidelines in SOP 50 51, Chapter 10, "Special Programs."

(2) Lenders may make demand as soon as 30 days after the earliest uncured payment default, but must not make demand later than 120 days after the earliest uncured payment default.

g. Insurance Coverage for defaults.

(1) In post-shipment guarantees, lenders must establish that the cause of loss is not covered by the Export-Import Bank of the U. S. (Eximbank) or other insurers' applicable post-shipment insurance.

(2) In combined guarantees, the post-shipment rules apply if the default occurs after shipment.

10. Disaster Loans - Servicing.

a. What are disaster home loans?

The SBA makes loans under its disaster assistance authority to individuals who have suffered loss or damage to their residential real or personal property.

b. What are disaster business loans?

The SBA makes loans under its disaster assistance authority to businesses who have suffered loss or damage to their business real or personal property.

c. Servicing.

(1) <u>Disaster home loans.</u>

Procedures governing the servicing of disaster home loans are contained in SOP 50 52, "Disaster Home Loan Servicing." Disaster home loans are serviced by the disaster home loan centers (DHLSC), unless the borrower also has a companion business loan. If there are companion home and business loans, and the borrower requests a servicing action, the DHLSC must transfer the loan to the appropriate Commercial Loan Servicing Center (CLSC) for action.

(2) Disaster Business Loans.

Procedures governing the servicing of disaster business loans are contained in SOP 50 50, "Loan Servicing." Disaster business loans are serviced by the Commercial Loan Servicing Centers.

11. Disaster Farm Loans.

a. What are disaster farm loans?

The SBA makes loans under its disaster assistance authority to small business concerns that have suffered loss or damage to their farming enterprise. (See SOP 50 30, "Disaster Loans.")

b. Unacceptable subordinations.

You must not subordinate SBA's debt to a new loan provided by Farmer's Home Administration (FMHA). FMHA's policy allows it to take a senior position on unencumbered assets only, and takes a junior position on assets already uncumbered by SBA's loan.

c. Automatic subordinations.

(1) You may recommend approving, under the rule of two, a subordination to a new operating loan, without credit analysis, where the borrower:

(a) Has liquidated all previous senior-position operating loans with no substantial change to farming operations; and

(b) Is current on all other intermediate or term debt, including the SBA loan.

(2) In this situation, you must obtain a commitment to make the SBA loan payment from the new senior lender if it falls due during the subordination period.

(3) If the loan is in default, you still may approve the subordination if the senior lender <u>also</u> will agree to make the past due payments.

12. Certified Development Company Loans (504 Loans) - Servicing.

a. What is the purpose of the 504 Loan Program?

The 504 Loan Program fosters economic development, creates or preserves job opportunities, and stimulates growth, expansion, and modernization of small businesses.

The small business receives a 504 loan from a Certified Development Company (CDC). The 504 loan funds come from a debenture guaranteed by SBA and sold to investors. The 504 loan is made by the CDC, but after closing, the CDC assigns the loan documents to SBA while continuing to service the loan on behalf of SBA. Loans made under the 504 Program (and prior 503 Program) provide long-term financing for fixed assets.

(See Chapter 11, Prepayment or Purchase of a Development Company Loan or Debenture," for further servicing guidelines for the 503 and 504 Programs.)

b. Regulations:

13 C.F.R. 120.970.

Servicing of 504 loans and Debentures.

The CDC must service the 504 loan in accordance with the Loan Authorization, these regulations, SBA policies and procedures, and prudent lending standards until paid in full, including review of the small business's financial statements, tax filings, insurance, and security filings. In doing so, CDCs must comply with the provisions of 120.513. In addition, CDCs must comply with the servicing requirements set forth in SBA's SOP. CDCs must report promptly to SBA any adverse trend,

condition or information relevant to a Borrower. Upon request by a CDC, SBA may agree to defer a Borrower's monthly payment. SBA may negotiate agreements with CDCs to liquidate loans.

c. General servicing requirements.

(1) The CDC is responsible for servicing a 503/504 loan in accordance with prudent lending practices. The CDC must process servicing actions in conformance with this SOP.

(2) The CDC must take the following actions in servicing 503/504 loans:

(a) Monitor the 503/504 loan to ensure that borrower is making timely payment to the CSA.

(b) Take all appropriate action to follow up with borrower on past due accounts (including telephone contact, letters, site visits, etc.).

(c) Obtain and review the borrower's financial statements (at least annually, or more frequently as stipulated).

(d) Review to determine that the borrower has made timely payment of taxes and insurance premiums.

(e) Create a tickler system for monitoring the Uniform Commercial Code

(UCC) filing dates on collateral securing the 503/504 loan. Prepare and file re-recorded UCC financing statements before they lapse, in order to ensure a continuity of "perfection" of SBA's lien position.

(f) Monitor other financing with liens senior to the 503/504 loan to ensure that payments are current.

(g) Make field visits as necessary or when requested by SBA to review business operations and the condition of SBA collateral.

(h) Immediately report to SBA any default or any other adverse trend, condition, or information.

(i) Upon borrower's default or the occurrence of an adverse condition, propose intensive/remedial servicing actions as ordinarily performed by a prudent lender. (See Chapter 7, "Workout and Intensive Servicing Responsibilities...")

(j) Refer a borrower to management assistance resources, where appropriate, including the CDC's own resources and SBA's management and technical assistance resources.

(k) Ensure that all servicing actions proposed are in accordance with:

(i) The terms and conditions in the loan authorization and related instruments executed by the borrower;

(ii) The SBA regulations, policy, and SOP; and

(iii) The applicable State laws and practices.

(3) The CDC must not take any servicing action without the prior written consent of SBA.

d. CDC's/CSA's reporting requirements.

(1) <u>Reports on past due loans.</u>

(a) The CDC is responsible for notifying CSA that an SBA-approved workout plan is in place in order to avoid acceleration procedures and debenture purchase.

(b) The CSA is responsible for submitting a 45 day default report monthly to the CDC and to the SBA field office servicing the loan.

(c) The CSA is responsible for submitting the "65 Day Default Report" monthly to the CDC and to the SBA field office servicing the loan.

(d) The CDC must provide monthly reports to SBA identifying loans which are 45 or more days past due. The report must include the following information:

(i) An explanation of the reason(s) for non-payment.

(ii) A description of the steps taken or being taken by the CDC or the borrower to bring the delinquent account to a current status.

(iii) Information about the status of the first mortgage and any subordinate financing.

(iv) If the CDC anticipates that it will not be able to bring the account current prior to the 65 day default report and feels that a workout is viable, a workout plan must be submitted to the SBA servicing office for approval. (See Chapter 11, "Prepayment or Purchase of a Development Company Loan or Debenture," for additional information.)

(e) The SBA must receive this report within 15 working days following the issuance of the 45 day default report.

(f) This report must include all loans reported as past due on the CSA report as outlined in Chapter 15, "Loan Collection Monitoring & Reports."

(2) <u>Special reports.</u>

The CDC must submit any special report requested by SBA on an individual borrower, within the time limits required by SBA.

13. Accredited Lenders Program (ALP) - Servicing.

a. What is an Accredited Lender Program (ALP) lender?

An ALP lender is a CDC which has been designated by SBA as deserving of ALP status with respect to its 504 loans.

b. Regulations:

13 CFR 120.840.
Accredited Lenders Program.

The SBA may designate a CDC as an Accredited Lender. SBA will provide an Accredited Lender with expedited loan processing or servicing action.

c. Unilateral authority to take certain servicing actions.

(1) The SBA has given ALP-CDCs the unilateral authority to take certain servicing actions without SBA's prior written approval. See paragraph 4-13, titled "What Actions May the Lender/ALP-CDC Approve with Unilateral Authority?" in Chapter 4, "General Loan Servicing Requests and Actions," for a list of such unilateral actions.

(2) Because SBA holds the 504 note and all related collateral documents, the ALP-CDC must prepare any necessary legal documents to affect the desired servicing action, for SBA review and signature.

(3) The ALP-CDC must be aware that SBA counsel will review for legal sufficiency, all legal documents prepared for SBA's signature. An ALP-CDC may want to consult its own counsel, if appropriate, before submitting such documents to SBA, in anticipation of such review by SBA counsel.

CHAPTER 7

WORKOUT AND INTENSIVE SERVICING RESPONSIBILITIES OF FIELD OFFICES AND SERVICE CENTERS

1. General Guidelines for Intensive Servicing.

a. What is intensive servicing?

It is the last phase of regular servicing before the loan is transferred into liquidation status.

b. When is intensive servicing appropriate?

(1) Intensive servicing efforts are appropriate when the loan is delinquent or the business has suffered an adverse change, and circumstances indicate that the loan may still be paid in full through regular payments.

The objective of intensive servicing is a loan workout.

(2) A workout is:

(a) An attempt by SBA, sometimes in conjunction with other creditors, to allow a borrower to restructure its debt(s); and

(b) A last effort to allow the borrower who is experiencing cash flow and repayment difficulties, to keep its debt current.

(3) The purpose of the workout is to allow a borrower to structure a payment plan that will ultimately allow the loan to be paid in full. A workout often takes the place of pending liquidation action.

(4) The consideration SBA gives to the workout is an agreement to postpone on declaring the loan in default or taking liquidation action.

(5) In a workout effort, you will utilize any appropriate servicing actions, or combination of actions, to keep the business viable, at the least expense and cost to SBA/lender/CDC.

c. What is SBA's policy on workouts?

(1) Workouts help fulfill SBA's mandate to foster the growth and success of small business concerns. Workouts usually are preferable to liquidation action for all concerned. In any workout, you must keep these two concerns in mind:

(a) Creating a practical repayment plan for the borrower which will allow the small business concern to keep operating; and

(b) Ensuring that the workout adequately protects SBA's interests.

(2) The "rule of two" is required for workout strategies outlined in this chapter.

d. What status may the loan be in while you do a workout?

You can negotiate a workout while the loan is either in servicing status or in liquidation status. As a general rule, loans in servicing status will be handled by the service centers. Service centers should transfer the loan to the appropriate field office, if:

(1) Closer communication between the borrower, lender/CDC, and SBA is required; and

(2) The loan is likely to be transferred into "in liquidation" status.

2. What Questions Must You Ask Before You Process a Workout?

a. Is the loan lender-serviced?

(1) If yes, the following guidance applies:

STATUS OF 7 (A) LOAN:	SCOPE OF RESPONSIBILITY TO DEVELOP A WORKOUT:	WHO AT SBA CAN PROCESS THE WORK-OUT:
Loan sold on secondary market	Lender is bound by the terms of Secondary Market Participation Agreement, SBA Form 1086.	CLSC or field office
Loan never sold on the secondary market	Lender is responsible for developing a workout, with SBA concurrence, as required (PLP lenders--advance concurrence not required; notice to SBA is required) - You can encourage lender to negotiate a workout	CLSC or field office
Lender purchased loan back from the secondary market and SBA has not purchased its guaranteed share	Lender is responsible for developing a workout, with SBA concurrence, as required (PLP lenders--advance concurrence not required, notice to SBA is required) - You can encourage lender to negotiate a workout	CLSC or field office
Lender purchased loan back from secondary market and SBA0 purchased its guaranteed share	Lender is responsible for developing a workout, with SBA concurrence, as required. - SBA generally has a much higher percentage of participation in the loan - You should have a good deal of input into the lender's workout actions	field office

(2) You should consider taking back servicing on the loan from the lender if:

(a) You believe the lender is being unreasonable by not doing a workout which is in the borrower's and SBA's best interests; or

(b) The lender has an actual or apparent conflict of interest between the SBA-guaranteed loan and other unguaranteed loans the lender has made to the same borrower.

b. Is the loan SBA-serviced?

If yes, the following guidance applies:

STATUS OF SBA-SERVICED LOAN:	SCOPE OF RESPONSIBILITY TO DEVELOP A WORKOUT:	WHO AT SBA CAN PROCESS THE WORK-OUT?
Direct loan (including disaster loans)	You are responsible for the workout. - You have maximum responsibility for developing and recommending a workout. - You can take any reasonable workout actions as described in this chapter.	CLSC or field office
XGP loans	You are responsible for developing and recommending the workout. - You have a great deal of flexibility to negotiate a workout. - You must obtain the lender's concurrence on a proposed workout	CLSC or field office
GP loans	The lender is bound by SBA's rules & regulations (as well as the terms of the Secondary Market Participation Agreement, SBA Form 1086, when executed).	CLSC or field office

c. Is the loan a certified development company (CDC) loan?

If yes, the following guidance applies:

STATUS OF LOAN:	SCOPE OF RESPONSIBILITY TO DEVELOP THE WORKOUT:	WHO AT SBA CAN PROCESS THE WORKOUT:
CDC-serviced development company loan; debenture is sold	CDC is responsible for developing the workout. - CDC is bound by the terms of the servicing agent agreement. - Any changes to payment structure require the debenture to be purchased.	CLSC or field office
SBA-serviced development company loan; SBA has purchased the debenture	You are responsible for developing the workout, consulting with the CDC, and recommending the workout. - You have the maximum flexibility to negotiate a workout. - You can take any reasonable workout actions as described in this chapter.	CLSC or field office

3. What are the Limitations on Extensions of Loan Maturity Dates?

See paragraph 15, on "Extension to the Maturity of the Borrower's Loan" in Chapter 5, "Specific Loan Servicing Actions."

4. What are the Issues You/Lender/CDC Should Consider Before Agreeing to a Workout?

a. Is a workout a reasonable alternative?

(1) A fundamental question you should answer is whether any action or combination of actions will be likely to help resolve the borrower's problems. This will require you to consider what problems caused the borrower to be unable to pay its debt.

(2) If you determine that no actions which you might take will help the borrower keep its business viable and restructure its debt at minimum expense to SBA, you must transfer the loan to "in liquidation" and begin appropriate liquidation activities.

b. What is the status of borrower's business?

Before you agree to any workout actions, you must determine:

(1) Whether the borrower's cash flow is sufficient to service the debt, after covering all operating costs.

(a) Ask the borrower to submit current business (and possibly personal) financial statements, as appropriate.

(b) Ask the borrower to project its debt servicing ability, based on the proposed workout.

(c) Ask borrower to disclose other debt and workout arrangements that exist.

(d) Consider obtaining a current credit report on the borrower to assist in developing a complete credit picture.

(2) Whether the borrower is current on its taxes, including sales taxes, and Federal and State employee withholding taxes.

(3) Whether the borrower has any pending or threatened legal action(s) which may impact the business operations or SBA's collateral.

(a) Ask the borrower to disclose any pending or threatened legal actions.

(b) For example, suppliers have put the borrower on a cash only basis, and threatened legal action because of borrower's failure to pay outstanding bills for supplies.

c. What is the status of SBA's collateral?

Before you agree to any workout actions, you must determine the status of the SBA collateral including (The lender and CDC should assist in providing this information if they are servicing the loan.):

(1) Whether SBA's liens have been properly filed and are legally enforceable.

(a) Did the borrower sign the security agreement to create a lien against personal property at the time of closing?

(b) Did the borrower sign the deed of trust/mortgage to create a lien against real property at the time of closing?

(c) Was the UCC-1 financing statement appropriately filed at the time of loan closing?

(d) Does the UCC-1 remain in effect?

(e) Was the deed of trust/mortgage properly recorded at the time of closing?

(2) Whether there are other liens, including junior liens, on SBA's real property and personal property collateral, including tax liens.

(a) Ask the borrower to make a full disclosure (i.e., status, amount, collateral) of all outstanding debts, tax debts, judgements, and liens, whether recorded yet or not.

(b) Conduct a search of the real property and personal property lien filing records.

(3) Whether hazard and flood insurance is in effect on the real property and personal property collateral.

Ask the borrower to produce records on hazard and flood insurance policies and loss payable endorsements, if required for the loan.

d. Can you require borrower to correct deficiencies as part of the workout?

(1) As a condition of the workout, you must require the borrower to correct any deficiencies in the documentation for the loan, to the extent possible.

(2) Examples of correcting deficiencies include:

(a) Requiring borrower to submit current financial statements and tax returns;

(b) Obtaining the debtor's signature on a UCC-1 financing statement which you/lender/CDC will need to re-record to prevent a lapse;

(c) Obtaining borrower's signature on a deed of trust/mortgage if borrower did not sign at closing, and ensuring that the deed of trust/mortgage is recorded; and

(d) Asking the borrower to verify that required hazard and flood insurance on SBA's collateral is in place.

5. What are Some of the Actions Available for a Workout?

a. General guidance on alternatives in a workout.

(1) You may use a variety of actions to facilitate a workout. Frequently, a combination of actions works best for intensive workouts. For example, a retroactive deferment, interest rate reduction, and re-amortization will bring the loan current, and modify the future payments to a level sustainable by the borrower.

(2) You should be creative in designing a plan in cooperation with the borrower.

(3) You should be very flexible in your approach to a workout.

(4) You must consult with counsel when proposing actions that may affect SBA's legal rights to collect the debt.

NOTE: You must not make any changes to the payment structure of a CDC loan unless the debenture has been purchased.

b. Defer loan payments.

(1) You may defer past due or future loan payments to the maturity date. You must inform the borrower that this will create a balloon payment due at end of the loan term.

(2) When loan payments are deferred, interest continues to accrue. You may address the accruing interest in several ways:

(a) You can require the borrower to pay interest during the deferment period;

(b) You can delay collection of the full amount of the accrued interest until the end of the deferment period, and collect it in one lump sum at that time;

(c) You can apply all payments after the deferment, first to accrued interest, then to principal; and

(d) You can create a separate note receivable in the amount of the accrued interest. (In this section, refer to sub-paragraph 5.g., "Create a separate note(s) receivable.")

c. Reduce amount of loan payments on a temporary basis.

(1) You may temporarily reduce the amount of the borrower's loan payments to a fixed amount. If you do not also extend the maturity date of the loan, there will be a balloon payment due at maturity. You must advise the borrower of this consequence.

(2) You should consider whether the reduced payment amount is enough to cover the following:

(a) Accruing interest;

(b) Depreciation of collateral; and

(c) Reduction of principal.

(3) If a balloon payment will be due at maturity, you may:

(a) Require payment in full at maturity (this may cause a hardship to the borrower, unless the borrower can refinance the balance at maturity); and

(b) Extend the loan maturity and term out the balance at a payment level which the borrower can afford.

d. Re-amortize loan payments.

(1) You may re-amortize the loan for a specified period of time, in order to reduce the amount of loan payments.

(2) You can re-amortize the loan in conjunction with an extension of the maturity date.

(a) This will result in the loan being paid over a longer term, with lower monthly payments.

(b) If you do not also reduce the interest rate as well, this will result in the borrower paying more total interest over the life of the loan. You must advise the borrower of this consequence.

(3) You can re-amortize the loan, but not extend the maturity date.

(a) For example, you can re-amortize the loan based on a 20 year term, but the loan remains due in 10 years (the original maturity).

(b) This will result in lower monthly payments for the term of the loan, and a large balloon payment due at maturity. You must advise the borrower of this consequence.

(4) You can re-amortize the loan for limited periods of time, instead of for the full life of the loan.

(a) For example, you have a loan with a maturity of 5 years. You can re-amortize the loan based on a 10 year term, for a period of 3 years. Then you can re-amortize the remaining balance due, over the remaining 2 years of the loan so there will be no balloon payment owing at maturity.

(b) This will result in substantially higher loan payments during the last 2 years of the loan. You must advise borrower of this consequence.

e. Extend maturity date.

(1) You can extend the maturity date of the note beyond that originally established.

(2) For extensions of maturity dates, see paragraph 5-15 titled, "Extension to the Maturity of the Borrower's Loan."

(3) You must consider the following factors when deciding whether and how long to extend the maturity date:

(a) Are there any junior liens?

Under applicable State law, the proposed extension may allow junior lienholders to move ahead of SBA. You must consult counsel to determine if notice to junior lienholders before extending a maturity date is a requirement in the applicable state.

(b) Are there any standby agreements?

A standby agreement may expire during the period of extension. You must give notice to the standby creditor to request continuance of the standby agreement to the extended maturity date. If not, you must take this into consideration in deciding whether to grant the extension.

f. Adjust the interest rate.

(1) You can change the interest rate from a variable rate to a fixed rate.

(2) You can reduce the interest rate to the "cost of money to the Government."

The "cost of money to the Government" is defined for the purpose of this SOP as 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, & Bills, 'Ask YLD'" column.

(3) You can reduce the interest rate to below the "cost of money to the Government."

(4) You can retroactively reduce the interest rate.

g. Create a separate note(s) receivable.

(1) As part of a total debt restructure, you can create a separate note receivable for items like accrued interest or the unsecured principal balance.

(a) You should take this action only where there is an improving trend in the business. For example, cash flow will likely improve in the future as a result of income from a new contract.

(b) If you take this action while the loan is in servicing status, you must have a reasonable expectation that the borrower will be able to repay the note receivable.

(2) You must establish the terms of the note receivable, for example:

(a) Interest bearing (except a note receivable for accrued interest) or non-interest bearing; and

(b) Regular payments required, or payment in one lump sum upon maturity of the note receivable or the original loan.

(3) The terms of the note receivable must be in writing, and signed by the obligor.

(4) The guarantors on the original loan must also guarantee the note receivable.

(5) You must complete an SBA Form 515, "Note Receivable Report," for each note receivable you create. (See Appendix 9.) If the note does not involve ColPur, the district office or service center also must input the note receivable into SBA's LAUD computer systems.

h. Subordinate, release, or take additional collateral.

(1) You may take a variety of actions relating to collateral securing the loan:

(a) Subordinate SBA's lien on collateral to a lender that will provide new money to the borrower in order to improve borrower's cash flow.

You should consider whether there are any junior liens. Under State law in your area, the proposed subordination may cause junior lienholders on

the same collateral to move ahead of SBA. You should give notice to, and obtain the consent of junior lienholders. You also should obtain the consent of guarantors and standby creditors. Consult counsel to determine the proper course of action.

(b) Release collateral securing SBA's loan, so that the borrower can sell that collateral and generate cash.

(c) Take additional collateral to secure SBA's loan.

(d) Take action to gain better control over existing collateral. For example, obtain the borrower's absolute assignment of payment rights in its accounts receivable.

(2) You should be aware of what might occur if the borrower files bankruptcy within a specified period of time after the parties reach a workout agreement. If SBA takes new collateral, a bankruptcy court could invalidate SBA's lien as a "preference." You should consult with counsel for guidance on this issue, before finalizing the workout. If this is a risk, you must address this issue in your 327 action.

6. How Must you Process a Workout Action?

a. You must prepare a 327 action.

You must include in the 327 action a realistic and reasonable justification for the workout action. You should discuss the following:

(1) Circumstances of the loan, for example:

(a) History of the business;

(b) A detailed analysis of the borrower's overall financial condition. (e.g., a description of the business' current cash flow and management problems and when they began);

(c) The amount of time the business estimates is necessary for the workout, (e.g., when the business may be able to make regular payments again, or when the borrower expects business to improve);

(d) What actions you propose that SBA take as part of the workout, and how these actions will help solve the borrower's problems;

(e) What actions the borrower is willing to take as part of the workout; and

(f) What actions any other creditors have taken or will take as part of the workout.

(2) All relevant issues relating to borrower's repayment ability, SBA's collateral condition and value, and deficiencies in loan documentation, as discussed in paragraph 4, "What are the Issues You/Lender/CDC Should Consider Before Agreeing to a Workout?"

b. You must obtain legal review of the 327 action.

(1) Counsel must comment on the legal aspects of the proposed workout action with respect to the following:

(a) Enforceability of guaranties;

(b) SBA's lien position on collateral (i.e., effect of intervening junior liens, etc.);

(c) Impact on any standby agreements;

(d) Impact on any legal agreements or contracts of the borrower;

(e) Potential litigation actions, for example, bankruptcy filing by an obligor or guarantor; and

(f) Any other relevant legal issues.

(2) On SBA-serviced loans, SBA counsel must oversee the preparation of all legal documents to implement the approved workout plan, including:

(a) Modification to the note.

(_)All material changes to the loan repayment terms or maturity date set forth in the note, require a modification to the existing note. The obligor must sign this document. The SBA/lender/CDC must not make a unilateral change without the borrower's signature indicating its consent.

(b) Amendment or modification to the security agreement for personal property collateral, or deed of trust/mortgage for real property collateral.

(c) Amendment or modification to a guaranty(ies).

(d) New notes and loan terms for note receivables.

(e) Workout agreement signed by all parties to the transaction, if appropriate.

(f) Subordination or assumption agreements, if appropriate.

These documents may be prepared by SBA counsel or other SBA/non-SBA personnel. At a minimum counsel must review documents for legal sufficiency before you submit them to the borrower for signature.

(3) For lender/CDC-serviced loans, lender/CDC must consult with its legal counsel for preparation and/or review of such documents, before submission to SBA.

c. You must give guarantors notice of the workout.

(1) At a minimum, you must provide notice to the guarantors of the proposed workout. You should try also to obtain the consent of any guarantors on the loan to the proposed workout. Ideally, you should involve the guarantors in the workout negotiations.

(2) If you are unable to gain the consent of guarantors, you must state the reasons why in your 327 action. Counsel must comment on the consequences to SBA if the guarantors' do not consent to the workout.

7. What Resources are Available from SBA to Help Borrowers, and When Should You Refer a Borrower for Assistance?

a. SBA.

The SBA has several resources intended to assist small business concerns with management and technical assistance. These include:

(1) Small Business Development Centers (SBDC).

These are SBA-funded centers where borrowers can receive one-on-one business counseling, training seminars, and other business management assistance.

(2) Service Corps of Retired Executives (SCORE).

An association of retired individuals with business experience and core executives

who provide one-on-one business counseling, free of charge. SCORE also conducts training seminars, and has various business resources available to small businesses.

(3) Small Business Institutes (SBI).

A college university program where business students and faculty conduct case studies of business operations and recommend how to improve management, accounting systems, financial controls, etc.

b. Referrals.

These resources may be helpful to a borrower that is experiencing cash flow or management problems. This is the type of borrower you will likely see in the context of a workout negotiation.

c. How do you make a referral?

You must complete an SBA Form 1061, "Request for Management Assistance," (Appendix 17). You must send this form to the appropriate individual in your office who is handling business development for the geographic area where the borrower is located.

8. How Do You Process Advances/Expenses During Loan Workouts?

Refer to Chapter 19, "Administrative Costs, Advances, Expenses, and Recoveries," in the Liquidation SOP for guidance.

9. Real Property and Personal Property Appraisals.

a. In a loan workout situation, it is critical that you know the value of the assets pledged to SBA to assist you in weighing the choices available to help a borrower survive and to protect SBA's interests. Incorrect value estimates can result in:

(1) Unrealistic expectations of recovery and borrower performance;

(2) Failure of workout efforts;

(3) Unnecessary foreclosure expenses;

(4) Acquisition of ColPur that is not readily disposable; and

(5) Reduction of net recovery, caused by high holding costs and other expenses, or by unknowingly selling assets (or allowing them to be sold) at depressed prices.

b. You must obtain a current appraisal(s) in order to accurately determine the value of the collateral. Generally, you should not rely on an appraisal older than 1 year. However, you must consider the particular workout situation, the nature of the assets, and local market trends.

c. If you use an appraisal that is more than 1 year old, for servicing actions:

(1) You must document your reasons on your 327 action under the rule of two; and

(2) For liquidation situations (e.g., for private sales of collateral or ColPur) refer to SOP 50 51.

10. Classifying a Loan as "In Liquidation" or "In Litigation."

Refer to SOP 50 51, "Loan Liquidation and Acquired Property," Chapter 4, "General Guidelines for Liquidation Activities," for information on this topic.

CHAPTER 8

THE SECONDARY MARKET FOR SBA GUARANTEED LOANS

1. Why Did SBA Establish a Secondary Market Program for SBA Loans?

The secondary market was established in the 1970's in order to provide greater liquidity to lenders and thereby expand the availability of commercial credit for small business. In a secondary market sale, SBA's conditional guaranty to a lender converts into an unconditional guaranty to an investor.

2. What Do the Regulations State About the Secondary Market?

The regulations regarding the secondary market appear in **13 CFR 120.600 through 120.660, Subpart F - Secondary Market** . These sections can be found in Appendix 27 this SOP.

3. Who at SBA is Responsible for Oversight of the Secondary Market?

The Director, Office of Secondary Market and 504 Sales, who reports to the AA/BLS, is responsible for oversight of the secondary market and the FTA. The SBA loan servicing personnel may contact this office for additional information:

Office of Secondary Market and 504 Sales
Small Business Administration
409 Third St. S.W., 8th Floor
Washington, D.C. 20416
(202) 205-6493

Before contacting this office, be sure to read the SBA Form 1086," Secondary Participation Guaranty Agreement" (1086 which can be obtained at your office), as this will probably answer most questions.

4. Why Would a Lender Want to Sell its SBA Loans?

Lenders who hold business loans guaranteed by SBA may be able to profit by selling the guaranteed portions of those loans in the secondary market. The two main reasons for a lender to consider selling a loan are as follows.

a. Liquidity.

(1) The lender can convert SBA guarantee to cash; and

(2) The lender can use this cash to provide new loans.

b. Profit.

The lender may profit from:

(1) Selling the loan at a premium;

(2) Collecting a servicing fee over the life of the loan; or

(3) Earning float on the borrower's loan payment.

The premium, servicing fee, and float earned on the sale of an SBA loan, effectively reduces the lender's investment in the loan, thereby reducing the lender's overall risk of loss on the loan.

5. When Should a Lender NOT Sell an SBA Loan?

A lender is discouraged from selling an SBA loan if:

a. The loan has an above average potential for default or requirement for payment modification; or

b. The lender intends to increase the principal after fully disbursing the loan.

6. What Types of SBA Loans Can a Lender NOT Sell?

a. Lines of credit; and

b. Revolving loans.

7. What is the Sale Process for SBA Loans?

The lender can complete the sale process in as little as 2 weeks.

a. The lender and buyer (investor) sign an agreement describing the rights and responsibilities of both parties ("Secondary Participation Guaranty Agreement," SBA Form 1086).

Often the lender contacts a few broker/dealers to get selling price quotes. Brokers/dealers are familiar with the paperwork and selling process, and make a market

in the securities. However, lender may sell a loan directly to an investor without the services of a broker/dealer.

b. The lender, or broker/dealer, sends the agreement (SBA 1086), with the SBA Note (SBA 147), to the FTA who reviews the documentation for completeness and accuracy. The FTA contacts both parties to arrange a settlement (closing date).

c. On the settlement date, the buyer wires money to the FTA. The FTA receives the money and wires it to the seller. The FTA then issues a guaranteed interest certificate to the buyer. The buyer is now the registered holder (investor) of the guaranty loan.

8. What are the Lender's Responsibilities After the Sale?

a. The lender remains responsible for all loan servicing activities. The lender must service sold loans according to the regulations, the 750 agreement, the 1086 agreement and this SOP. The regulations prevail if there is any inconsistency between the 1086 agreement and the regulations.

b. The lender must forward the borrower's monthly payment to the FTA with a complete accounting of the funds, using SBA 1502. If the lender does not remit payments to FTA by the specified due date, there is a severe penalty which can rarely be waived. (See 1086 agreement, paragraph 6.)

c. The lender must request the approval of the investor for any payment modifications to the loan.

(1) The request must be sent to the FTA which will forward it to the investor for response.

(a) The investor must respond to the proposal within 30 days. Lack of response is construed as non-approval.

(b) There is no obligation of the investor to approve any request for modification. Payment modifications are only permitted if the investor agrees to them.

(c) In cases where the viability of the borrower may be at stake if modifications are not made, the lender may seek approval from SBA for an emergency repurchase of the loan by the lender. (See paragraph 20 of the 1086 Agreement.)

(d) **UNDER NO CIRCUMSTANCES CAN THE LENDER UNILATERALLY REPURCHASE THE LOAN FROM THE**

SECONDARY MARKET IF THE INVESTOR DOES NOT APPROVE THE MODIFICATION.

(2) If the modification also requires SBA's consent (e.g., it is not within lender's unilateral authority to approve), the lender must:

(a) First obtain SBA's written consent; then

(b) Forward a copy of SBA's consent with the payment modification proposal to the FTA.

(3) Examples of modifications which require the approval of the investor include, but are not limited to:

(a) Adjustments to the interest rate in any way (increase, decrease, convert from fixed to variable, or variable to fixed);

(b) Extension or other modification to the maturity;

(c) Change to a seasonal or a periodic payment plan;

(d) Modification of the installment amount;

(e) Change to interest accrual basis (Actual/365;30/360); or

(f) Deferment of payments, **EXCEPT:** per the 1086 agreement, lender may approve one deferral of payment for up to three consecutive monthly payments without obtaining prior permission from the investor.

d. When the borrower is refinancing or prepaying the loan, the lender servicing the loan must be sure that the FTA receives written notice of the intent to prepay at least 10 business days prior to prepayment date. If the lender fails to notify the FTA within this time frame, the lender will pay the investor all interest that would have accrued during the 10 days and may incur a penalty. (See 1086 agreement, paragraph 15.)

9. Are There Any Changes to a Sold Loan Which a Lender Can Make Without the Approval of the Investor?

Yes. The lender does not need the investor's approval (but may need SBA's approval) to modify other terms of the loan, such as, but not limited to:

a. Change in guarantor;

b. Release or substitution of collateral;

c. Permission of payment to standby creditor;

d. Assumption of the loan (notify FTA of new name of borrower);

e. Transfer of loan to another bank (notify FTA); or

f. Subordination of collateral of SBA loan to another loan.

10. What Are the Responsibilities of the Fiscal Transfer Agent (FTA)?

The Secondary Market Improvements Act of 1984 requires the central registration of all secondary market transactions.

The FTA:

a. Facilitates the settlement of the first sale of a loan;

b. Records current and all prior registered holders (investors) of a loan;

c. Tracks loan payment histories;

d. Collects payments from lenders on sold loans (the lenders are permitted to write one check each month to cover all loans that have been sold);

e. Remits payments to investors (FTA sends one check to the investor that includes an accounting of the funds for all loans held by that investor);

f. Forwards all servicing requests from a lender to the investor and forwards the response back to the lender;

g. Notifies SBA of delinquent loans; and

h. Handles SBA and lender repurchases from the investor.

11. When Can the Lender or SBA Repurchase a Loan Sold on the Secondary Market?

a. Borrower is greater than 60 days in default.

The FTA will provide a monthly list of the loans which are in arrears to each SBA field office or servicing center. This list is entitled "Default Report." The SBA loan servicing

personnel must contact the lenders for each loan on the list to determine the status of the loan.

If the borrower is more than 60 days past due on a regularly scheduled installment of principal and interest, or if the interest paid-to-date is more than 60 days in arrears, SBA must, in consultation with the lender, decide on an appropriate remedial action or determine if SBA or the lender will repurchase the loan from the investor. (See 1086 agreement, paragraph 10.)

b. Unilateral purchase by SBA.

SBA has the authority under the 750 agreement to purchase the guaranteed interest at any time. (See also 1086 agreement, paragraph 11.)

For example, if the viability of the small business may be at stake, and the lender will not consent to a reasonable workout action deemed necessary by SBA, SBA may purchase the guaranteed interest. In this case, SBA may also assume servicing of the loan from the lender.

c. Emergency repurchase by lender.

(1) Ordinarily, the lender may repurchase a non-delinquent loan from the secondary market only on a "willing buyer-willing seller" basis. However, in critical situations where a borrower's ability to remain in business depends upon a modification of the installment payments, SBA may authorize a lender to repurchase from the investor. (See 1086 Agreement in Appendix.)

(2) In order for a lender to obtain emergency repurchase authority from SBA, the lender must submit to the SBA field office or servicing center:

(a) Current financial statements of the borrower;

(b) A written decline from the investor to a specific request for a change in the terms and conditions of the payment, or a written response from the FTA that the investor did not respond (which is construed as no consent);

(c) A written response from the FTA that the guaranteed interest is part of a pool;

(d) A statement that the proposed change in terms and conditions of the loan is solely for the benefit of the borrower; and

(e) A certification by lender that it will make the requested change in the

terms and conditions if repurchase is approved by SBA.

(3) The SBA field office or servicing center must review the financial statements of the borrower and any other appropriate information and conclude that:

(a) The borrower's business will probably fail if the lender can not change the existing terms;

(b) The business will probably survive and resume payment if the lender changes the terms (if the lender's request meets all conditions, the SBA field office or servicing center may approve the purchase of the guaranteed portion by the lender); and

(c) The lender must give the FTA ten days notice of intent to repurchase under the emergency repurchase authority (see 1086 agreement, paragraph 15.)

(4) The lender may not resell the guaranteed portion of a repurchased loan unless the borrower has made all payments as scheduled in the note for a period of 12 months.

(5) You must use this authority only in carefully selected cases, where an emergency clearly exists and the business will probably survive if the lender and SBA provide relief by changing the existing payment terms.

Do not construe this policy as general or wholesale authority for unilateral repurchase by lenders. That interpretation is incorrect.

12. How Do You Know if an SBA Loan is Sold?

a. You can determine if an SBA loan is sold by using SBA's loan accounting system. This information is updated on a monthly basis by the FTA which transmits the data to SBA via computer.

(1) You can retrieve this data by loan number under PMQD04. The screen will indicate "Secondary Market Sale."

(2) PMQD04 will NOT indicate if a sold loan has been repurchased from the investor.

b. You will know when a sold loan has been repurchased from the investor when you receive written notice from the FTA that the certificate has been redeemed under a prepayment of the loan or a default on the loan.

CHAPTER 9

PURCHASING SBA'S GUARANTY

1. Time is of the Essence.

Loan servicing and liquidation personnel in the field offices and servicing centers must act expeditiously on guaranty purchase actions. Delay on the part of SBA may significantly increase the amount of accrued interest SBA pays, which increases the cost of the loan program.

2. Regulations.

The regulations regarding when and how SBA honors its guarantee appear in **13 CFR 120.520 through 120.524**. This chapter includes these regulations in the appropriate sections.

3. When Does SBA Purchase from the Lender?

a. Regulations:

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.

b. SBA purchases the guaranty from the lender when the lender has made demand on SBA, and the following happens.

(1) The loan is not sold on the secondary market, or the lender has purchased the loan from the secondary market through the fiscal transfer agent (FTA).

(a) The FTA will redeem the certificate of interest from the investor.

(b) The SBA must have notification from the FTA that the certificate has been redeemed.

(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 Privilege, 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 all loan closing instruments.

(1) The lender must provide SBA with the executed authorization, note,

guaranty(ies), and all collateral documentation with evidence of required lien position. As applicable, the lender must also provide copies of standby agreement(s), evidence of equity injection, assignment of life insurance, and other documents as may be required in the authorization. (See Appendix 26, "Checklist For Purchase Documents," for additional guidance on required documentation to support the guaranty purchase process.)

(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 maturity 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 purchase, the earliest uncured payment default date does not change because the Lender has already exercised its right to request purchase.

b. However, note the following.

(1) Partial payments do not advance the next installment due until they equal the full loan payment amount.

(2) Payments submitted by the borrower after the lender has requested that SBA purchase the guaranty do not change the earliest uncured payment default.

(3) For lines of credit, the date of default is the date of the next installment of interest due.

(4) Liquidation proceeds do not advance the due date. They are applied to principal only until principal is paid in full. The proceeds may be applied to interest first (for a maximum of 120 days of interest) when the lender is liquidating the collateral prior to purchase of the SBA's guaranty. Refer to paragraph 9-8 titled "Payment of Accrued Interest" for additional information.

(5) Payments of proceeds from insurance or a claim on the estate of a deceased obligor generally do not advance the due date once they are applied to principal only.

(6) In the case of approved deferment periods, the date of default is the next installment due after the deferment. The lender has 120 days from the next installment due after the deferment period ends to submit a complete purchase request. However, if the borrower was in payment default when the deferment was granted and the borrower does not make the first installment payment at the end of the deferment period, the lender must submit a complete purchase request within 30 days of the payment default (after the deferment) to receive payment for accrued interest during the deferment period to the time of payment.

Note: <u>The lender MUST exercise prudent lending practices whether a deferment is recommended to the SBA for approval, or the lender exercises unilateral authority. A lender must exercise this type of action only when it may assist in solving the problems of the small business.</u>

For example, a borrower whose payments are current at the time of the deferment

has an approved deferment of principal and interest for the installments due for January 1, February 1, and March 1. If the borrower fails to make a payment on April 1, the date of default is April 1. The lender has 120 days from April 1 to submit a complete purchase request.

(7) In the case of a seasonal or quarterly payment plan, the date of default is the date on which the next seasonal or quarterly installment was due.

c. You must determine the earliest uncured payment default because it sets:

(1) The interest rate that SBA will use at the time of purchase; and

(2) The maximum number of days of accrued interest that SBA will pay; and

(3) The date that a variable interest rate becomes fixed upon the purchase of the loan.

7. Determining the Interest Rate for Purchase.

a. Regulations:

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).

b. When SBA purchases a loan, the interest rate on the guaranteed and unguaranteed portions becomes fixed at the rate in effect at the time of the earliest uncured payment default.

If there is no payment default of interest and/or principal, the interest rate on the guaranteed and unguaranteed portions must be fixed at the rate in effect as of the date of purchase by SBA.

c. If there are different rates in effect for the unguaranteed and guaranteed portions of the loan (split rate), the interest rate used for purchase is the rate in effect as of the date of default on the guaranteed portion of the loan as of the date of default.

8. Payment of Accrued Interest.

a. Regulations:

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.

b. Agency will pay interest at a reduced rate at time of purchase.

Section 7(a)(4) of the Small Business Act was amended on September 28, 1996 (P.L. 104-208). Under the amended provision, the Agency will pay the lender the rate of interest indicated in the CFR quote (13 CFR 120.522) less 1 percent. This includes loans sold in the secondary market. (See paragraph 9-8.d. titled, "How much accrued interest will SBA pay if the lender submits a timely purchase request?" and paragraph 9-16. titled, "How Does SBA Purchase from the Secondary Market?".

NOTE: The field office will not need to change the purchase process. The 1 percent will be automatically deducted (by OFO) prior to the lender receiving payment.

c. How much interest will the lender be able to recover if the guaranty has NOT been purchased?

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 as of the earliest uncured payment default date. 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 51, Chapter 8, "Lender Serviced Liquidation.") Because the lender will have already collected 120 days of interest prior to purchase and interest will not be paid at time of purchase, an additional 1 percent interest will not be deducted from the purchase proceeds.

d. How much accrued interest will SBA pay if the lender submits a timely purchase request?

(1) If the lender submits a complete purchase request to SBA within 120 days from the date of default, SBA will pay all accrued interest from the interest paid-to-date to the date of wiring the funds to the lender, including any approved deferment periods.

Example:

(a) The borrower was given a 3 month deferment of principal and interest for January 1, February 1, and March 1.

(b) The next installment due is April 1. **The rate in effect is 10 percent,**

therefore, the rate of interest which will be paid is 9 percent (10 percent less 1.0 percent);

(c) The interest paid-to-date is December 1;

(d) The SBA receives the purchase package on June 1st and the lender failed to include appropriate documentation to indicate that the lender has a first security interest against personal property as required in the loan authorization;

(e) SBA notifies the lender on June 3rd to provide a current UCC search or title opinion on the personal property;

(f) The lender supplies a title opinion to SBA on July 20th indicating the lender perfected a first security interest on the personal property;

(g) On July 23rd, SBA conducts a review of loan documentation and approves that SBA purchase the loan and inputs the purchase request; and

(h) The lender receives the wire on July 26th.

(2) <u>How many days of interest does SBA pay in the above example?</u>

(a) Lender submitted a complete request within 120 days of the date of default (April 1).

(b) The SBA pays 120 days from the interest paid-to-date of December 1, plus the 3 month deferment period, plus SBA's processing time:

December 1 - 31	31 days
January 1 - March 31	90 days
April 1 - July 26	117 days
Total days purchased	238 days at 9 percent

(c) <u>Package not submitted in 120 days.</u>

If the lender had not submitted a complete purchase request within 120 days from the date of default of April 1, SBA would have paid 120 days plus 90 days for the approved deferment period and would not have paid

any processing time:

120 + 90 = 210 days at 9 percent

(d) Package submitted in 120 days, no deferment.

If there had been no deferment, the date of default was January 1, and the lender submitted the complete request within 120 days, SBA would have paid interest from December 1, up through 120 days plus SBA's days of processing time, even if it exceeded the 120 days from December 1.

e. Can SBA extend the 120 day period?

Yes. As the regulations state in 13 CFR 120. 120.522, the SBA field office may approve an extension to the 120 day period before that period expires if:

(1) The SBA and the lender agree that the borrower can cure the default within a reasonable and definite time period; or

(2) The benefits of extending the 120 day period will exceed the costs of SBA paying additional interest.

(3) Extension of the 120 day period after the period has expired, must be approved by the AA/FA or designee.

9. What Do You Verify in a Lender's Transcript of Account?

a. Verify:

(1) That disbursement dates on the transcript were as reported in the SBA Form 1050, "Settlement Sheet;"

(2) That variable interest rates were adjusted according to the note;

(3) That payments were applied to interest through the date of receipt, then to principal unless otherwise stated in the note or unless payment was applied to principal only (such as liquidation proceeds);

(4) The next installment due date;

(5) The interest paid-to-date;

(6) That the lender has certified that the transcript is "true and correct;"

(7) That, in the case of a variable interest rate note, the base rate used on each fluctuation date was correct (e.g., check to make sure that the prime rates used by the lender on the specific date of fluctuation were based on the low Wall Street Journal prime.);

(8) That the interest rate accrual basis that was used was actual/365 days, 30/365, or actual/360; and

Note: Actual/360 is not allowed for loans sold in the secondary market.

(9) That all transactions against the loan were posted (e.g., expenses incurred prior to purchase).

Note: The lender must advise SBA of the expenses reimbursed prior to purchase. The lender may reflect this in the request to SBA to purchase the guaranty, thereby requesting an amount that is net of the expenses.

b. If your verification shows a discrepancy between the computations of the lender and SBA that is more than $100, you must further review the transcript with the lender until you reconcile the difference or the lender accepts the SBA transcript. If you need to make adjustments after the purchase, you can process a corrected purchase or an additional purchase.

10. Review of Loan Documentation.

a. What is a purchase review?

The review of loan documentation for the purpose of determining SBA's liability on a guaranty is called a purchase review. Purchase reviews are classified as "pre-purchase reviews" and "post purchase reviews." The responsibility for conducting the purchase review lies with loan servicing/liquidation personnel and SBA counsel. (Refer to Appendix 26, "Checklist for Purchase Documents.")

b. Should review be before or after purchase?

(1) You must conduct a pre-purchase review with the exception of loans sold in the secondary market, or loans made to a borrower who suffer losses in a declared disaster. (Refer to paragraph 5-29, titled, "Assistance Provided to Existing Borrowers Who Suffer Losses in a Declared Disaster.")

(2) In most cases, you will conduct a post-purchase review for loans sold in the secondary market.

You must review the transcript, and purchase loans expeditiously from the secondary market. It is important to minimize the interest expense to the Agency.

c. Advantages of pre-purchase review over post purchase review.

(1) The pre-purchase review process allows you to verify that the lender has complied with SBA's rules and regulations, the 750 agreement, and the authorization **before** honoring the guaranty.

(2) If you determine there is a deficiency with the documents or with how the lender-serviced the loan that is likely to cause a loss to the Agency, then you have the ability to:

(a) Work with the lender to correct any deficiencies; or

(b) Determine whether you should recommend reducing the amount of the guaranty purchased (repairing) or denying the guaranty.

d. Responsibility of the loan servicing/liquidation recommending official.

(1) The loan servicing/liquidation recommending official must complete a 327 action which:

(a) Comments on whether the lender closed and serviced the loan in substantial accordance with the authorization and with SBA's rules and regulations;

(b) Reconciles the transcript of account; and

(c) Recommends that SBA purchase the full guaranty, reduce the guaranty, or deny the guaranty.

(d) States whether the guaranty fee has been paid. If it has not been paid, a determination as to the existence of an SBA Guaranty must be made by the approving official and counsel's opinion must be obtained.

(e) States whether the guaranty fee is correct (and properly adjusted if the loan amount was increased or decreased).

(f) States whether the 50 basis point fee is reasonably current. It may be reasonable to assume that if the loan has a recent "paid to date," the 50 basis point fee is reasonably current. However, if the loan is seriously delinquent, the lender must state in writing the date to which the fee has been paid. At the time of purchase, outstanding delinquent 50 basis point fees will be deducted automatically _)from the proceeds submitted to the lender.

(2) The recommending officials must submit the 327 action and the complete loan file to counsel for review.

e. Responsibility of SBA legal counsel.

(1) Counsel must review:

(a) The 327 action forwarded by the loan servicing/liquidation recommending official; and

(b) The actual loan documentation.

(2) Counsel must render opinions on the 327 action regarding:

(a) Any deficiencies in the loan documentation or in the lender's actions which are likely to cause a loss to SBA; and

(b) Any liability SBA has to honor the guaranty.

(3) Counsel must forward the loan file and the 327 action with legal opinion to the loan servicing/liquidation approving official for final action. (See the chapter titled "Denial of Liability -- Suit Against the Participant" in SOP 50 51.

NOTE: <u>If the district counsel determines that SBA is not legally obligated to purchase the loan, in whole or in part, this decision cannot be overruled at the field level. The issue and the case file must be referred to the AA/FA for action with input and concurrence of the Office of General Counsel.</u>

11. When a 327 Action is Approved, How Does the Lender Receive the Funds from the SBA?

a. Computer processing of purchase.

(1) The guaranty purchase process is automated.

(2) You will input the purchase data into the SBA Data Communications System

(SBA-DCS). The instructions for purchase input are located in the SBA-DCS User Manual which is located on the SBA's Intranet.

(3) The lender will receive the purchase funds by wire transfer. The wire will indicate the breakdown between principal and interest.

b. Manual processing of purchase.

On occasion, you will need to process a purchase manually. For example, there may be an accounting matter which has caused SBA's OFO in Denver to place a "freeze" on the loan account. If there is a freeze on an account, the DCS will reject your input of purchase data until OFO lifts the freeze.

(1) What must you submit to OFO for a manual purchase from the lender?

You must submit the following:

(a) A cover memo indicating the reason for manual purchase and the documents enclosed;

(b) An SBA Form 1128, "Guaranty Loan Purchased;"

(c) A 327 action approving the purchase; and

(d) An SBA Form 1149, "Lender's Transcript of Account," or similar lender's certified transcript of account, reconciled by SBA.

(2) What must you submit to OFO for a manual purchase from the secondary market?

You must submit the same items as for manual purchase from the lender above, except you should reconcile the transcript of account with the FTA and the lender. If there is a discrepancy you can not resolve, use FTA's transcript for purchase.

12. If the Lender Acquires the Collateral Before Purchase, How is SBA's Purchase of the Guaranty Affected?

a. SBA's policy is to share, in accordance with its Guaranty Agreement, in any gain or loss experienced by a participating lender in the disposition of loan collateral. If the net proceeds from the sale of loan collateral are less than the amount credited by the lender to the loan account, SBA will share in the loss so long as the sale was commercially reasonable and all procedures used by the lender were consistent with the lender's practices on non-SBA collateral and in accord with generally accepted commercial banking practices used by prudent lenders.

b. Under local procedures, acquisition of collateral by a lender prior to guaranty purchase may require a credit to the loan account for the amount bid at a foreclosure sale (a "credit bid" at a foreclosure initiated by the lender) or the agreed-upon value of property transferred by voluntary conveyance. If the net proceeds from the subsequent sale of the property are greater than the prior credit to the loan account, these proceeds must be credited to the loan. If the property is sold after SBA has purchased its guaranteed percentage of the loan, the lender must apply to the loan balance any net proceeds received from the sale in excess of the amount credited to the loan prior to purchase and remit SBA's portion to the SBA Denver Finance Center along with SBA Form 172. Lenders are encouraged to coordinate "credit bids" with the servicing office handling the loan to avoid any problems or misunderstandings with a subsequent loan purchase.

c. If the net proceeds from the lender's sale of the acquired property are less than the amount credited to the loan prior to guaranty purchase, SBA will pay its proportionate share of the difference at the time of purchase. Any loss on the sale of property acquired through a credit bid must be reported separately since the borrower is not liable for this loss and it is not reflected on the loan transcript. If guaranty purchase took place prior to sale of the property, SBA will pay its share of the loss through the CPC system.

d. When a lender makes an advance to protect worthwhile collateral at a senior lienholder's foreclosure sale (a "protective bid"), the amount of the advance is added to the loan balance. The net proceeds from the subsequent sale of the property, including both cash and the amount of any note receivable financing, are applied to the loan as a credit. SBA's guaranty does not extend to the note receivable, nor will SBA share in any loss incurred by the lender on the note.

e. If the lender bids the full loan balance at a foreclosure sale, SBA will share ratably in any gain or loss on the subsequent sale of the property (the amount will be treated as a gain or loss on the colpur account). There is no guaranty purchase in this situation since the loan balance has been reduced to zero with the acquisition in full satisfaction. If the lender, by its bid, prevented recovery from any obligors or collateral on the loan, SBA will not share in any loss unless the bid was pre-approved in writing by SBA. Lenders are encouraged to follow bidding procedures outlined in SOP 50 51 2, paragraph 7-8 through 7-14.

13. What is SBA's Unilateral Purchase Privilege, and When Should You Invoke It?

a. SBA's unilateral right to purchase.

(1) <u>SBA Purchase Privilege.</u>

The SBA Form 750, "Loan Guaranty Agreement (Deferred Participation)," gives SBA the absolute right to purchase the guaranteed portion of any loan:

Notwithstanding any provision of any agreement between SBA and the lender, SBA has the absolute right at anytime to purchase its guaranteed percentage of any loan in the interest of the Government or the borrower. **Within 15 days** of the lender's receipt of SBA's written demand to purchase the guaranteed percentage, the lender shall deliver to SBA a certified transcript of the loan account showing the date and amount of each advance or disbursement and repayment, and shall assign and deliver to SBA the loan instruments as noted in this chapter and in paragraph 7 of SBA 750. Upon receipt of these documents, SBA shall pay the lender the guaranteed portion of the amount then owing on the loan as noted in this chapter.

(2) Option to Purchase by SBA.

SBA Form 1086, "Secondary Participation Guaranty Agreement," paragraph 16, is consistent with the 750 agreement in providing for SBA's unilateral purchase privilege:

Pursuant to the 750 agreement, SBA shall at anytime have the option to purchase from the registered holder the outstanding balance of the guaranteed interest at the note rate less the lender's servicing fee. Failure of the registered holder to submit the certificate to the FTA for redemption on the date of prepayment specified by SBA to the FTA will not entitle the registered holder to accrued interest beyond such date."

b. When should SBA consider invoking the unilateral purchase privilege?

You should consider a unilateral purchase when the following occurs.

(1) A conflict of interest exists between SBA and the lender which will adversely affect the interests of SBA.

(2) Unsatisfactory or ineffective loan administration by the lender is adversely affecting the interests of SBA.

Some examples are:

(a) The lender is inattentive to the borrower's requests for servicing or is

otherwise negligent in monitoring and reporting on the status the loan; or

(b) The lender and borrower communication has irretrievably broken down.

(3) The lender and SBA substantially disagree on the method of resolving a delinquency.

For example, SBA is willing to enter into a workout with rate reductions, reduced payments, deferments, and extension of maturity. The lender is unwilling to provide such relief. In this situation, you should make every effort to resolve the differences of the lender and SBA. The lender may be more willing to pursue the workout once SBA has purchased the guaranty.

(4) An alternative to the unilateral purchase option is for SBA to seek the agreement of the lender to voluntarily cancel the SBA guaranty, thus releasing SBA from liability on the guaranty and any further involvement in the SBA loan.

c. Procedure for invoking the unilateral purchase privilege.

(1) Notify the lender in writing that SBA is invoking the unilateral purchase privilege under the 750 agreement, paragraph 11.

(2) Request that the lender send a certified transcript of the account to SBA within 15 days of receipt of SBA's letter.

(3) Request that the lender assign and deliver to SBA the loan documents.

(4) Proceed with the purchase procedure as outlined in this chapter.

14. Notice to Lender of Purchase.

For both requested and unilateral purchases, after you (or OFO in the case of a manual purchase) input purchase data, you must advise the lender by letter that SBA is purchasing the guaranty.

a. If the lender is retaining loan servicing, you must enclose an SBA Form 152, "Participation Certificate," and must ask the lender to execute the form and return it to SBA. You must also indicate what the purchase rate of interest is and inform the lender that it must fix the interest rate on the SBA and lender shares of the loan at the time of purchase.

b. If SBA intends to take over loan servicing, SBA must execute and enclose SBA Form 156,"Certificate of Interest," and the following instructions in paragraph 9-17, titled, "Transfer of Loan Servicing."

15. When Must a Loan be Purchased from the Secondary Market (by Lender or SBA)?

The FTA will provide each SBA field office or service center with a monthly list of loans that are in default ("Default Report").

a. For each loan on the default report, you must, within 5 business days of receipt of this default list, verify with the lender the status of the loan.

b. If the lender indicates that the interest paid-to-date is more than 60 days in arrears, or there is a default by the borrower in payment of any installment of principal or interest, and this default has continued uncured for more than 60 days; SBA must consult with the lender to decide on an appropriate action. The SBA must do this within 10 business days of the first contact with the lender.

(1) You must determine if:

(a) The lender will exercise its authority to grant a one-time unilateral deferment (only if it will assist the borrower in solving the problem exercising prudent lending practices); or

(b) The lender will seek the investor's consent to a payment modification for a workout.

(2) If the lender is not able to take remedial action (e.g., registered holder in the secondary market has denied the request), or will not take it, SBA must notify FTA within 5 business days of the decision.

(3) You should recommend that the lender repurchase the loan in accordance with SBA Form 1086, "Secondary Participation Guaranty Agreement," paragraph 10.

16. How Does SBA Purchase from the Secondary Market?

a. You must notify the lender and the FTA in writing that SBA will purchase the guaranteed portion. At this point, it is a good idea for SBA to advise the lender to forward directly to SBA all future payments from the borrower to avoid the incidence of payments in transit to the FTA during the purchase process.

b. Within 5 business days of receiving SBA's notice, the lender and the FTA must provide a transcript and final statement of account of the guaranteed portion of the loan to SBA. The SBA may fine the lender $100 if the lender does not provide a transcript to SBA on a timely basis.

c. You must reconcile the transcripts provided by the FTA and the lender.

(1) If you cannot reconcile the lender's transcript with the FTA's transcript, you must use the FTA transcript for the purchase from the FTA.

(2) If the lender fails to furnish a current transcript statement within 10 business days after SBA's request, you must rely on the certified statement of account and supporting documentation from the FTA (e.g., in the event of a bank failure).

d. In reconciling the transcripts, you must do the following.

(1) Verify the transcript.

(2) Determine the earliest uncured payment default.

(3) Determine the interest rate for purchase.

(a) Fixed rate note:

The SBA's payment of accrued interest to the payment date on a fixed interest rate note must be at the note rate less the lender's servicing fee.

(b) Variable rate note:

i. If the loan is in default, SBA's payment of accrued interest must be at the rate in effect on the date of the earliest uncured borrower default.

ii. If the loan is not in default, SBA's payment of accrued interest must be at the rate in effect at the time of purchase, less the lender's servicing fee.

NOTE: **The servicing fee held back from the secondary market will be submitted to the lender, less 1 percent which will be retained by the Agency. An example would be if the interest rate was 11 percent with a servicing fee of 2 percent - the secondary market would receive 9 percent with lender receiving 1 percent (2 percent less 1 percent to be retained by SBA). For further information regarding the 1% retained by the Agency, refer to the paragraph titled, "Payment of Accrued Interest."**

(4) Purchase all accrued interest up to the date of payment of the purchase. This does not include interest on the day of purchase.

e. Within 10 business days of final reconciliation of the account, SBA must do the following.

(1) Provide written notice to the FTA of the date of purchase by SBA at least 10 days prior to the purchase date.

(2) Input the purchase into SBA-DCS. Where the 1128 (Guaranty Loan Purchase System) screen asks if there is a "secondary bank," you state "Y" for yes. This will provide two screens:

(a) One screen for the "primary bank" which represents the combined SBA and lender shares of the loan (the gross loan amounts), and

(b) One screen for the "secondary bank" which represents the secondary market balances and interest rate net of the lender's servicing fee.

(3) Perform a pre-purchase/post purchase review of loan documents.

(4) If you are reducing the guaranty, reducing the principal amount purchased, or curtailing the days of interest paid, you must immediately notify the lender in writing that the lender must reimburse SBA for the amount of the overpayment by SBA. This means that the lender will reimburse SBA for SBA's share of the overpayment. Give the lender a deadline, usually no more than 2 weeks.

(a) Example:

On a loan with an outstanding gross principal balance of $100,000 (interest rate 11 percent with servicing fee of 2 percent) and 150 days of accrued interest, SBA paid the secondary market 75 percent of the outstanding SBA share of principal and interest as follows:

75 percent x 100,000 = $75,000

75 percent x 150 days of interest at 9 percent (note rate less 2 percent servicing fee) = $2,773.97

(.75 x 100,000 x .09)/365 x 150 days

On review, SBA determined that the lender failed to obtain the required security interest in collateral with a liquidation value of $10,000. Additionally, upon review of the lender's transcript and the FTA transcript, SBA determined that the principal amount of the FTA's transcript (SBA share) was $3,000 more than the lender's transcript for

SBA's share, and SBA had to purchase this higher balance. Finally, the lender failed to submit a complete purchase package to SBA within 120 days of the earliest uncured payment default.

(b) In the above example, SBA must seek reimbursement for:

<u>Repair:</u> .75 x $10,000 = $7,500

<u>Discrepancy on transcript:</u> $3,000 (SBA share)

<u>Excessive interest days</u>: =
150 - 120 = 30 days overpaid
(.75 x 100,000 x .09)/365 x 30 = $554.79

<u>Payments in transit to the FTA:</u> One payment of $2500 (SBA share is $1,875, principal only for this example)

<u>Total amount of reimbursement</u>: $12,929.79
(7,500 + 3,000 + 554.79 + 1,875 =)

The 1086 agreement permits SBA to charge interest during the reimbursement period (days between the purchase date and the date of reimbursement by lender), calculated on outstanding guaranteed portion at the note rate. Assume that it took the lender 30 days to reimburse SBA. The calculation for the total interest charged the lender for the reimbursement period would be:

(.10 x $75,000)/365 x 30 = $616.44

Total reimbursement due from lender is:
$12,929.79 + $616.44 = $13,546.23.

Refer to the **"NOTE"** contained in paragraph 9-16, titled, "How Does SBA Purchase from the Secondary Market?".

17. Transfer of Loan Servicing from Lender to SBA.

To transfer loan servicing from the lender to SBA, the loan must be purchased by SBA.

The procedure for transferring is as follows.

a. Request a current transcript of account from the lender.

b. Request that the lender assign the original loan documents to SBA.

(1) Consult with counsel as to which documents the lender must assign to SBA. Usually the list will include:

(a) Promissory note;

(b) Security agreements;

(c) UCCs;

(d) Guaranties;

(e) Mortgage/deeds of trust;

(f) Assignment of life insurance policies;

(g) Assignment and pledge of stock of corporation; and

(h) Assignment of lease and lessor's waiver of claim.

(2) Consult with counsel on the assignment language required and instruct the lender to use this language on all documents assigned. For UCC filings and other recorded loan documents, ask counsel for specific instruction on appropriate method of assignment and requirement for filing. You may wish to supply the new UCC filings required or the separate assignment forms required by counsel.

(3) Consult with counsel on which original documents the lender should forward to SBA.

c. Prepare a 327 action recommending that SBA take over loan servicing and route it to the approving official for approval under the rule of two. (This action may be included in the 327 action completed for the purchase of the loan.)

(1) Submit a copy of the approved 327 action to OFO, Denver, for input into the loan accounting system. Once entered into the system by OFO, the loan will show "XGP SBA SERV."

(2) Instruct the borrower that all future payments are to be remitted directly to SBA's Office of Financial Operations (OFO) in Denver, CO. The only exception to this policy is where a legal or technical reason dictates that the collection must be sent to the field office.

18. SBA's Purchase of the Unguaranteed Portion/Lender's Share of the Loan.

a. The purchase by SBA of the lender's share of a loan is an **Exception to Policy.** Only the AA/FA, or designee, can approve such exceptions to policy.

b. For SBA loans acquired by FDIC, a field office can approve, under the Rule of Two, with comments of Counsel.

The approving official may authorize the purchase of the entire SBA guaranty loan or the lender's share of an XGP loan from FDIC when such action is in the best interest of the SBA.

An example when it may be in the best interests of SBA would be when FDIC has taken over a bank with a large portfolio of SBA loans which are not quickly sold to a successor bank. In this circumstance, the field office might face the burdensome administrative task of responding to FDIC on a large number of loans, perhaps while also taking over servicing of the loans and responding directly to the borrowers.

(See paragraph 12-4, titled, "SBA's responsibilities after an FDIC Take-Over," for additional information.)

You should always attempt to negotiate a discount.

The amount paid for the unguaranteed portion of the loan held by FDIC cannot exceed the lesser of:

(1) The agreed upon present value (discounted value) of the lender's share (Refer to SOP 50 51, appendix on present value calculations); or

(2) The par (face) value of the lender's share.

You must state in your 327 action for purchase from FDIC the comparison of the present and face values of the lender's share of the loan.

19. Purchase Log.

a. Each field office or service center must maintain a purchase log to control the purchase process.

b. The log should be in a format similar to the guaranty purchase control log format. The log may be maintained manually or computerized, but must contain the following information:

(1) Fiscal year of log;

(2) Name of borrower and SBA loan number;

(3) Name of lender;

(4) Loan balance;

(5) Interest paid-to-date;

(6) Date SBA received demand from lender;

(7) Date SBA advised lender of discrepancy or missing documents (if any);

(8) Date SBA received complete material from lender (discrepancy resolved);

(9) Days of interest SBA purchased;

(10) Date SBA input the purchase into DCS system;

(11) Date file submitted to Headquarters for denial of liability; and

(12) Date denial of liability was approved/declined.

CHAPTER 10

MISCELLANEOUS ISSUES REGARDING PARTICIPATION LOANS

1. **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.**

EFFECTIVE DATE: DECEMBER 1, 1997

(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.

2. Cancellation, Termination, and Expiration of an SBA Guaranty.

a. Voluntary cancellation by lender.

(1) Upon written notice to SBA, a lender may request that SBA terminate or cancel the guaranty on any of its SBA loans provided:

(a) The SBA has not purchased the loan.

(b) The loan is not paid in full; and

(c) The lender has not assigned or transferred the loan to another party (e.g., a lender can not cancel a guaranty for a loan sold in the secondary market since the loan is assigned to a registered holder).

(2) A lender may request that SBA cancel a guaranty in circumstances where SBA intends to seek a denial of liability on the guaranty, or where the lender has a conflict of interest between the SBA loan and other non-SBA loans to the same borrower.

(3) If you receive a request for cancellation or termination of the guaranty from a lender, you must:

(a) Execute an 327 action recommending approval of the cancellation. Route the action to the approving official under the rule of two.

(b) Send a copy of the approved 327 action to SBA's OFO, Denver, for input into the SBA-DCS.

(c) Use the date of receipt of the letter from the lender as the effective date of cancellation.

(d) Advise the lender in writing that SBA has canceled the guaranty. In the letter, you must state:

"SBA does not waive any preexisting causes of action against the participant or borrower nor does SBA waive any defenses against preexisting causes of actions."

b. Involuntary cancellation or termination by SBA.

(1) General guidance.

In certain circumstances, SBA can terminate its guaranty on a loan without the lender's concurrence.

(2) Nonpayment of guaranty fee.

See SOP 50 10 for guidance on nonpayment of the SBA guaranty fee.

(3) Maturity of loan.

(a) The regulations state SBA's obligation to purchase a guaranty on a specific loan expires 120 days after the maturity date of the loan.

(b) The lender may request in writing that SBA extend the purchase deadline prior to 120 days after the maturity date. The SBA may, at its sole discretion, approve an extension of maturity under the Rule of Two.

(c) When a guaranty is terminated because 120 days have passed since the date of maturity, you must notify the lender in writing that SBA has canceled the guaranty. This notification is for administrative purposes only, since termination will be effective in any event.

In your letter you must state:

"SBA does not waive any preexisting causes of action against the participant or borrower nor does SBA waive any defenses against pre-existing causes of actions."

(d) The SBA may, as an exception to policy, and at its sole discretion, approve a reinstatement of a guaranty after the 120 days has elapsed since the maturity of the loan. Such action requires the approval of AA/FA or designee.

(4) Improper Transfer by FDIC of an SBA- Guaranteed Loan to a Non-

participating Lender.

(a) Pursuant to the memorandum of understanding executed between SBA and FDIC on October 15, 1991, regarding servicing SBA guaranty loans originated by failed banks, FDIC may sell an SBA guaranteed

loan ONLY to a participating lender (a lender which has executed a 750 agreement with SBA).

(b) Improper transfer of an SBA guaranteed loan to a non-participating lender is grounds for denial of liability on the guaranty. (For more information on this subject, refer to Chapter 12, "Federal Deposit Insurance Corporation (FDIC) Takeover of a Participating Lender."

3. Reinstating an SBA Guaranty.

a. Erroneously reported "paid in full" loans.

(1) Occasionally, a lender will erroneously report that a guaranty loan is "paid in full" (For example, once a lender sells a loan, its records reflect a zero balance. As a result, the lender reports the loan to SBA as paid in full.)

(2) If the lender wants to have the SBA guaranty reinstated, it must advise SBA in writing:

(a) Explaining what caused the mistake;

(b) Providing the current balance of the loan; and

(c) Certifying that no default or substantial adverse change has occurred.

(3) Except in unusual situations justified in a request for an exception to policy, the SBA must not reinstate the guaranty if your review indicates:

(a) A substantial adverse situation has occurred since the date of termination;

(b) The guaranty fee remains unpaid; or

(c) The borrower has an uncured default in payment of principal or interest.

(4) You must prepare a 327 action for approval of a reinstatement using the rule of two. You must send/FAX a copy of the 327 action to OFO Denver.

(5) You must continue to monitor the account until the loan has been reinstated. This process could take up to 30 days.

b. Canceled or terminated guaranty for unpurchased loans.

(1) The SBA may, at its sole discretion and on a case-by-case basis, consider reinstatement of a canceled or terminated guaranty on a loan not purchased, provided that the cancellation was not intentional.

An example would be a lender inadvertently marks the SBA Form 1502, "Guaranty Loan Status and Lender Remittance." as "PAID IN FULL."

(2) For SBA to consider a request for reinstatement of a guaranty, the lender must request the reinstatement in writing and certify:

(a) That the loan is current;

(b) That there has been no adverse change and the lender has no knowledge that an adverse change is imminent;

(c) That the lender has paid the guaranty fee;

(d) The current loan balance; and

(e) The explanation for the cancellation and reinstatement of the guaranty.

(3) In order to process a request for reinstatement, you must:

(a) Execute a 327 action reflecting the above details of the loan;

(b) Forward your 327 action to the approving official for approval under the rule of two;

(c) Send a copy of the approved action to the OFO, Denver, for input into the SBA-DCS; and

(d) Notify the lender in writing that SBA has reinstated the guaranty.

c. Purchased loans (XGP) (reverse purchase).

(1) A lender may request that SBA convert a purchased loan (XGP) to a guaranty loan. The SBA, at its sole discretion, may approve such request under the rule of two.

(a) A lender may sell converted XGP loans provided the borrower has made all scheduled payments as agreed in the previous 12 consecutive months.

(b) The terms of the original 750 agreement will apply to the reinstated XGP. No additional guaranty fee is required since the transaction reinstates the original guaranty for which a fee has been paid.

(2) In preparing the 327 action, you must indicate:

(a) Loan status.

The loan must be current, both principal and interest, and there must be no adverse changes in the financial condition of the borrower.

(b) Interest rate.

If the lender wants to convert the loan to a variable rate, that rate must be in the best interest of the borrower at the time of conversion to guaranty status. If in doubt, require the borrower's consent.

(c) Guaranty percentage.

The percentage of guaranty must be the original percentage or the adjusted percentage if SBA repaired the purchase.

(d) Conversion price.

The conversion price must be SBA's share of the current outstanding loan balance (including advances for expenses) plus accrued interest through the date of sale to lender (date SBA receives reinstatement funds from lender).

NOTE: Be sure to compare SBA records with the lender's records, accounting for any payments in transit, and reconciling the balance for principal and accrued interest, and the interest paid-to-date.

(3) Route your 327 action to your approving official for approval under the rule of two.

You must forward a copy of the approved 327 action to:

(a) Collateral cashier in the field office.

The collateral cashier must remit the funds received from the lender to the OFO, Denver, using transaction code 380.

(b) Office of Financial Operations in Denver

The Office of Financial Operations, Programmatic Accounting Group must input the accounting for the reverse purchase and reinstate the guaranty.

(4) Upon approval of the 327 action, notify the lender in writing that SBA will reinstate the guaranty provided the lender remits to SBA the funds required. Use the following language exactly in the commitment letter to the lender:

"SBA must receive from _____(name of lender) $_____, which is the purchase price at par (principal balance, including advances, plus accrued interest due from the borrower at date of sale to SBA) in cash for the guaranteed portion under the terms of the original guaranty agreement and at the SBA purchased percentage rate (_____%) with respect to the guaranteed portion. In consideration for this payment, SBA will reinstate its guaranty on the loan. SBA requires no additional guaranty fee since this is not a new guaranty but rather is a reinstatement of a guaranty. Lender must charge borrower the same rate of interest stated in the Note, unless SBA has agreed otherwise."

4. Can SBA Approve a Reduction in the SBA Guaranty (an Increase in the Lender's Share) of the Loan?

Yes, a lender may request and SBA may approve a reduction in SBA's share of the loan.

a. Reduction in SBA's guaranty before purchase.

(1) <u>Prior to full disbursement.</u>

SBA's Finance Division is responsible for processing a lender's request to increase the lender's share of a loan prior to full disbursement.

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(2) **<u>After disbursement.</u>**

Loan servicing personnel are responsible for processing a lender's request to increase the lender's share of a loan after the loan is fully disbursed.

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(e) Exchange the new SBA Form 152, "Participation Certificate," if it is a lender-serviced loan, or the new SBA Form 156, "Certificate of Interest"' if it is a SBA-serviced loan for the respective old certificate held by the lender.

b. Reduction in SBA's guaranty after purchase.

To approve a decrease in SBA's share of a purchased loan (XGP) upon request of the lender, you must:

(1) Approve with a 327 action under the rule of two;

(2) Notify the lender of the amount due SBA for the additional principal and interest through the sale date which represents the increase in the lender's share;

(3) Via collateral cashier, remit lender's check to DFC, transaction code 380;

(4) Send a copy of SBA Form 327 approval to DFC, Programmatic Accounting Group to input the reduction in SBA's percentage of participation; and

(5) Exchange the new SBA Form 152,"Participation Certificate," if it is a lender-serviced loan, or new SBA Form 156,"Certificate of Interest," if it is an SBA-serviced loan for the respective old certificate held by the lender.

CHAPTER 11

PREPAYMENT OR PURCHASE OF A DEVELOPMENT COMPANY LOAN OR DEBENTURE

1. Factors Unique to Development Company Loan Servicing.

a. General guidance.

This chapter provides the procedures for prepaying development company loans or purchasing development company debentures.

(1) The CDCs make loans to eligible small businesses that are funded by the sale of debentures with repayment guaranteed by SBA.

(2) There are two types of loans which are funded in this way.

(a) The SBA 503 ("503") loans were funded by debentures sold to the Federal Finance Bank (FFB) of the U.S. Department of Treasury. The SBA "503" loans were approved between 1980 and June 1986.

(b) The SBA 504 ("504") loans are funded by debentures sold to private investors through underwriters. The SBA "504" loan approvals began June 1986.

(c) The major servicing differences between "503" and "504" loans relate to prepayments and purchases. These differences are highlighted in this chapter.

b. What is the difference between prepayments and purchases?

This chapter provides guidance for both borrower's voluntary prepayments of loans and SBA's purchase of debentures.

(1) <u>Prepayments</u>.

(a) When a borrower pays its loan in full prior to its maturity date, the CDC must also prepay the debenture. Therefore, the prepayment amount for the loan is the same amount required to prepay the debenture.

(b) Regulations:

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."

(2) <u>Purchases</u>.

(a) When a borrower is unable to make the loan payments as agreed (amortize the loan and debenture), the SBA will purchase the debenture. The loan will then be reviewed for further workout, and either classified into liquidation or charge-off.

(b) Regulations:

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.

c. What is the difference between 503 and 504 debentures?

One of the few substantive differences between the 503 and 504 debentures is the prepayment provision.

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(c) The borrower may prepay at any time, but calculations will include all monthly payments scheduled up to and including the one due on the semi-annual payment date.

2. Documentation Required for the Prepayment.

a. CDC's 15 day notice for prepayment.

The CDC must submit a letter request and a resolution for prepayment to CSA at least 15 days prior to the requested prepayment date.

b. The request letter.

The CDC letter must include:

(1) Identification of the debenture.

This includes the type (503 or 504), date of issue, face amount, debenture interest rate, and maturity date.

(2) Prepayment date.

The CDC must identify the date by which the borrower plans to make the prepayment.

(a) A borrower may prepay a 503 debenture only on the 2nd or 4th Thursday of the month, except, during November and December, when the prepayment is on the 1st or 3rd Thursday.

(b) A borrower may prepay a 504 loan at any time. However, the debenture can only be prepaid on the 3rd Thursday of the month before its semi-annual payment date.

(3) Statement whether there is an outstanding deferment or delinquency.

If SBA advanced (paid) part or all of a semi-annual installment on behalf of the borrower, the amount shown as due on the debenture will be less than the amount that the borrower owes on the note.

(4) Contact person.

Name and telephone numbers (fax and voice) of the person handling the transaction for the CDC.

c. Corporate resolution.

(1) The CDC must include a corporate resolution for prepayment with the request for prepayment of the loan and the debenture. The resolution submitted must contain wording approved by the SBA. No changes are allowed.

(2) The resolution is not required for SBA-serviced loans.

d. Full compliance necessary.

The CDC must obtain all required documentation before submitting the letter request to the CSA. The CSA has the authority to waive the 15 day notice requirement, provided the CDC can comply with the requirements of the prepayment procedural steps, in paragraph 3, "Prepayment Procedural Steps."

3. Prepayment Procedural Steps.

The CDC must ensure compliance with the requirements of the preceding paragraph. The references to CDC for this paragraph also refers to SBA if the loan is SBA serviced.

a. Prepayment estimates.

(1) The CDC must send by facsimile transmission, SBA Form 1614, "Loan Information Request," (see Appendix 24) to the CSA for receipt of the prepayment estimate.

(2) The CSA will send the estimate to the CDC.

b. Notice to CSA.

(1) The CDC must submit a memo to the CSA, stating that it has completed the prepayment requirements.

(2) The CDC must provide a copy of the corporate resolution (original must be retained in the CDC's loan file).

(3) The CDC may submit this notification by facsimile transmission.

(4) The CDC must submit this notification to the CSA for their receipt at least 15 days prior to the prospective prepayment date.

c. Prepayment deposit.

(1) For most debentures.

A non-refundable prepayment deposit is required. The note between the CDC and the borrower states this requirement.

(2) 503 debentures.

Borrowers must provide a $1,000 good faith deposit for debentures funded on or after July 1985.

(3) 504 debentures.

Borrowers must provide a $1,000 good faith deposit for debentures funded on or after January 1992.

(4) The borrower must wire the $1,000 deposit to the CSA 7 business days prior to the prospective 503 prepayment date or 10 business days prior to the 504 prepayment date. The $1,000 deposit will be deducted from the prepayment price.

(5) Failure to submit the deposit will result in the cancellation of the prepayment request.

(6) If the borrower fails to complete the prepayment, the deposit will be forfeited. The CSA will send the deposit to OFO, Denver.

d. Prepayment cancellation.

(1) The CDC must provide written notice to the CSA for any loan that will not prepay as scheduled.

(2) If the prepayment is to be rescheduled, the CDC must notify the CSA, in writing, of the new date and advise the CSA that it is to re-utilize the prepayment resolution. Otherwise a new resolution will be required.

e. Prepayment price determination and notification.

(1) For 503 debentures, on the day before the scheduled prepayment date, CSA will notify the CDC by facsimile transmission of the official prepayment amount.

(2) For 504 debentures, at least 1 week before the prepayment date, CSA will notify the CDC by facsimile transmission of the prepayment amount.

(3) The CDC must notify the borrower or the borrower's designated agent.

f. Escrow account funds.

For 503 debentures, the CSA automatically applies the reserve/escrow funds to the prepayment.

g. Prepayment funds transfer.

(1) The borrower must wire to the CSA funds equal to the quoted prepayment amount.

(2) The amount will reflect the reduction of the $1,000 deposit, if any, and application of any escrow/reserve account funds. The CSA will not accept checks. The borrower must not send funds to the SBA.

(3) For 503 debentures, the borrower must wire the funds by noon (Eastern Time) on the prepayment date.

(4) For 504 debentures, the borrower must wire the funds by noon (Eastern Time) no later than the third Thursday of the month.

(5) Timeliness is Critical.

(a) The CSA must receive the correct payment by the date and time specified above. If the payment is not timely, the CSA will terminate the transaction, the CDC must reschedule, and the borrower will forfeit any prepayment deposit.

(b) For 503 debentures, it will be necessary to obtain a new prepayment amount from the FFB.

(c) For 504 debentures, it may be necessary to revise the quote based on the next semi-annual debenture payment.

(d) In either case, additional funds may be required to close the transaction and complete the prepayment at a later date.

4. Release of Debenture and Note.

a. You may release the note and collateral, after the CDC completes the prepayment and you receive from the CSA confirmation of the receipt of funds.

Do not wait for the PMQD screen to show "PIF."

b. For 503 debentures, the SBA will return the canceled debenture to the CDC.

c. For 504 debentures, the debenture trustee will return the debenture after the next semi-annual date.

5. Alternatives to Prepayment of Debentures.

a. In the normal course of operations, businesses and properties are bought and sold. A borrower who sells his/her business or property may have sufficient funds to prepay the debenture but may not wish to endure the economic hardship or financial disadvantage of the prepayment premium.

The CDC and SBA, in an effort to assist the borrower, may consider alternatives to prepayment.

(1) Sale and assumption.

See chapter 5.

(2) Substitution of collateral.

See chapter 5.

(3) Cash escrow account.

(a) For 503 debentures, SBA may permit the borrower to sell the facility and place sufficient cash in escrow to ensure that the 503 loan will be paid in a timely manner or to prepay the loan.

(b) If a cash escrow account is established from the sale of assets, you should transfer loan servicing to SBA, unless the CDC continues to service the loan for sale of other assets.

(c) The cash escrow account must be established at the CSA.

(4) Prepayment of a third-party loan.

In the event of a business scale-back or death of a principal, proceeds from a partial sale of assets or an insurance recovery may be applied to reduce or pay off the participating third-party loan. This could reduce overall debt payments improving loan repayment-ability, and would reduce prior liens improving SBA's collateral position.

b. In evaluating the alternatives, you should maintain SBA's collateral position. The value of the collateral should be maintained at the same level as available to SBA prior to a prepayment.

6. Purchase of Debentures.

a. General guidance.

(1) The purchase of a debenture and the liquidation of the loan are two separate and distinct events. A debenture purchase must be initiated prior to normal liquidation activities and may be made as a step in loan workout activities. It is initiated by submitting an approved 327 action to the CLSC-LR (Attn. "Debenture Purchase Clerk") placing the loan into liquidation (or advising that workout is required) and requesting purchase of the debenture.

(2) You should work with the CDC and encourage the CDC to maintain its relationship with the borrower. When the CDC reports borrower problems, you and the CDC should consider available workout alternatives that can be taken without purchase of the debenture.

The workout alternatives include:

(a) Short term deferment.

(b) Subordination of the SBA lien to a working capital loan, if it appears that the workout will overcome a short term problem; and

(c) Agreement with other creditors for similar concessions.

(3) Due to the terms of the debenture, some loan workout tools are NOT available until SBA purchases the debenture.

Alternative tools NOT available until after purchase:

(a) Extension of maturity;

(b) Deferment of payments to maturity;

(c) Reduction of interest rates; and

(d) Other payment modifications such as seasonal payments.

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b. 504 guidance.

(1) Monitoring and collection requirements.

(a) When a 504 borrower becomes two payments past due, the CDC and SBA must take the necessary steps to bring the loan current, or when appropriate, implement a formal written deferment that includes a workout plan. Keep in mind that a deferment on a 504 loan is allowable only if the borrower can reasonably project that the deferred amount will be brought current within 5 years after the deferment period.

(b) In the absence of an approved workout plan, the CDC and the SBA must begin acceleration procedures, when the loan becomes three payments past due.

(c) Monthly, SBA's CSA, will prepare a report on 504 loans that are 45 days past due and send it to the CDC and to the appropriate SBA field office servicing the loan.

(d) The CDC will have approximately 15 business days to analyze and document an action plan to bring the payments current and/or prepare a workout plan or determine other appropriate action.

i. If the CDC is not able to either bring the loan current or have an SBA-approved action plan in place when the loan is three payments past due, SBA and the CDC must begin acceleration

procedures.

ii. If a workout plan is developed before purchase, SBA should delay debenture acceleration procedures.

(e) The CDC is responsible for notifying the CSA that an SBA-approved plan is in place in order to avoid acceleration procedures and debenture purchase.

(f) Example of how this will affect the borrower:

A 504 loan payment is due on June 15 (due date of June 1 plus grace period). If the June payment is missed and is not received by July 30, the June payment becomes 45 days delinquent on that date. The next CSA 45 day report will show that the borrower is two payments past due. When the CDC receives the report from the CSA, the CDC must initiate contact with the borrower and develop a plan to bring the loan current or to establish a workout plan which must be approved by the SBA field office. (Note: The delinquency period starts at the completion of the grace period in order to provide the necessary time for the borrower to bring the loan current.)

If the CDC is not able to either bring the loan current or have an SBA-approved action plan in place by August 19, the loan will be listed on the August 65 day delinquent report, since as of August 20, the borrower would be three payments past due. Once the loan is three payments past due, SBA and the CDC must begin acceleration procedures. If a workout plan is developed before purchase, SBA could delay debenture acceleration procedures. The CDC is responsible for notifying the CSA that an SBA-approved plan is in place in order to avoid acceleration procedures and debenture purchase.

NOTE: <u>SBA and the CDCs should be mindful that an in-depth analysis of the viability of the small business concern is essential in deciding whether or not to liquidate. A prompt analysis and decision are necessary in order to carry out the legislative mandate . Decisions not to purchase the debenture and liquidate a business on the 65-day delinquency list must be supported by a well-analyzed, written workout plan prepared by the CDC and approved by the SBA. Once the workout plan is determined not to be successful in bringing the loan current and the loan returns to or remains on the 65-day</u>

delinquent list, SBA and the CDC must begin acceleration procedures.

c. Purchase decision by SBA.

(1) The field office/servicing center must submit its approved 327 action for debenture purchased to the Little Rock Commercial Loan Servicing Center (CLSC-LR), attention "Debenture Purchase Clerk." Further guidance for the 327 action for recommending purchase is provided in this chapter.

(2) For guidance on determining if the debenture has been purchased, see paragraph 11-8 titled, "Loan Accounting after Debenture Purchase."

(3) The decision regarding when to purchase the debenture is critical to protecting the interests of the Agency, borrower, and the participating third party lender. Example reasons for debenture purchase are:

(a) Intensive servicing workouts;

(b) Bankruptcy;

(c) Liquidation; and

(d) Litigation.

d. Purchase for intensive servicing workouts.

(1) Due to the limitations imposed on loan workout by the debenture structure, you should consider recommending debenture purchase if:

(a) The CDC and/or borrower indicate that the borrower will not be able to make the loan payments as required in the loan agreement; and

(b) The borrower has had 12 months or more of deferment and is not able to make payments under an approved catch-up plan for return to regular payments within 5 years of the end of the deferment.

(2) Failure to purchase the debenture and initiate a workout in a timely manner may result in a dissipation of collateral or further deterioration of the borrower's financial condition.

e. Bankruptcy actions.

(1) Your 327 action must clearly identify that there is a bankruptcy and the type, and

must also identify whether there is a probable or actual workout, assumption, compromise, or charge-off.

(2) For 504 debentures, you must submit the 327 action requesting purchase for debentures sold before or during August 1993, if the borrower or a guarantor files for bankruptcy.

(3) For 504 debentures sold after August 1993, a chapter 11 bankruptcy does not automatically require that SBA purchase the debenture. If the bankruptcy does not appear to adversely affect loan repayment ability the field office may recommend that SBA not purchase the debenture.

(4) For 503 debentures, SBA agreements do not require SBA to purchase the 503 debenture under specified circumstances. When the borrower has filed a petition in bankruptcy, it may be important for SBA to purchase the debenture quickly so that SBA's "proof of claim" can include the premium or discount amount. In cases of chapter 11 bankruptcy, you should not submit an approved 327 action recommending that CLCS-LR purchase the 503 debenture until:

(a) The bankruptcy has been dismissed;

(b) The bankruptcy has been converted; or

(c) It is clearly evident from the plan that there will not be a full recovery for SBA.

f. Dollar amount for demand or proof of claim.

In the event of default where SBA has to make a claim for all amounts due, SBA will normally establish a proof of claim based on the actual amount of debt remaining. In the case of 503/504 loans, the actual amount of total debt is not known until the debenture has been purchased at which time the amount of any premium is disclosed.

(1) Demand.

(a) In some cases you may need to make a demand or file a claim prior to purchase of the debenture.

(b) You can make demand with an estimate from the CSA in response to SBA 1614.

(c) Your request to the CSA must clearly identify the purpose of the request and note any deferments or missed payments.

NOTE: You can not use the PMQD09 to get a payoff amount prior to purchase of the debenture.

(2) For a proof of claim.

(a) In order to establish the actual amount of the borrower's debenture premium or discount, SBA must first purchase the debenture.

(b) For 504 debentures, there is no prepayment penalty if the debenture is purchased by SBA. However, the purchase will include the amount of

monthly principal and interest payments to and including the month of the semi-annual debenture payment.

(c) For 503 debentures, the FFB's present value of the debenture determines if the prepayment will result in a premium, a discount, or a simple "at par" transaction:

i. Prepayment premium. The prepayment premium is the charge assessed by the FFB to offset their loss of investment income. If SBA's election to prepay the debenture for any reason, including liquidation, necessitates SBA's payment of a premium to the FFB, you must consider such payment a recoverable expense and add that amount to the note balance.

ii. Prepayment discount. A prepayment discount is a rebate paid by the FFB upon the prepayment of a debenture yielding less than existing market rate. The SBA will pass on any discounts we receive to borrowers in liquidation only after any loan deficiencies are paid in full.

7. Processing of 327 Actions For Debenture Purchases.

a. Statement of reason.

You must send to CLSC-LR the approved 327 action recommending purchase of the debenture. Your 327 action must include a statement explaining the reason for the purchase (see prior paragraph):

(1) Placing loan in a workout;

(2) Bankruptcy; or

(3) Placing loan in liquidation and/or litigation.

b. Termination of CSA and CDC servicing.

(1) The CLSC-LR will terminate the CSA and CDC servicing functions at the time the debenture is purchased.

(2) The CLSC-LR will notify the CSA to close out its accounts, transfer monies, and provide loan balance information necessary for filing legal claims, etc. The CSA will send a copy of the loan balance information to BLS, who will provide copies to SBA's Accounting Operations Division for record keeping purposes.

(3) The CLRS-LR will notify the field office or servicing center when the transfer of servicing is completed.

8. Loan Accounting after Debenture Purchase.

a. Once the debenture is purchased, SBA's accounting division will set up a new note record. For the new note loan number, SBA's Accounting Division will change the eighth digit of the loan number from a "0" to a "5." It sometimes takes up to eight weeks from the time SBA purchases the debenture until the field office/servicing center can pull up the computer record for the new loan number. If you need a loan balance or daily interest amount in the interim, contact Denver, OFO, Programmatic Accounting Group.

b. Once the accounting is set up with the new loan number, the PMQD05 screen for the original number ("0" in the eighth digit) should show "PIF" or "PURCHASED" next to the "SBA-STATUS" and there should be no dollar amounts under "GROSS." If the original loan status is not "PIF" or "PURCHASED" or there are dollar amounts shown, you must contact OFO, Denver, to make the adjustments.

c. Once the new record is available on the computer, you will be able to access loan information, including transcripts, as you would for any SBA-serviced loan.

9. Placing Loans in Liquidation.

Development company loans are treated in the same manner as 7(a) loans.

10. Termination of CDC Servicing.

a. CDCs should remain involved with a loan whenever possible. For problem loans, CDCs can actively assist in:

(1) Doing the "leg work" in cooperation with SBA; and

(2) Finding assumptors for the business or the loan through sale of assets or new financing.

b. You should terminate the CDC's servicing functions only if:

(1) The CDC is unable or unwilling to continue its servicing function;

(2) An assumption, workout or continued payment activity is not possible without purchase of the debenture; or

(3) There is no reasonable probability of full recovery from a potential workout, compromise, or liquidation.

c. Communication between the CDC and the field office is essential to the expeditious handling of problem loans. When you make a decision to terminate CDC servicing, you must forward a 327 action accomplishing this to the CSA with a copy to the CDC. You should discuss this action with the CDC.

d. When SBA terminates CDC servicing and assumes responsibility for the account, you must insert "SBA/" in front of the "Borrower" name in SBA's computer and other files. This will be helpful in determining where the servicing function resides, while continuing to identify the source of the loan.

11. Termination of CSA Servicing.

a. The CSA servicing must continue until SBA purchases the debenture. You must route all funds collected through the CSA to ensure that the borrower (and CDC) receive proper credit. If funds are sent to OFO, Denver, they may be held in suspense resulting in a misrepresentation of the borrower's debt. When requesting payoff information utilize SBA 1614 (see Appendix 24).

b. In cases where SBA terminates CDC servicing, but the loan is still viable, you must maintain CSA servicing. In such cases, CSA will treat the field office as a substitute CDC.

If SBA terminates CDC servicing due to unsatisfactory CDC performance pursuant to 13 CFR 120.980-120.984 (see paragraph 3-4.e. titled, "Regulations for CDCs"), it is preferable to transfer servicing to another CDC without a break in CSA servicing.

12. Servicing Fees.

a. Servicing fees are part of the borrower's indebtedness and they continue as long as the note is in place. Either the CDC or SBA must collect these fees until the obligation is satisfied.

b. If loan servicing has been transferred to SBA, but SBA has not purchased the debenture, the CSA must collect the CDC servicing fees. The CSA transfers the fees to OFO, Denver.

c. If SBA has purchased the debenture and you have established a new note or modification to the note, you should discontinue the CDC and CSA fees, providing a savings to the borrower.

13. CDC Liquidating Functions.

a. The SBA may allow a CDC to assist with the liquidation of loans under SBA regular liquidation regulations and procedures.

(1) When CDCs participate in liquidation activities, the liquidation report/plan will specify the CDC's duties, compensation, and fees.

(2) You must coordinate with the CDC activities with the third-party lender.

(3) The SBA is responsible for developing and implementing a liquidation plan.

(4) Where possible, the CDC should actively participate through final disposition of the loan as authorized by SBA.

b. You must NOT give the CDC any responsibility for the conduct of litigation which occurs as a part of the liquidation of indebtedness.

c. SBA must NOT reassign documents to the CDC.

CHAPTER 12

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) TAKE OVER OF A PARTICIPATING LENDER

1. The FDIC Takeover of a Participating Bank.

The FDIC has the statutory authority to determine when a bank has failed and when it will take over a bank. When the FDIC takes over a bank:

a. The FDIC becomes the receiver for the bank's operations. The FDIC steps into the shoes of the original bank; and

b. FDIC assumes the duties and responsibilities, as well as the liabilities of the bank for servicing and liquidating the bank's loan portfolio. This includes the SBA-guaranteed loans in the failed bank's portfolio.

2. What are the Rules Governing How SBA Interacts with FDIC After a Takeover?

On October 15, 1991, SBA and FDIC entered into a memorandum of understanding (MOU) which clarified the relationship between SBA and FDIC on SBA-guaranteed loans. (See Appendix 25.)

3. What Must You Do When a Bank Fails?

a. Notice of a bank failure.

The FDIC is responsible for notifying SBA of a bank failure. However, if you become aware of a participating lender's failure, you should immediately contact FDIC.

b. Obtain a list of borrower names and addresses.

Obtain a list of all outstanding SBA guaranteed loans at the failed bank. This information can be obtained from one of the following sources.

(1) From the loan status report submitted by the bank.

(2) From the failed or successor bank, or from FDIC while it is the receiver for the failed bank.

(3) From the field office(s) working with that bank.

(4) From the Office of Borrower and Lender Servicing (BLS) in Headquarters, if you provide the following information.

(a) The failed bank's financial institution reporting system (FIRS) number; and

(b) The location of the bank and all of its branch offices.

(5) From the computer, on the Guaranty Loan Reporting System screen (PMGI01). This provides a list of loans by lender, by FIRS number.

c. Send a letter to all borrowers immediately.

(1) Procedure.

You must notify all borrowers in writing, sending a copy to FDIC and to Colson Services Corp. (Colson), advising them of the following:

(a) That FDIC has taken over their bank;

(b) That SBA has taken over servicing of their loan;

(c) That they must make their loan payments directly to Colson, as SBA's collection agent; and

(d) That they must refer all servicing and liquidation questions to the responsible SBA office, not FDIC.

(2) Purpose.

Colson is responsible for processing borrowers' loan payments for all loans, as soon as possible after FDIC takes over the bank. It is important for borrowers to know that SBA is monitoring their loan payments. Loan payments for some loans may be re-directed at a future date. At the outset, however, all loans are treated the same and borrowers must direct their payments to Colson.

d. Review all SBA guaranteed loan files.

(1) Timing.

(a) The SBA has promised FDIC that it will review all SBA guaranteed loan files within 30 days of receiving notification from FDIC of the takeover.

(b) You should coordinate with the FDIC contact person to establish a date for this review.

(c) The FDIC has agreed to make the loan files available for SBA's review, usually on site, at the original bank's offices.

(2) <u>Purpose.</u>

The purpose of the review is to determine whether SBA is liable under its guaranty, based on the original bank's loan processing, approval, closing, disbursement, and servicing of the loan. It is in SBA's sole discretion to determine what constitutes a deficiency which affects SBA's guaranty. However, SBA has agreed with FDIC that SBA will honor its guaranty unless:

(a) The SBA finds fraud, negligence, or misrepresentation on the part of the failed bank; or

(b) The SBA finds that an action taken by the failed bank substantially affects SBA's interests in the loan or in the underlying collateral.

e. Divide the loan files into two groups.

(1) The first group is those files which SBA finds acceptable (i.e., SBA is liable under its guaranty).

The SBA should transfer this group of files to the appropriate SBA field office or servicing center within 30 days after the FDIC takeover. You must modify the SBA computer database records for each of these loans by adding "FDIC/" at the beginning of the lender name. The SBA will service these loans until pay-off or purchase of the loan by an approved SBA lender.

(2) The second group is those files which have deficiencies serious enough to affect SBA's guaranty.

You should identify the problems with these loans for FDIC. The FDIC has 90 days to correct any deficiencies. The SBA must make a decision whether to take back servicing of these loans, within 90 days after the FDIC takeover.

f. SBA servicing of guaranteed loans in the failed bank's portfolio.

(1) In many cases, with the takeover of the failed bank, FDIC will immediately transfer to another lender (with an executed SBA Form 750, "Loan Guaranty

Agreement") a large portion of the SBA guaranteed loan portfolio. Those loans will not need to be transferred to SBA servicing. But, if there is a delay in FDIC's transfer of loans to another participating lender, you must process those loans for transfer to SBA servicing.

(2) SBA and FDIC intend that SBA will take back servicing of virtually all of the failed bank's SBA loan portfolio, upon FDIC takeover.

(3) You may make a few exceptions to this basic approach, on a case-by-case basis, if:

(a) Litigation is already underway with respect to the loan;

(b) There is a high potential that SBA will deny liability for the loan;

(c) There are unresolvable conflicts of interest with other loans to the same borrower by either agency; and/or

(d) For some other significant reason, it is to the overall benefit of the Government for servicing to remain with FDIC.

(4) When FDIC retains servicing, you should monitor their progress as you would any lender-serviced loan.

g. Resolve with FDIC all loans with deficiencies affecting SBA's guaranty.

(1) After the 90 day period allowed for FDIC to correct deficiencies has passed, you should work with FDIC to resolve those loans where FDIC is unable to cure or resolve the deficiencies.

(2) The FDIC can release SBA's guaranty.

(a) If SBA's guaranty is released, FDIC can transfer the loan to a third party without SBA's permission.

(b) The SBA must notify the borrower and Colson that SBA's guaranty is canceled.

(c) The FDIC or the transferee is responsible for notifying the borrower that the loan has been transferred and for providing the new address for loan payments.

(d) The FDIC may submit a claim to Colson for any payments made prior to

the transfer.

(3) SBA can process a denial of liability, if FDIC will not release SBA's guaranty.

(a) You must follow the guidelines and procedures in chapter 10 regarding denial of liability.

(b) If SBA has denied liability, FDIC is free to sell the loan to third parties without SBA's permission.

(4) The SBA can process a repair of its guaranty (an adjustment to the percentage of SBA's guaranty), if FDIC will not release SBA's guaranty.

(a) You must follow the guidelines and procedures in SOP 50 51, in the chapter titled "Denial of Liability -- Suit Against Participant," regarding repair of SBA's guaranty.

(b) The FDIC may sell a repaired loan only to an SBA participating lender.

(c) The SBA will take back servicing on such loans if FDIC does not sell them to an SBA participating lender.

(d) The SBA must notify Colson of the change to the guaranty percentage.

(5) For those loans sold on the secondary market where FDIC cannot cure deficiencies:

(a) The SBA will grant FDIC permission to purchase the loan at par from the secondary market;

(b) After purchase, FDIC must release SBA's guaranty;

(c) The FDIC can then sell the loan to any third party without SBA's consent; and

(d) The FDIC and Colson will decide on a case-by-case basis, which entity will process payments on such loans.

(6) The SBA must transfer to the appropriate field office or servicing center, all loans where FDIC has resolved the deficiencies.

4. SBA's Responsibilities after an FDIC Takeover.

a. SBA must service all loans where it has taken back servicing.

(1) You will make all decisions affecting the borrower, and will act in the best interests of the Government.

(2) The FDIC and any future owner of the unguaranteed portion of the loan will have no input in the servicing of the loan.

(3) You should consider all servicing expenses, for example, UCC refiling fees, as non-recoverable program expenses.

b. SBA must work with FDIC to sell loans.

You must coordinate with FDIC in the sale of the entire portfolio of SBA-guaranteed loans to ensure that FDIC sells the loans to another SBA participating lender. Also be aware that FDIC is required to give SBA notice, when FDIC sells the unguaranteed portion of any SBA-guaranteed loan, to any party.

c. SBA may purchase both unguaranteed and guaranteed portions of loan(s) in some cases.

There may be situations where it is appropriate for SBA to purchase the entire loan (both its guaranteed portion as well as the unguaranteed portion) from FDIC. The approving official may authorize the purchase of the entire SBA guaranty loan or the lender's share of an XGP loan from FDIC when such action is in the best interest of the SBA.

5. FDIC's Responsibilities for SBA's Loan Portfolio After FDIC Takeover.

The following table describes the actions FDIC can take with respect to SBA-guaranteed loans:

STATUS OF LOAN:	ACTIONS FDIC CAN TAKE:	WHAT SBA/FDIC MUST DO:
FDIC releases SBA from its guaranty (loan was not sold on the secondary market)	FDIC may sell the loan to any investor without SBA's permission	
FDIC released SBA from its guaranty (loan was sold on the secondary market)	--FDIC first must purchase the loan from the secondary market, at par, then release SBA's guaranty --FDIC may then sell the loan to any investor without SBA's permission	--SBA notifies Borrower and Colson that SBA's guaranty is canceled --FDIC notifies Borrower of new loan payment mailing address --FDIC may submit a claim to Colson to recover loan payments made during the transfer process.
SBA denied liability for the loan	FDIC may sell the loan to any investor without SBA's permission	
SBA repaired the guaranty on the loan	FDIC may sell the loan ONLY to an SBA participating lender, with SBA's prior written permission	SBA notifies Colson of any changes in the guaranty percentage
FDIC sold the entire loan (both guaranteed and unguaranteed portions)	FDIC may sell the loan ONLY to an SBA participating lender, with written notice to SBA	SBA usually will transfer servicing and loan payment collection responsibilities to the new lender
FDIC sold the unguaranteed portion of the loan	FDIC may sell this portion of the loan to any investor without SBA's consent after SBA takes over servicing. FDIC must give SBA written notice.	

6. Who Collects Loan Payments and Maintains Loan Data?

a. Before SBA takes over servicing.

(1) The FDIC is responsible for collecting loan payments in the place of the failed bank until loan servicing is transferred to SBA.

(2) The FDIC is responsible for sending statements to borrowers about interest paid at year-end on the loan.

b. After SBA takes over servicing of the loan(s) and notifies Colson.

(1) Colson is responsible for collecting loan payments.

(2) Colson will maintain, at a minimum, a record of date of receipt and amount of each loan payment it receives.

(3) Colson also maintains records on loan balance and interest paid-to-date. The FDIC or SBA must provide sufficient information to Colson. The information Colson needs is:

(a) Loan balance prior to transfer of servicing to SBA;

(b) Interest paid-to-date date; and

(c) Borrower's taxpayer identification number.

CHAPTER 13

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; and

(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 Freedom of Information Act (FOIA). However, there are laws that prohibit you from disclosing certain types of information.

2. Types of Information that are 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 the following.

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 are "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 the Chapter 14, "Referrals to the Office of the Inspector General," for additional information on OIG 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 U.S.C. 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 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; AND

(b) The requestor must be reasonably specific in describing the records he/she wants.

(2) You should advise the requestor of these requirements, if the requestor asks for information over the telephone.

c. Does the requestor have the 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, 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 case 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) 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 14

REFERRALS TO THE OFFICE OF THE INSPECTOR GENERAL

1. Referrals to the Inspector General (IG).

a. Except when otherwise instructed in writing by the Department of Justice (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; and

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; 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 14-7, titled, "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

(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; 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, and 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 do the following.

(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 the following must occur.

(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.

(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 do the following.

(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.

(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.

CHAPTER 15

LOAN COLLECTION MONITORING & REPORTS

1. General Guidelines for Loan Collections.

a. SBA-serviced loans.

You are responsible for the collection of SBA-serviced loans. You must inform borrowers that they must submit their loan payments to OFO, Denver. You should encourage borrowers to agree to have their payments automatically debited from their bank accounts through Pre-Authorized Debits (PAD). The OFO will advise you if the borrower's payment by check is rejected in which case you must contact the borrower for replacement payment. (The instructions for PADs are located in the SBA-DCS User Manual which is located on the SBA's Intranet.)

b. Lender-serviced loans.

The borrower will make payments directly to the lender. The lender is responsible for monitoring loan collections and reporting the loan status to SBA as described later in this chapter.

For loans sold on the secondary market, the lender must submit the guaranty portion of the borrower's payment less servicing fees to the FTA, who will distribute payments to the investors. The lender must follow the instructions in the SBA Form 1086, "Secondary Participation Guaranty Agreement."

c. CDC-serviced loans.

For development company loans, borrowers make their payments to the CSA. The CDC must request that the borrower agree to have their payments debited from their bank accounts through PAD (form provided by the CSA). For the exception to this procedure, refer to SOP 50 10, "Business Loan Program, Loan Processing."

2. Computer Databases for Loan Collection Status.

To assist you in the monitoring of borrower loan approval, disbursement, payment activity and status, SBA maintains two databases accessible from your computer terminal. The principal loan database is available through the portfolio management query display (PMQD) screens. The index of these screens is displayed by entering "PMQD00." The second database is for lender-serviced loans and is identified as the SBA guaranty loan reporting menu screen. The menu of available screens is displayed by entering "PMGI01," Portfolio Management Guaranty Input

(PMGI).

The following is a description of the loan collection status screens most commonly used in loan servicing.

a. SBA-serviced loans.

You can retrieve the current loan payment status for an SBA-serviced loan from your computer terminal through the PMQD screens.

(1) "PMQD09" displays the date of last payment, amount of principal and interest to be paid, next payment due date, and other loan information that may be helpful in collecting loan payments.

(2) "PMQD11" displays the history of loan payments made and the application of the payments to principal and interest.

b. Lender-serviced loans.

(1) The lender submits loan payment status monthly to the FTA as described later in this chapter. The FTA will report the loan status to SBA.

(2) "PMGI11" displays a detailed history of loan payments made and the application of the payments to principal and interest.

(3) "PMGI13" displays the next payment due date, amount applied to principal and interest from the last reported payment and other loan information that may be helpful in collecting loan payments.

(4) For lender-serviced XGP loans, you may also refer to the "PMQD04" screen for loan status.

c. CDC-serviced loans.

The CSA provides to all CDCs and SBA offices an on-line computer screen that lists by date received, each 503/504 borrower's last eight loan payments. For instructions and assignment of code to access this information, contact the CSA.

3. Reporting of Delinquent Loans.

a. SBA-serviced loans.

Each Monday morning, a designated individual in your office should print out the following reports from the "Reports Menu" covering all delinquent loans.

(1) Collector reports.

These reports list each loan in descending order of delinquency and provide the number of days since the last collection call was made to the borrower:

(a)	LCAW40XX*	Lender-serviced XGP loans.
(b)	LCAW50XX*	SBA-serviced business loans.
(c)	LCAW60XX*	Disaster farm loans.
(d)	LCAW70XX*	Disaster home loans.
(e)	LCAW55XX*	All SBA-serviced loans at both the district and the servicing center

(2) Supervisor reports.

These reports provide the supervisor with summary information regarding the status of his or her office's portfolio and the level of collection activity by the office's collectors:

(a)	LCAW41XX*	Lender-serviced XGP loans
(b)	LCAW51XX*	SBA-serviced business loans,
(c)	LCAW61XX*	Disaster farm loans.
(d)	LCAW71XX*	Delinquent disaster home loans
(e)	LCAW31XX	DLCS weekly que statistics
(f)	PMCW05XX*	AMS weekly statistic report.

XX* = To be replaced by the last two digits of the Office Code number.

b. Lender-serviced loans (current and delinquent).

(1) Each month, lenders must report to the FTA using SBA Form 1502, "Guaranty Loan Status & Lender Remittance Form," on the status of all their SBA guaranteed loans, showing loan collections and other information specified in reporting instructions for this program. Loans are not reported on SBA Form 1502 after guaranty loan purchase. The SBA Form 1502 has replaced SBA Form 1175," Quarterly Report."

(2) The FTA will review the reports for completeness and submit an electronic report to SBA Headquarters with all data received. Those reports will be reflected in their entirety in the PMGI screens described earlier.

(3) The FTA will correct some errors. The field office and servicing center will correct those that the FTA can not resolve.

(4) With exception of the PMGI11 screen, all reports will be available as they are updated by the FTA. They will be available until a monthly cutoff date at which time the screen will be cleared pending the next month's report from the lender through the FTA.

c. CDC-serviced loans.

(1) CSA status of portfolio reports.

Each month the CSA mails the Status of Portfolio Reports to CDCs, SBA field offices and servicing centers. The report lists all CDC loans in your office and identifies loans which are past due, deferred or under a deferment catch-up plan.

(2) CDC reports on servicing follow-up.

Each CDC must submit to the appropriate field office(s) and the appropriate servicing center a report at least quarterly summarizing their contact with and status of problem resolution for delinquent borrowers. This is described in Chapter 6, "Special Loan Programs" in paragraph 12, "Certified Development Company (504) - Servicing."

4. Basic Steps in the Loan Collection Procedure.

a. SBA-serviced loans.

(1) Assigning past due accounts for follow-up.

(a) Collectors can be designated to be in specific groups and delinquent accounts can be assigned according to the group code. Under this system, you would be responsible for collecting all loans in a particular group code.

(b) Delinquent loans can also be assigned to a collector by "Days Delinquent". Examples are "10 to 30," "31 to 60," "61 to 90," and "90 and over." Under this system, more experienced collectors work the more seriously delinquent loans.

(2) <u>The delinquent loan collection system (DLCS).</u>

(a) The DLSC is an on-line system that provides access to loan collection information contained in SBA's central mainframe. The loan servicing supervisor may automatically set priorities, group, and distribute the office's portfolio of delinquent accounts.

(b) Using the DLCS screen, you may bring up delinquent loans by loan number or use a function key to bring up "next in Queue." It is more efficient to use the "next in Queue," because the most seriously delinquent loans are brought up first.

(c) There are auxiliary displays to help you. These screens provide information relating to prior collection methods, payment history and loans worked/not worked during the collection cycle.

(d) Complete instructions on operating the DLCS is available on the SBA Intranet. If you need assistance accessing or downloading portions of the manual contact your information resource manager (IRM) for assistance.

(3) <u>Calling the borrower.</u>

(a) You are responsible for the collection of delinquent loans. You will be the first point of contact with a borrower and it will be up to you to determine why the borrower is not making the required payment. Do not be afraid to ask questions. The problem may be temporary or it could be a problem necessitating a loan modification (e.g., deferment, temporary payment reduction, due date change, or modification of the repayment schedule.) For such modifications, refer to Chapter 5, "Specific Loan Servicing Actions."

(b) When calling a delinquent borrower, remain polite and courteous at all

times. Do NOT be afraid to ask questions (e.g., "According to our records your loan is past due... When will you be able to send the past due payment(s)?;" or "Are there some particular problems that are preventing your from making your monthly payments?;" "Is there some way that SBA might help you?")

(4) Sending automated collection letters to borrowers.

Once you have logged into the DLCS for a specific loan account, enter the "Action/Update Screen" by pressing the "F-2 key." Once in the menu, tab down to "ACTION CD" and enter "AR." Then tab to the automated message system (AMS), "AMS MENU?(Y/N)" and enter "Y." This will enter you into the AMS letter directory. Each letter is identified by a number code (010, 020, 030, etc). Select the appropriate letter by its number code. The letter will appear on the screen. Enter the required information and then tab to the "XMIT section." Transmit. You then will be returned to the main screen. Under "Collection Comments" the letter code will appear (010, 020, 030, etc.)

b. Lender-serviced loans.

(1) For lender-serviced XGP loans, identify the lenders to be called from the weekly LCAW40XX report. Watch for lapse in actual activity between updated lender reports. Corrections must be sent to the Denver, OFO Action Desk.

(2) For regular 7(a) lender-serviced loans, identify the lenders to be called from the monthly report received from the FTA available through PMGI01.

(3) For loans that are 60 or more days past due, contact the lender to determine whether the lender:

(a) Is adequately servicing the account;

(b) Needs assistance from the SBA; or

(c) Needs to request that SBA purchase the guaranty and transfer servicing to SBA.

c. CDC-serviced loans.

(1) Identify the CDCs to be contacted from the loans reported as past due on the CSA "Status of Portfolio Report" and the CSA's "Late Payment Report."

(2) For loans that are 45 or more days past due, contact the CDC to determine

whether the CDC:

(a) Is adequately servicing the account;

(b) Needs assistance from the SBA; or

(c) Needs to request that SBA purchase the debenture and transfer servicing to SBA.

(See Chapter 11, "Prepayment or Purchase of a Development Company Loan or Debenture" for additional information.)

5. Recording a call in the DLCS.

a. Recording, in the DLCS all calls and other contact with borrowers, lenders, and CDCs, is critical to effective loan servicing. This is especially critical because files are transferred between field offices and servicing centers.

b. Before you make any calls on delinquent loans, log into the DLCS. To make a record of your conversation with a borrower, lender or CDC, press "F-2 key" and this will bring you to the ACTION/UPDATE screen. Tab the "Action CD" (code). Enter "Action Code." Tab to "Result CD" (code). Enter correct "Result Code." Tab to "Comment." Enter brief record of conversation, (e.g., "Called bwr prom to mail 1 pmt on 4/21 and will mail April pmt on 5/5." When information is complete, transmit.

CHAPTER 16

SERVICING PROCEDURES

POLLUTION CONTROL FINANCING GUARANTEES

1. Introduction.

a. Authority.

Authority to provide pollution control financing guarantees (PCFG) to small business concerns was originally codified at Section 404 of the Small Business Investment Act. In 1988, funding for this program was eliminated and a new statutorily-recognized program was established pursuant to 7(a)(12) of the Small Business Act. This chapter covers only servicing of pollution control financing made under the Small Business Investment Act. The new 7(a)(12) pollution control loans should be serviced according to general provisions of this SOP.

b. Regulations and related SOPs.

Since no loans are currently being made under that program, there are no CFR provisions.

c. History.

Between 1978 and 1987, 263 pollution control bonds were guaranteed by SBA, most between 1979-1983. Most of the businesses benefitting from this program are located in the Great Lakes Area (Region V) or in California (Region IX). Principal guaranteed was up to $5 million (average of $1.2 million), with maturity up to 25 years (average of 20 years). Common businesses that received pollution control guarantees were metal platers, waste haulers, waste storage firms, cheese manufacturing, and dry cleaners. Collateral was not required early in the program, but collateral requirements were stringent in the later issues. Pollution control equipment held as collateral is often outdated and of little value now, and property held as collateral may be polluted.

d. Structure.

Under this program, bonds were issued by a State development authority, a municipality, or a company (debenture). Bonds are handled by various trustees (banks) for a fee paid by the borrower. The SBA has guaranteed 100 percent of the base loan payments (principal and interest) that the borrower has agreed to pay the trustee monthly under the

qualified contract (loan agreement). From these loan

payments, the trustee then makes bond payments to various bond holders. The bond documents, and SBA's rights and responsibilities are not clearly defined, and vary in each issue (loan).

e. Servicing.

Servicing is now done by the district offices. Often the trustee handles direct contact with the borrower. However, all normal servicing requests (assumption, collateral release, etc.) are referred by the Trustee to the district office. All problems with servicing and liquidation are handled by the district office. The trustee may complete tasks at the request of SBA, but most trustees will require additional compensation for these activities. (SBA's guarantee does not include trustee fees. However, in order to accomplish efficient servicing the Trustee's services are usually required, so a fee is generally negotiated.) The district office keeps a complete case file and has a collateral file, but often trustees hold some collateral in their name. The district office may seek guidance on servicing actions from the Office of Borrower and Lender Servicing (BLS).

f. Headquarters.

You must provide annual reports to Headquarters on all cases. This is the only reporting system for this manual portfolio. Headquarters maintains the most recent reports as a portfolio database and contact list. Headquarters has a skeleton file on all active cases. Compromises are usually handled at the Headquarters level because of the high dollar amount. Headquarters should also follow up on the defaulted cases as well as for those borrowers on repayment plans. Headquarters also handles the SBA guarantee. This includes all guarantee purchases (acceleration and redemption). Payments are made through OFO, Denver, directly to the Trustee. Headquarters also handles any refunding or re-issue of bonds. This may be done to lower interest rates for the borrower. Any problems or concerns on the guarantee, or the trustee are to be referred by the field offices to Headquarters.

g. Accounting.

The Office of the Chief Financial Officer, Accounting and Auditor Support Group, must review the portfolio on a yearly basis. The Chief Financial Officer, Financial Reporting & Analysis Group, provides a yearly status report on the funds in the separate pollution control revolving fund (73x4147). All payments made or received need to be marked as belonging to the 73X4147 revolving fund so that they are properly applied by OFO, Denver.

h. Definitions.

(1) Issuer.

Usually an issuing (State) authority who actually issued (sold) the industrial revenue bonds on the market to lend money to loan to a company (borrower).

(2) Trustee.

A bondholder's trustee was assigned the bonds from the issuer, and loaned the money to the obligor (borrowing company). The obligor pays the trustee monthly loan payments. The trustee holds the loan payments and pays the bondholders the semi-annual bond payments.

(3) Bondholders.

Purchased the bonds issued by the authority. Receive semi-annual payments on these bonds from the trustee.

(4) Obligor.

The borrower or debtor (small business company).

(5) Obligee.

The issuer (usually a State development authority).

(6) Base loan payments.

Monthly loan payments that the borrower must pay the trustee. The SBA's guarantee is for 100 percent of the principal and interest of these monthly payments.

(7) Qualified contract.

Often a loan agreement assigned by the issuer to the trustee, for the repayment of the loan by the obligor, or small business borrower. Collateral is held to secure

the qualified contract.

(8) Indenture.

The authorizing, or binding document for the bond issue, assigning the qualified contract to the trustee.

(9) Bond documents.

Numerous documents, including the indenture and qualified contract, held together in a 'bible'. The trustee and issuer should keep a copy of the bond documents. (The SBA does not usually have a complete copy of the bond documents.)

(10) Redemption.

Bonds are redeemed when they are prematurely bought out. This can be done voluntarily by the borrower or it can be done by the SBA in order to accelerate the note, or loan agreement - in effect purchase our guarantee.

(11) Defeasance.

Where the borrower prepays the base loan payments, but due to bond document restrictions, or other reasons, is not able to or elects not to pay off the bonds until sometime in the future. The trustee holds these funds until such time.

(12) Pollution Control Finance Guarantee (PCFG).

The SBA's 100 percent guarantee in this program, often used to refer to the program, itself.

(13) 73X4147.

The PCFG program revolving fund maintained by SBA's Chief Financial Officer.

2. Summary Review of the PCFG Program.

a. General.

The statutory purpose of the PCFG Program was to provide pollution control funds at feasible cost to financially disadvantaged small businesses by having SBA

unconditionally guarantee the periodic payments by the small business as they came due on the bonds. The cost of funds to the small business is generally moderated because the source of financing is typically revenue bonds and in most cases the interest received by the bondholders is exempt from Federal income taxes.

b. Financing structure.

The industrial revenue bonds are issued by a city, country, State, or similar entity. The issuer used the funds from the bonds to purchase the pollution control facilities and then leases them to the small business; or it lends the funds to the small business for the purpose of acquiring the pollution control facilities. The bonds are sold to investors. The loan (or lease) and the payments thereon are assigned to a trustee, or "Bondholder's Trustee" as the source of repayment of the bonds. Example. A county development authority (Obligee) issues $2 million in industrial revenue bonds at 8 percent tax free interest redeemable over a period of 15 years. The development authority lends the $2 million to an eligible small business to install pollution control equipment in its factory. The small business signs a 15 year note calling for regular amortization payments (usually monthly) which are unconditionally guaranteed by SBA. The small business also executes UCC and mortgage documents to secure the note and the SBA guaranty. If the security is for the note, there must usually be an agreement permitting SBA to liquidate the security upon borrower default and payment by SBA under the guaranty. After the closing, the trustee under the bond indenture holds the note and collateral instruments, collects the monthly payments from the small business, and makes the payments required under the bond indenture (normally semiannual payments of interest and annual payments of principal). The development authority (Issuer) is merely the vehicle for the transaction, it assumes no risk or no obligations.

c. SBA's role.

The SBA guarantees prompt periodic payment of the base loan payments of the "Qualified Contract" between the issuer of the bond and the small business (not a lump sum guarantee of the outstanding balance). This "Qualified Contract" may be a lease, sublease, installment purchase agreement, note, loan agreement, or similar instrument. The qualified contract is assigned, under the indenture, to the trustee to support the bond payments. The SBA requires the small business and often the principals of the small business to indemnify SBA for any payments made by SBA in connection with the guaranty. The typical indemnification agreement requires the indemnitor to reimburse SBA for payments actually made by SBA to the bondholder's trustee.

d. Default.

A default by the small business in making payments under the qualified contract is also a default under the bond indenture. The trustee must utilize funds in an escrow and reserve account to meet required payments to the bond holders before calling on SBA for payment. The trustee must make a claim on SBA for each subsequent payment to bond holders. The handing of such claims and payments is the responsibility of Headquarters. Note that Headquarters often makes arrangements with the trustee to pay on our guarantee semi-annually in order for the trustee to meet the bond payments; or Headquarters, with field office concurrence, may decide to accelerate and redeem the bonds.

(1) Reserve account.

The reserve account held by the trustee is set up at loan origination and usually consists of three monthly payments, plus accumulated interest. It is interest bearing and may be augmented during the life of the loan by any funds received by the trustee in excess of the payments due.

(2) Escrow account.

The escrow account is where the trustee keeps the monthly loan payments from the obligor. The escrow account is drawn upon to meet the semi-annual bond payments.

e. Responsibilities.

The trustee is responsible for coordination between the parties (receipt and disbursement of funds). See bond documents for specifics of each case. The field office is responsible for the servicing and liquidation of pollution control loans. Headquarters is responsible for program overview and direction, handling of claims and payments on defaulted accounts and refunding or re-issuing any bonds.

3. Coordination of Servicing Activity.

a. Headquarters.

Headquarters retains authority and responsibility for handling claims from trustees under the guaranty and for determining, with field office concurrence, when defaulted issues are to be redeemed (purchase of the SBA guarantee). Headquarters is also responsible for any re-issuing or refunding of the bonds by obligors that are current on their loan payments. Such refunding or re-issue is done solely for interest relief, and not to defer payments for troubled borrowers. Headquarters must also coordinate all program

monitoring and review. Headquarters is also available to handle any questions or problems the field has concerning the servicing of these issues, since each case is often unique.

b. Field office.

Field offices should routinely perform the normal servicing tasks involved in the administration of pollution control financing guarantees. The scope of this delegation as it applies to PCFGs, is, however, restricted by this SOP in that it requires Headquarters clearance before any funds can be advanced for servicing expenses. Also, since Headquarters handles the payment of any claims on the guarantee, any monetary default by a borrower must be immediately reported to Headquarters by the field office. Because of the special nature of the PCFG program and the retention of centralized handling of claims under the guaranty, the following requirements must be met.

(1) <u>Specialized assignment.</u>

Pollution control accounts are typically large and have special characteristics which add to their complexity. Accordingly, all such accounts should be assigned to a senior loan officer designated to service all PCFG cases within the assigned territory.

(2) <u>Coordination.</u>

Headquarters and the field offices must keep each other informed of developments concerning the various accounts. Field offices must send copies of servicing actions under this SOP, (e.g., major actions, field visit reports, SBA 327 actions, etc.) to the Office of Borrower & Lender Servicing. Where there is a question as to the effect of a servicing action on the position of SBA, the field office must consult with Headquarters before the action is taken. Within 30 days of the end of a fiscal year, you must complete and send to Headquarters a "Yearly Pollution Control Report" on each account. Interim indications of serious default under the qualified contract should be communicated promptly to Headquarters whenever noted.

4. Bondholder's Trustee.

a. Trustee.

A trustee (usually a bank) whose major duty is to receive the scheduled (monthly) loan payments from the borrower and to distribute scheduled (semi-annual) bond payments to the bondholders, is named in each bond issue. Borrower payments are usually calculated

to cover the amounts due to the bondholders, pay the fees of the trustee, and possibly, allow incremental increases in the reserve account.

b. Additional duties of the trustee.

The trustee holds the qualified contract and all related documentation. Under the trust indenture, the trustee assumes the responsibility to take action on behalf of the bondholders in the event of default by the business. This action can be taken only with the written consent of SBA. The indenture does not require the trustee to monitor the qualified contract nor to do any normal servicing; therefore, the field office should maintain a closer follow-up schedule than is the case with loans being serviced by regular participating lenders. However, the trustee should be able to monitor the account and advise the loan office of adverse activity. Therefore, it is important that the loan officer maintain contact with the trustee.

c. Changes by the trustee.

The qualified contract and the indenture require the prior written consent of SBA for actions affecting the interest of SBA. The SBA's consent for the following actions may be given only with the concurrence of the Office of Borrower and Lender Servicing in Headquarters.

(1) Substantial alteration of terms in any loan instrument (i.e., in excess of monies available in the reserve fund).

(2) Release or waiver of any claim against the borrower, indemnitor, or other party to the qualified contract.

(3) Acceleration of the maturity of the qualified contract or the initiation of suit under any PCFG loan instrument.

(4) Acceptance of a compromise settlement of the indebtedness for a sum less than the total amount due.

(5) Advancing funds for any purpose if such advance is chargeable to SBA.

(6) Taking or consenting to any action that benefits or confers a preference on the trustee or the trustee's institution.

d. Responses to trustees.

You must respond to trustee requests for information, clarification, assistance, or changes within (10 working days of receipt. On actions which require the concurrence of

Headquarters, the trustee should, as a minimum, be advised by telephone within the 10 working days of the anticipated time of final action.

5. Servicing Pollution Control Financing Guarantees.

a. Because of the nature of the indenture and qualified contract, the trustee's lack of responsibility of any servicing activities, and the passive nature of the obligee or issuer, SBA should treat the PCFG as if it were an SBA-serviced obligation. This includes direct monitoring of the progress of business operations, responsible control over collateral items securing the loan, and maintenance of loan repayment terms. Remedial action should be employed by the field office in response to problems which can be relieved through modification of loan terms, except that when such remedial action must require SBA making payments under the guarantee, the prior consent or Headquarters must be required. Field portfolio management (pm) personnel should also serve as advisors on borrower's problems which may affect business success and repayment ability.

b. A reasonable balance must be maintained between the interests of the borrower and the effect on SBA. Servicing of a PCFG should reflect a positive outlook of continuing effort to meet the problems of the small business involved while early recognition that a problem or potential problem or potential problem exists. The loan officer should identify the basic underlying cause of the problem, determine possible solutions, and with their supervisor's approval, take action designated to resolve the borrower's problem and ensure eventual payment of the loan.

c. Scope.

The assigned loan officer must review the files and establish the case in the tickler systems of the office to ensure timely notice of servicing actions to be taken, typically following the pattern for direct or SBA-serviced loans. However, since these cases usually carry high dollar liability, above average repayment risk, and long term SBA obligations, some special added requirements have been established. The above average repayment risk results from the expenditures by the small business for assets which are not revenue producing, and the fact that the primary collateral often consists only of pollution control equipment. The assigned loan officer must maintain close interest, active involvement, and an objective attitude toward assistance throughout the loan life.

d. Early warning indicators.

Problem identification can be accomplished by continuous monitoring of PCFG for warning signals, including:

(1) Requests for relief in loan terms and conditions;

(2) Adverse changes or declining financial or economic trends in the industry;

(3) Cancellation of hazard insurance policies;

(4) Death or illness of the principal(s);

(5) Tax problems, especially failure to pay Federal withholding deposits;

(6) Substantive changes in officers, managers, ownership, control, or method of operations;

(7) Fire, legal action, or loss of contracts; or

(8) Cash flow problems.

e. Special involvement.

Any of the above signals requires involvement. When you learn that a borrower has failed to make two consecutive monthly payments to the trustee you must consider the case as requiring intensive servicing activity. Typically such information will come from the trustee during the recommended contacts or as a result of the relationship you build with the trustee.

f. Non-standard documentation.

The documents and instruments of each PCFG are sometimes prepared by bond counsel or outside counsel and, therefore, the documentation of a particular PCFG may be unique and the terms and conditions may vary substantially from the usual SBA documentation requirements. The documents in each case must, therefore, be examined independently. You must pay particular attention to the following:

(1) The application for the PCFG and related documents;

(2) The loan processor's report;

(3) The qualified contract and the indenture;

(4) The settlement documentation; and

(5) All supporting documentation.

g. Field visit to obligor.

A field visit to the small business is optional. Field visits can be used to meet the obligor, check on the business activities, obtain relevant documents, monitor potential problems, and inspect SBA's collateral. Field visits are recommended for those cases in default.

h. Financial statements.

Usually for PCFGs the borrower is required to submit financial statements to the trustee on an annual basis. You should make arrangements with the trustee and the borrower to receive a copy of the financial statements as they become available. The loan officer must review the financial statements and compare them against the prior year(s). This may take the form of a trend analysis of major items, or direct year to year comparisons of the financial statements on SBA Form 360, "Comparative Statements." Some selected ratio analysis should also be performed. You should address any potential problem indicators such as:

(1) Operating losses;

(2) Deficit or negative net worth;

(3) Excessive salaries (increases in the face of losses, etc.);

(4) Excessive increase or decrease in accounts receivable, inventory, accounts payable, or notes payable;

(5) Substantial tax liabilities;

(6) Deterioration of fixed assets; and

(7) The type (compilation, review, audited) of financial statement should be noted.

6. Controls.

a. Account files.

The loan (case) file must be filed in the file room and the document (collateral) file must be placed under the control of the collateral cashier. The closing (document or bond file) may either be placed with district counsel or merged with the loan file.

b. Establishment of controls.

Controls should also have been established to ensure the following.

(1) Incorporate any equipment liens in the office's UCC tickler system. Where available, private services which provide notice of changes in UCC and other filings should be employed.

(2) Establish and maintain a special chron sheet for each account.

(3) Provide for any insurance follow-up deemed necessary.

(4) Establish a tickler to ensure yearly contact with the trustees regarding status, and reporting to Headquarters.

7. Yearly Pollution Control and Report.

a. Contact with trustee.

You must maintain at least annual contact with the trustee. However, since the trustee can provide valuable monitoring and early warning on the account, you may want to contact the trustee by telephone several times a year in order to maintain a close relationship.

b. Yearly contact and report.

At a minimum, status information on each PCFG case held by the trustee must be obtained at the end of each fiscal year. A status report on each contact must be made and a copy must be furnished to Headquarters by October 31st. This yearly "Trustee Report" is a one page form. The report requires you to contact the borrower and issuer, as well as answer a few relevant questions on the loan balances, collateral, and status of the bond issue. Note that these annual reports by the loan officer to Headquarters are the only reporting mechanism in place to monitor the portfolio - as this is an old and small program it was never put on the mainframe.

c. Defaulted loans.

A yearly memo to the file must be made regarding the collection activities for each delinquent or defaulted loan. A copy of the report should be attached to the quarterly report to Headquarters.

8. General Administrative Activities.

a. Monitoring PCFG accounts.

In most instances, the normal procedures for monitoring and managing SBA-serviced loans are applicable to PCFG accounts. However, in some instances, an adjustment in the process or additional reporting requirements are necessary.

b. Computer support.

The PCFG portfolio is not on the Agency's computer mainframe, and, accordingly, no information is yet available on PCFG accounts over computer terminals within field offices. All controls and reporting are, therefore, manual procedures.

c. Copies to headquarters.

Copies of all important servicing actions (327s, reports, etc) or notifications of default or payment in full, should be sent to the Office of Borrower and Lender Servicing, at Headquarters. Headquarters should also be notified of any change in the name or address of a borrower.

d. Modification of limitations in the qualified contract.

Generally, the qualified contract must not contain special limitations on salaries, bonuses and other compensation, payments of dividends, working capital requirements, or fixed assets. Where such limitations exist and a request for change is received, it should be considered only if the borrower is current in payments under the qualified contract. The trustee should participate in any major modification and his/her concurrence should be obtained if at all possible.

e. Advances and expenses.

It becomes necessary at times for a creditor to make "Advances" (CPC, taxes, prior liens, etc.) or incur "expenses" (appraisals, abstracts, recording fees, etc.) to protect its position or to assist in administration of the account. These expenditures are typically liquidation-related and are sometimes recoverable from the borrower. All expenditures made on account of a PCFG for advances or expenses must be authorized through a 327 action and cleared in advance with Headquarters.

f. Hazard insurance.

The qualified contract usually requires the borrower to maintain hazard insurance coverage on the collateral and to provide evidence of such coverage to the trustee. You should determine the existence of any required hazard insurance in contacts with the

trustee.

g. Real and personal property taxes.

The qualified contract requires the borrower to pay all real and personal property taxes on pledged collateral. Payment of delinquent taxes or tax liens are authorized only when necessary to protect the Agency's interest in the collateral. If the borrower does not make reasonable arrangements for prompt payment of delinquent taxes of any substantial amount, steps should be taken to assure maintenance of the Agency's position in the collateral. In cases where the Agency's collateral is a small part of a facility, excess involvement should be avoided.

h. Purchase of prior liens.

In general, SBA must not purchase prior liens unless faced with an in-process foreclosure action by the prior lienholder(s). Any proposed purchase of a prior lien on a PCFG case must be approved by Headquarters. If purchase of a prior lien is to be recommended, you must prepare an 327 action detailing the circumstances and the justification for the purchase and forward the 327 action to Headquarters for concurrence and assurance of adequate funds available in the pollution control revolving fund. Because of the nature of this program, the property involved frequently will be polluted. You must specifically address this issue when recommending SBA's purchase of a prior lien.

9. Servicing Actions Requiring Payment Relief.

a. Payment relief.

Relief, within the limits of the monies available in the reserve fund, may be allowed locally in coordination with the trustee. To the extent that any payment relief exceeds the reserve funds and, therefore, result in claims upon SBA under the guaranty, the recommendations of the loan officer for payment relief must be approved by Headquarters in the circumstances described below.

(1) <u>Defaults or delinquency.</u>

Immediately upon default by the small business under the qualified contract, you should immediately hold a conference with the principals to determine the nature of the problem(s) and the appropriate action to be taken. The various remedial action permitted under this SOP may be used with coordination as indicated above. A field visit is recommended if the delinquency exceeds two monthly payments.

(2) <u>Deferments.</u>

Deferment of delinquent installments under the qualified contract may be allowed for the entire period of delinquency provided an acceptable new payment plan has been worked out. Deferment of future installments up to the amount available in the reserve fund may be authorized by the field office. Since deferments in excess of the amount in the reserve fund require SBA to assume responsibility for matching payments to the bondholder's trustee, deferments which have a value greater than the amount in the reserve fund must be approved by Headquarters. You must prepare a 327 action giving full details of the efforts made to remedy the situation and justifications for the recommended action.

(3) <u>Changes in repayment.</u>

Reduced loan payment amounts may be allowed if it is determined that the borrower's cash flow cannot sustain the regular payments prescribed in the qualified contract and the reduction must provide a basis for eventual resumption of full repayment. Since a prolonged reduction in loan payment amounts must result in claims by the trustee on SBA for the difference in amount required to meet the payments to the bondholders, reduced loan payment plans that are not covered by the reserve account must be approved by Headquarters. You must prepare a 327 action giving full details of the efforts made to remedy the situation and justification for the recommendation for reduction in loan payment amount.

10. Collateral.

a. Types of collateral.

Collateral for PCFG, usually consists of all items pledged to secure the financing, as specified in the qualified contract. This usually includes the pollution control equipment or facilities, and may include real estate, equipment, and other fixed assets. Accounts receivable, inventory, contracts, special rights, or licenses were rarely taken as collateral.

b. Release of collateral/subordination of liens.

The interest of SBA is maintained and protected through responsible control over collateral pledged to secure the PCFG. Requests for major collateral adjustments, including subordination of liens, require a full review of the benefits and the risks of the proposal. You must perform an analysis of any such request including an evaluation of management ability, review of current financial information, the prior record of the

borrower, the extent of remaining collateral, the status of any superior liens, etc. Guidelines for release of collateral include the following.

(1) Use of funds.

The proceeds from the sale of released collateral should ordinarily be provided to the trustee to hold in (and/or replenish) the reserve fund. The borrower should be required to continue making the periodic payments on the loan to the trustee for use in making forthcoming payments to bondholders. Funds obtained from sales or releases of collateral, or a part thereof, may be used for business purposes if it is deemed that such use is necessary for the continued existence and viability of the borrower, and the Agency's interest is reasonably protected. There must be documentation that an enhanced repayment ability must exist which is reasonable in relation to the outstanding obligations under the qualified contract, and that the release of collateral must not interfere materially with the operation of the business. The 327 action must fully justify the action to be taken.

(2) Exchanges or trade-ins.

The trustee and the field office should take any necessary steps to ensure that Agency liens apply to the acquired property, subject to purchase money liens.

(3) Appraisals.

The nature of pollution control equipment is such that an appraisal by an industry specialist may sometimes be necessary to support requests for major releases of such collateral.

(4) Subordination of liens.

The subordination of an SBA lien may be allowed only when there must be new money injected in the borrower and it is necessary to ensure borrower survival and future payment to SBA. The requirements for release of collateral indicated above should be used in determining the subordination of liens.

11. Indemnification Agreements.

a. Release of indemnitors.

Actions that could result in the release of indemnitors should not be taken. Indemnitors are usually liable to SBA only for actual payments made by SBA, not the total debt due from the borrower. Where the indemnitors have hypothecated collateral as direct security for an SBA guaranty, special care should be taken in liquidation of such security to ensure against problems in the application of funds.

b. Release of indemnitors.

Release of indemnitors of PCFG accounts is not contemplated. Requests for such release may be approved in unusual circumstances only with the written concurrence of the trustee and Headquarters.

12. Liquidation Considerations.

a. Transfer to liquidation.

Upon the occurrence of any of the "automatic" reasons for a transfer to liquidation (bankruptcy, etc.), or whenever the field office determines that orderly repayment of the debt will not occur and that the interests of SBA can best be protected by enforced collection efforts, you must immediately prepare an appropriate 327 action and forward it to Headquarters.

b. Procedures.

The actual liquidation of collateral in PCFG cases is little different from the procedures used for SBA loans. However, careful review of SBA's position and rights must be made by the liquidation officer and SBA counsel to ensure a full understanding of the important differences.

c. Rights to take action.

In most cases, the trustee is named in the collateral documents (by assignment or otherwise) and arrangements must be made with the trustee to ensure that the Agency's rights to proceed are clear.

d. Exhaustion of escrow funds.

The bond documents may require as a condition precedent to the trustee's filing of a claim against SBA, both the exhaustion of the escrow funds and reasonably diligent efforts to minimize loss such as advertising the facility for sale, lease or rent, or retention of agents or brokers to salvage the value of the property. It is not the Agency's intent that the trustee handle liquidation, and, accordingly, all such requirements may (usually) be

waived.

e. Successor interest.

If the transaction requires the trustee to hold the qualified contract, the SBA guaranty, and the collateral, as assignee-trustee, the documentation serves to place SBA as the successor in interest in the qualified contract.

f. Unique documentation.

Most documents relating to the PCFG transaction were tailored by outside counsel to fit the particular case as such counsel viewed it at closing. The liquidating loan officer and SBA counsel may not assume that the case fits a predetermined pattern, and must review the documents carefully in order to determine the Agency's position, rights, and responsibilities in each individual case.

13. Special Guidance/Assistance.

Any field office desiring special guidance on any aspect of pollution control bond servicing or liquidation should contact the Office of Borrower and Lender Servicing at Headquarters.

APPENDIX

APPENDIX 1
SBA FORM 152, PARTICIPATION CERTIFICATE

APPENDIX 2
SBA FORM 155, STANDBY AGREEMENT

SBA FORM 155, STANDBY AGREEMENT (cont.)

APPENDIX 3
SBA FORM 156, CERTIFICATE OF INTEREST

APPENDIX 4
SBA FORM 172, TRANSACTION REPORT ON LOANS SERVICED BY LENDER

APPENDIX 5
SBA FORM 327, MODIFICATION OR ADMINISTRATIVE ACTION

APPENDIX 6
SBA 327 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 397, NOTICE OF FULLY PAID ACCOUNT

SMALL BUSINESS ADMINISTRATION
OFFICE OF FINANCIAL OPERATIONS
DENVER, COLORADO 80202

Notice of Fully Paid Account

TO: COLLATERAL CASHIER

The account cited below has been paid in full. Release of the paid obligating instrument when SBA-serviced, as well as any collateral held, is subject to the appropriate provisions of SOP 20 05 and SOP 20 22.

[ ] Direct or immediate participation paid in full.
[ ] Guarantee loan voluntarily terminated or paid in full.
[ ] Automatic termination of guarantee loan.
[ ] Loan paid in full by compromise.

==========

Borrower: (Name and Address) Loan Number:

Svc Off: [ ] SBA-Sc

[ ] Bnk-Sc

==========

LAST LOAN ACCOUNTING TRANSACTION PROCESSED BY SBA

Fund Sy DT# Eff Date Blk# Date Overpayment

==========

CERTIFIED CORRECT AND APPROVED FOR PAYMENT

Approving Off: Date:

==========

BORROWER REFUND BY OFO

Refund on Schedule - W Amount: Date:

EFFECTIVE DATE: DECEMBER 1, 1997

INSTRUMENT RELEASED BY SBA FIELD OFFICE

Collateral Cashier: Date:

SBA FORM 397 (11-95) REF: SOP 20 05 & 20 22

APPENDIX 8
SBA FORM 466, TRANSCRIPT OF ACCOUNT-EXAMPLE

APPENDIX 9
SBA FORM 515, NOTE RECEIVABLE REPORT

APPENDIX 10
SBA FORM 596 B, CERTIFIED STATEMENT OF ACCOUNT

APPENDIX 11
SBA FORM 888, MANAGEMENT TRAINING REPORT

APPENDIX 12
SBA FORM 927, MORTGAGE (DIRECT)

SBA FORM 927, MORTGAGE (DIRECT) (cont.)

SBA FORM 927, MORTGAGE (DIRECT) (cont.)

SBA FORM 927, MORTGAGE (DIRECT) (cont.)

APPENDIX 13
SBA FORM 928, MORTGAGE (PARTICIPATION)

SBA FORM 928, MORTGAGE (PARTICIPATION)(cont.)

SBA FORM 928, MORTGAGE (PARTICIPATION)(cont.)

SBA FORM 928, MORTGAGE (PARTICIPATION)(cont.)

APPENDIX 14
SBA FORM 929, DEED OF TRUST (DIRECT)

SBA FORM 929, DEED OF TRUST (DIRECT) (cont.)

SBA FORM 929, DEED OF TRUST (DIRECT) (cont.)

SBA FORM 929, DEED OF TRUST (DIRECT) (cont.)

APPENDIX 15
SBA FORM 930, DEED OF TRUST (PARTICIPATION)

SBA FORM 930, DEED OF TRUST (PARTICIPATION) (cont.)

SBA FORM 930, DEED OF TRUST (PARTICIPATION) (cont.)

SBA FORM 930, DEED OF TRUST (PARTICIPATION) (cont.)

SBA FORM 930, DEED OF TRUST (PARTICIPATION) (cont.)

APPENDIX 16
SBA FORM 1032, STATEMENT OF LOAN ACCOUNT

APPENDIX 17
SBA FORM 1061, REQUEST FOR MA ASSISTANCE

APPENDIX 18

SBA FORM 1102, CERTIFICATION OF COMPLIANCE WITH FISCAL REQUIREMENTS

APPENDIX 19
SBA FORM 1128, GUARANTY LOAN PURCHASED

APPENDIX 20

RESERVED

APPENDIX 21

RESERVED

APPENDIX 22

SBA FORM 1201, REPAYMENT NOTICE

SBA FORM 1201, REPAYMENT NOTICE (cont.)

APPENDIX 23

SBA FORM 1502, GUARANTY LOAN STATUS &

LENDER REMITTANCE FORM

APPENDIX 24

SBA FORM 1614, ORA & ED/SBA INFORMATION REQUEST

APPENDIX 25

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN FDIC AND SBA

APPENDIX 26
CHECKLIST FOR PURCHASE DOCUMENTS

SBA Loan Number:_____ SBA Loan Name:_____

Lender should note on the checklist below all loan documentation required and outlined in the Loan Authorization and provide copies along with any other additional documents relevant to the disbursement, closing, or servicing of the loan. *Please do not assign documents to SBA unless requested to do so.*

Bank Req'd	SBA use only Rec'd	Need	
			Debt Instruments and Authorizing Borrowing Resolutions
[ ]	[ ]	[ ]	Note (SBA Form 147) and any amendments or modifications thereof
[ ]	[ ]	[ ]	Guarantees (SBA Form 148) of any parties
[ ]	[ ]	[ ]	Evidence of guarantor consent for any material changes to the loan terms
[ ]	[ ]	[ ]	Certificate as to Partners (SBA Form 160A) or equivalent
[ ]	[ ]	[ ]	Corporate Resolution to Borrow (SBA Form 160) or equivalent
[ ]	[ ]	[ ]	Authorization to Borrow from Limited Liability Company
[ ]	[ ]	[ ]	Other:_____
			Real Property Collateral
[ ]	[ ]	[ ]	Recorded Deed(s) of Trust / Mortgage(s) covering real property pledged on the note or guaranty
[ ]	[ ]	[ ]	Required Title Policies obtained when loan was closed or after substantial changes
[ ]	[ ]	[ ]	Hazard Insurance Policies insuring real property pledged as collateral
[ ]	[ ]	[ ]	Appraisals subsequent to loan approval, if required
[ ]	[ ]	[ ]	Lease
[ ]	[ ]	[ ]	Other:_____
			Personal Property Collateral
[ ]	[ ]	[ ]	Security Agreement(s)
[ ]	[ ]	[ ]	UCC-1 Financing Statements with amendments, if any, filed with Secretary of State
[ ]	[ ]	[ ]	UCC-2 Continuation Statement, if appropriate
[ ]	[ ]	[ ]	UCC-3 Lien Search from Secretary of State
[ ]	[ ]	[ ]	Fixture Filing with County
[ ]	[ ]	[ ]	Continuation for Fixture Filing, if appropriate
[ ]	[ ]	[ ]	Landlord's waiver
[ ]	[ ]	[ ]	Hazard Insurance for Personal Property
[ ]	[ ]	[ ]	Certificate of Ownership and security agreement on automotive equipment
[ ]	[ ]	[ ]	Other:_____
			Life Insurance
[ ]	[ ]	[ ]	Life Insurance Policies, with acknowledgement by the home office of the collateral assignment
[ ]	[ ]	[ ]	Other:_____
			Other Miscellaneous Documents
[ ]	[ ]	[ ]	Certified Transcript of Account
[ ]	[ ]	[ ]	Evidence of Borrower Injection
[ ]	[ ]	[ ]	Standby Agreement
[ ]	[ ]	[ ]	Environmental questionnaires
[ ]	[ ]	[ ]	Phase I or II, if necessary
[ ]	[ ]	[ ]	Fictitious Business Name Statement filing
[ ]	[ ]	[ ]	Settlement Sheets (SBA Form 1050), if not provided when loan was closed
[ ]	[ ]	[ ]	Loan Authorization executed by all parties, if a copy was not already provided
[ ]	[ ]	[ ]	Other:_____
[ ]	[ ]	[ ]	If not covered elsewhere in this checklist, any other documentation showing that all terms and conditions of the loan agreement have been followed

EFFECTIVE DATE: DECEMBER 1, 1997

APPENDIX 27

13 CFR 120.600 - 120.660 -- SECONDARY MARKET

13 CFR 120.600 - 120.660

Subpart F - Secondary Market

FISCAL AND TRANSFER AGENT (FTA)

120.600 Definitions.
120.601 SBA Secondary Market.

CERTIFICATES

120.610 Form and terms of Certificates.
120.611 Pools backing Pool Certificates.
120.612 Loans eligible to back Certificates.
120.613 Secondary Participation Guarantee Agreement.

THE SBA GUARANTEE OF A CERTIFICATE

120.620 SBA guarantee of a Pool Certificate.
120.621 SBA guarantee of an Individual Certificate.

POOL ASSEMBLERS

120.630 Qualifications to be a Pool Assembler.
120.631 Suspension or termination of Pool Assembler.

MISCELLANEOUS PROVISIONS

120.640 Administration of the Pool and Individual Certificates.
120.641 Disclosure to purchasers.
120.642 Requirements before the FTA issues Pool Certificates.
120.643 Requirements before the FTA issues Individual Certificate.
120.644 Transfers of Certificates.
120.645 Redemption of Certificates.
120.650 Registration duties of FTA in Secondary Market.
120.651 Claim to FTA by Registered Holder to replace Certificate.
120.652 FTA fees.

SUSPENSION OR REVOCATION OF PARTICIPANT IN SECONDARY MARKET

120.660 Suspension or revocation.

Subpart F - Secondary Market

EFFECTIVE DATE: DECEMBER 1, 1997

120.600 Definitions.

(a) Certificate is the document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate), or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

(b) Current means that no repayment from a Borrower to a Lender is over 29 days late measured from the due date of the payment on the records of the FTA's central registry (Pools) or the entity servicing the loan (individual guaranteed portion).

(c) FTA is the SBA's fiscal and transfer agent.

(d) Note Rate is the interest rate on the Borrower's note.

(e) Net Rate is the interest rate on an individual guaranteed portion of a loan in a Pool.

(f) Pool is an aggregation of SBA guaranteed portions of loans made by Lenders.

(g) Pool Assembler is a financial institution that:

(1) Organizes and packages a Pool by acquiring the SBA guaranteed portions of loans from Lenders;

(2) Resells fractional interests in the Pool to Registered Holders; and

(3) Directs the FTA to issue Certificates.

(h) Pool Rate is the interest rate on a Pool Certificate.

(i) Registered Holder is the Certificate owner listed in FTA's records.

(j) SBA's Secondary Market Program Guide is an issuance from SBA which describes the characteristics of Secondary Market transactions.

120.601 SBA Secondary Market.

The SBA secondary market ("Secondary Market") consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. By the terms of such Certificate, SBA guarantees a Registered Holder timely payment of principal and interest from the loan or loans underlying the Certificate. Transactions involving interests in Pools or the sale of individual guaranteed portions of loans are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and this subpart. See sections 5(f), (g) and (h) of the Small Business Act (15 U.S.C. 634 (f), (g) and (h)).

CERTIFICATES

. 120.610 Form and terms of Certificates.

(a) General form and content. Each Certificate must be registered with the FTA. SBA must approve the terms of the Certificate.

(b) Face amount of Pool Certificate. The face amount of a Pool Certificate cannot be less than a minimum amount as specified in the Program Guide, and the dollar amount of Certificates must be in increments which SBA will specify in the Program Guide (except for one Certificate in each Pool). SBA may change these requirements based upon an analysis of market conditions and program experience, and will publish a Notice of any such change in the Federal Register.

(c) Basis of payment for Pool Certificates. Principal installments and interest payments are based on the unpaid principal balance of the portion of the Pool represented by a Pool Certificate. All prepayments on loans in the Pool must be passed through to the appropriate Registered Holders with the regularly scheduled payments to such Holders.

(d) Basis of payment for Individual Certificates. Principal installments and interest payments are based on the unpaid principal balance of the SBA guaranteed portion of the loan supporting an Individual Certificate. The Certificate must provide for a pass through to the Registered Holder of payments which the FTA receives from a Lender or any entity servicing the loan, less applicable fees.

(e) Interest rate on Pool Certificate. The interest rate on a Pool Certificate must be equal to the lowest Net Rate on any individual guaranteed portion of a loan in the Pool.

. 120.611 Pools backing Pool Certificates.

(a) Pool characteristics. As set forth in the Program Guide, each Pool must have:

(1) A minimum number of guaranteed portions of loans;

(2) A minimum aggregate principal balance of the guaranteed portions;

(3) A maximum percentage of the Pool which an individual guaranteed portion may constitute;

(4) A maximum allowable difference between the highest and lowest note interest rates;

(5) A maximum allowable difference between the remaining terms to maturity of the loans in the Pool; and

(6) A minimum weighted average maturity at Pool formation.

(b) Adjustment of Pool characteristics. SBA may adjust the Pool characteristics periodically based upon program experience and market conditions.

. 120.612 Loans eligible to back Certificates.

(a) Pool Certificates are backed by the SBA guaranteed portions of loans comprising the Pool. An

Individual Certificate is backed by the SBA guaranteed portion of a single loan. Any such loan must:

(1) Be current as of the date the Pool is formed or the individual guaranteed portion of a loan is initially sold in the Secondary Market;

(2) Be guaranteed under the Act; and

(3) Meet such other standards as SBA may determine to be necessary for the successful operation of the Secondary Market program.

(b) The loans that back a Pool must meet the SBA requirements in effect at the time the Pool is formed.

. 120.613 Secondary Participation Guarantee Agreement.

When a Lender wants to sell the guaranteed portion of a loan, it enters into a Secondary Participation Guarantee Agreement ("SPGA") with SBA and the prospective purchaser. The terms of sale between the Lender and the purchaser cannot require the Lender or SBA to repurchase the guaranteed portion of the loan except in accordance with the terms of the SPGA. Before execution of the SPGA, the Lender must:

(a) Submit to FTA a copy of the proposed SPGA, the note, and such other documents as SBA may require;

(b) Disburse to the Borrower the full amount of the loan; and

(c) Pay SBA all guarantee fees relevant to the loan in full.

° ° °

unpaid principal and accrued interest due as of the date of SBA's purchase, less deductions for applicable fees. Unlike the SBA guarantee with respect to pooled loans, SBA does not guarantee timely payment on Individual Certificates.

(b) What triggers the SBA guarantee. SBA's guarantee to the Registered Holder may be called upon when:

(1) The Borrower remains in uncured default for 60 days on payments of principal or interest due on the note;

(2) The Lender fails to send to the FTA on a timely basis payments it received from the Borrower; or

(3) The FTA fails to send to the Registered Holder on a timely basis any payments it has received from the Lender.

(c) Full faith and credit. SBA's guarantee to the Registered Holder is backed by the full faith and credit of the United States.

POOL ASSEMBLERS

120.630 Qualifications to be a Pool Assembler.

(a) Application to become Pool Assembler. The application to become a Pool Assembler is available from the AA/FA. In order to qualify as a Pool Assembler, an entity must send the application to the AA/FA, with an application fee, and certify that it:

(1) Is regulated by the appropriate agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Meets all financial and other applicable requirements of its regulatory authority and the Government Securities Act of 1986, as amended (Pub. L. 99-571, 100 Stat. 3208);

(3) Has the financial capability to assemble acceptable and eligible guaranteed loan portions in sufficient quantity to support the issuance of Pool Certificates; and

(4) Is in good standing with SBA (as the AA/FA determines), the Office of the Comptroller of the Currency ("OCC") if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, or the National Association of Securities Dealers if it is a member.

(b) Approval by SBA. An entity may not submit Pool applications to the FTA until SBA has approved the application to become a Pool Assembler.

(c) Conduct of business by Pool Assembler. An entity continues to qualify as a Pool Assembler so long as it:

(1) Meets the eligibility standards in paragraph (a) of this section;

(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards; and

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities.

120.631 Suspension or termination of Pool Assembler.

(a) Suspension or termination. The AA/FA may suspend a Pool Assembler from operating in the Secondary Market for up to 18 months or terminate its status as a Pool Assembler, if the Pool Assembler (and/or its Associates):

(1) Does not comply with any of the requirements in 120.630(a) and (c);

(2) Has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony;

(3) Has received an adverse civil judgment that it has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships;

(4) Has not formed a Pool for at least three years; or

(5) Is under investigation by its regulating authority for activities which may affect its fitness to participate in the Secondary Market.

(b) Suspension procedures. The AA/FA shall notify a Pool Assembler by certified mail, return receipt requested, of the decision to suspend and the reasons therefore at least 10 business days prior to the effective date of the suspension. The Pool Assembler may appeal the suspension made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(c) Notice of termination. In order to terminate a Pool Assembler, the AA/FA must issue an order to show cause why the SBA should not terminate the Pool Assembler's participation in the Secondary Market. The Pool Assembler may appeal the termination made under this section pursuant to procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

MISCELLANEOUS PROVISIONS

120.640 Administration of the Pool and Individual Certificates.

(a) FTA responsibility. The FTA has the responsibility to administer each Pool or Individual Certificate. It shall maintain a registry of Registered Holders and other information as SBA requires.

(b) Self-liquidating. Each Pool or individual guaranteed portion of a loan in the Secondary Market is self-liquidating because of Borrower payments or prepayments, redemption by SBA, and/or payments by SBA or the Lender after default by the Borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) SBA's right to subrogation. If SBA pays a claim under a guarantee with respect to a Certificate issued under this subpart, it must be subrogated fully to the rights satisfied by such payment.

(d) SBA ownership rights not limited. No Federal, State or local law can preclude or limit the exercise by SBA of its ownership rights in the portions of loans constituting the Pool against which the Certificates are issued.

. 120.641 Disclosure to purchasers.

(a) Information to purchaser. Prior to any sale, the Pool Assembler, Registered Holder of an Individual Certificate, or any subsequent seller must disclose to the purchaser, verbally or in writing, information on the terms, conditions, and yield as described in the SBA Secondary Market Program Guide.

(b) Information on transfer document. The seller must provide the same information described in paragraph (a) of this section in writing on the transfer document when the seller submits it to the FTA. After the sale of an Individual Certificate, the FTA will provide the disclosure information in writing to the purchaser.

(c) Information in prospectus. If the Registered Holder is a trust, investment Pool, mutual fund or other security, it must disclose the information in (a) above to investors through a prospectus and other promotional material if an Individual Certificate or Pool Certificate is placed into or used as the backing for the investment vehicle.

. 120.642 Requirements before the FTA issues Pool Certificates.

Before the FTA issues any Pool Certificate, the Pool Assembler must deliver to it the following documents:

(a) A properly completed Pool application form;

(b) Either:

(1) Individual Certificates evidencing the guaranteed portions comprising the Pool; or

(2) An executed SPGA and related documentation for the loans whose guaranteed portions are to be part of the Pool; and

(c) Any other documentation which SBA may require.

. 120.643 Requirements before the FTA issues Individual Certificates.

(a) FTA issuance of initial Certificate. Before the FTA can issue the Individual Certificate for a

guaranteed portion of a loan, the original seller must provide the following documents to the FTA:

(1) An executed SPGA;

(2) A copy of the note representing the guaranteed loan; and

(3) Any other documentation which SBA may require.

(b) Review of documentation. SBA may review or require the FTA to review any documentation before the FTA issues a Certificate.

120.644 Transfers of Certificates.

(a) General rule. Certificates are transferable. Transfers in the Secondary Market must comply with Article 8 of the Uniform Commercial Code of the State of New York. The seller must use the detached form of assignment (SBA Form 1088), unless the seller and purchaser choose to use another form which the SBA approves. The FTA may refuse to issue a Certificate until it is satisfied that the documents of transfer are complete.

(b) Transfer on FTA records. In order for the transfer of a Certificate to be effective the FTA must reflect it on its records.

(c) Contents of letter of transmittal accompanying the transfer of Certificates.

(1) A letter of transmittal must accompany each Certificate which a Registered Holder submits to the FTA for transfer. The Registered Holder must supply the following information in the letter:

(i) Pool number, if applicable;

(ii) Certificate number;

(iii) Name of purchaser of Certificate;

(iv) Address and tax identification number of the purchaser;

(v) Name and telephone number of the person handling or facilitating the transfer;

(vi) Instructions for the delivery of the new Certificate.

(2) The Registered Holder must also send the fee which the FTA charges for this service. The FTA will supply fee information to the Registered Holder.

(d) Lender cannot purchase guaranteed portion of loan it made. The Lender (or its Associate) that made a 7(a) guaranteed loan cannot purchase the guaranteed portion of that loan in the Secondary Market. If a Lender does purchase the guaranteed portion of one of its own loans, it shall not have the unconditional guarantee of SBA.

120.645 Redemption of Certificates.

(a) Redemption of Individual Certificate. The prepayment of the underlying loan or a default on such loan will trigger the redemption of the Certificate by FTA/SBA in accordance with the procedures prescribed in the SPGA.

(b) Redemption of Pool Certificate. The FTA and SBA may redeem a Pool Certificate because of prepayment or default of all loans in a Pool.

. 120.650 Registration duties of FTA in Secondary Market.

The FTA registers all Certificates. This means it issues, transfers title to, and redeems them. All financial transactions relating to a guaranteed portion of a loan flow through the FTA. In fulfilling its obligation to keep the central registry current, the FTA may, with SBA's approval, obtain any necessary information from the parties involved in the Secondary Market.

. 120.651 Claim to FTA by Registered Holder to replace Certificate.

(a) To replace a Certificate because of loss, theft, destruction, mutilation, or defacement, the Registered Holder must:

(1) Give the FTA information about the Certificate and the facts relating to the claim;

(2) File an indemnity bond acceptable to SBA and the FTA with a surety to protect the interests of SBA and the FTA;

(3) Pay the FTA its fee to replace a Certificate; and

(4) Use an affidavit of loss (form available from the FTA) to report:

(i) The name and address of the Registered Holder (and the name and capacity of any representative actually filing the claim);

(ii) The Certificate by Pool number, if applicable;

(iii) The Certificate number;

(iv) The original principal amount;

(v) The name in which the Certificate was registered;

(vi) Any assignment, endorsement or other writing on the Certificate; and

(vii) A statement of the circumstances of the theft or loss.

(b) When the FTA receives notice of the theft or loss, it will stop any transfer of the Certificate. The Registered Holder must send to the FTA all available portions of a mutilated or defaced Certificate. When the Registered Holder completes these steps, the FTA will replace the Certificate.

. 120.652 FTA fees.

EFFECTIVE DATE: DECEMBER 1, 1997

The FTA may charge reasonable servicing fees, transfer fees, and other fees as the SBA and FTA may negotiate under contract.

SUSPENSION OR REVOCATION OF PARTICIPANT IN SECONDARY MARKET

120.660 Suspension or revocation.

(a) Suspension or revocation of Lender, broker, dealer, or Registered Holder for violation of Secondary Market rules and regulations. The AA/FA may suspend or revoke the privilege of a Lender, broker, dealer, or Registered Holder to sell, purchase, broker, or deal in loans or Certificates for:

(1) Committing a serious violation, in SBA's discretion, of:

(i) The regulations governing the Secondary Market; or

(ii) Any provisions in the contracts entered into by the parties, including SBA Forms 1085, 1086, 1088 and 1454; or

(2) Knowingly submitting false or fraudulent information to the SBA or FTA.

(b) Additional rules for suspension or revocation of broker or dealer. In addition to acting under paragraph (a) of this section, the AA/FA may suspend or revoke the privilege of any broker or dealer to sell or otherwise deal in Certificates in the Secondary Market if:

(1) Its supervisory agency has revoked or suspended the broker or dealer from engaging in the securities business, or is investigating the firm or broker for a practice which SBA considers, in its sole discretion, to be relevant to the broker's or dealer's fitness to participate in the Secondary Market;

(2) The broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony which bears on its fitness to participate in the Secondary Market; or

(3) A civil judgment is entered holding that the broker or dealer has committed a breach of trust or a violation of any law or regulation protecting the integrity of business transactions or relationships.

(c) Notice to suspend or revoke. The AA/FA shall notify the affected party in writing, providing the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. The affected party may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA will remain in effect pending resolution of the appeal. Revocation will last a minimum of five years.

APPENDIX 28
CAPLINES PROGRAM SERVICING GUIDELINES

1. Introduction.

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.

There are universal requirements for both processing and servicing **CAPLines,** as well as requirements for processing and servicing each of the separate sub-programs under the umbrella. Servicing personnel must be familiar with both the unique and general requirements that are applicable to each sub-program when servicing loans disbursed under this program.

c. Procedures and policies not covered in this section must be governed by the requirements detailed in existing SOPs or regulations, as applicable.

d. Servicing of every CAPLines loan will require different knowledge than the servicing of regular 7(a) guaranty loans. The loan amount for each sub-program is based on the value of either existing or to be generated current assets. Disbursements or advances can be continually made throughout the loans term, but only after an acceptable value of the current assets is determined. Repayment comes from the orderly or operational liquidation of these assets (which also serves as collateral). Liquidation, as used herein, refers to the conversion of the assets (accounts receivables and inventory) to cash.

e. Each sub-program is only available on a guaranty basis. Lender responsibility includes determining which current assets are acceptable, the value of these assets, and the control of all cash or near cash receipts obtained from these assets when liquidated.

f. In this program as with the regular 7(a) loan program, servicing efforts of Commercial Loan Servicing Centers (CLSCs) and the field offices must be directed primarily to the servicing of the participant and the performance of an overview of the participant's servicing.

2. General Servicing Criteria.

a. Post disbursement servicing of any CAPLines loans must be acted upon by personnel who have successfully completed either SBA's Level III Commercial Credit & Analysis Course or an SBA/National Association of Government Guaranty Lenders (NAGGL) GreenLine Course.

b. All personnel servicing CAPLines sub-program loans must keep abreast of all aspects of the program as noted in this appendix, "CAPLines Program Servicing Guidelines."

c. As with the regular 7(a) loan program, servicing efforts of CLSC and the field offices must be directed primarily to the servicing of the participant and the performance of an overview of the participant's servicing of the borrower.

d. Once the **initial** disbursement of a CAPLines loan has been made, whether partial or full, it must be transferred to servicing in the applicable servicing center.

e. Since CAPLines sub-program loans have some unique servicing requirements, these guidelines act as a supplement to those set throughout this SOP.

f. Servicing personnel must be familiar with the various additional authorization requirements which are unique to the CAPLines sub-programs.

g. Any action which requires SBA concurrence/approval must be sent to the servicing division of the local SBA field office/servicing center where appropriate. The SBA will strive to respond to all requests within 5 working days. Requests may be sent via facsimile (FAX) and depending on the urgency of the request, the lender may wish to follow-up with a phone call to SBA.

h. District offices currently sending their loans to a servicing center, must continue to do so with the CAPLines loans. These loans must be sent to the center after the first disbursement has been made and remain there until the lender has proceeded to liquidate the current assets or the servicing/workout of the line has become so intense that field office interaction is required in order to facilitate the process.

i. For increases, refer to Chapter 6, "Special Loan Programs," in the paragraph 6-8 titled "CAPLines Loan Program - Servicing."

3. Universal Servicing Requirements.

a. Guaranty fee.

For all **CAPLines** originally approved on or before 9/30/95 with a maturity of 12 months or less that are renewed past 12 months, SBA is due an additional guaranty fee equal to 2 percent of the guaranteed portion less the 1/4 of 1 percent fee of the guaranteed portion previously paid. For all CAPLines approved on or after 10/12/95 for 12 months or less that are renewed past 12 months, SBA is due an additional guaranty fee equal to what the fee would have been under the rules of the Small Business Lending Enhancement Act of 1995, less the 1/4 of 1 percent fee of the guaranteed portion previously paid.

No additional guaranty fee is due if:

(1) The original CAPLines was approved with a maturity exceeding 12 months; or

(2) The **CAPLines** is extended past its original maturity, providing the extension is to only effect collections, with no further disbursements.

b. Interest rates.

(1) The SBA's standard interest rate provisions are applicable to all CAPLines sub-programs loans. Since no commitment can exceed 5 years, the maximum initial interest rate cannot exceed the minimum prime rate as published in the Money Rate section of the Wall Street Journal for the date the application is received by SBA, plus 2.25 percent (Prime + 2.25 percent).

(2) As an inducement for the lenders to make small loans, the Agency has permitted the lenders to charge (see 13 CFR 120.215):

(a) Interest rates as high as 2 percent over the standard rate for loans of $25,000 or less (Prime + 4.25 percent).

(b) Interest rates as high as 1 percent over the standard rate for loans over $25,000 but not exceeding $50,000 (Prime + 3.25 percent).

In the event SBA approves an increase to a loan that was for $50,000 or less <u>and</u> the lender availed themselves of the ability to charge an interest rate higher than prime plus 2.25 percent which raises the loan over one of small loan incentive thresholds as noted above ($25,000/$50,000), the interest rate must be adjusted accordingly.

(3) Interest computations for all CAPLines can be based on either the **daily** (simple interest) or **average daily** outstanding balance. The method chosen by the lender is stated in the authorization. Once the method has been established, it must remain the same throughout the term of the loan.

c. Lender Servicing Fees.

For loans approved under CAPLines, lenders are permitted to charge an annual fee of up to 2 percent of the outstanding loan balance for extraordinary servicing, when justified and approved by SBA, in addition to the guaranty fee and actual closing costs. This fee must be based on either the average daily outstanding balance or the average monthly outstanding balance times 0.167 percent. Lenders may charge servicing fees in excess of the 2 percent limit for loans approved under the Standard Asset Based sub-program, subject to certain restrictions.

d. Maturity, renewals, and extensions.

(1) A renewal continues an existing loan along with its original terms and conditions, except maturity and other specifically changed conditions, in place so that both disbursements and collections can continue. The maturity of all CAPLines can not exceed 60 months including all renewals. Renewals, in this context, mean lengthening the original or modified maturity to permit both additional disbursements and collections. A renewal does not constitute a new loan.

(2) Extensions are made to only effect collections. All CAPLines can be extended past original maturity and the 60 month limit, but no new disbursements are permitted when an extension is approved. An extension may require that the loan be termed out with payments amortized over an established period based on the business' traditional repayment ability.

(3) When a short term loan secured by only current assets is termed out, it becomes prudent to require additional collateral, including fixed assets (business or personal) to assist in repayment.

(4) All **CAPLines** must be structured so there is some form of exit strategy built into the repayment terms. This provides the loan's administrator with a degree of control to make sure the loan will be paid out by maturity. Since these types of loans can be for short periods, maturity can occur relatively quickly after initial disbursement. The PM staff must be aware of the anticipated maturity for each **CAPLines** and understand that the participant must generally need to move quickly if full payment is not to be obtained when due, particularly since the collateral is so volatile.

e. Collateral considerations.

(1) All **CAPLines** are to be secured by either specific or generic short term current assets, along with personal guarantees of all individuals owning 20 percent or more of the operating concern. There are no restrictions on taking fixed assets to bolster the collateral position, but securing a **CAPlines** with fixed assets in lieu of proper monitoring and control of inventories and/or receivables is not authorized. Additional collateral requirements are listed under each sub-program.

(2) In addition, taking all assets to secure a line of credit will usually strap a small business concern. When a **CAPLines** is increased, taking additional collateral must only be done as an exception, with justification.

(3) Control of the collateral is essential for any **CAPLines** loan because the conversion of

the current assets from inventory or labor and materials to receivables and finally to cash creates the opportunity for repayment. As long as the proceeds generated from operations are applied against the loan's balance, repayment will occur.

(4) Each of the sub-programs under the **CAPLines** umbrella has a method for controlling the cash received from the liquidation of the collateral securing the loan.

(5) The SBA must also consider both the existing and future financing needs of the business when restructuring or servicing the required collateral.

f. Additional collateral with extensions.

(1) While short term loans are generally considered to be self liquidating because the cash received from the conversion of current assets is applied against the loan's balance. However, reliance upon the continued existence of specific current assets when a loan is termed out and repayment no longer occurs with the current assets are converted to cash is very limited. Once a loan is termed out, repayment comes from the borrower's cash flow at pre-determined intervals (usually monthly).

(2) When a short term loan is extended for purposes of affecting collection activity, the reliance on the existing short term assets may prove tenuous for the protection of the Government.

(3) When providing an extension to any **CAPLines** loan, full consideration for requiring additional collateral needs to be made a part of the recommendations in the 327 action approving the extension, and justification is required if additional collateral will not be acquired.

g. Increases in loan amount (SBA Form 327).

(1) A **CAPLines** can be made on a revolving basis, with continual draws or advances, as well as continual payments throughout the term, as long as the outstanding balance does not exceed the approved amount. For purposes of complying with SOP 50 10, a **CAPLines** must not be considered "fully disbursed" until one cash cycle before maturity.

(2) An existing CAPlines can be increased in the same manner as presently provided for partially disbursed loans, <u>except</u> the amount of the increase must be limited to one-third of the original loan amount and the increase can only be provided one time. All increases are subject to permissible SBA maximums, as cited in SOP 50 10. An SBA guaranty fee will be due and
payable from the lender in the same manner as provided for other increases in the guaranteed portion of a loan. All increases must be based upon the lender's justifiable request and are to be processed and recommended by a member of the CLSC.

(3) When a borrower has justified an increase to their existing CAPLines in excess of the one-third limit, consideration can be given for a second loan, made on a term basis with monthly principal and interest payments.

(4) This second loan can be guaranteed by SBA, subject to the $750,000 maximum. The proceeds of the term loan can be used to finance new work, generating new receivables. The borrower would therefore not have to draw upon the CAPLines loan to accomplish this new effort. The existing receivables which had previously been either generated or advanced against as part of the CAPLines, must be converted to cash and applied against the outstanding CAPLines balance. The borrower will then have the ability to draw upon the increased availability of the CAPLines. The borrower would also begin to make monthly payments on the term loan.

(5) Under this process the term loan does not directly pay down the CAPLines. Instead, the term loan allows the borrower to generate new business without having to draw upon the CAPLines. This means that as existing CAPLines assets are converted to cash, the CAPLines balance decreases. The term loan allows the business to continue to generate cash which will bring the CAPlines balance down to an amount generally equal to the term loan. After this occurs the borrower can continue to operate with a CAPlines that has new borrowing ability and a term loan that addresses the business' permanent working capital needs.

h. Forms applicable to CAPLines.

Due to the short term nature of all CAPLines, certain data is necessary for the adequate servicing of these loans. Select forms have been developed for use by lenders and SBA for this program. Forms with a prefix of CAP are applicable to all CAPLines. Forms with an AB in the prefix are applicable for the two asset based sub-programs and the SAB prefix forms are only applicable to the Standard Asset Based sub-program.

Forms marked with an omega (Ω) are always required. Lenders may substitute their own forms for the example forms not marked with an omega providing they furnish the same basic information and are satisfactory to SBA before being used.

(1) SBA Form 1502 Ω, "Guaranty Loan Status & Lender Remittance Form."

Loan status of every CAPLines must be reported on the same SBA 1502 as any other 7(a) loans. When a CAPLines is made on a revolving basis, the loan is not considered fully disbursed until the exit period begins. Therefore, most of the time the SBA 1502 will likely reflect an outstanding balance as well as an undisbursed balance. Only if the outstanding balance as of the last day of the quarter happens to coincide with the full approved loan amount, must there not be an undisbursed balance shown. **The combination of the disbursed and undisbursed columns must always equal the approved loan amount.**

(2) SBA Form 1050 Ω, "Settlement Sheet."

(a) SBA's Form 1050 Ω is to be used at the time of initial disbursement of all SBA 7(a) loans. Since CAPLines involve numerous advances and the standard SBA 1050 is designed to report single draws, a new form (SBA Form CAP 1050 Ω) has been established to report all subsequent disbursements.

(b) SBA Form 1050 Ω, "Lender's Semi-Annual Funds Disbursement Report," is to be completed by the lender on a semi annual basis (October 31, and March 31) and sent to the SBA office servicing the loan.

(3) Forms to report fees.

SBA Form 159 (Ω) must be used to report all compensation the lender or representative charges the applicant/borrower in connection with all CAPLines, except those processed under the Standard Asset Based sub-program which must use the modified SBA Form SAB 159A to report the anticipated compensation and SBA Form SAB 159B to report actual compensation every 6 months over the life of the loan. These special compensations agreements have been established to accommodate the pilot basis unrestricted fee provisions for SAB loans.

i. Review of reports.

(1) It must be the responsibility of SBA servicing personnel to review all reports submitted by the lender and borrower in connection with a CAPLines loan. Forms required semi-annually are to be included when the participant submits the March 31, and October 31, SBA 1502.

(2) Servicing personnel are responsible for reviewing the "Lender's Semi-Annual Funds Disbursement Report," SBA Form CAP-1050 Ω, to determine if the line is revolving in accordance with the terms of the authorization and to determine that advances and repayments are properly occurring according to the business' cash cycle, seasonal cycle, contract(s) performance, etc. as specified in the authorization.

j. Withholding tax requirement.

(1) Tax requirements under CAPLines are the same as those for any of the other SBA loan programs. Applicants under this program must be current on payroll taxes or have an IRS approved plan for repayment which is in good standing at the time of initial disbursement. Since all CAPlines include working capital for the payment of labor, all CAPLines must have a depository plan in place for the payment of future withholding taxes.

(2) If the lender should make disbursements for the borrower's payroll, the lender must deduct all payroll taxes and make appropriate direct deposits to the Federal and State authorities. This is a prudent management practice, providing protection to the lender and SBA because of the provisions of the Federal Tax Lien Act of 1966. This Act holds the lender liable for unpaid income tax withholdings when the lender's advances are used for payroll purposes and the lender had knowledge of a deficiency in tax remittances.

(3) If the direct deposits are not made by the participating lender, the lender will require the borrower to submit a copy of SBA Form 941,"Employer's Quarterly Federal Tax Return," within 3 weeks after the end of each quarter and have stapled to it a copy of the bank's receipt where the withholdings were deposited.

k. Zero balance period requirement.

(1) There is no requirement that a zero balance be maintained for any particular time period (clean up period) on any revolving CAPLines with the exception of loans made under the Seasonal sub-program (CAS) loan. However, prudent lending must be used as circumstances dictate. If the lender and the SBA should require a clean-up period, it must be noted in the authorization.

(2) If a clean up period is required in the authorization, the lender must note, on an annual or semi-annual basis, in the "Lender's Semi-Annual Funds Disbursement Report," SBA Form 1050 Ω, whether the borrower is in compliance.

l. SBA oversight.

The AA/FA, in coordination with field offices, must review selected CAPLines case files. If needed, the review will include contact with the lender and borrowers to review the loan application documents, servicing and reporting documents, and to assess the overall health of the program. SBA reserves the right to review and examine both borrower and lender records, collateral, etc. as needed, to determine the extent of compliance with SBA's rules and regulations, standard operating procedures, and the terms and conditions of the authorization.

m. Right of offset.

If the borrower incurs financial difficulty or other situation which constitutes a serious default under the terms and conditions of this loan, the lender must, to the extent allowed by law, exercise its right of offset in servicing the account. All funds received must be applied or paid against outstanding balances prior to the lender requesting that SBA honor its guaranty.

n. Honoring of the guaranty.

Under CAPLines, the lender agrees as a condition of initial disbursement and stated in the authorization, to liquidate the current working capital assets that secure the line before SBA will honor its guaranty. Once the deficient balance is established and the lender seeks a purchase, SBA will have to assure itself, as it does in all other guaranty lending programs, that prudent lending practices, as required in the SBA 750, were utilized in the making, servicing, and liquidation of the line of credit.

o. Maintenance of documentation and reports.

All required documentation must be maintained by the lender and made available to SBA for inspection, at its option, during normal banking hours, until the guaranty obligation of the SBA has expired or is terminated.

If further guidance is desired, comments must be forwarded to the Office of Borrower and Lender Servicing in Headquarters.

4. Servicing of Both Asset Based Caplines.

a. Introduction.

(1) The Standard Asset Based and Small Asset Based sub-programs are both part of the CAPLines umbrella. The requirements for servicing these loans is based on an understanding that: These loans are actually lines of credit that are extended on a revolving only basis; they are collateralized by current assets (accounts receivables and/or inventory); disbursement is based upon the value of an acceptable portion of the current assets that collateralize the line; and the collateral being financed has to be sold in order to generate the funds for repayment.

(2) The heart of the asset based sub-programs is their ability to support lenders in their efforts to provide businesses with short term financing, based on the business' cash cycle rather than its cash flow over an established period of time. The servicing procedures are established to provide assurances that the revolving feature is maintained which means that principal payments are made in relation to the advances and tied to the cash cycle, not the cash flow of the business.

(3) Disbursements against the line and repayment of principal back to the line must be made throughout the term of the loan in relation to the borrower's cash cycle. No provisions exist to permit the payment of interest only past the conclusion of one cash cycle following initial disbursement.

(4) All personnel servicing asset based loans must keep abreast of all aspects of the program as noted in this CAPlines Program Servicing Guidelines as well as in the Program Guide for Financing.

b. Cash cycle lending.

(1) Cash-cycle lending is highly specialized. Many lenders do not provide this type of credit extension because of the risk associated with the borrower not applying the cash collected from the liquidation (conversion) of the current assets financed with the proceeds against the outstanding balance is high. In addition many small businesses do not need this type of financing, as it is usually only needed by businesses that extend credit to other businesses.

(2) A borrower may not appear to demonstrate the capacity to generate a sufficient cash flow to repay the installments required to satisfactorily amortize intermediate or long term debt, but may still have the capacity to meet the repayment terms of a properly operating line of credit.

(3) The cycle is generally defined as the time between when cash is used to acquire assets (which are to be sold in the normal course of business) to the time when cash is collected as a result of the sale of those same assets. Most businesses need to be able to continually sell to stay in business, but when they sell on terms, a sale is only an increase (debit) to accounts receivable. It is not until the purchasing customer pays their account payable that a business receives the cash from the sale and can reduce its accounts receivables (credit).

(4) Since the income from any given sale is not available to pay for additional purchases until the end of the cycle for a particular sale, the business needs other sources of cash to use to replace sold assets. This need for alternative sources generally occurs in businesses that provide credit terms to their purchasing customers.

(5) Asset based borrowers use the value of their existing accounts receivable and inventory to borrow against, so they can have sufficient cash to acquire new current assets while they wait for the existing current assets to be converted to cash. Proceeds received from the collection of accounts receivable and cash from inventory sales repay the loan. Since collections are applied against the loan's balance, a business continually needs to borrow to obtain replacement assets. Borrowing is generally secured by inventory and accounts receivables which were financed with loan proceeds.

(6) The business, therefore, uses its short term assets, which will become cash in the future, to have working capital available in the present. The most important component of this type of lending is that once the proceeds are actually generated, the business has acquired repayment ability and these proceeds need to be used to pay back the loan, rather than be available to the business. Otherwise, the business would have twice the cash from a single sale and the lender would not get repaid. This type of financing is referred to as asset based lending (ABL).

(7) Asset based lending broadly entails assessing a business' short term working capital needs to derive a loan amount, determining the maximum borrowing amount after evaluating the current assets which will collateralize the loan, and establishing accounting procedures for continual draws and repayments of funds over the term of the line of credit.

c. Lender responsibility and authority.

(1) It is of the utmost importance that the lender be able to immediately recognize borrower deterioration and be able to curtail credit and/or commence liquidation of collateral, when necessary. It is imperative that the lender, maintain a constant watch on collateral flow, financial performance, internal reporting practices and the quantity and quality of the assets pledged.

(2) Lenders are expected to utilize all the disbursement and repayment controls necessary to ensure that an asset based loan maintains its revolving nature and otherwise properly operates. The control requirements are developed from data provided at the time of original processing and included in each authorization. SBA Form AB4 (Ω) provides information on the current asset practices of the applicant and is required for both asset based sub-programs. Servicing staff must review this form to gain insight into these practices.

(3) With all asset based loans, the lender has the authority to take immediate action to remedy any adverse condition. In addition, lenders have authority to increase controls as deemed necessary for non-performing loans without SBA's concurrence. Relaxation of any controls required in the authorization requires SBA's concurrence.

d. Authorization conditions.

The authorization specifies the covenants required of the borrower. Violations of these covenants need not always reflect trouble, nor a termination of the lending, but alternatively, the potential for a restructuring before there is a default or insolvency.

e. Disbursements.

(1) The lender may make advances at any time before the beginning of the last cash cycle prior to maturity, providing the borrower is current on all principal and interest payments and in substantial compliance with the terms and conditions of the authorization.

(2) Lender justification and SBA approval is required in order for disbursements to be made after the last cash cycle before maturity has commenced. No disbursements must be made after maturity.

f. Borrowing base certificate.

(1) Both asset based sub-programs require the use of a borrowing base certificate (certificate) which is submitted by the borrower and used by the lender to determine the borrowing base, or the amount that the lender may advance to the borrower at a particular time. The certificate lists all current assets of the borrower, including those which may not be eligible for inclusion in the borrowing base computation.

(2) Assets that are less likely to be converted to cash must be eliminated from the certificate, e.g., receivables more than three times the normal term, or 30 days past extended terms (sales date), as well as those receivables due from affiliated companies, and work in progress inventory.

(3) The aggregate face value of eligible current assets must be used to form the borrowing base. Various assets that are not accepted in the certificate, may still serve as viable collateral for the loan. The determination of eligible accounts receivable and inventory is accomplished in the certificate in order to determine the dollars that may be advanced. (See section g. below.)

(4) In addition certificates need to include a reconciliation section which reports the movement (creation and collection) of the current assets between successive certificates.

(5) A current borrowing base certificate is required at least monthly even if there are no advances within that specified period and may be obtained with each advance to determine the amount that can be disbursed.

g. Advance rate.

Throughout the term of an asset based loan, advances are made by the lender for any authorized identifiable and legitimate short term business purposes including: support of growth; use in exporting; financing seasonal needs; contract financing; flexibility to take advantage of specific opportunities; other short term needs; or a combination of any of these purposes.

The lender agrees to advance the funds and service the line as agreed in the authorization.

(1) The advance rate is the percentage amount loaned against the face value of eligible receivables and inventory.

(a) The maximum advance rate on accounts receivable cannot exceed 80 percent of the eligible receivables (less allowances for dilution of receivable values occurring through charge backs, returns, bad debt allowances, and contra account write downs, etc.).

(b) The maximum advance rate for inventory is 50 percent. It is typically based upon the lesser of the sum of the direct material plus labor cost in manufacturing, or the invoice cost less discounts of resale goods in wholesale distribution. The advance rates will be unique for each case depending upon the various factors mentioned.

(c) Unless there is a very long manufacturing cycle or a very good borrower history and financial condition, only minor (if any) advances must be made against intermediate work in process since little can be realized through liquidation.

(2) Exceptions to the advance rate are discussed in the section titled Lender Unilateral Authority, Maximum Change in the Advance Rate.

h. Repayment of principal and interest.

(1) While there are no requirements for reducing the line's principal balance on a monthly basis, principal must be reduced in accordance with the cash cycle of the business. There are no provisions to permit interest only payments for any period exceeding the borrower's cash cycle.

(2) Borrowers must make their interest payments on a monthly basis. The revolving feature must be maintained by the borrower. This is accomplished through the process of drawing funds, increasing the current assets, and repaying principal when the cash is received from the sale of these assets. This is all done in relation to their cash cycle.

(3) The lender must report all draws from the line and payments back to the line on an SBA 1050. The SBA 1050 Ω "Settlement Sheet," must be executed at the time of initial disbursement to report that transaction.

(4) Subsequent disbursements are to be recorded on SBA CAP 1050 (Ω). This report is to be included when the lender submits their April 30, and October 30, SBA 1502 reports.

i. Review of SBA Form CAP 1050 Ω.

(1) Maintaining the revolving feature in asset based lending is the primary responsibility of the lender. When a loan is not revolving in relation to its cash cycle or actual need, increased servicing will be required to re-institute the revolving nature of the loan.

(2) Servicing personnel must review the "Lender's Semi-Annual Funds Disbursement Report," SBA Form CAP 1050 Ω to determine that the line is revolving in accordance with the terms of the authorization and to be ensured that the borrower is correctly utilizing the line in relation to its cash cycle. The authorization must state the cash cycle in days. With an analysis of the cash cycle and the loan amount, the analyst must be able to determine the amount of total draws the borrower should have taken during the period covered by the disbursement report.

(3) One of the key measurements to any revolving loan is the total amount of draws against the line and number of times a business uses it. If a business has a cash to cash cycle of 60 days, then the business must have total draws of up to 6 times the amount of the loan (365/60 = 6). If the loan amount is $100,000, the borrower must have drawn up to $300,000 over a 6 month period. If the line is being properly used in the above example but the total draws for the six month period only equals $210,000, the approved amount may be too high or exceed actual needs by $30,000.

(4) The review must consist of a comparison of the total draws and repayments in relation to the total loan amount and the total dollars disbursed, both in the last 6 month period, and over the entire loan's term.

(5) If this same business was drawing up to the amount of the loan and keeping only the interest current, it would not be revolving. If either Asset Based sub-program loan is not revolving, additional requirements are to be placed on the borrower to ensure that the revolving nature of the loan is maintained. (See section under Lender Unilateral Authority titled Workout Status.)

(6) When a business receives the cash it generated by having the use of asset based proceeds but does not reduce its balance, the line has to be considered as negatively operating. This is a significant "Red Flag" which must result in immediate consultation between SBA and the participant.

(7) After review, the report must be initialed/dated by the servicing loan officer and properly filed and maintained in the loan's docket file together with any additional documentation/comments.

(8) The disbursement report also allows the Agency to determine the amount of leverage its revolving loan programs are creating for small business and to indicate the degree to which the lines are truly revolving.

j. Monitoring and controls.

(1) The guaranty which SBA provides its participants is designed to cover the risk associated with a borrower's failure to generate sufficient sales to repay the debt guaranteed by the Agency. Our guaranty does not cover the risk associated with a lender's failure to adequately close, secure, or service the credit, or maintain compliance with the deferred participation agreement (SBA Form 750) or individual authorization. Therefore, the responsibility that an asset based loan is properly booked and serviced so the loan revolves is the lender's. The methods for achieving this responsibility include the use of adequate monitoring techniques in conjunction with periodic reviews, plus sufficient control of the funds generated as a result of having the line of credit.

(2) Monitoring is the continual review of the borrower's compliance with loan covenants, payment plans, tax obligations, and credit proceedings to determine the borrower's management of the collateral. Monitoring includes a review of the borrowing base certificate and financial statements with aging schedules to determine the maximum amount that can be outstanding during the effective period of the certificate. This process also includes a determination of the maximum amount which can be advanced after subtracting the existing loan balances.

(3) Funds control covers the cash (or near cash) the business generates as a result of having the use of asset based proceeds. This type of control could include requiring a borrower's customers to remit payments via: collecting joint payee checks; obtaining dominion over the borrower's existing post office box where collections are sent (block box); or establishing an independent post office box under the control of the lender (lock box). However, these collections methods are <u>not required</u>. At a minimum for all Asset Based loans, collections of all receivables which were advanced against must be applied against the loans outstanding balance.

k. Increases in loan amount (327 actions).

(1) Since an asset based loan may have a maturity of up to 60 months, the original loan amount may prove unsatisfactory in latter years, particularly as a business grows and its need for a larger line of credit increases. All asset based loans may be increased in the same manner as is presently provided for on partially disbursed loans <u>except</u> the amount of the increase must be limited to one-third of the original loan amount, can only be done once over the life of the loan, and must be processed and recommended by a member of the servicing office's staff.

(2) All increases are subject to permissible SBA maximums, as cited in SOP 50 10. An SBA guaranty fees will be due and payable from the lender in the same manner as provided for other increases in the guaranteed portion of short term loans.

(3) For purposes of complying with SOP 50 10, an asset based loan must not be considered "fully disbursed" until maturity.

(4) No increases must be made without justification from the lender. This justification must relate back to the short term working capital needs of the borrower. The Agency

does not want to commit excessive loan funds to the detriment of overall funding authority or unduly restrict the amount approved so it limits the operation or adequate growth of the borrower. The recommending official must justify the loan amount in their report. Comments that support the level authorized have to be provided.

(5) All increases must be based on a lender's justifiable request and must be recommended by a servicing loan officer in the designated district office's servicing division or by a loan officer in the servicing center, where applicable, using a 327 action.

(6) In order to consider a request to increase the loan amount, some basic concepts must be understood. They are:

(a) Determining the cash cycle to confirm that there have not been any changes; and

(b) Verifying the requested increase.

l. Determining the cash cycle.

(1) The cash to cash cycle of a business is comprised of elements which are traditionally measured by the turnover ratios of selected current assets and liabilities. The accounts receivable turnover ratio is a general indicator of receivable quality. Credit sales are divided by accounts receivable (A/R) to obtain the A/R turnover ratio.

NOTE: Caution must be used in accounting for non-credit sales.

A declining ratio usually indicates a dropping quality of receivables and may indicate a restructuring of terms is required.

(2) The inventory turnover ratio gives insight into inventory quality. Cost of goods sold are divided by inventory to get the ratio. Generally the higher ratios indicate that the inventory is moving faster. This is usually viewed favorably, but it may also indicate inventory shortages.

(3) Businesses with a low inventory turnover could have obsolete items or be overstocked.

(4) The trade related accounts payable turnover ratio shows how often a business pays its creditors. Cost of goods sold are divided by trade payables to determine the ratio. Businesses that have a declining ratio over time are usually experiencing a cash shortage, but they could also be expanding their trade credit.

(5) Converting ratios into days allows the loan officer to determine the cycle's length. Adding the receivable plus inventory turnovers and subtracting the payable turnover, all expressed in days, equals the cash cycle of the business being evaluated. Averaging the beginning and ending levels of each asset and liability should eliminate seasonal variances and assist in the analysis.

(6) After an analysis of the applicant's financial information, the lender must establish the

cycle's time period, and SBA must concur. A condition must be included in the authorization that states the original cash cycle for the loan and establishes the guidelines for the allowable time difference between disbursements and repayment of principal. The cycle's definition must be determined after analyzing the small business company's (SBC) prior three full years of statements.

(7) To avoid skewing, consideration must be given for the use of a weighted average where the most recent year will receive a weight of 3, the next oldest a weight of 2, and the oldest a weight of 1.

(8) If the cash cycle should change, the lender must notify the SBA in writing of the revision to the authorization with a brief explanation.

m. Verifying the requested increase.

(1) The total dollar amount of any asset based loan must be based on the short term working capital needs of the applicant. The recommending official has to justify an increase in the loan amount with a 327 action based on need rather than collateral. The comments must indicate that the approved amount is not artificially inflated which would cause excessive loan funds to be committed, or unsatisfactorily low which could restrict operations or prevent adequate growth.

(2) Justification must start with a determination of the borrowers needs based upon the same formula used for determining the original loan amount for all asset based sub-program loan.

(3) The formula for determining the justifiable loan amount for an existing asset based borrower is:

HISTORICAL NET SALES (Excluding returns and bad debt allowances, credit memos, and other elements of dilution) - Based on the most recently completed full fiscal year.

LESS TRADITIONAL RULE OF THUMB CASH FLOW - Herein defined as Net Profit and Depreciation/Amortization and other non-cash items.

DIVIDED BY 365 TO YIELD AVERAGE DAYS CASH REQUIRED.

TIMES THE DAYS OF THE CASH TO CASH CYCLE

Note that this formula relies upon historical sales, rather than projected sales. The formula is to be used to arrive at a base loan amount.

(4) Generally, if projected financial data is used to determine the loan amount, the potential for a larger loan exists. While loans can be made in an amount greater than the base loan amount calculation, all amounts must be justified. Any amount other than the base amount which the above formula yields requires additional justification.

(5) For purposes of the analysis to be included in the loan report, the amount derived from the basic formula is self- justified. However, alternative amounts need to be justified by the lender and supported in the SBA officer's report. Alternative amounts are acceptable, providing they relate to actual business need rather than unsupported desire.

(6) The total dollar amount of any asset based loan is to be based on the short term working capital needs of the applicant, for the period to be covered by the line. It is not to be set from a determination of the value of eligible collateral that is listed on the borrowing base certificate and then multiplied by the applicable advance rate.

(7) While the product of this multiplication forms the "Borrowing Base," it does not adequately address a business' actual working capital need.

(8) As an alternative to considering an increase to an existing asset based loan, a standard 7(a) term loan can be approved in the Finance Division, where the proceeds allow the borrower to generate new work while the collections from the prior work pays down the line. Reference paragraph 3(g) of this guide for further discussion on this method of increasing loans.

(9) As previously outlined in this document, draws/advances from the line and repayments back to the asset based line can be made, as provided herein, throughout the term (prior to the last cash cycle before maturity) of the loan as long as the outstanding balance does not exceed the approved amount.

n. Loan restructuring.

(1) It is of the utmost importance that the lender be able to immediately recognize borrower deterioration and be able to curtail credit or liquidate the collateral, if necessary. Therefore, it is imperative that the lender maintain a constant watch on collateral flow, financial performance, internal reporting practices, and the quantity and quality of the assets pledged.

(2) The loan authorization must specify the covenants to be required of the borrower. Violations of these covenants need not reflect trouble, nor a termination of the lending, but alternatively, the potential need for restructuring before there is a monetary default or insolvency.

(3) With asset based loans, the lender has the authority to take immediate action to remedy any adverse condition. Some of the action a lender can take when an asset based line of credit is not performing as required may include the following:

(a) Acquiring more capital or subordinate financial support, where it otherwise does not dilute the senior lender loan liens. This can also include participation of trade creditors and the use of inter creditor agreements.

(b) Acquiring more collateral or reduce the advances against existing collateral.

(c) Adjusting pricing and fees.

(d) Obtaining credit enhancements or outside guarantees.

(e) Retaining a qualified financial consultant.

(f) Paying down the loan to acceptable levels.

(g) Continuing the financing, but increase the intensity of the level of collateral control. This may mean lock boxes are employed or a third party is utilized to make certain that there is conditional dominion of the assets should things deteriorate further.

(4) The degree of increased servicing will depend on the circumstances of the case. Some additional alterations to the conditions of the loan could include:

(a) Requiring the borrower's customers to remit their payments via a joint payee process checks to the lender and small business concern;

(b) Establishing a demand deposit account (DDA) or other type of controlled cash collateral account, where the borrower's receivable collections are deposited;

(c) Obtaining conditional or actual dominion of the receivables by operating a postal block or lock box, wherein receivable proceeds are directed to the cash collateral account and perpetually applied against the loan; and

(d) Converting the outstanding balance from a revolving to a term loan with no further draws and the establishment of monthly payments of principal and interest.

o. Conditions of default.

(1) Any one or more of the following must be a default under an Asset Based loan, unless waived by lender.

(a) Borrower fails to pay any indebtedness when due.

(b) Borrower breaches any term, provision, warranty or representation under the security agreement, or under any other agreement or contract between borrower and lender or obligation of the borrower to lender.

(c) Any involuntary petition in bankruptcy filed against the borrower and not dismissed within 60 days.

(d) The appointment of any receiver or trustee of all or a substantial portion of the assets of the borrower.

(e) The borrower, or any of its subsidiaries or guarantors become insolvent or

unable to pay debts as they mature, make a general assignment for the benefit of creditors, or voluntarily file any bankruptcy or similar law.

(f) Any financial statements (balance sheet, profit and loss statement, aging reports etc.), certificates or schedules, or other statements furnished by the borrower to lender which prove false or incorrect in any material aspect.

(g) Any levies of attachments, executions, tax assessments, or similar processes issued against the collateral and not released within 10 days.

(h) If any of the collateral pledged as security for this loan is sold in bulk or outside the normal course of business, the entire debt must become due and payable at the option of the lender, unless written permission for alternative repayment is provided by the lender.

(i) Suspension of business operations for more than 5 days in any calendar year.

NOTE: These examples of default situations are provided here so they may be included in the authorization.

p. When conditions of default occur.

(1) The following represent examples of potential cures to default situations which lenders may choose when administering asset based loans and are provided herein so they may be included in the authorization. The lender must respond to the adverse changes or indications of deterioration in the borrower's condition. Lender must:

(a) Declare any portion of the indebtedness that is over-advanced or unsecured immediately due and payable;

(b) Provide the borrower with notification of default and a specific written time frame in which they will cure said default, when default is correctable in a commercially feasible manner; and

(c) Advise SBA of borrower's default or delinquency in regard to the loan or other borrower financial obligations of which the lender has knowledge and provide outline of intended action.

(2) Lender may do any one or more of the following without SBA's concurrence, providing notification of action is provided SBA:

(a) Enforce the security interest given pursuant to the UCC or other applicable law;

(b) Execute the lender's rights of offset to recover up to the amount eligible of the indebtedness that is over advanced or unsecured;

(c) Require the borrower to assemble the collateral and the records pertaining to receivables and make them available to the lender at a place designated by the lender;

(d) Use, in connection with any assembly or disposition of the collateral, any trademarks, trade names, trade style, copyright, patent right, or technical process used or utilized by the borrower; and

(e) Enter the premises of the borrower and take possession of the collateral and of the records pertaining to the receivables and any other collateral.

(3) The lender may do the following, providing SBA's concurrence is obtained prior to taking these actions:

(a) Declare all indebtedness secured hereby immediately due and payable;

(b) Compromise claims and settle receivables for less than face value, either with or without prior notice to the borrower; and

(c) To the extent allowed by law, execute a full right of offset and apply all funds against the outstanding ABL balances. This is to be accomplished prior to the lender requesting that SBA honor its guaranty.

q. Maximum change in the advance rate.

(1) The lender has the unilateral authority to <u>increase</u> or <u>decrease</u> the advance rate stipulated in the authorization by 5 percent (not to exceed the approved loan amount). This authority will be used in rare situations, with a written plan in place identifying how and when the loan will be returned to compliance with the original terms and conditions of the authorization. It is strongly recommended that the loan be returned to compliance within 30 days.

(2) The lender must document the borrower's file and fax notification of this action with the plan to the SBA.

(3) If the loan is not returned to compliance in accordance with the plan, SBA must be notified of the workout plan that will be implemented to bring the loan back into compliance or move it to in-liquidation status. By the date specified in the workout plan, the lender must inform SBA of the success of the plan.

r. Right of offset.

If the borrower incurs financial difficulty or other situation which constitutes a serious default under the terms and conditions of this loan, the lender must, to the extent allowed by law, exercise its right of offset in servicing the account. All funds received must be applied or paid against outstanding asset based balances prior to the lender requesting that SBA honor its guaranty.

s. Honoring of the guaranty.

Under the asset based sub-programs, the lender agrees, as a condition of initial disbursement and stated in the authorization to liquidate the current working capital assets securing the line before SBA honors its guaranty. Once the deficient balance is established, and the lender seeks a purchase, SBA will have to assure itself, as it does in all other guaranty lending programs, that prudent lending practices, as required in SBA 750, were utilized in the making, servicing, and liquidation of the line of credit.

t. Factors to determine sufficient lender effort to liquidate.

The following factors must be utilized by the Liquidation Division when determining if a lender has significantly liquidated an asset based borrower's receivables prior to requesting SBA to honor its guaranty. These factors must be included in the servicing section of the asset based (formerly GreenLine) program guide.

(1) The lender must make a good faith effort to collect all accounts receivable outstanding at the date of default. The date of default must be the date determined by the lender based on the events of default detailed in the authorization. Collection of the accounts receivable must commence on or after the date the borrower fails to cure the default.

(2) Good faith effort must be evidenced by the collection of not less than 50 percent of the outstanding balance on the loan within the first 100 days after default. However, if less than 50 percent of the outstanding balance is collected in the first 100 days, the lender may submit evidence of the effort made to collect all accounts receivable as justification for a lower collection.

(3) The lender is responsible to continue the collection effort although SBA has honored a request for payment under the guaranty.

(4) The interest allowance period of 120 days contained in the regulations and this SOP must be adhered to.

u. Maintenance of documentation & reports.

All required documentation must be maintained by the lender and made available to SBA for inspection, at its option, during normal banking hours, until the guaranty obligation of the SBA has expired or is terminated.

If further guidance is desired, comments must be forwarded to the Office of Borrower and Lender Servicing, Headquarters, Washington, D.C.

5. Servicing Requirements for Standard Asset Based (SAB) Caplines.

a. Introduction.

(1) SBA's standard asset based CAPLines loans are available to small businesses which are unable to obtain revolving lines of credit without guaranty support and who show the ability to comply with the servicing requirements that are imposed to prudently assure that the revolving nature of these loans is maintained.

(2) The SAB CAPLines are considered to have enough risk associated with them that the authorization must include requirements for the lender to make both initial and periodic on site examinations of the loan's current assets which serve as collateral and form a borrowing base. Also required must be conditions for the continual monitoring of financial data and control of the proceeds generated as a result of the business having the use of the SAB proceeds.

b. Approval of SBA personnel to service SAB loans.

(1) The servicing of SAB loans must be more comprehensive than for the regular 7(a) guaranty loans. Standard asset based loans may only be serviced at a "designated" SBA district office or servicing center. At a minimum, the designated office's chief of portfolio management or servicing loan officer must be trained in either GreenLine or asset based lending (which is included in a Commercial Credit and Analysis Courses conducted after July 31, 1995) in order to take any servicing actions on SAB loans.

(2) Due to the fact that the Standard Asset Based sub-program is considered a high risk loan, these guidelines will set out the areas that will be different from those elsewhere in this SOP.

c. Approval of lender participants.

Lenders participating in the Standard Asset Based sub-program must complete a Lender Qualification Survey and be approved as a standard asset based lender before being able to submit applications under this sub-program.

d. Lender responsibilities.

(1) Lenders are expected to utilize all the disbursement and repayment monitoring and collateral controls necessary to ensure that an SAB loan maintains its revolving nature, and otherwise properly operates.

(2) As a minimum, the acceptable administration of an SAB loan must include an initial and semi-annual examination of selected quantities of assets, plus the quantification and qualification of those assets which are susceptible to dilution, shrinkage, or depreciating values.

(3) The initial examination, monitoring, and control requirements are developed from information provided by the applicant at the time of the lender's original processing. Lenders have the authority to increase controls, as deemed necessary, for non-

performing loans without SBA's concurrence. Relaxation of any controls required in the authorization requires SBA's concurrence.

(4) Regularly submitted financial information must be reviewed in connection with completed field examinations. Periodic credit reviews, along with tests of adherence to loan documents and collateral control, including specific financial covenants, are to be completed at least annually.

(5) A detailed explanation of the servicing requirements for all SAB loans can be found in exhibit 1 of this document.

e. Lender servicing fees.

(1) The Agency's policies regarding "Other Fees" for the Standard Asset Based sub-program are on a pilot basis. Lenders are permitted to charge the same fees they would normally charge their non-SBA borrowers for similar types of revolving lines of credit over the original term of the loan. The AA/FA can end or modify this pilot provision if it is determined that unreasonable fees are being charged.

(2) The lender is required to make full disclosure and have the borrower acknowledge **ALL FEES** to be, and that are actually, charged in connection with both making and maintaining these loans throughout their term. The SBA AB 159 A, is to be used to disclose all fees that the lender anticipates charging the borrower and is submitted with the original application.

(3) Fee disclosure updates are required on a semiannual basis. The SBA Form AB 159-B (Ω), "Pilot Compensation Agreement for Services Provided in Connection with Standard Asset Based Application and Loan Made in Participation with the U.S. Small Business Administration," must be used by the lender to report on a semi-annual basis, for each 6-month reporting period.

This report must be submitted by the lender when forwarding the April 30, and October 31, Quarterly Guaranty Loan Status Report to SBA. Borrower acknowledgement and acceptance of all fees is required as part of this form.

(4) The SBA loan officer must review this form. If an increase in servicing fees from the previous period is noticed, it may be an indication of additional monitoring by the lender which may signify that a problem exits. The SBA loan officer must contact the lender for clarification.

(5) If any of these fees are outstanding at the time of liquidation, they must not be added to the principal balance of the loan. The SBA must not pay these fees when honoring the guaranty. Lender fees are not guaranteed by the SBA.

f. Collateral considerations.

(1) All SAB CAPLines must be secured by a first lien position on the assets being financed as the proceeds are designed to generate new current assets. In most cases, pledged assets must consist of accounts receivable and/or inventories (raw materials

and finished goods). The line's repayment is tied directly to the sale of these assets. These loans are not to be approved where the primary collateral securing the line are fixed assets.

(2) An SAB CAPLines may have no other lines of credit outstanding unless the assets securing the other line are separate and distinct from the assets securing the SAB loan.

(3) There may a continuing need to monitor or control the collateral on a daily, weekly, or monthly basis, depending upon the size of the loan, the underlying financial strength of the borrower, and the volatility of the industry and/or assets in which the borrower is engaged.

g. Maturity considerations.

(1) After start of the borrower's last cash cycle, no further disbursements must be made without SBA concurrence. No disbursements must be made after the loan has matured.

(2) The following options are available if the line has a outstanding balance at maturity.

(a) Pay off the loan through the recovery of the accounts receivable in the normal cash cycle. If it is not possible for the loan balance to be paid in full in this manner, one of the other alternative actions noted here must be taken. Notification to SBA is required.)

(b) Renew the line without SBA's guaranty.

(c) Renew the line, requesting SBA's guaranty (new application must be processed by the SBA Finance Division).

(d) Term out any outstanding balance. SBA's concurrence is required if the guaranty is to remain in place. There must be no new advances.

(Care has to be taken to ensure that when a loan is termed out it is adequately collateralized so that the interest of the Government is protected.)

(3) Liquidate the assets being financed by the SAB Loan. (SBA notification required.)

(4) Liquidate other assets. For further information on liquidation see the section titled Liquidation. (The SBA's concurrence isrequired. Other assets must be liquidated in accordance with the requirements set out in SOP 50 51, "Loan Liquidation and Acquired Property".

(5) Additional security may not be available at maturity. At this time tighter controls on the existing collateral often becomes necessary. When "terming out a loan," the balance must be amortized over a period consistent with the borrower's ability to repay based on cash flow, rather than cash cycle. Under these circumstances, it is important to maintain diligence over collateral servicing, potentially tightening the degree of control. At a minimum, the proceeds must be controlled even though payments are made on a fixed schedule rather than in relation to the cash cycle.

(6) The SBA guaranty on any line of credit expires 120 days after the maturity date of the loan. A renewal or extension which alters the maturity automatically extends the guaranty. The SBA is not obligated to purchase the guaranteed portion where the demand for such purchase or request to extend the loan's maturity is not received by SBA within 120 days after maturity of the note.

h. Authorization.

(1) The authorization must specify the covenants to be required of the borrower. Violations of these covenants need not reflect trouble, nor a termination of the lending, but alternatively, the potential need for restructuring before there is a monetary default or insolvency.

(2) The servicing loan officer must be familiar with the authorization boiler plate which is specific to SAB loans.

i. Monitoring (with examinations) and controls.

(1) As a minimum, the acceptable administration of **SAB** loans must include an initial and semi-annual examination of selected quantities of assets, plus the quantification and qualification of those assets which are susceptible to dilution, shrinkage, or depreciating values.

(2) In addition there may a continuing need to monitor or control the collateral to loan ratio on a daily, weekly, or monthly basis, depending upon the size of the loan, the underlying financial strength of the borrower, and the volatility of the industry and/or assets which the borrower is involved.

(3) Regularly submitted financial information must be reviewed in connection with completed field examinations. Periodic credit reviews, along with tests of adherence to loan documents and collateral control, including specific financial covenants are to be completed at least annually.

(4) Upon conclusion of the semi-annual review by the lender, SBA is to be contacted whenever deficiencies or discrepancies are found, so SBA may be apprised of the situation.

j. Responses to lender servicing actions.

Any action which requires SBA's concurrence/approval must be sent to the servicing division of the local SBA field office or servicing center where appropriate. The SBA must respond to all requests within 2 business days of receipt. These requests may be sent by facsimile (FAX). Depending on the urgency of the request, the lender may wish to follow-up with a phone call to the SBA.

k. Workout situations.

(1) A workout situation can occur when the CAPLines loan is no longer in compliance

with the terms of the authorization. This is an action that will require more intensive servicing with the intention of avoiding problems in the future. At this time, the loan is still in regular servicing not in liquidation.

(2) When a loan is in workout status, the lender must notify the SBA servicing office personnel of this action and of the nature of the workout by telephone or fax.

(3) However, workout status must not be construed as an action that would automatically place a loan into liquidation status unless the lender clearly indicates that the workout is for the purpose of liquidation.

(4) There could be more than one occasion when a loan may be in workout status as it moves in and out of compliance with the authorization. With this action, a lender's opportunity to correct a potential problem before it is out of control should be greatly improved thus increasing the chances of success for the small business.

(5) Some situations where a workout status may be appropriate are when:

(a) The value of the borrowing base certificate (collateral) has deteriorated below that which was identified in the authorization (out of formula) placing the loan into a position of being over advanced.

(b) The borrower has difficulty making regular monthly interest and/or principal payments at the end of the cash cycle.

(6) Some actions that may be taken to bring a loan back into compliance are as follows.

(a) Increase monitoring of disbursements to the borrower.

(b) Establish tighter controls on the collection of accounts receivable.

(c) Increase the frequency and or intensity of field exams.

(d) Term out the remaining balance of the loan.

(e) Increase the amount of the line <u>with the SBA's concurrence</u>.

(f) Reduce the advance rate (see section titled Lender Unilateral Authority, Maximum Change in the Advance Rate).

The lender must take great care when reducing the advance rate in order to avoid creating additional problems for the small business. This must be done only as a last resort to assist in bringing the borrower in compliance as opposed to stopping all advances.

(g) Temporarily eliminate disbursements.

(7) The SBA must be notified when a loan has been moved out of workout status after

having returned to compliance with the conditions of the authorization.

l. Liquidate the loan.

(1) The lender must liquidate all current assets securing the loan. (See section titled Liquidation for further information on the liquidation of CAPLines loans.)

(2) The lender must immediately telephone the local district office, followed by a fax, at the time it appears that they may have to begin liquidating the current assets securing the loan. However, prior to placing the loan into liquidation status a workout status must be considered.

m. Situations placing loans in liquidation.

(1) The normal policy guidelines, as set out in SOP 50 51, "Loan Liquidation and Acquired Property."pertaining to placing a loan into liquidation status must apply for SAB loans. In addition to these situations, if principal payments are not made and therefore the loan is not revolving or if the loan is substantially out of compliance with the terms of the authorization, this must also be considered as severe enough to warrant liquidation to commence.

(2) The lender must immediately advise his/her local SBA district office by telephone, to be followed up in writing, of the steps he/she is taking and/or plan to take. The lender will not be required to obtain SBA's concurrence to proceed with the liquidation. (The SBA's approval is required for liquidation expenses.)

(3) Liquidation of all other assets securing the loan must be in accordance with SOP 50 51, "Loan Liquidation and Acquired Property."

n. Application of funds while in liquidation.

(1) When the SBA guaranty has not been purchased, the lender must apply the proceeds to principal first, then to interest.

(2) When the SBA guaranty has been purchased, the lender must apply the net proceeds to principal first, then to interest, and remit SBA's share of the net proceeds together with SBA Form 172, "Transaction Report on Loan Serviced by Lender," and an itemized accounting of all income and expenses to the local SBA office.

(3) After reviewing the submission and determining that everything is in accordance with the liquidation plan, the liquidation officer must advise the cashier to forward the funds and the SBA 172 to OFO, Denver, for application on the account (using transaction code 307).

NOTE: The lender must not send any collections from the liquidation process directly to OFO, Denver. (Review SOP 50 51 for more detail.)

o. Liquidation expenses.

(1) A good estimate of liquidation expenses must be included in the liquidation plan. All liquidation expenses must be approved by the SBA. As it will probably be necessary for the bank to act quickly due to the nature of the collateral, they may phone the SBA field office for immediate approval with a follow up by fax. Approved liquidation expenses must be paid on a pro rata basis as noted in SOP 50 51.

(2) If it is necessary for the lender to respond immediately (i.e. for care and preservation of the collateral) and contact with the SBA is not possible, the lender may proceed. However, at the first possible opportunity, the lender must advise SBA of the action taken and of their related expenses. Some immediate actions which may be taken in this situation are field exams and the prompt securing of the inventory.

(3) The exception to this policy must be that once a lender has placed a loan into a workout and or liquidation status, and has notified the SBA, fees charged specifically for the care and preservation of the collateral (e.g., lock box, field exam, etc.) that are approved by the SBA and not recovered from the borrower must be shared on a pro rata basis when the guaranty is honored.

p. Conditionality of SBA guaranty.

(1) Two key premises regarding the conditionality of an SBA guaranty are that the lender is expected to administer loans guaranteed by SBA in a similar manner as they would administer their own equivalent non-guaranteed loans and lenders must not commit any negligence, misrepresentation, or fraud in the making or administration of any loan guaranteed by SBA. Non-compliance with these premises may result in the cancellation or alteration of the guaranty provided by SBA to the lender.

(2) When SBA's asset based program was being developed, SBA realized that every lender did not have pre-existing policies, to administer their own asset based lines of credit that the Agency could rely upon for equal administration on SBA guaranteed lines of credit. Therefore the Agency promulgated its own minimum requirements for making and administering its asset based loans so that all lenders could obtain a guaranty on this type of credit extension.

(3) The act of creating these minimum standards does not alter the conditionality of SBA's guaranty to the lender or the established practices of the Agency for honoring its guaranty. Under SBA's asset based loan programs, as with any other 7(a) loan, the Agency is not obligated to honor its guaranty if or when it has knowledge of bank negligence, misrepresentation, or fraud. However, in the absence of these identifiable negatives and when compliance with the terms of the authorization are met by the Lender, the Agency is obligated to honor its guaranty.

(4) 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:

1. The lender has failed to comply materially with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization;…

(5) No aspect of SBA's asset based loan programs alters this premise. There is no authority built into SBA's asset based programs which would increase or decrease SBA's long established practices with respect to the honoring of our guaranty which would differ from the standard conditionality or practices the Agency follows in any 7(a) guaranty loan.

q. Review of annual loss rates.

Servicing personnel must annually review the loss ratios of all lenders participating in the Standard Asset Based sub-program. If the loss ratio appears to be substantial, the Servicing Division must notify the Finance Division that a problem appears to exist. At that time, a strategy must be considered to reduce the loss ratio with that particular lender.

6. Servicing Requirements for Small Asset Based (SMAB) Caplines.

a. Introduction.

(1) The SBA recognizes that all the criteria for the **Standard Asset Based (SAB)** program may not be necessary for more credit worthy small businesses needing smaller lines of credit, and therefore a **Small Asset Based (SMAB)** sub-program was established under **CAPLines**. The maximum loan amount under this sub-program must not exceed $200,000.

(2) Loans approved under the **Small Asset Based** sub-program must demonstrate capabilities to meet higher credit standards by showing repayment ability from cash flow based on the requested loan amount being amortized over not more than 7 years.

(3) Under the Small Asset Based sub-program a borrower is only required to remit to the lender what they collect from the pledged assets that were advanced against, as opposed to remitting all the proceeds (cash and near cash) collected from the sale of any inventory or collection from all receivables as is required in the Standard Asset Based sub-program. This distinction allows a small business borrower receiving a SAB loan to keep their proceeds from cash inventory sales and receivable collections from receivables not advanced against.

b. Lender approval.

The ability for a lender to participate in the Small Asset Based sub-program does not require completion of a Lender Qualification Survey with subsequent approval of SBA. However a properly executed SBA 750 and/or SB 750B is required.

c. Servicing fees.

The unrestricted fee provisions provided in the Standard Asset Based sub-program are not available for lines of $200,000 and under, but lenders may charge up to a 2 percent fee for extraordinary servicing, since they are required to monitor the collateral assets and reconcile the borrowing base certificate.

d. Monitoring and control.

(1) The monitoring and control requirements for a SMAB loan are the same as for the SAB loan except:

(a) There is no requirement for on site examinations of the collateral prior to initial disbursement or on a semi-annual basis after disbursement.

(b) The borrowing base certificate is due monthly and the lender's analysis of the certificate is only required when submitted.

(c) There is no requirement for a cash collateral account under the **Small Asset Based** sub-program. However, if a borrower fails to remit 100 percent of the

collections it receives from the pledged assets which were advanced against, the borrower is technically in payment default.

(d) Under this situation the lender would have to either collect the difference between what a borrower collected from its customers and what was remitted for any given month or consider the loan in default. In this situation, the lender would most likely have to initiate proceedings to end the loan's revolving feature and term the obligation out or commence enforced collection.

(e) The frequency of all required reviews is lengthened so they are required less often.

(2) A detail explanation of the servicing requirements for all Small Asset Based loans can be found in Exhibit 1 of the this appendix.

7. Servicing of Seasonal Caplines Loans.

a. Introduction.

(1) There can be only one seasonal loan outstanding at a time. Loans made under this sub-program do not revolve as other **CAPLines** can, because there is no provision to permit a borrower to obtain more than the approved loan amount one time between cleanup periods. The borrower cannot commence repayment and then redraw the difference between the allowable borrowing base and outstanding loan balance during a season.

(2) Seasonal loans are designed to provide funds based on the projected cash to be generated in the future from funds that are disbursed before the inventory is acquired, the receivable generated, or labor paid for, in much the same way that a contract CAPLines is based on the eventual payments to be received after the job is completed. This is counter to the philosophy of asset based lending where advances are only made against existing current assets.

b. Out-of-debt period.

(1) An out-of-debt period of at least 30 days must follow each seasonal cycle. At the conclusion of the out-of-debt period, borrowers are permitted to obtain new financing for their next season. A seasonal CAPLines does not revolve within a season but can revolve over numerous seasons.

(2) The limitations of one seasonal loan outstanding at a time and the 30 day out-of-debt requirement do not apply to agricultural enterprises because of their special nature.

(3) The maximum duration of a seasonal line of credit's cycle may not exceed 11 months.

c. Borrowing Base Certificates.

Loans approved under the Seasonal sub-program require a borrowing base certificate to be submitted to the lender monthly. The certificate must permit the lender to monitor the seasonality of the current assets and to inform them when payments are coming to the borrower from its customers so repayment exists. The advance rate must be based on a percentage of the anticipated receivables and/or inventory that does not include a borrower's profit.

d. Collateral.

The only required collateral position on a seasonal CAPLines must be a first position lien on the assets being financed. A secondary position on machinery and equipment, real estate, and personally owned assets must only be required when the current assets, along with other credit factors, are not considered to be sufficient to protect the interests of the Government. Current assets may be used to secure other debt providing the assets being financed can be easily segregated.

8. Servicing of Contract Caplines Loans.

a. Introduction.

Contract CAPLines are used to guaranty the financing required to cover a business' estimated direct short-term working capital needs in order to perform on assignable contract(s). Prior to the initial disbursement to finance any contract, the borrower must have already been awarded the contract to be financed, and the proceeds of the contract must be assigned directly to the lender as collateral and the primary source of repayment. Third party acknowledgement of the assignment must be received by lender.

b. Use of proceeds.

(1) This program is established to finance the labor and material costs on specific contract(s). The business must provide a specific service or product under an assignable contract. Contract CAPLines can not be used to finance existing receivables or inventory.

(2) The lender provides the borrower advances against the contract line for the purpose of financing the direct cost of labor and materials associated with a particular contract. It does not provide funds to cover general and administrative (G&A) or overhead expenses. Once an allowable portion of the contract is completed, the borrower may invoice the contracting authority for payment. After any necessary reviews by the contracting authority, payment is made. The lender has a direct assignment of all payments, the remittance is sent directly to the lender for application against the lines outstanding balance.

(3) Contract receivable collections generally include some profit as well as funds that may be needed to assist a borrower in covering his/her overhead expenses. Therefore, this sub-program permits less than 100 percent of the contract proceeds to be applied against the outstanding balance so the remainder may be returned to the SBC for their internal use when made on a non-revolving basis for one contract.

(4) A <u>predetermined</u> percentage (up to 100 percent) of the collection from the contract receivables must be applied exclusively to the **Contract** sub-program for repayment. The percentage must be no less than the amount which was advanced for labor and material pertaining to that receivable payment plus a percentage equal to the percentage of any retainage held back by the contracting authority.

(5) If the contract CAPLines finances multiple contracts, all proceeds collected are to be applied against the outstanding balance unless justified by the lender and concurred by SBA. Each contract's required payment is to be considered on an individual contract basis.

c. Collateral.

At a minimum, the lender must obtain a direct assignment of the proceeds from the contract(s)

being financed. A secondary position on machinery and equipment, real estate, and personally owned assets must only be required when the current assets are not considered, along with other credit factors, to be sufficient to protect the interests of the Government.

9. Servicing of Builders Caplines Loans.

a. Introduction.

This sub-program finances the direct costs for construction or renovation of residential or commercial buildings that will be offered for sale upon completion by small general contractors. Each structure either renovated or constructed must be deemed an individual project. Funds may only be used for the direct expenses of the project.

b. Loan structure.

(1) TheSBA may allow the finished property to be rented pending sale only in cases where the rental will enhance the ability to sell the property. Selling some large commercial structures and apartment buildings is not feasible until a large percentage of the units are rented. Conversely, selling single family, detached homes which are rented is usually difficult. Decide each case on its own merits. Do not permit rental as a means of putting the structure into an applicant's personal portfolio.

(2) Final sale of the project must be to an unaffiliated third party. There must be a true transfer of both legal and beneficial title to the property. This program is not to be used to provide the applicant with construction financing for a structure that will become part of the applicant's or an affiliate's portfolio.

c. Collateral.

Funds advanced for this purpose must be secured by no less than a second lien on the real estate being constructed or renovated. Where the project is part of a subdivision, the prime lender for the subdivision is likely to hold a first lien. In such cases the first lienholder has to provide a "release clause" for transfer of clear title to any eventual buyer of an individual parcel upon receipt of a pre-established payment.

d. Servicing considerations.

The SBA must be advised upon completion of the construction or renovation, as to whether or not the property will be rented out until the property is sold.

EXHIBIT 1

EXPLANATION OF SERVICING STANDARDS

Administering a CAPLines **asset based** account involves numerous activities to ensure the required revolving feature of these loans is maintained and that sufficient value in the collateral exists to cover the outstanding balance. The principal activities include the following.

Monitoring and Financial Examination: The continual review of the borrowing base certificates and accompanying financial information to evaluate the borrower's management of the collateral.

Collateral Examination: Conducting periodic examinations of the collateral to verify its value and ability to be converted to cash, analyzing the financial data and source documents to ascertain the validity of the statements, and conducting an analysis of in-depth point-in-time information on the collateral such as what is obtained during a field examination.

Funds Control: Perpetual control of the proceeds generated by the business as a result of having the use of the **asset based** proceeds that limit a borrower's discretionary use of the cash receipts generated as a result of having the loan. Potential control of the accounts which secure the loan, including the segregation of different classes and types of inventory.

The degree of monitoring and control depends upon the mode of operation and financial capabilities of the business, the nature of the collateral, and the risk assessment of these factors.

All applicants for a CAPLines **asset based** loan must complete an SBA Form AB 4, "Supplemental Information for Asset Based Lines of Credit" as part of their application documentation. The lender uses this information to complete their Applicant's Questionnaire and derive a score. The results must be used to determine the level of monitoring and control to be required on the loan. All **asset based** borrowers must be subject to certain minimum standards regardless of their score and can expect to be subject to more stringent requirements when the factors evaluated show higher risk or at the discretion of the lender and SBA.

The requirements for all **standard asset based** and **small asset based** sub-program loans are detailed below. All numbered items (unless otherwise noted) are applicable to the **standard** sub-program. Items marked with an omega (**Ω**) are applicable to the **small** sub-program.

The following standards represent the servicing requirements of SBA's CAPLines asset based loans. These requirements are divided between the functions of monitoring and control.

PROCEDURE: MINIMUM MONITORING AND FINANCIAL EXAMINATION

1. **Prior to each disbursement** and no less frequently than monthly, the borrower must submit a borrowing base certificate to his/her lender who must review for accuracy, adjust for ineligible items, and determine the value of collateral eligible for advancement of proceeds. Prior to release of funds, lender must indicate the report was satisfactory.

Ω Same as above except certificate only due monthly.

2. **Prior to each disbursement**, the lender must reconcile the borrowing base certificate and establish the allowable borrowing base by multiplying the value of the eligible collateral derived from a newly submitted borrowing base certificate times the applicable advance rate. The existing outstanding principal balance must be subtracted from the borrowing base to determine the maximum allowable amount to be advanced.

Ω Same as above, except borrowing base certificate is reconciled and borrowing base is established only monthly.

3. **On a monthly basis**, the lender must receive selected operating reports from the borrower, including an aging of receivables and payables and an inventory schedule (when advances are made against inventory). The Lender must reviewed reports against actual borrowing base disclosures.

Ω Same as above, except operating reports are only due quarterly.

4. **On a quarterly basis**, the lender must receive selected operating reports from the borrower including financial statements (of a quality of the lender's choosing) within 60 days of the conclusion of each operating quarter.

Ω Same as above.

4a. **On a quarterly basis**, the lender must cross review the interim financial statements, current asset reports, and borrowing base reports for changes, inconsistencies, and deterioration.

Ω Same as above, except cross review only due semi-annually.

4b. **On a quarterly basis**, the lender must conduct a review of bad debt, obsolete inventory, and accrual policies.

Ω Same as above, except review only required semi-annually.

5a. **On a semi-annual basis**, the lender must conduct a ratio analysis and compare a spread of key ratios to analyze any changes which may impact turnover and dilution of current assets. Examples include: days sales outstanding; days inventory on hand; accounts payable; allowances for bad debt; allowance for or actual percentages of returns/credits; current ratio; etc. The lender must act on results as needed.

Ω Same as above.

5b. **On a semi-annual basis**, the lender must conduct a covenant compliance review.

Ω Same as above, except review only required annually.

5c. **On a semi-annual basis**, the lender must compare the status of the borrower's accounts payable, term debts, and leases, with prior semi-annual periods. The lender must act on results as needed.

Ω Same as above, except review only required annually.

6a. **On an annual basis**, the lender must review management information system and controls and make necessary remediation if required.

Ω Same as above, except review only required annually.

6b. **On an annual basis**, the lender must conduct a legal review for any actions, claims, tax deficiencies, and liens.

Ω Same as above.

6c. **On an annual basis**, the lender must conduct a review of bad debt, obsolete inventory, and accrual policies.

Ω Same as above.

6d. **On an annual basis**, the lender must modify loan agreements, advance rates, and/or loan covenants, as necessary.

Ω Same as above.

6e. **On an annual basis**, the lender must conduct an SIC peer group review on selective items in #5a.

Ω Same as above.

PROCEDURE: MAXIMUM MONITORING AND FINANCIAL EXAMINATION

1. Increase the frequency of all activities other than those done monthly as follows: annual to semi-annual; semi-annual to quarterly; and quarterly to monthly.

Ω Same as above.

NOTE: Regardless of the score obtained from the applicant's questionnaire, lenders have unilateral authority to increase the frequency of any of the above stated monitoring and financial examination requirements without SBA's concurrence. Reduction in the frequency beyond what is authorized requires lender justification and SBA concurrence.

Most of the required servicing can be conducted at the lender's office (off site), but selected requirements have to be done at the borrower's place of business (on site).

PROCEDURE: MINIMUM ACCOUNTS RECEIVABLE EXAMINATION REQUIREMENTS

FREQUENCY: Prior to initial disbursement and not less than semi-annually as follows.

Off Site

1. Compare aging statements with borrowing bases over the concluded semi-annual period to determine turnover and condition of receivables pool.

Ω Same as above, except review only required prior to initial disbursement and annually thereafter.

2. Mail blind verifications to 20 percent of the borrower's account debtors to determine their reported payables to borrower on specific date, compared with reports given to the lender voluntarily.

NOTE: The 20 percent figure should include a representative sample of the borrower's largest customers.

Ω Same as above, except review only required annually.

3. Conduct a red flag analysis, reviewing available information submitted by borrower for: unusual rollovers of accounts; changes in credit performance of specific accounts over a 90 day period; cash receipts not in parity with reported account turnover and deposits made to cash collateral account; deteriorating markets or specific accounts; unusual credit or warranty activity; changes in credit policy or due diligence of accounts; the advent of other financing activity causing reduction in collateral pool (e.g., creation of affiliated entities to extend financing not covered by the **asset based** line or investor financing of selective A/R assets).

PROCEDURE CON'T: MINIMUM A/R's EXAMINATION REQUIREMENTS

Ω Same as above, except review only required prior to initial disbursement and annually.

4. Cross-age selective data like contra accounts; specific turnover of the ten largest accounts to test for stability, credit adherence, etc.

Ω Same as above, except review only required annually.

<u>On Site</u>

5. Compare present shipping documents to invoices and A/R listing for the most recent quarters financial data on the largest five accounts to determine confirmation of amounts, margins, receiving statements, and acceptances.

Ω Note required.

6. Compare elements of dilution (e.g., over aged A/R; contras; affiliated transactions; offsets and credits; concentrations; rollovers; etc.) by reviewing source documents such as cash receipts journals; credit memos; shipping reports; repair and warranty files; credit files/in-house agings; payable/receivable ledgers; foreign accounts; call reports; and various communications.

Ω Note required.

7. Use source documents to review current and past delinquencies for account debtor trends and compare to financial reports and agings given in prior financial statements and borrowing base certificates to lender.

Ω Note required.

8. Test credit memos to financial reports and adjustments to the certificate.

Ω Note required.

9. Summarize activity by determining revised ineligibility and advance rate standards or covenant changes.

PROCEDURE: MAXIMUM ACCOUNTS RECEIVABLE EXAMINATION REQUIREMENTS

1. Increase the frequency of all activities other than those done monthly as follows: annual to semi-annual; semi-annual to quarterly; and quarterly to monthly.

PROCEDURE: MINIMUM INVENTORY EXAMINATION REQUIREMENTS

FREQUENCY: Prior to initial disbursement and not less than semi-annually.

Off Site

1. Overview components of eligible inventory to determine items with most movement, credit/return potential, over-stocking, markdowns, and obsolescence

Ω Same as above, except review only required prior to initial disbursement and annually thereafter.

2. Analysis by product lines and vendor support including changes in vendors, offsets, reported purchase money liens, shifts in strategy or stocking, etc.

Ω Same as above, except review only required prior to initial disbursement and annually thereafter.

3. Test eligibility compliance issues for needed changes.

Ω Same as above, except review only required prior to initial disbursement and annually thereafter.

4. Review for red flags: unusual turnover; changes in long standing supplier relationships; selective item or product group turnover changes; aging of certain items or product groups; rise in returns or bad orders; etc.;

Ω Same as above, except review only required prior to initial disbursement and annually thereafter.

5. Review any consignments or co-tenancy arrangements which might be pre-standing.

Ω Same as above, except review only required prior to initial disbursement and annually thereafter.

6. Interview other personnel generally for opinions or inconsistencies from what principals might have reported.

Ω Same as above, except review only required prior to initial disbursement and annually thereafter.

On Site

7. Selectively review how the borrower determines the carrying cost of inventory or raw materials, and check the same to the selected inventory accounting method disclosed.

EFFECTIVE DATE: DECEMBER 1, 1997

Ω Note required.

8. Tie the inventory or stocking reports given to the lender by item or group concurrently, test counts of 20 percent of the dollars, or 10 percent of the items to determine compliance. If substantial variances exist, expand audit untill reasons are determined. The results should weigh in advance rates, future eligibility, or modification of the loan status and confirmation of asset in financial statements.

Ω Note required.

9. Confirm slow moving and obsolete items and integrate results in borrowing base and future adjustments in loan agreement if necessary.

Ω Same as above, except review only required annually.

10. Test reported pricing and gross margins during test counts by item or product groups.

Ω Note required.

11. When inspecting the inventories and raw materials, review: care and custody issues; issues which might impact salability/marketability; rotation of stocks; contingent liabilities (environmental, zoning, employee safety, etc.).

Ω Note required.

12. Review covenants including insurance, etc.

Ω Same as above, except review only required annually.

13. Test and examine records for consignments and joint warehousing arrangements.

Ω Same as above, except review only required annually.

14. Interview other personnel generally for opinions or inconsistencies in what principals might have reported.

Ω Same as above, except review only required annually.

PROCEDURE: MAXIMUM INVENTORY EXAMINATION REQUIREMENTS

1. Increase the frequency of all activities other than those done monthly as follows: annual to semi-annual; semi-annual to quarterly; and quarterly to monthly.

Ω Same as above.

EFFECTIVE DATE: DECEMBER 1, 1997

PROCEDURE: MEDIUM ACCOUNT CONTROL

1. If the borrower segregates its inventories that are subject to the lender's lien, provide the lender both a landlord waiver and acknowledgement of conditional control, if not acquired previously. By covenant support, the borrower agrees to grant the lender, or its designee, management control of the area in which the collateral is kept in the event of certain specific defaults or deterioration of the credit.

Ω Same as above

PROCEDURE: HIGH ACCOUNT CONTROL

1. Medium account control is modified to provide that the lender now either: contracts with a public warehouse to segregate or store collateral and release it upon instructions only; or it creates an on-site segregation using elements of bailment, wherein the collateral is released only from physical control upon instruction. This normally entails use of a third party servicer or field warehouser.

Ω Same as above.

PROCEDURE: MINIMUM FUNDS CONTROL

1. Lender to establish a cash collateral account under its control for the borrower's use to deposit all proceeds (cash and checks) received from the sale of any of the borrower's inventory or services including all collections of all receivables resulting from such sales. The lender is to clear or sweep the account, including deposit funds, at their discretion, but no less frequently than weekly, and apply all proceeds to the outstanding interest and principal of the **asset based** loan.

Ω Same as above.

PROCEDURE: HIGH FUNDS CONTROL

1. Minimum funds control is modified to provide that lender now either: operates, itself or by designee, the borrower□s postal box; or transfers collections to its own postal box (lock box). The lender is to provide account debtors of the borrower with instructions to remit all balances due borrower to the account they control.

Note: The overriding test of control is that the lender only advances against any borrowing base after they have established a process to receive all of the borrower's cash or near cash receipts resulting from the sale of any of the assets included in the borrowing base, upon their arrival, as well as eliminate any borrower discretion to operate outside such a system.

EFFECTIVE DATE: DECEMBER 1, 1997

APPENDIX 29
LOAN ASSUMPTION GUIDELINES

ITEMS REQUIRING ANALYSIS FOR LOAN ASSUMPTION
(INCLUDE IN LENDER'S CREDIT MEMORANDUM)

REASON FOR REQUEST (be specific):

Provide a brief description stating the reason(s) and conditions of the requested assumption, e.g.:

Sale of business includes the real property securing the SBA loan and all business assets.

Sale of business assets only; original borrower retains the real property and will lease property to new business owner.

Sale of business assets only (leased premises).

Sale of business assets only (relocation to new premises).

CONDITIONS OF SALE:

Provide a summary of the sale conditions **and** a copy of the Buy/Sell Agreement.

Note: Senior lienholder(s) written consent is necessary for all business collateral.

COLLATERAL ANALYSIS:

A detailed analysis of all collateral is required for both before and after the requested assumption. If the proposed assumption would result in a diminished collateral position, a detailed analysis and justification must be included in the proposal.

FMV should be substantiated by the most recent appraisal performed by a licensed appraiser and should include the date it was completed. Should the market value be evaluated other than an appraisal, the method/source (net book value, cost or estimate) must be stated. Please include a copy of current appraisal. If there is no current evaluation available use FMV value as shown on loan Pro-forma. Lien balance and current status should be verified. If lien is a revolving line of credit, the recorded lien amount should be used, otherwise, use principal balance owing.

EFFECTIVE DATE: DECEMBER 1, 1997

LOAN ASSUMPTION GUIDELINES (cont.)

The net equity value should be determined by using a liquidation percentage of the market value as noted in Chapter 4, "General Loan Servicing Requests and Actions," in paragraph 6. b., "Valuation of collateral."

SUMMARY OF ASSUMPTOR(s) AND OBLIGOR(s)/GUARANTOR(s):

Provide basic business information on the new assumptor (including management experience and knowledge of industry), as well as on the current and new obligor(s)/guarantor(s). Specify whether guarantor(s)/co-obligor(s) guaranties "will be" secured or unsecured.

REPAYMENT ANALYSIS:

The assumption of a loan is the most complex servicing action we entertain. It requires a financial analysis of the existing small business concern (and its obligors/guarantors). It may require an analysis of the proposed assumptor (and proposed obligors/guarantors) if the existing borrower's business will cease to exist and we will have to rely on the assumptor's business to repay the debt.

Business tax returns/financial statements for the last two years and an interim statement (if FYE statement is more than 90 days old) should be obtained and analyzed.

Provide a cash flow analysis of the original borrower to determine if adequate cash flow exists to service the debt(s). Comment on any area(s) which shows a deficiency. If adequate cash flow is not available, explain the basis of the request. Include a current schedule of indebtedness which will be necessary for determining net cash flow.

Provide a Balance Sheet analysis of the original borrower. Are the current financial statements favorable (e.g., there are no adverse trends)? Comment on any areas where the Financial Statement analysis shows deficiencies or adverse trends.

LENDERS CHECKLIST

LOAN ASSUMPTION

TERMS OF SALE:

___ Lender Credit Memorandum

___ Escrow Instructions

___ Copy of Buy/Sell Agreement

___ Copy of seller carry-back Note

___ Lease Agreement

___ Approval of senior lienholder

PURCHASER:

___ Personal Financial Statement of borrowers, guarantors and major stockholders (SBA Form 413 or 770)

___ Personal Federal Tax Return (most recent)

___ Business Financial Statements (FYE) including Profit and Loss Statement (two years)

___ Interim Business Financial Statement (if FYE is more than 90 days old)

___ Business Federal Tax Returns (two years)

EFFECTIVE DATE: DECEMBER 1, 1997

___ Statement of Personal History (SBA Form 912)

___ Statements Required by Laws and Executive Orders (SBA Form 1261)

LOAN ASSUMPTION GUIDELINES (cont.)

___ Environmental Questionnaire and Disclosure Statement. If questionnaire reveals possible pollution problems, a Phase 1 report will be required as a minimum. If the business is on the "List of Frequently Polluting Industries", a Phase 1 report is mandatory.

___ Current or most recent real estate appraisal (additional collateral or on commercial real estate being sold)

___ Landlord Waiver (if no RE involved)

___ Business Credit report

___ Credit reports on all assumptors (required)

___ Copy of Corporate Charter or Partnership Agreement

___ Copy of Resolution by Board of Directors authorizing purchase and assumption of the SBA Loan (SBA Form 160)

___ Other

LOAN ASSUMPTION GUIDELINES (cont.)

SELLER:

___ Business Financial Statements (FYE) including Profit and Loss statement

___ Interim Business Financial Statement (if FYE is more than 90 days old)

___ Business Federal Tax Returns (two years)

___ Current Personal Financial Statement of borrowers and guarantors.

___ Personal Federal Tax Return (one year)

___ Written consent from all guarantors/co-obligors to this action/request

___ Current or most recent RE appraisal (if exchanging properties)

___ Assignment of Lease (seller retains RE and leases back to assumptor)

___ Guaranty release requested (explain fully)

___ SBA Form 1614, submitted in advance of request, (**503/504 LOANS ONLY)**

ALL DOCUMENTS MUST BE SIGNED AND DATED

Prepared by

Date:

Telephone:

Fax:

EFFECTIVE DATE: DECEMBER 1, 1997

LOAN ASSUMPTION GUIDELINES (cont.)

LOAN ASSUMPTION GUIDELINES (cont.)

EFFECTIVE DATE: DECEMBER 1, 1997

APPENDIX 30

LOAN POLICY AND PROGRAM OVERSIGHT GUIDE FOR LENDER REVIEWS

This Appendix has been created in WORD and is located on the Intranet. The address is:
"http://yes.sba.gov/offices/fa/oversight.html".

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