
AMERICA WEST
– ROADSHOW –
2020
– PRESENTED BY –
Capital Growth Solutions, LLC
WELCOME
TO THE ROADSHOW

Submitting the Guaranty

The SBA Liquidation Process A–Z

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It can be very challenging to understand the SBA SOPs and the other issue is they constantly change.

SBA SOP

- SBA SOP 5057 2- Servicing SOP for 7A loans- should be updated soon

- SBA SOP 5010 5 K – Origination and closing of SBA Loans.

WHAT SBA LOANS DOES THE 5057 2 GOVERN?

All SBA Loans that are fully disbursed and in regular servicing or liquidation status.

Fully disbursed means that the loan has been closed and all disbursements have been made.

On a revolving LOC – fully disbursed means that the loan has been closed and the initial disbursement has been made.

This just helps to clarify when a SBA loan moves from being governed by the 5010 to being covered by the 5057. It also helps to clarify when a revolver is considered fully disbursed.

DELEGATED AUTHORITY LOANS – SERVICING REQUEST ON LOANS THAT HAVE NOT BEEN FULLY DISBURSED- 5010 5 K

If there are changes in ownership, it must be submitted to SBA for approval.

They will review the following and then make changes in etran:

Verification that the proposed changes to the ownership of the Borrower comply with limitations on the aggregate amount of SBA portions of all loans to a Borrower, including affiliates .

Verification that there has been no prior loss to the Government caused by the new owner(s) or any business owned, operated or controlled by the new owner(s).

Lenders may not unilaterally approve any adjustment to or change in the ownership of a Borrower, including a change in percentage of ownership, for 12 months after final disbursement on any loan.

WHEN SHOULD A SBA LOAN BE PUT INTO LIQUIDATION?

- When a loan is 60 days or more past due.
- When an adverse event such as a bankruptcy, litigation, or closure of the business occurs.

SBA 7A Loans

- When a loan becomes 60 days or more past due.
- When an adverse event such as a bankruptcy, litigation, or business closure occurs.

SBA 504 Loans

PUTTING A LOAN INTO LIQUIDATION

As of Feb. 01, 2014, Participant banks are required to put SBA 7A loans into liquidation using Etran. It is expected that SBA One will accomplish this once the Servicing Module is on-line.

SBA 504 loans still require a submission to the appropriate SBA Servicing Center – Fresno or Little Rock.

When evaluating whether or not to put a loan into liquidation, please assess whether or not they can catch this up in 30 days or less. Putting a loan into liquidation impacts your PARRis score.

NEXT STEPS AFTER PUTTING A LOAN INTO LIQUIDATION

1. On a 7A loan, if it was sold in the secondary market, it must be repurchased.

2. on a 504 loan, if there is no chance for a workout, this is the time to request SBA to repurchase the debenture.

3. Both types of SBA loans should have a demand letter sent at this time.

4. Site visits should be conducted – Non payment default – within 15 days. Payment default within 60 days.

WHEN DOES THE SOP REQUIRES A SITE VISIT?

The only time that the SOP 5057 2 specifically requires a site visit is when a loan is put into liquidation. Other times that it is prudent to do a site visit include:

1. Prudent Servicing Standards – whatever your institution's site visit policy is.
2. During consideration of a workout plan
3. If there is a change in environmental risk
4. During a payment deferment

PREPARING FOR A SITE VISIT

1. Review the loan file specifically collateral documents.
2. Complete new lien searches.
3. Determine the status of taxes – property, payroll, income.
4. Appraisal review – Does a new appraisal need to be ordered?

THINGS TO DO DURING A SITE VISIT

1. Determining whether the property is occupied or vacant.
2. Assessing if there is environmental risk.
3. Gathering information for the preparation of a liquidation plan.
4. Evaluating the possibility of a workout with the borrower.
5. Repossessing personal collateral if appropriate.
6. Developing a plan for the Care and Preservation of the collateral including securing the property and making sure that you have insurance coverage on the collateral.
7. Evaluating if any repairs or cleanup are necessary on the property.

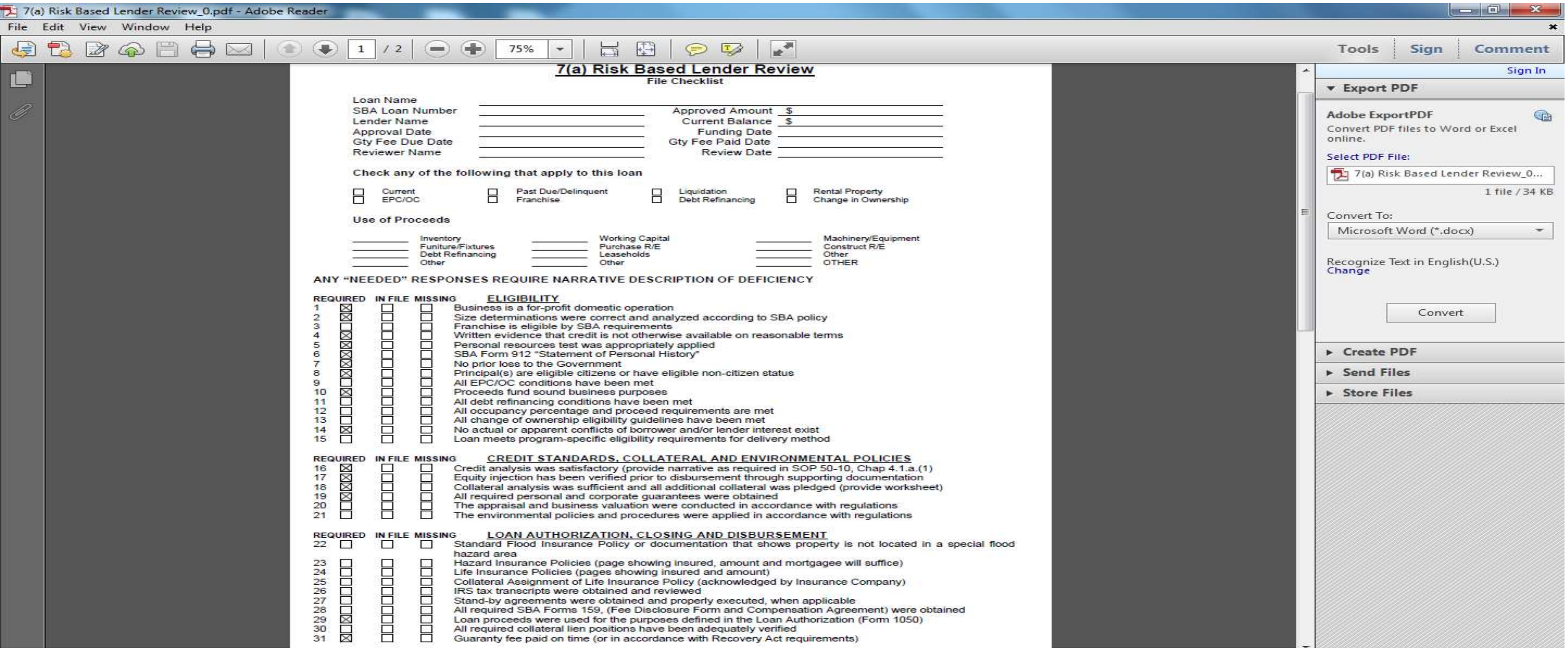
DOCUMENTING THE SITE VISIT

1. Use a site visit form that your bank uses as a prudent lender.
2. Address the 7 items in a memorandum format.
3. Attach digital pictures of the collateral items.

REVIEW THE LOAN FILE FOR EXCEPTIONS

It is critically important to review the file at this time for any exceptions that may exist and clear those exceptions. The time to do it is NOW not later!

FILE REVIEW



7(a) Risk Based Lender Review

File Checklist

Loan Name			
SBA Loan Number		Approved Amount	$
Lender Name		Current Balance	$
Approval Date		Funding Date	
Gty Fee Due Date		Gty Fee Paid Date	
Reviewer Name		Review Date	

Check any of the following that apply to this loan

☐ Current ☐ EPC/OC ☐ Past Due/Delinquent ☐ Franchise ☐ Liquidation ☐ Debt Refinancing ☐ Rental Property ☐ Change in Ownership

Use of Proceeds

______	Inventory	______	Working Capital	______	Machinery/Equipment
______	Funiture/Fixtures	______	Purchase R/E	______	Construct R/E
______	Debt Refinancing	______	Leaseholds	______	Other
______	Other	______	Other	______	OTHER

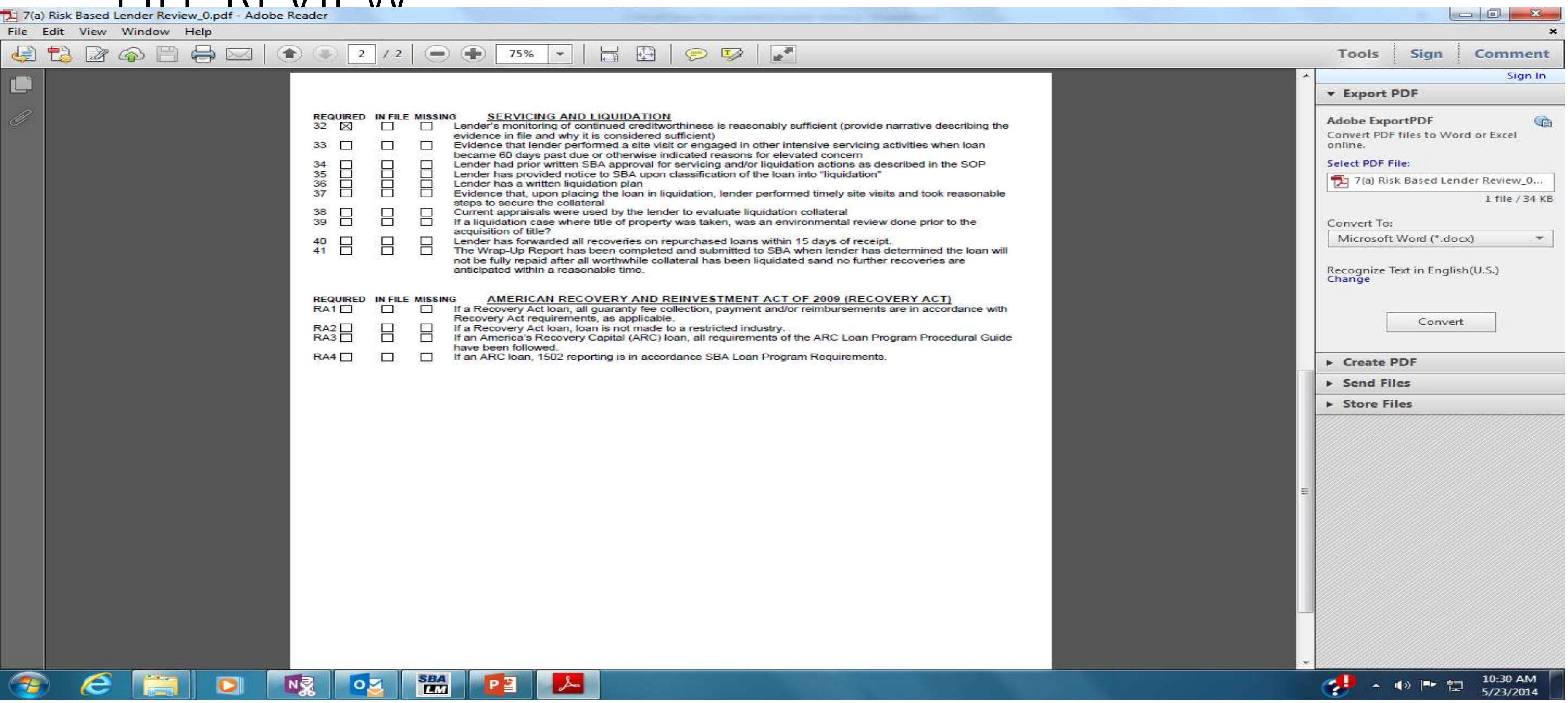
ANY "NEEDED" RESPONSES REQUIRE NARRATIVE DESCRIPTION OF DEFICIENCY

	REQUIRED	IN FILE	MISSING	ELIGIBILITY
1	☒	☐	☐	Business is a for-profit domestic operation
2	☒	☐	☐	Size determinations were correct and analyzed according to SBA policy
3	☐	☐	☐	Franchise is eligible by SBA requirements
4	☒	☐	☐	Written evidence that credit is not otherwise available on reasonable terms
5	☒	☐	☐	Personal resources test was appropriately applied
6	☒	☐	☐	SBA Form 912 "Statement of Personal History"
7	☒	☐	☐	No prior loss to the Government
8	☒	☐	☐	Principal(s) are eligible citizens or have eligible non-citizen status
9	☐	☐	☐	All EPC/OC conditions have been met
10	☒	☐	☐	Proceeds fund sound business purposes
11	☐	☐	☐	All debt refinancing conditions have been met
12	☐	☐	☐	All occupancy percentage and proceed requirements are met
13	☐	☐	☐	All change of ownership eligibility guidelines have been met
14	☒	☐	☐	No actual or apparent conflicts of borrower and/or lender interest exist
15	☐	☐	☐	Loan meets program-specific eligibility requirements for delivery method

	REQUIRED	IN FILE	MISSING	CREDIT STANDARDS, COLLATERAL AND ENVIRONMENTAL POLICIES
16	☒	☐	☐	Credit analysis was satisfactory (provide narrative as required in SOP 50-10, Chap 4.1.a.(1)
17	☒	☐	☐	Equity injection has been verified prior to disbursement through supporting documentation
18	☒	☐	☐	Collateral analysis was sufficient and all additional collateral was pledged (provide worksheet)
19	☒	☐	☐	All required personal and corporate guarantees were obtained
20	☐	☐	☐	The appraisal and business valuation were conducted in accordance with regulations
21	☐	☐	☐	The environmental policies and procedures were applied in accordance with regulations

	REQUIRED	IN FILE	MISSING	LOAN AUTHORIZATION, CLOSING AND DISBURSEMENT
22	☐	☐	☐	Standard Flood Insurance Policy or documentation that shows property is not located in a special flood hazard area
23	☐	☐	☐	Hazard Insurance Policies (page showing insured, amount and mortgagee will suffice)
24	☐	☐	☐	Life Insurance Policies (pages showing insured and amount)
25	☐	☐	☐	Collateral Assignment of Life Insurance Policy (acknowledged by Insurance Company)
26	☐	☐	☐	IRS tax transcripts were obtained and reviewed
27	☐	☐	☐	Stand-by agreements were obtained and properly executed, when applicable
28	☐	☐	☐	All required SBA Forms 159, (Fee Disclosure Form and Compensation Agreement) were obtained
29	☒	☐	☐	Loan proceeds were used for the purposes defined in the Loan Authorization (Form 1050)
30	☐	☐	☐	All required collateral lien positions have been adequately verified
31	☒	☐	☐	Guaranty fee paid on time (or in accordance with Recovery Act requirements)

FILE REVIEW



	REQUIRED	IN FILE	MISSING	SERVICING AND LIQUIDATION
32	☒	☐	☐	Lender's monitoring of continued creditworthiness is reasonably sufficient (provide narrative describing the evidence in file and why it is considered sufficient)
33	☐	☐	☐	Evidence that lender performed a site visit or engaged in other intensive servicing activities when loan became 60 days past due or otherwise indicated reasons for elevated concern
34	☐	☐	☐	Lender had prior written SBA approval for servicing and/or liquidation actions as described in the SOP
35	☐	☐	☐	Lender has provided notice to SBA upon classification of the loan into "liquidation"
36	☐	☐	☐	Lender has a written liquidation plan
37	☐	☐	☐	Evidence that, upon placing the loan in liquidation, lender performed timely site visits and took reasonable steps to secure the collateral
38	☐	☐	☐	Current appraisals were used by the lender to evaluate liquidation collateral
39	☐	☐	☐	If a liquidation case where title of property was taken, was an environmental review done prior to the acquisition of title?
40	☐	☐	☐	Lender has forwarded all recoveries on repurchased loans within 15 days of receipt.
41	☐	☐	☐	The Wrap-Up Report has been completed and submitted to SBA when lender has determined the loan will not be fully repaid after all worthwhile collateral has been liquidated sand no further recoveries are anticipated within a reasonable time.

	REQUIRED	IN FILE	MISSING	AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT)
RA1	☐	☐	☐	If a Recovery Act loan, all guaranty fee collection, payment and/or reimbursements are in accordance with Recovery Act requirements, as applicable.
RA2	☐	☐	☐	If a Recovery Act loan, loan is not made to a restricted industry.
RA3	☐	☐	☐	If an America's Recovery Capital (ARC) loan, all requirements of the ARC Loan Program Procedural Guide have been followed.
RA4	☐	☐	☐	If an ARC loan, 1502 reporting is in accordance SBA Loan Program Requirements.

BORROWER INTERACTION

The primary objective of borrower interaction when a SBA Loan is non-performing is to keep the borrower engaged.

BORROWER INTERACTION

Consider possible SBA Servicing Actions

1. Deferments
2. Restructure the Loan
3. Workout

CARE AND PRESERVATION OF COLLATERAL

The most important step in Care and Preservation is a timely and well documented site visit.

1. CARE AND PRESERVATION OF COLLATERAL

1. Security and Safekeeping
2. Insurance
3. General Maintenance

PRUDENT LIQUIDATION

One of the primary standards for a SBA participant lender is:

All Lenders must service and liquidate their SBA loans in a diligent, commercially reasonable manner that is free of conflicts of interest and Preferences, and is consistent with the Loan Authorization, Prudent Servicing and Prudent Liquidation practices, including the Prudent Liquidation Deadline, as defined in Chapter 2 below and the SBA Loan Program Requirements in effect at the time the action is taken.

LIQUIDATION PLAN

On a 7a Loan, a liquidation plan is a recommended document in the file of any non-performing loan. Only loans under the CLP will have liquidation plans that require SBA's approval.

On a 504 Loan that is non-performing, a liquidation plan is a required document and it requires approval.

LIQUIDATION PLAN FORMAT

1. Justification for transfer to Liquidation.
2. Workout attempts
3. Non SBA Loans that the bank has with the borrower.
4. Information on Guarantors
5. General Recovery Plan

	Real Estate	Real Estate	Personal Property	Other
Original Appraised Value				
Current Appraised Value				
Current Liquidation Value/Estimate				
Less senior liens/taxes:				
1st (name):				
2nd:				
3rd:				
Estimated net value:				
Expense Category				
Real Estate Appraisal				
Personal Property Appraisal				
Environmental Reports (Phase I or II)				
Insurance Coverage				
Legal Fees				
Care & Preservation of Collateral				
Escrow/Commissions				
Storage/Pickup/Asset Marshaling				
Trustee Foreclosure (if applicable)				
Auction/Sale Expenses				
Other:				
Other:				
Projected Recovery After Expenses:				

Payments During Liquidation

Once a loan is put into Liquidation, the Borrower no longer has a legal right to make payments on the loan. As a result, payments (as opposed to recoveries) on loans in liquidation status are generally rare.

How do you apply the payments??

Unless there is a workout agreement or legally binding agreement such as a bankruptcy plan payments should be applied as follows:

1) Principal Funds from payments received on loans in liquidation status must be applied to the principal balance of the loan until it has been paid in full;

(2) Accrued Interest After the principal balance of the loan has been paid in full, funds from payments received on loans in liquidation status must be applied to accrued interest; and

(3) SBA Permitted Loan Fees After the principal balance of the loan and the accrued interest have been paid in full, funds from payments received on loans in liquidation status may be applied to SBA permitted loan fees.

When should loans be removed from Liquidation status?

1. After three consecutive timely payments as a part of a workout agreement or agreement to let the borrower resume normal payments.
2. When the loan has been Paid in Full.
3. When the loan is Wrapped up and is ready to be charged off.
4. The Unilateral Matrix indicates that you as a participant bank can put the loan back into regular servicing. (In real life for loans in the Herndon Center, it does not work that way, you have to submit a request to Herndon to do this and it takes them a few weeks to do it.)

Requirements Before a Guaranty Purchase can occur.

1. Loan must be in default.
2. Loan should be in liquidation status with SBA.
3. Loan was purchased from the secondary market.
4. Any collateral with a recoverable value of $5K or more has been liquidated.

Purchase Demand on a Regular 7A Loan

Regular 7A Loan Purchase Packages go the Herndon NGPC

1. Tab 1 – Demand Letter to SBA
2. Tab 2 – Loan Authorization and any approved changes as well as companion loan information.
3. Tab 3- Eligibility Information
4. Tab 4 – Legal docs including note, guaranties, security agreement, UCC filings and searches, Title Insurance, 912s, etc.
5. Tab 5 –Disbursement – Needs to match the authorization or have approved changes attached.

Purchase Demand on a Regular 7a.

6. Tab 6 – Loan Transcript – needs to be on SBA Form or in SBA transcript format.
7. Tab 7 – Early Default Issues – IRS Tax Verification, Equity Injection Proof, Credit Memo, Standby Agreements, etc.
8. Tab 8 – Reconciliation of business personal property collateral.
9. Tab 9 – Collateral Info – Appraisals, site Visit, Sale or release of collateral, liquidation summary.
10. Tab 10 – The most important TAB – wire transfer information and CPC Tabs.

Guaranty Purchase Packages

All SBA 7 a Guaranty Purchase request with the exception of Express and CA loans should be submitted to Herndon using the 10 Tab PDK for all loans made before Jan 01, 2014.

After Jan 01, 2014. All 7 a loans over $350,000 plus the EWCP loans should be submitted to Herndon using the 10 Tab PDK.

After Jan. 01, 2014, All 7 a loans under $350,000 should be submitted to the appropriate servicing center (Little Rock or Fresno) using the Express 10 Tab PDK.

This is a significant change. A SBA 7 A Loan done under GP for $349,000 after Jan. 01, 2014. If it defaults and Guaranty Purchase is required would be submitted using the Express PDK and it would be sent to Little Rock or Fresno. These centers are quicker and more efficient that Herndon and the PDK is less cumbersome.

Express Loan Purchases

These Purchase Demands either go to Little Rock or Fresno depending on where you are located.

On Express Loans, you can submit for expedited purchase in many circumstances and get paid before the final liquidation of collateral.

Express PDK

1. Tab 1 – Eligibility Information
2. Tab 2 – Authorization and approved changes.
3. Tab 3 – Note and Guaranties
4. Tab 4- Wire Transfer Info.
5. Tab 5- Loan transcript – SBA Form or Format
6. Tab 6 – Special Loan Program Info – Community Exp., Patriot Exp., Export Exp.

Express PDK

7. Tab 7 Collateral Information
8. Tab 8 – Liquidation of Collateral Summary, Litigation Summary
9. Tab 9 – Bankruptcy Information
10. Tab 10 – Early Payment Default Info

Resolution after Guaranty Purchase

Return to regular servicing via a workout agreement.

Paid in Full

Wrapped Up and Recommendation for charge off- this is required within 24 months of guaranty purchase or the effective date of the SOP 5057 2 - 12-1-15 whichever is longer.

The Deadline for Wrap Up Reports on SBA Loans that were in Liquidation prior to 12-1-15 is 12-1-2017.

If this cannot be accomplished an extension may be approved for a timely wrap up.

Content of a Request for Extension of the Wrap Up Period.

A detailed description of the extenuating circumstance preventing timely liquidation;

Supporting documentation evidencing the extenuating circumstances;

A reasonable estimate of when the Prudent Liquidation will be complete on the SBA purchased loan; and

A status report must be submitted with the request for extension

What are the consequences for an untimely Wrap Up?

1. Lender is required to buy the loan back from SBA.
2. Referral to SBA OCRM.
3. You could loose your ability to sell loans in the secondary market.
4. You could loose your delegated lending authority.

Charge Offs

When is a recommendation for charge off appropriate on a SBA Loan?

All reasonable efforts have been exhausted to achieve recovery from: (1) voluntary payments on the Note; (2) compromise with the Obligors; (3) liquidation of the collateral; and (4) enforced collection.

Further collection efforts are not cost effective or practical.

Remaining legally obligated Obligors cannot be located, are unable to pay the loan balance, or are unwilling to pay the loan balance.

The loan balance is uncollectible due to discharge in bankruptcy

Acceptable CPC/Recoverable Expenses

1. UCC Searches, Title Reports, Credit Reports, Asset Searches
2. Appraisals and Environmental Reports
3. Site Visits
4. Litigation Expenses
5. Care and Preservation expenses – utility bills, insurance, repairs, and property taxes

When Can you submit CPC/ Recoverable expenses?

You can submit your CPC expenses with your Purchase Demand Kit.

You can also submit your expenses with the Wrap Up Report.

CPC Expense TABS

1. General Information
2. Collateral Sheet showing what collateral was taken and what remains.
3. Recovery Documents – shows recoveries from the sale of collateral and how it was applied.
4. Legal Fees- summary of Legal Expenses
5. Valuations – Appraisals, BPOs, Asset valuations, Environmental, and Site Visit Information.
6. Asset and Lien Searches- summary of expenses
7. Preservation of collateral expenses
8. Miscellaneous Expenses- should be minimal

How to apply collateral recoveries

Recoverable Expenses

Principal Balance

Accrued Interest

Expense Reimbursement

Expenses should be deducted from recoveries first.

Expenses not covered by recovery will be reimbursed by SBA.

Remember SBA’s portion of the recovery has to be submitted within 15 business days of the Recovery.

Liquidation servicing actions

Loans in Servicing & Liquidation (after final disbursement)

See SOP 50 57 2 and 13 CFR 120.535 and 120.536

		After final disbursement, actions that require SBA notification and requests for prior SBA approval Must be sent to the appropriate Commercial Loan Servicing Center (CLSC).			
SBA Approval Required	Activity creating real, apparent, or potential conflict of interest/ Confer a Preference [3]				X
	Release Borrower or Guarantor				X
	Compromise principal balance owed [4]				X
	Assumption of loan with release of original Borrower / Guarantor				X
	Take title to any property in the name of SBA				X
	Take title to Contaminated property, or take over operation or control of a business that handles Hazardous Substances or is located on Contaminated property.				X
	Emergency Purchase from secondary market				X
	Determination of involuntary prepayment / subsidy recoupment fee				X
	Reinstatement of SBA Guaranty				X
	Extraordinary servicing fee per 13 CFR 120.221(b)				X
	Increase loan amount on loans approved by the Standard 7(a) LGPC [6]				X
	Transfer, sell or pledge more than 90% of a loan				X
Etran Update or SBA Notification Required	Transfer, sell or pledge 90% or less of a loan		X		
	Decrease to loan approval amount or SBA's Guaranty percentage		X		
	Terminate SBA Guaranty <u>prior to</u> submission of Guaranty Purchase Demand Kit [7]	X			
	Extend maturity prior to stated maturity date for loans in Regular Servicing [6, 15]	X			
	Extend maturity prior to stated maturity date for loans in Liquidation		X		
	Change interest rate <u>within loan program guidelines</u> [2, 6]		X		
	Change in Borrower's legal structure [8]		X		
	Add a Guarantor to the loan	X			
	Correct or Change EIN or SSN [8]		X		
	Change Obligor's address or legal/trade name of business [8, 14]	X			
	Assumption of loan without release of original Borrower / Guarantor	X			
	Transfer loan into liquidation status [7]	X			
	Return loan to regular servicing status [13]		X		
	Change a loan to PIF status [7]	X			
	Increase loan amount on loans approved under delegated authority [6]	X			
	Change loan from revolving to non-revolving	X			

For the most recent version of this matrix, click here!

Liquidation servicing actions

Servicing and Liquidation Actions
7(a) Lender Matrix

		Unilateral Actions			
		E-Tran Required	Notify Center	No Notification Required	Requires Prior SBA Approval
No Approval or Notification	Subordinate / release lien[3]			X	
	Defer payments[3,6]			X	
	Release / substitute collateral[3]			X	
	Accept prepayments (subsidy recoupment fee may apply)			X	
	Changes to Loan Authorization, including changes to use of proceeds			X	
	Correct typographical errors in loan documents (including Loan Authorization)			X	
	Make loan that does not adversely affect collateral position of SBA guaranteed loan			X	
	Change flood, life or hazard insurance requirements[9]			X	

Liquidation Servicing actions

Liquidation Actions [3]				
Liquidation Plans and amendments for loans approved under CLP procedures (Liquidation Plans are encouraged for other loans as an aid to recovery)				X
Sale of collateral or acquired collateral to the Lender, an Associate of Lender, employee of Lender or Close Relative of an employee of the Lender				X
Private sale of collateral or acquired collateral to an Obligor, or Close Relative or Associate of an Obligor				X
Appoint a receiver				X
Continue liquidation actions for more than 24 months past date of guaranty purchase [16]				X
Public, private or negotiated sale of collateral (other than those above) [3]			X	
Initiate foreclosure proceeding [10]			X	
Obtain Phase I or Phase II environmental audit (may be needed for possible acquisition of property or other reason)			X	
Deed in lieu of foreclosure that will not prevent recovery from Borrower/Guarantors			X	
Enter Protective Bid at foreclosure sale			X	
Purchase or pay prior lien [3]			X	
Site visit			X	
Obtain current Appraisal			X	
Pay real estate taxes			X	
Hire auctioneer or appraiser [3]			X	
Postpone liquidation action if necessary [16]			X	
Abandon collateral when justified			X	
Terminate SBA Guaranty after submission of Guaranty Purchase Demand Kit [7]		X		
Litigation Actions				
Litigation Plan and budget (for Routine Litigation [11] and legal fees under $10,000)			X	
Litigation Plan and budget (if legal fees exceed $10,000 or Non-routine Litigation [12], or if Routine Litigation becomes non-routine)				X
Amendments to Litigation Plans where material changes arise that were not addressed in the original plan				X
Any amendments to an approved Litigation Plan if fees increase by more than 15%				X

For the most recent version of this matrix click here!

Thank you!
Questions?

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