

APPENDICES

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Appendix 1-A

Franchise Eligibility Checklist

Check Franchise Registry at www.franchiseregistry.com for applicant's Franchise.

When Franchise is on the Registry:

Ask Franchisor for Certificate

- Certificate of No Material Change received – Eligible: franchisor is not affiliated with the franchisee under the franchise agreement
- Certificate of Material Change received – New Eligibility determination required.
 - Send Certificate to FRANDATA and Senior Franchise Counsel. Wait for them to examine changes and determine affect on eligibility and let you know if the franchise is still eligible – **OR**
 - Send Certificate to FRANDATA and Senior Franchise Counsel. Then Determine eligibility as if the Franchise was Not listed on the Registry

When Franchise is Not in the Registry:

1. Ask Franchisor for Franchise Documents

- FTC Offering Circular (if they have one) or Current and Historical Financial and Litigation Information of the Franchise
- Franchise Agreement with Attachments & Amendments
- Referenced/Related Documents – Leases

2. Analyze Franchise Documents for Affiliation under 13 CFR 121.103(g):

Affiliation based on franchise and license agreements. The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

3. Apply Franchise Eligibility Guidelines in SOP 70-50, Ch. 3., Para. 8 and Appendix 3e, and SOP 50-10, Para. A., Ch. 3, Sec. 3e:

Under the Franchise Agreement Franchisor must not control Franchisee, directly or through an agent, to such a degree that the Franchisee does not have the independent right to profit from its efforts and bear the risk of loss commensurate with ownership.

- ❑ Franchise Fee and other fees are not excessive
- ❑ Franchisee has control of money & accounts – deposits and withdrawals.
(Franchisor may prescribe accounting method and due dates for fee payment, but may not control accounts)
- ❑ Franchisee manages daily operations (except in case of illness or disability)
- ❑ Franchisee controls, hires and fires, employees (Franchisor can require employee training)
- ❑ Agreement specifies:
 - ❑ Events of default
 - ❑ What written Notice of default will be provided
 - ❑ Events that may lead to termination
 - ❑ Events that cause automatic termination
 - ❑ Time to cure provided for other defaults
- ❑ Franchisee has the right to transfer its interest in the franchised business:
 - ❑ Franchisor allows transfer to qualified transferee (Qualifications must be specified in Agreement or otherwise set forth in writing)
 - ❑ Franchisor prior written consent will not be unreasonably withheld or delayed
 - ❑ Franchisor does not control sale price or appraisal method
- ❑ Terms and conditions of leases and/or other franchise related documents do not lead to excessive Franchisor control
- ❑ EPC/OC Real Estate Loans: EPC directly leases 100% of space to the OC, not through an agent or subsidiary of the Franchisor
- ❑ Gas Station Loans: Effect of Petroleum Marketing Practices Act (PMPA)
- ❑ Determine if state law where the franchisee is located will affect any terms of Franchise Agreement and your eligibility determination.

4. Ask SBA whether there have been eligibility issues with this franchise

Send an e-mail to FRANCHISE@sba.gov or contact the Senior Franchise Counsel or local District Counsel to determine if this franchise has appeared on the Franchise Findings list, what problems there were, and whether franchisor was willing to negotiate a fix.

5. If eligible, get SBA Franchise Code Number, if ineligible try to negotiate a fix.

Existence of a SBA franchise code number does not mean the franchise is eligible. Comfort letters are not acceptable evidence of fixes. Franchisor must provide a written amendment if franchise agreement is changed or written agreement not to enforce a provision.

APPENDIX 4-A

QUICK REFERENCE GUIDE SOP 50 50 4 – SERVICING ACTIONS (Chapter/Paragraph)

The following is a selected list of servicing actions with the SOP reference. (For PLP, Express and LowDoc loans, see chapters 3, 4, and 5 for lender’s delegated authority.)

<u>ACTION TYPE</u>	<u>SOP 50 50 4</u>	<u>ACTION TYPE</u>	<u>SOP 50 50 4</u>
Assumptions	Ch. 5/10	Reinstating SBA Guaranty	Ch. 10/3.a
Deferment	Ch. 5/8	Release of collateral/substitution*	Ch. 5/5.b
Exception to Policy	Ch. 2/4.i	Servicing (SBA to assume)	Ch. 9/17
Hazard Insurance	Ch. 5/18	Standby Agreement	Ch. 5/13
Interest Rate Adjustment	Ch. 5/16	Subordination	Ch. 4/17,5/8
Life Insurance	Ch. 5/19	Liquidation (transfer in)	Ch. 7/10
Maturity (extension of)	Ch. 5/5.b	Note Receivable	Ch. 7/5.g
UCC Continuation Filings	Ch. 4/7.b.1	Workouts	Ch. 7/5
Post Purchase Review	Ch. 9/10.c(1)	Purchase (Secondary)	Ch. 9/15
Transfer loans between District Offices	Ch. 3/1.d		
Transfer loans between Participant Lenders	Ch. 5/27		
Transfer loans to Fresno/Little Rock	Ch. 3/1.a		

Appendix 5-A

QUICK REFERENCE GUIDE SOP 50 51 2A – LIQUIDATION ACTIONS (and SOP 50 50 4A, SERVICING ACTIONS, where applicable)

(Chapter/Paragraph)

<u>ACTION TYPE</u>	<u>SOP 50 51 2</u>	<u>ACTION TYPE</u>	<u>SOP 50 51 2</u>
Abandonment	Ch. 11/34.a	Life Insurance	Ch. 22/2
Appraisals	Ch. 16/1.a	Liquidation Plan	Ch. 8/11.b
Assumption (SOP 50 50 4A)	Ch. 5/10	Maturity (Extension of) (SOP 50 50 4A)	Ch. 5/15.b
Auction	Ch. 15	Note (Sale of)	Ch. 4/14
Charge-Off	Ch. 18/2	Payment Application	Ch. 19/39.a and .b
Colpur (REO)	Ch. 11	Prior Lien Purchase/Payment	Ch. 21/5.f.(1) and (3)
Compromise	Ch. 17	Private Sale	Ch. 7/5.d
Compromise (without merit)	Ch. 17/7.c.3	Protective Bid	Ch. 7/10
Deed in Lieu of Foreclosure	Ch. 7/3.b	Protective Bid (tolerance range)	Ch. 7/14
Deferment	Ch. 5/4	Release of Collateral	Ch. 6/13
Environmentally Impaired Property	Ch. 6/15	Servicing (SBA to assume) (SOP 50 50 4A)	Ch. 9/17
Exception to Policy (SOP 50 50 4A)	Ch. 2/2.i	Taxes (Payment of R/E Taxes)	Ch. 20
Expenses (Payment of)	Ch. 19/8	Termination of Guaranty	Ch. 9/4.a
Forced Sale	Ch. 2/3.c	Title to Property	Ch. 11/5
Foreclosure (DOT)	Ch. 7/3.d	Transfer of loan to another lender (SOP 50 50 4A)	Ch. 5/27
Guarantors (Release of)	Ch. 12/12	Trustee Sale	Ch. 7/3.d
Insurance Coverage (Participant)	Ch. 22/1.a.3	UCC Release (Abandonment)	Ch. 6/23
Interest Rate Adjustment	Ch. 5/ 6 and 7	Workout	Ch. 5/1
Judgment	Ch. 12/16		
Late Fees (SOP 50 50 4B)	Ch. 3/9.a.3		
Legal Budget/Legal Fees	Ch. 8/22.b		
Legal Budget/Legal Fees (PLP)	Ch. 10/5.k		
Lender's Private UCC Sale	Ch. 8/19.a		
Liens (Senior Competing)	Ch. 21/1		
Liens (Competing Liens)	Ch. 8/10		

Appendix 5-B

LITIGATION PLAN

SBA LENDERS MUST SUBMIT A LITIGATION PLAN FOR PRIOR APPROVAL TO SBA COUNSEL FOR: (1) NON-ROUTINE (CONTESTED) LITIGATION INCLUDING ANY LITIGATION IN WHICH THE LENDER HAS ANOTHER OUTSTANDING LOAN TO THE BORROWER OR A GUARANTOR; AND (2) ROUTINE LITIGATION FOR WHICH OUTSIDE COUNSEL PROPOSES TO CHARGE FEES AND COSTS EXCEEDING \$5,000. LENDER MUST NOTIFY SBA COUNSEL IN WRITING WITHIN 15 DAYS OF THE DATE OF THE COMMENCEMENT OF ANY DEFENSIVE LITIGATION INVOLVING AN SBA GUARANTEED LOAN.

For a case requiring a Litigation Plan, you must provide the following:

Loan Name: _____

Loan Number: _____

1. Strategy, including what expert witnesses will be needed and their estimated cost and whether the case can be disposed of by motion or by trial;
2. Information regarding all non-SBA debts owed by the borrower, its owners and guarantors to the SBA participating lender, including the original amount of the obligation, current balance and current status;
3. Estimate of the recovery;
4. Risk of adverse precedent;
5. Actual or potential conflicts of interest;
6. Whether some form of Alternative Dispute Resolution (ADR) is advantageous, such as mediation, mini-trial or arbitration;

7. Settlement alternatives;
8. Estimated timetable; and
9. Any proposed pro-rata allocation of fees and recoveries, if lender has one or more loans to the borrower, its owner or guarantors that are not guaranteed by SBA.
10. Estimate of attorney's fees, including method of billing, and other litigative expenses.

AFTER APPROVAL OF THIS PLAN, YOU MUST:

1. **Submit legal bills to SBA counsel when received.**
2. **Submit substantive pleadings such as dispositive motions or other pleadings containing substantive legal arguments or statements of policy prior to filing; and**
3. **Submit an amended Litigation Plan as soon as modification of the plan is necessary or when the proposed legal fees and costs exceed the projections contained in the original litigation by 5 percent.**

LENDER

DATE

Appendix 6-A

QUICK REFERENCE GUIDE SOP 50 50 4, LOAN SERVICING, and SOP 50 51 2, LOAN LIQUIDATION, on GUARANTY PURCHASE

(Chapter/Paragraph)

<u>ACTION TYPE</u>	<u>SOP 50 50 4A</u>	<u>ACTION TYPE</u>	<u>SOP 50 51 2A</u>
Accrued interest (payment of)	Ch. 9/8	Amount of loss	Ch. 13/8
Acquisition of collateral (affect on purchase)	Ch. 9/12	Asset injection	Ch. 13/24.b
Determining earliest uncured default	Ch. 9/6	Borrower's injection	Ch. 13/24
Determining interest rate for purchase	Ch. 9/7	Burden of proof	Ch. 13/7
Information required of lender for purchase	Ch. 9/4	Cash injection	Ch. 13/24.a
Notice to lender of purchase	Ch.9/14	Change of ownership	Ch. 13/21.b & 23
Receipt of funds from SBA	Ch. 9/11	Collateral available at liquidation	Ch. 13/22.b
Regulation	Ch. 9/2	Collateral lien position	Ch. 13/26
Review of loan documentation	Ch. 9/10	Collateral lists at time loan is made	Ch. 13/27
Purchase from secondary market	Ch. 9/15	Denial of liability (SBA official w/authority)	Ch. 13/1
Purchase log	Ch. 9/19	Denial of liability (evaluation of)	Ch. 13/3
SBA's purchase of unguaranteed portion	Ch. 9/18	Determining amount of loss attributable to lender	Ch. 13/23
SBA's unilateral purchase privilege	Ch. 9/13	Early default/early loan problems	Ch. 13/14, 22.c.(i), & 21.a
Verification of lender's transcript	Ch. 9/9	Establishing loss if collateral is missing at liquidation	Ch. 13/22.c
When SBA purchases	Ch. 9/3	Expiration of guaranty after maturity	Ch. 13/25
When lender must submit complete purchase	Ch. 9/5	File documentation	Ch. 13/12
		IRS delay	Ch. 13/21
		IRS tax verification	Ch. 13/21
		Length of time in business	Ch. 13/24.c
		LowDoc eligibility	Ch. 13/16
		Program integrity	Ch. 13/9

Appendix 6-B

GUARANTY PURCHASE CHECKLIST

SBA Loan Number: _____ **SBA Loan Name:** _____

Instructions: Items pre-checked are mandatory for all purchases. Additional checked items are necessary to determine liability of SBA to honor its guaranty for this loan. If a required item is not available, Lender must provide a written explanation. Lender must **not** deliver or assign any original collateral documents to SBA unless directed to do so by SBA.

Note: For purchases under the Streamlined Guaranty Purchase Process (SBA share \$10,000 or less) go to next page.

BANK	REQ'd of REC'd	SBA USE ONLY NEED	
<u>ADMINISTRATIVE DOCUMENTS</u>			
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Written demand that SBA honor its guaranty
2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wire transfer instructions
3	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certified Transcript of Account signed by lender; transcript must include payment receipt dates, interest rates in effect, amounts applied to principal and/or interest; transcript must show all transactions on borrower's account including liquidation receipts and expenses, along with date of default, interest rate at default, date to which interest has been paid and next installment due date
<u>SBA POLICY / SOP REQUIREMENTS</u>			
4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Loan Authorization and any amendments
5	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Settlement Sheets (SBA Form 1050). Attach evidence showing proceeds were used according to the Authorization and instructions on SBA Form 1050; include copies of cleared joint payee checks, bills of sale and paid invoices, as applicable
6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Risk Management Database information
7	<input type="checkbox"/>	<input type="checkbox"/>	Evidence of borrower Injection (such as copies of cleared checks, bank statements, escrow closing statements, paid invoices); required if injection is a condition of the loan authorization
8	<input type="checkbox"/>	<input type="checkbox"/>	IRS Income Tax Verification for _____ years
9	<input type="checkbox"/>	<input type="checkbox"/>	Lender's credit memorandum and supporting documentation (PLP/SBAExpress early default loans)
10	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Loan eligibility determination (PLP loans only)
11	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Loan eligibility checklist and supporting documentation (LowDoc loans only)
12	<input type="checkbox"/>	<input type="checkbox"/>	Liquidation Plan
13	<input type="checkbox"/>	<input type="checkbox"/>	Site Visit Reports
14	<input type="checkbox"/>	<input type="checkbox"/>	Liquidation Wrap-up Report with supporting documentation
<u>DEBT INSTRUMENTS</u>			
15	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Note (SBA Form 147) with any Modifications/Amendments
16	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Guaranties (SBA Form 148)
17	<input type="checkbox"/>	<input type="checkbox"/>	Evidence of guarantor consent for any material changes to the loan terms
<u>REAL ESTATE COLLATERAL</u>			
18	<input type="checkbox"/>	<input type="checkbox"/>	Recorded Deeds of Trust / Mortgages covering _____
19	<input type="checkbox"/>	<input type="checkbox"/>	Transfer and Assignment of Deeds of Trust / Mortgages to SBA (only if SBA services)
20	<input type="checkbox"/>	<input type="checkbox"/>	Title Insurance Policies and/or Certificates

PERSONAL PROPERTY COLLATERAL

- 21 Security Agreements
- 22 UCC Financing Statements filed with Secretary of State and/or County
- 23 UCC Continuation Statements and Amendments
- 24 UCC Financing Statements with assignments to SBA
- 25 Post Default UCC Lien Searches, including copies of all filings
- 26 Landlord's Subordination / Waiver
- 27 Certificate of Ownership and/or Certificate of Title on Vehicles / M&E / Manufactured Homes
- 28 Transfer and assignments of Vehicle / M&E / Manufactured Home titles to SBA (only if SBA services)

INSURANCE REQUIREMENTS

- 29 Life Insurance Policies (summary pages only)
- 30 Collateral Assignment of Life Insurance Policy (acknowledged by Insurance Company)
- 31 Transfer and Assignment to SBA of Collateral Assignment of Life Insurance Policy (only if SBA services)
- 32 Hazard Insurance Policies (page showing insured, amount & mortgagee will suffice)
- 33 Evidence of Standard Flood Insurance Policy or determination that property is not located in a special flood hazard area

OTHER MISCELLANEOUS DOCUMENTS

- 34 Reconciliation of original collateral, with a unit value of \$500 or more (include description and serial numbers) to current inventoried collateral
- 35 Demand Letters
- 36 Copies of all legal pleadings, including bankruptcy filings
- 37 Itemized legal invoices, including hours per task and charge per hour
- 38 Itemized expenditures (these expenditures should match the Transcript of Account)
- 39 Reports for sale of collateral
- 40 Appraisals received at loan origination and liquidation (summary pages only)
- 41 Lease Agreement (pages showing terms, lessee & signatures)
- 42 Environmental Questionnaires on _____
- 43 Phase I and/or Phase II Environmental Report (Summary & Recommendation pages only)
- 44 SBA Form 912, Statement of Personal History, for each principal (required for PLP/SBAExpress early default loans)
- 45 Other: _____
- 46 Other: _____ -

IMPORTANT: When instructed to transfer servicing to SBA and original documents are required, the Note (and any Modifications/Amendments), Guaranties, and Security Agreements must have the following typed on them and be signed and dated by the Lender: **“Transferred and assigned to the U.S. Small Business Administration, an Agency of the U.S. Government, without recourse.”**

CHECKLIST FOR STREAMLINED SMALL LOAN BALANCE PURCHASES (SBA share \$10,000 or less)

- | BANK | REQ'd
of
REC'd | SBA USE ONLY
NEED | |
|------|-------------------------------------|--------------------------|--|
| 1 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Written demand that SBA honor its guarantee including date of default, interest-paid-to date, interest rate at time of default, and the next installment due date. |
| 2 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Wire transfer instructions |

- 3 Certified Transcript of Account signed by lender *(must include the payment receipt dates, the interest rates in effect, and the amounts applied to principal and/or interest. The transcript must show all transactions on the borrower's account including liquidation proceeds and expenses)*
- 4 Lender's documentation of eligibility (PLP and Lowdoc loans only)
- 5 Copies of Note, executed Loan Authorization and any guaranties
- 6 Risk Management Database information
- 7 Lender certification that loan proceeds were disbursed in accordance with the loan authorization

IF LIQUIDATION IS COMPLETE:

7 Lender certification that liquidation is complete and that all avenues of collection have been completed

8 **Final wrap-up report with information required by SOP 50 51 2**