

**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

Subject: Revision "B" to SOP 50-50(4), Loan Servicing

INTRODUCTION

1.Purpose:

To update policy and procedural guidance for servicing business loans.

2.Personnel Concerned:

Headquarters and field personnel engaged in business loan servicing activity.

3.Page Changes:

Remove

Insert

3-2 - 3-18	i - xiii	3-2 - 3-14	i - xii
A20-i - A20-ii		A20-i - A20-ii	
	A21-i - A21-ii		A21-i - A21-ii
			A30-i - A30-xc
	I-i - I-xii		I-i - I-xii

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TABLE OF CONTENTS

CHAPTER 1

WHAT DOES THIS STANDARD OPERATING PROCEDURE (SOP) COVER, AND HOW IS IT ORGANIZED? 1-1

1. What is the Purpose of this SOP? 1-1
2. How is this SOP Organized? 1-1
3. What are the Sources of Authority and Guidance for Servicing Activity? 1-1

CHAPTER 2

HOW DOES SBA SERVICE LOANS? 2-1

1. What is a Servicing Action? 2-1
2. Who Has Authority to Take Servicing Actions on SBA Loans? 2-1
3. Which 327 Actions Must SBA Counsel Review? 2-5
4. What Other 327 Actions Does SBA Counsel Typically Review? 2-6

CHAPTER 3

ADMINISTRATIVE ASPECTS FOR LOAN SERVICING 3-1

1. Transferring Loans to the Commercial Loan Servicing Centers (CLSC). 3-1
2. [Lender/CDC/Office of the Inspector General \(OIG\) Reviews.](#) 3-3 |
3. What Actions May You Take if the Lender/CDC is Not Properly Servicing its Loans? 3-4 |
4. Setting Up Lender and CDC File. 3-5 |
5. SBA Field Visits to Borrowers with Lender or CDC-Serviced Loans. 3-6 |
6. SBA Field Visits to Borrowers for SBA-Serviced Loans. 3-7 |
7. What Fees Does SBA Charge a Lender? 3-7 |
8. What Fees Can a Lender Charge? 3-8 |

EFFECTIVE DATE: OCTOBER 1, 1999

| 9. What Fees Relate to Certified Development Companies (CDC) and to CDC Loans? 3-11

| 10. How Do You Suspend/Terminate/Reinstate CDC Servicing Fees? 3-11

CHAPTER 4

GENERAL

LOAN SERVICING REQUESTS AND ACTIONS 4-1

1. General Guidelines for Loan Servicing and SBA's Policy on Lender Servicing..... 4-1

2. What is the Objective of Loan Servicing Actions? 4-2

3. What are Indicators of Potential Servicing Problems? 4-2

4. How Should You Prepare a Response to a Servicing Request? 4-3

5. What is Required in the Servicing Request to SBA? 4-3

6. What are Additional Requirements for Actions Affecting the Loan Collateral? 4-4

7. Uniform Commercial Code (UCC) National Financing Statement Renewing, Modifying, or Releasing Security Interests Responsibilities 4-6

8. What is the SBA Form 327, Modification or Administrative Action? 4-7

9. Maintaining Record of Servicing Requests, Actions, and Loan Account Communications. 4-9

10. What are Seasoned Loans? 4-11

11. What Lender Actions Must Have SBA's Approval? 4-12

12. What is Unilateral Authority? 4-12

13. What Actions May the Lender/ALP-CDC Approve with Unilateral Authority? 4-13

CHAPTER 5

SPECIFIC LOAN SERVICING ACTIONS 5-1

1. Servicing Actions During the Disbursement Period. 5-1

EFFECTIVE DATE: OCTOBER 1, 1999

2.	Preparation and Submission of a Servicing Request.	5-1
3.	Requests for Information.	5-2
4.	Pre-Authorized Debits (PADs).	5-6
5.	Release of Collateral.....	5-6
6.	Subordination of Collateral/Lien.	5-8
7.	Substitution of Collateral.	5-9
8.	Deferments of Loan Payments.	5-10
9.	Inter-Creditor Agreements	5-13
10.	Assumption of a Loan by an Unrelated Party.	5-14
11.	Processing "Paid in Full" Loans.	5-16
12.	Proceeds from Condemnation of a Borrower's Collateral.	5-17
13.	Release of, or Changes to, a Standby Agreement.	5-17
14.	Guarantor Release/Substitution.	5-18
15.	Extension to the Maturity of the Borrower's Loan.	5-20
16.	Interest Rate Changes.	5-22
17.	Other Loan Repayment Term Changes.	5-22
18.	Hazard Insurance Requirements.	5-23
19.	Life Insurance Requirements.	5-24
20.	Proceeds of Life Insurance upon Death of Insured.	5-25
21.	Claims Against Estates of Deceased Borrowers/Guarantors.	5-26
22.	Flood Insurance Requirements.	5-27
23.	Proceeds from Insurance Claims for Losses on Collateral.	5-30

EFFECTIVE DATE: OCTOBER 1, 1999

24.	Borrower Financial Statements: Changes in Form or Frequency.	5-31
25.	Loan Agreement Management Compliance Covenants (Salary/Dividend Limits, Performance Ratios, etc).	5-33
26.	Assignment of Interest in a Loan/Transfer of Loan(s).	5-34
27.	Transfer of Loans between Participating Lenders.	5-36
28.	Surrender of CDC Certification & Transfer of Portfolio.	5-37
29.	Assistance Provided to Existing Borrowers who Suffer Losses in a Declared Disaster.	5-37

CHAPTER 6

SPECIAL LOAN PROGRAMS 6-1

1.	General Guidance.	6-1
2.	Participation 7(a) Loans.	6-1
3.	Direct 7(a) Loans.	6-1
4.	Certified Lenders Program (CLP) - Servicing.	6-2
5.	Preferred Lenders Program (PLP) - Servicing.	6-3
6.	Low Documentation Loan Program (LowDoc) - Servicing.	6-5
7.	FA\$TRAK Loan Program - Servicing.	6-7
8.	CAPLines Loan Program - Servicing.	6-10
9.	Export Working Capital Program (EWCP) - Servicing.	6-12
10.	Disaster Loans - Servicing.	6-15
11.	Disaster Farm Loans.	6-15
12.	Certified Development Company Loans (504 Loans) - Servicing.	6-16
13.	Accredited Lenders Program (ALP) - Servicing.	6-19

EFFECTIVE DATE: OCTOBER 1, 1999

CHAPTER 7

**WORKOUT AND INTENSIVE SERVICING RESPONSIBILITIES
OF FIELD OFFICES AND SERVICE CENTERS** 7-1

1. General Guidelines for Intensive Servicing. 7-1
2. What Questions Must You Ask Before You Process a Workout? 7-3
3. What are the Limitations on Extensions of Loan Maturity Dates? 7-5
4. What are the Issues You/Lender/CDC Should Consider Before Agreeing to a Workout? 7-5
5. What are Some of the Actions Available for a Workout? 7-7
6. How Must you Process a Workout Action? 7-12
7. What Resources are Available from SBA to Help Borrowers, and When Should You Refer a Borrower for Assistance? 7-14
8. How Do You Process Advances/Expenses During Loan Workouts? 7-15
9. Real Property and Personal Property Appraisals. 7-15
10. Classifying a Loan as "In Liquidation" or "In Litigation." 7-16

CHAPTER 8

THE SECONDARY MARKET FOR SBA GUARANTEED LOANS 8-1

1. Why Did SBA Establish a Secondary Market Program for SBA Loans? 8-1
2. What Do the Regulations State About the Secondary Market? 8-1
3. Who at SBA is Responsible for Oversight of the Secondary Market? 8-1
4. Why Would a Lender Want to Sell its SBA Loans? 8-1
5. When Should a Lender NOT Sell an SBA Loan? 8-2
6. What Types of SBA Loans Can a Lender NOT Sell? 8-2

EFFECTIVE DATE: OCTOBER 1, 1999

7. What is the Sale Process for SBA Loans? 8-2

8. What are the Lender's Responsibilities After the Sale? 8-3

9. Are There Any Changes to a Sold Loan Which a Lender Can Make Without the Approval of the Investor? 8-4

10. What Are the Responsibilities of the Fiscal Transfer Agent (FTA)? 8-5

11. When Can the Lender or SBA Repurchase a Loan Sold on the Secondary Market? 8-5

12. How Do You Know if an SBA Loan is Sold? 8-7

CHAPTER 9

PURCHASING SBA'S GUARANTY 9-1

1. Time is of the Essence. 9-1

2. Regulations. 9-1

3. When Does SBA Purchase from the Lender? 9-1

4. Information Required from a Lender. 9-2

5. When Must the Lender Submit the Complete Purchase Request? 9-3

6. Determining the Earliest Uncured Payment Default. 9-3

7. Determining the Interest Rate for Purchase. 9-5

8. Payment of Accrued Interest. 9-6

9. What Do You Verify in a Lender's Transcript of Account? 9-9

10. Review of Loan Documentation. 9-10

11. When a 327 Action is Approved, How Does the Lender Receive the Funds from the SBA? 9-12

12. If the Lender Acquires the Collateral Before Purchase, How is SBA's Purchase of the Guaranty Affected? 9-13

13. What is SBA's Unilateral Purchase Privilege, and When Should You Invoke It? 9-14

EFFECTIVE DATE: OCTOBER 1, 1999

14.	Notice to Lender of Purchase.....	9-16
15.	When Must a Loan be Purchased from the Secondary Market (by Lender or SBA)?	9-16
16.	How Does SBA Purchase from the Secondary Market?	9-17
17.	Transfer of Loan Servicing from Lender to SBA.....	9-20
18.	SBA's Purchase of the Unguaranteed Portion/Lender's Share of the Loan.....	9-21
19.	Purchase Log.....	9-22

CHAPTER 10

MISCELLANEOUS ISSUES REGARDING PARTICIPATION LOANS..... 10-1

1.	13 CFR § 120.524. When is SBA released from liability on its guaranty?	10-1
2.	Cancellation, Termination, and Expiration of an SBA Guaranty.....	10-2
3.	Reinstating an SBA Guaranty.....	10-4
4.	Can SBA Approve a Reduction in the SBA Guaranty (an Increase in the Lender's Share) of the Loan?	10-7

CHAPTER 11

PREPAYMENT OR PURCHASE OF A DEVELOPMENT COMPANY LOAN OR DEBENTURE..... 11-1

1.	Factors Unique to Development Company Loan Servicing.....	11-1
2.	Documentation Required for the Prepayment.....	11-4
3.	Prepayment Procedural Steps.....	11-5
4.	Release of Debenture and Note.....	11-8
5.	Alternatives to Prepayment of Debentures.....	11-8

EFFECTIVE DATE: OCTOBER 1, 1999

6.	Purchase of Debentures.	11-9
7.	Processing of 327 Actions For Debenture Purchases.	11-14
8.	Loan Accounting after Debenture Purchase.	11-15
9.	Placing Loans in Liquidation.	11-15
10.	Termination of CDC Servicing.	11-15
11.	Termination of CSA Servicing.	11-16
12.	Servicing Fees.	11-16
13.	CDC Liquidating Functions.	11-17

CHAPTER 12

**FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) TAKE OVER
OF A PARTICIPATING LENDER**

		12-1
1.	The FDIC Takeover of a Participating Bank.	12-1
2.	What are the Rules Governing How SBA Interacts with FDIC After a Takeover?	12-1
3.	What Must You Do When a Bank Fails?	12-1
4.	SBA's Responsibilities after an FDIC Takeover.	12-6
5.	FDIC's Responsibilities for SBA's Loan Portfolio After FDIC Takeover.	12-7
6.	Who Collects Loan Payments and Maintains Loan Data?	12-7

CHAPTER 13

DISCLOSURE OF LOAN INFORMATION

		13-1
1.	What is SBA's Policy Governing Disclosure of Information about Loans?	13-1
2.	Types of Information that are Generally Available to any Requester Under the Freedom of Information Act (FOIA).	13-1
3.	Types of Information that are " <u>NOT</u> " Available to any Requestor.	13-3

EFFECTIVE DATE: OCTOBER 1, 1999

4. What Must You Determine if You Receive a Request for Information Contained in a Loan File? 13-4

5. What Must You Do if You Receive a Subpoena for Your Testimony or for SBA Records? 13-7

CHAPTER 14

REFERRALS TO THE OFFICE OF THE INSPECTOR GENERAL 14-1

1. Referrals to the Inspector General (IG). 14-1

2. What Matters Must You Refer to the IG? 14-1

3. How do you make an IG Referral? 14-2

4. What is the Format and Content of a Written IG Referral? 14-3

5. What Happens After You Refer a Matter to the IG? 14-5

6. What are Your Ongoing Responsibilities After You Have Referred a Matter to the IG? 14-6

7. What are Areas That Commonly Generate IG Referrals? 14-7

CHAPTER 15

LOAN COLLECTION MONITORING & REPORTS 15-1

1. General Guidelines for Loan Collections. 15-1

2. Computer Databases for Loan Collection Status. 15-1

3. Reporting of Delinquent Loans. 15-2

4. Basic Steps in the Loan Collection Procedure. 15-4

5. Recording a call in the DLCS. 15-7

CHAPTER 16

SERVICING PROCEDURES

POLLUTION CONTROL FINANCING GUARANTEES 16-1

EFFECTIVE DATE: OCTOBER 1, 1999

1.	Introduction.....	16-1
2.	Summary Review of the PCFG Program.....	16-4
3.	Coordination of Servicing Activity.....	16-6
4.	Bondholder's Trustee.....	16-7
5.	Servicing Pollution Control Financing Guarantees.....	16-8
6.	Controls.....	16-11
7.	Yearly Pollution Control and Report.....	16-12
8.	General Administrative Activities.....	16-12
9.	Servicing Actions Requiring Payment Relief.....	16-14
10.	Collateral.....	16-15
11.	Indemnification Agreements.....	16-16
12.	Liquidation Considerations.....	16-16
13.	Special Guidance/Assistance.....	16-17

APPENDIX 1

SBA FORM 152, PARTICIPATION CERTIFICATE.....	A1-i
---	-------------

APPENDIX 2

SBA FORM 155, STANDBY AGREEMENT.....	A2-i
---	-------------

APPENDIX 3

SBA FORM 156, CERTIFICATE OF INTEREST.....	A3-i
---	-------------

APPENDIX 4

SBA FORM 172, TRANSACTION REPORT ON LOANS SERVICED BY LENDER.....	A4-i
--	-------------

APPENDIX 5

SBA FORM 327, MODIFICATION OR ADMINISTRATIVE ACTION.....	A5-i
---	-------------

APPENDIX 6

SBA 327 STAMP -- EXAMPLE.....	A6-i
--------------------------------------	-------------

EFFECTIVE DATE: OCTOBER 1, 1999

APPENDIX 7	
SBA FORM 397, NOTICE OF FULLY PAID ACCOUNT	A7-i
APPENDIX 8	
SBA FORM 466, TRANSCRIPT OF ACCOUNT-- <u>EXAMPLE</u>	A8-i
APPENDIX 9	
SBA FORM 515, NOTE RECEIVABLE REPORT	A9-i
APPENDIX 10	
SBA FORM 596 B, CERTIFIED STATEMENT OF ACCOUNT	A10-i
APPENDIX 11	
SBA FORM 888, MANAGEMENT TRAINING REPORT	A11-i
APPENDIX 12	
SBA FORM 927, MORTGAGE (DIRECT)	A12-i
APPENDIX 13	
SBA FORM 928, MORTGAGE (PARTICIPATION)	A13-i
APPENDIX 14	
SBA FORM 929, DEED OF TRUST (DIRECT)	A14-i
APPENDIX 15	
SBA FORM 930, DEED OF TRUST (PARTICIPATION)	A15-i
APPENDIX 16	
SBA FORM 1032, STATEMENT OF LOAN ACCOUNT	A16-i
APPENDIX 17	
SBA FORM 1061, REQUEST FOR MA ASSISTANCE	A17-i
APPENDIX 18	
SBA FORM 1102, CERTIFICATION OF COMPLIANCE WITH FISCAL REQUIREMENTS	A18-i
APPENDIX 19	
SBA FORM 1128, GUARANTY LOAN PURCHASED	A19-i
APPENDIX 20	
RESERVED	A20-i

EFFECTIVE DATE: OCTOBER 1, 1999

**APPENDIX 21
RESERVED**

A21-i

**APPENDIX 22
SBA FORM 1201, REPAYMENT NOTICE** A22-i

**APPENDIX 23
SBA FORM 1502, GUARANTY LOAN STATUS &
LENDER REMITTANCE FORM** A23-i

**APPENDIX 24
SBA FORM 1614, ORA & ED/SBA INFORMATION REQUEST** A24-i

**APPENDIX 25
MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN FDIC AND SBA** A25-i

**APPENDIX 26
CHECKLIST FOR PURCHASE DOCUMENTS** A26-i

**APPENDIX 27
13 CFR § 120.600 - 120.660 -- SECONDARY MARKET** A27-i

**APPENDIX 28
CAPLINES PROGRAM SERVICING GUIDELINES** A28-i

1. Introduction. A28-i

2. General Servicing Criteria. A28-ii

3. Universal Servicing Requirements. A28-iii

4. Servicing of Both Asset Based Caplines. A28-ix

5. Servicing Requirements for Standard Asset Based (SAB) Caplines. A28-xxiv

6. Servicing Requirements for Small Asset Based (SMAB) Caplines. A28-xxxii

7. Servicing of Seasonal Caplines Loans. A28-xxxiv

8. Servicing of Contract Caplines Loans. A28-xxxvi

9. Servicing of Builders Caplines Loans. A28-xxxviii

EFFECTIVE DATE: OCTOBER 1, 1999

APPENDIX 29
LOAN ASSUMPTION GUIDELINES A29-i

APPENDIX 30
LOAN POLICY AND PROGRAM OVERSIGHT GUIDE FOR LENDER REVIEWS A30-i

INDEX..... I-i

EFFECTIVE DATE: OCTOBER 1, 1999

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

EFFECTIVE DATE: NOVEMBER 2, 1998

- (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."

EFFECTIVE DATE: OCTOBER 1, 1999

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

EFFECTIVE DATE: OCTOBER 1, 1999

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 its 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

EFFECTIVE DATE: OCTOBER 1, 1999

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.

EFFECTIVE DATE: OCTOBER 1, 1999

(1) Section I - 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) Section II - Annual Report.

Current lender or CDC annual statement/report.

(3) Section III - 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) Section IV - Correspondence.

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

(5) Section V - 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) Section VI - Miscellaneous Documents.

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

EFFECTIVE DATE: OCTOBER 1, 1999

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. Servicing Fees.

- (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. Review Fees

- (1) Regulations:

13 CFR § 120.454.
PLP performance review.

EFFECTIVE DATE: OCTOBER 1, 1999

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 (b).

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

EFFECTIVE DATE: OCTOBER 1, 1999

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 FASTRAK). 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

EFFECTIVE DATE: OCTOBER 1, 1999

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) What fees are prohibited?

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.

EFFECTIVE DATE: OCTOBER 1, 1999

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

EFFECTIVE DATE: OCTOBER 1, 1999

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

EFFECTIVE DATE: OCTOBER 1, 1999

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

EFFECTIVE DATE: OCTOBER 1, 1999

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.

EFFECTIVE DATE: OCTOBER 1, 1999

EFFECTIVE DATE: OCTOBER 1, 1999

APPENDIX 20
RESERVED

EFFECTIVE DATE: OCTOBER 1, 1999

APPENDIX 21
RESERVED

EFFECTIVE DATE: OCTOBER 1, 1999

EFFECTIVE DATE: OCTOBER 1, 1999

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>".

EFFECTIVE DATE: OCTOBER 1, 1999

EFFECTIVE DATE: OCTOBER 1, 1999

INDEX

PAGE #

120 days of interest from liquidation proceeds	9-7
13 C.F.R. § 120.970, Servicing of 504 loans and Debentures.	6-16
13 CFR 120.938, Default.	11-2
13 CFR § 120.10, Definitions	
Close Relative	2-5
13 CFR § 120.220 (c), Fees that Lender pays SBA.	3-7
13 CFR § 120.221, Fees lender may collect from applicant	
Extraordinary servicing	3-8
Late payment fee	3-9
No prepayment fee	3-10
Out-of-pocket expenses	3-8
13 CFR § 120.344, Unique requirements of the EWCP.	6-12
13 CFR § 120.431, Suspen/revoc. eligibility to participate	3-4
13 CFR § 120.440, What is the Certified Lender's Program	6-2
13 CFR § 120.442, Suspension or revocation of CLP status.	6-2
13 CFR § 120.450, What is the Preferred Lender's Program?	6-3
13 CFR § 120.453	
What are the requirements of a PLP Lender servicing/liquidation.	6-3
13 CFR § 120.454, PLP performance review.	3-7
13 CFR § 120.455, Suspension or revocation of PLP status.	6-5
13 CFR § 120.513, What servicing actions require/SBAconsent	4-12
13 CFR § 120.520, "When does SBA honor its guarantee?"	9-1
13 CFR § 120.521	
What interest rate applies after SBA purchases its guaranteed...	9-5
13 CFR § 120.522	
How much accrued interest does SBA pay to the Lender or	9-6
13 CFR § 120.523	
What is the earliest 'uncured payment default'?	9-3
13 CFR § 120.524	
When is SBA released from liability on its guarantee?	9-3, 10-1, A28-xxxi
13 CFR § 120.531, Extension of maturity	5-21
13 CFR § 120.600 - 120.660, Secondary Market	A27-i
13 CFR § 120.840, Accredited Lender's Program	6-19
13 CFR § 120.940, Prepayment of the 504 loan or Debenture	11-2
13 CFR § 120.982, Correcting CDC servicing deficiencies.	3-4
13 CFR § 120.983, Transfer CDC servicing to SBA/other CDC	3-4
13 CFR § 120.984, Suspension or revoc. of CDC certification	3-4
327 Actions Requiring Approval by Another Office	4-9
327 Stamp Format or Letter Overlay	4-8
503	11-1

EFFECTIVE DATE: OCTOBER 1, 1999

504	11-1
504 Debenture	
Prepay or purchase at the debenture's semi-annual payment date	11-3
AA/FA	1-1, 2-3
Accredited Lenders Program (ALP) - Servicing.	6-19
Accrued interest	9-7
ACE	14-5
Actions Available for a Workout?	7-7
Active military duty, borrowers called to	5-12
ADD/ED	2-3
Address of borrower, change of	5-5
Adverse Change	5-1
Affirmative Civil Enforcement (ACE) Division	14-5
ALP	6-19
Approve a loan servicing action	2-1
Approving official	2-1
Assistant district director for economic development (ADD/ED)	2-3
Associate Administrator for Financial Assistance	2-3
Associate Administrator for Financial Assistance (AA/FA)	1-1
ASSUMPTION GUIDELINES	A29-i
Assumption of a Loan	5-14
Assumptions/Approve a Borrower's Change in Organization Form	4-18
Authority to Take Servicing Actions	2-1
Automated Collection Letters	15-5
Bankruptcy Actions	11-12
Basic Steps in the Loan Collection Procedure	15-4
Borrower and Guarantors, consent of	4-16
Bribery	14-1
Business Loan Program - Loan Processing SOP	3-11
Can you Require Borrower to Correct Deficiencies as Part of th	7-7
Cancellation, Termination, and Expiration of an SBA Guaranty.	10-2
CAPLINES	A28-i
CAPLines - Servicing Responsibilities.	6-11
CAPLines Loan Program - Servicing.	6-10
CAPLINES PROGRAM SERVICING GUIDELINES	A28-i
CDC	1-1, 11-1
"503" and "504" Debentures prepayment provision.	11-2
30 Day Notice for Prepayment.	11-4
Cancellation of the prepayment request	11-6
Escrow Account Funds	11-7
Loan Servicing	11-1
Prepayment Cancellation	11-6
Prepayment Credit for a "discount."	11-3
Prepayment Letter Request	11-4

EFFECTIVE DATE: OCTOBER 1, 1999

Prepayment Penalty/Premium	11-3
Prepayment Price Determination and Notification	11-6
Prepayment Procedural Steps	11-5
Release of Debenture and Note	11-8
Servicing Fees	11-16
Termination of CDC Servicing	11-15
CDC Fees	3-11
Assumption Fee	3-11
Late Fees	3-11
Reinstatement	3-12
Servicing Fee	3-11
Suspension of Servicing fees	3-12
Termination	3-12
CDC Liquidating Functions	11-17
CDC Reviews	3-3
CDC Servicing Fees	
Suspend/terminate/reinstate	3-11
CDC, Certified Development Company	1-3
CDC's Reporting Requirements.	6-18
CDCs	4-1
Central Servicing Agent (CSA)	3-12, 4-7, 5-2, 5-12, 11-4
Certificate of Interest	9-16, 10-8
CERTIFICATE OF INTEREST, SBA FORM 156	
CERTIFICATE OF INTEREST	A3-i
CERTIFICATION OF COMPLIANCE WITH FISCAL REQUIREMENTS	A18-i
Certified Development Companies (CDC)	1-1
Certified development companies (CDCs)	4-1, 11-1
Certified Development Company (CDC)	1-3
Certified Development Company Loans (504 Loans) - Servicing.	6-16
Certified Lenders Program (CLP) - Servicing	6-2
Certified Lenders Program (CLP), Supplemental Agreement	1-3
CERTIFIED STATEMENT OF ACCOUNT, SBA Form 596 B	A10-i
Cetified Statement Account, SBA Form 596 B	5-2
CFR	1-1
CHECKLIST FOR PURCHASE DOCUMENTS	A26-i
Classifying a Loan as "In Liquidation" or "In Litigation."	7-16
CLP	6-2
CLSC	3-1
Code of Federal Regulations (CFR)	1-1
Collateral	
Liquidation Value	4-5
Subordination	5-8
Substitution	5-9
Collateral Valuation	4-5

EFFECTIVE DATE: OCTOBER 1, 1999

Collector Reports	15-3
ColPur	2-7
Acquisition of	7-15
Flood insurance	5-29
Note Receivable Report	7-11
Colson	5-39
Colson Services Corp. (Colson)	5-39, 12-2
Commercial Loan Servicing Center	
Fresno	3-2
Little Rock	3-2
Commercial Loan Servicing Center (CLSC)	5-1
Commercial Loan Servicing Centers (CLSC)	3-1
Comparative Statements	16-11
Cost of money to the government	7-10
Credit/audit confirmations	5-4
CSA	3-12, 5-2, 11-4
Authority to waive the 30 day notice requirement	11-5
Termination of CSA Servicing	11-16
CSA, Central Servicing Agent	5-12
Date of default	9-7
DD	2-3
DDD	2-3
Debenture	
327 Actions For Purchases	11-14
503 and 504 Difference	11-2
Bankruptcy Actions	11-12
Loan Accounting after Purchase	11-15
Prepayment Discount for "503" debenture	11-14
Prepayment Premium for "503" debenture	11-14
Proof of claim	11-13
Purchase	11-1
Purchase of	11-9
Workout alternatives	11-9
Debenture's semi-annual payment date	11-3
Debentures	
Prepayments	11-1
Deceased Borrowers/Guarantors	
Claims against the estate of	5-26
Declared Disaster	
Direct Loans	5-38
Existing borrowers who suffer a loss	5-37
Guaranty Loans	5-38
SBA/FDIC Loans, Colson	5-39
DEED OF TRUST (DIRECT)	A14-i

EFFECTIVE DATE: OCTOBER 1, 1999

DEED OF TRUST (PARTICIPATION)	A15-i
Default	9-2
Earliest uncured payment default	9-3
Deferment	5-10
Deferments	4-14
Deferments of Loan Payments	5-10
Demand	9-2
Deputy district director (DDD)	2-3
Direct 7(a) Loans	6-1
Disaster Business Loans	6-15
Disaster Farm Loans	6-15
Disaster Home Loans	6-15
Disaster Loans - Servicing	6-15
Disaster, Declared	
Assistance for Existing Borrowers who Suffer Losses in a...	5-37
Disclosure of Information	13-1
District counsel	2-2
District director (DD)	2-3
EWCP	1-3, 6-12
Non-routine actions	6-13
Exceptions to Policy	2-4
Export Working Capital Program (EWCP) - Servicing	6-12
Export Working Capital Program (EWCP), Supplemental Agreement	1-3
Extraordinary servicing fees	3-8
FA\$TRAK Loan Program - Servicing	6-7
FA\$TRAK Program, Supplemental Guaranty Agreement	1-3
False statements	14-2
FDIC AND SBA -- MOU	A25-i
Federal Finance Bank (FFB)	11-1
Fees	3-7, 3-10
Fees prohibited	3-10
Fees, Lender	3-8
Fees, SBA	3-7
FFB	11-1
Field Visits	
To Borrowers for SBA-Serviced Loans	3-7
Financial Statements	
Audited	5-31
Changes in form or frequency	5-31
Compiled	5-31
Internal	5-32
Reviewed	5-31
FISCAL AND TRANSFER AGENT (FTA)	A27-i
Fiscal transfer agent (FTA)	3-6, 9-1

EFFECTIVE DATE: OCTOBER 1, 1999

Flood Insurance	5-27
FOIA	13-1
Fraud	14-2
Freedom of Information Act (FOIA)	13-1
Freedom of Information Act, FOIA	13-1
Freeze" on the loan account	9-12
FTA	3-6, 9-17, A27-i
Guarantor	
Release/Substitution	5-18
Guaranty	5-18
When is SBA released from liability on its guarantee?	9-3
Guaranty Loan Purchased form	9-13
GUARANTY LOAN PURCHASED, SBA FORM 1128	A19-i
Guaranty Loan Status & Lender Remittance Form	15-3, A23-i
Guaranty purchase	9-1
Guaranty purchased (repairing) or denying	9-11
Guaranty, Reinstating	10-4
Hazard insurance	5-23
IG	14-1
Improper conduct by SBA employees	14-1
Irregularities committed by any non-SBA	14-1
Requests for the IG to conduct audits	14-2
Written Referral Format	14-3
IG Audit	14-5
IG Investigation	14-5
IG Referral	
To U.S. Attorney's Office, Criminal Division	14-5
IG, Inspector General	14-1
In Liquidation	7-16
In litigation	7-16
Increases in CAPLines Loan Amounts.	6-11
INFORMATION REQUEST	A24-i
Information Resource Manager (IRM)	5-6, 15-5
Inspector General (IG)	14-1
Inspector General Hotline	14-2
Installment amount adjustments	4-18
Insurance Claims, proceeds from	5-30
Intensive Servicing	7-1
Inter-Creditor Agreement	5-13
Interest Accrual Notification	4-15
Interest paid-to-date	9-7
Interest rate	9-5
Change	5-22
Interest rate, adjustments	7-10

EFFECTIVE DATE: OCTOBER 1, 1999

IRM	5-6, 15-5
IRS Form W-9	
Request for Taxpayer Identification Number and Certification	5-16
Late payment fee	3-9
LAUD	3-1
Lender Fees	
Extraordinary servicing fees	3-8
Fees prohibited	3-10
Late Payment Fee	3-9
Out-of-pocket expenses	3-8
Lender or CDC File	
Set up	3-5
Lender Reviews	3-3, 3-6
Lender's Transcript of Account	9-2, 9-13
Lender/CDC Reviews	3-3
Liability, Release from	A28-xxxi
Life Insurance	5-24
Proceeds upon death of insured	5-25
Life insurance or hazard insurance requirements changes	4-17
Liquidation Value of Collateral	4-5
Liquidation Values	4-5
Loan Accounting Update Display (LAUD)	3-1
LOAN ASSUMPTION GUIDELINES	A29-i
Loan collection status screens	15-2
Loan Collections	15-1
Loan Guaranty Agreement	1-2, 9-14
Loan Guaranty Agreement (Deferred Participation)	1-3
Loan Information Request	5-12, 5-15, 11-5
Loan Liquidation & Acquired Property, SOP 50 51	1-3
Loan Policy and Program Oversight Guide for Lender Reviews	3-3, 3-6
Loan Repayment Term, changes in	5-22
Loan transfers from one lender to another	5-36
Low Documentation Loan Program (LowDoc) - Servicing	6-5
LowDoc	6-5
LowDoc Loan Purchases	6-6
LowDoc: Non-routine actions	6-5
Management Covenants	5-33
Management Covenants adjustments	4-19
MANAGEMENT TRAINING REPORT	A11-i
Manual purchase	9-12
Maturity	
Extension of	5-20, 7-5
Of Loan	10-3
MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN FDIC AND SBA	A25-i

EFFECTIVE DATE: OCTOBER 1, 1999

Modification or Administrative Action	2-1
MODIFICATION OR ADMINISTRATIVE ACTION, SBA Form 327	A5-i
MORTGAGE (DIRECT), SBA FORM 927	A12-i
MORTGAGE (PARTICIPATION), SBA Form 928	A13-i
MUST	1-1
Non-routine actions	
EWCP	6-13
LowDoc	6-5
PLP	6-4, 6-8
Nonpayment of Guaranty Fee	10-3
Note Receivable Report	7-11
NOTE RECEIVABLE REPORT, SBA Form 515	A9-i
Notice of Fully Paid Account	5-16
NOTICE OF FULLY PAID ACCOUNT, SBA Form 397	A7-i
Office of Financial Operations (OFO)	9-12
OFO	9-12
Out-of-pocket expenses	3-8
PADs	5-6
Paid in Full Loans, Processing	5-16
Partial payments	9-4
Participation Certificate	9-16, 10-8, 10-9
PARTICIPATION CERTIFICATE, SBA FORM 152	A1-i
Pay off figures	4-14
Payoff amount	5-2
PLP	6-3
Adverse Situations	6-4, 6-13
CHECKLIST FOR PURCHASE DOCUMENTS	A26-i
Non-routine actions	6-4, 6-8
PMGI	15-1
POLLUTION CONTROL FINANCING GUARANTEES	16-1
Post purchase reviews	9-10
Pre-Authorized Debits	15-1
Pre-Authorized Debits (PAD)	5-6
Pre-purchase reviews	9-10
Preferred Lenders Program (PLP) - Servicing	6-3
Preferred Lenders Program (PLP), Supplemental Agreement	1-3
Prepaying development company loans	11-1
Prepayments	4-19
Primary bank	9-18
Privacy Act	13-6
Privacy Act Procedures	13-1
Process Advances/Expenses During Loan Workouts?	7-15
Prudent lending	2-2
Purchase Privilege, SBA's unilateral	9-14

EFFECTIVE DATE: OCTOBER 1, 1999

Purchasing development company debentures	11-1
PURCHASING SBA's GUARANTY	9-1
Re-instatement of Default	4-16
Real Property and Personal Property Appraisals.	7-15
Recommending official	2-1
Reconsideration Request	2-4
Reduction in the SBA Guaranty	10-7
Referrals to the Inspector General	14-1
Release of collateral	4-16, 5-6
Repayment Notice	5-4, 5-23, A22-i
Reports Menu	15-2
Request	
Non-Deserving Verbal	2-4
REQUEST FOR MA ASSISTANCE, SBA Form, 1061	A17-i
Request for Management Assistance	7-15
Request for Taxpayer Identification Number and Certification	5-16
Resources are Available from SBA to Help Borrowers	7-14
Responsibilities of the Fiscal Transfer Agent (FTA)	8-5
Review Fees	3-7
Reviews	
Lender/CDC	3-3
Rule of Two	2-2
SBA 327 STAMP	A6-i
SBA 503 ("503") loans	11-1
SBA 504 ("504")	11-1
SBA Data Communications System (SBA-DCS)	9-12
SBA Employee	
Servicing Actions	2-5
SBA Form 1032, Statement of Loan Account	5-4, A16-i, A17-i
SBA Form 1050, Settlement Sheet	9-9
SBA FORM 1061, REQUEST FOR MA ASSISTANCE	A17-i
SBA Form 1061, Request for Management Assistance	7-15
SBA Form 1086, Secondary Participation Guaranty Agreement	4-15, 8-1, 9-15, 9-17, 15-1
SBA FORM 1102, CERTIFICATION OF COMPLIANCE WITH FISCAL REQUIRE	A18-i
SBA Form 1128, Guaranty Loan Purchased	9-13, A19-i
SBA Form 1149, Lender's Transcript of Account	9-2, 9-13
SBA Form 1175, Quarterly Report	15-3
SBA Form 1186	
Supplemental Guaranty Agreement, Certified Lenders Program (CLP)	1-3
SBA Form 1201, Repayment Notice	5-4, 5-23, A22-i
SBA Form 1347	
Supplemental Guaranty Agreement, Preferred Lenders Program (PLP)	1-3
SBA Form 1347, Supplemental Agreement, Preferred Lenders	1-3
SBA Form 148, Guaranty	5-18

EFFECTIVE DATE: OCTOBER 1, 1999

SBA FORM 1502, GUARANTY LOAN STATUS & LENDER REMITTANCE FORM... A23-i
SBA Form 1502, Guaranty Loan Status and Lender Remittance.....10-5
SBA Form 152, Participation Certificate..... 9-16, 10-8, 10-9, A1-i
SBA FORM 155, STANDBY AGREEMENT A2-i, A5-i
SBA Form 156, Certificate of Interest..... 9-16, 10-8, A3-i
SBA Form 1614 11-16
SBA Form 1614, Loan Information Request..... 5-12, 5-15, 11-5
SBA FORM 1614, ORA & ED/SBA INFORMATION REQUEST A24-i
SBA Form 172, Transaction Report on Loan Serviced by Lender..... 3-10
SBA FORM 172, TRANSACTION REPORT ON LOANS SERVICED BY LENDER..... A4-i
SBA Form 1918
 Supplemental Guaranty Agreement, FASTRAK Program 1-3
SBA Form 232, the standard SBA loan file folder..... 3-5
SBA Form 327 4-7
SBA Form 327, Modification or Administrative Action..... 2-1, 4-7, A5-i
SBA Form 360, Comparative Statements 16-11
SBA Form 397, Notice of Fully Paid Account 5-16, A7-i
SBA Form 466, Transcript of Account..... 5-3, A8-i
SBA Form 515, Note Receivable Report 7-11, A9-i
SBA FORM 596 B, CERTIFIED STATEMENT OF ACCOUNT A10-i
SBA Form 596 B, Cetified Statement Account..... 5-2
SBA Form 750, "Loan Guaranty Agreement (Deferred Participation..... 1-3
SBA Form 750, Loan Guaranty Agreement (Deferred Participation)..... 9-14
SBA Form 750B, "Loan Guaranty Agreement (Deferred Participatio 1-3
SBA Form 750EX
 Supplemental Guaranty Agreement, Export Working Capital Program 1-3
SBA FORM 888, MANAGEMENT TRAINING REPORT..... A11-i
SBA Form 912, Statement of Personal History 13-5
SBA FORM 927, MORTGAGE (DIRECT) A12-i
SBA FORM 928, MORTGAGE (PARTICIPATION) A13-i
SBA FORM 929, DEED OF TRUST (DIRECT)..... A14-i
SBA FORM 930, DEED OF TRUST (PARTICIPATION)..... A15-i
SBA Revocation of a Lender's CLP Status. 6-2
SBA Revocation of a Lender's PLP Status...... 6-5
SBA-DCS 9-18
SBC 3-3
SBDC 7-14
SBI 7-15
SCORE 7-14
Seasoned Loans..... 4-11
Secondary bank 9-18
Secondary Market..... 9-1, 9-3, A27-i
 Certificates A27-i, A27-ii
 Definitions A27-i

EFFECTIVE DATE: OCTOBER 1, 1999

Fiscal and Transfer Agent (FTA)	A27-i
Pool Assemblers	A27-i, A27-v
Suspension or Revocation of Participant	A27-i, A27-x
Secondary Market Program	8-1
Secondary Participation Guaranty Agreement	4-15, 9-15, 9-17
Secondary Participation Guaranty Agreement (1086 Agreement)	8-1
Senior litigation counsel	2-2
Service Corps of Retired Executives (SCORE)	7-14
Servicing center attorney	2-2
Servicing Fees	3-7
Servicing Request	4-5
Servicing Request/Action Log	4-10
SERVICING REQUESTS	4-1
Servicing Requests, record of	4-9
Settlement Sheet	9-9
Short Term Loan Agreement, Supplemental Agreement	1-3
Small business company (SBC)	3-3
Small Business Development Centers (SBDC)	7-14
Small Business Institutes (SBI)	7-15
Soldier's and Sailor's Relief Act (50 Appendix USC, § 526)	5-13
SOP 40 03, "Disclosure of Information"	13-1
SOP 40 04, "Privacy Act Procedures"	13-1
SOP 50 10, "Business Loan Program - Loan Processing"	3-4, 3-11
SOP 50 51, "Loan Liquidation & Acquired Property"	1-3
Split rate	9-5
STANDBY AGREEMENT	A2-i
Changes to	5-17
Statement of Account	5-2
Statement of Loan Account	5-4, A16-i
Statement of Personal History	13-5
Submission of a LowDoc Liquidation Plan.	6-7
Subordination of Collateral/Lien	5-8
Subordinations to Senior Liens	4-17
Subpoena for Your Testimony or for SBA Records	13-7
Substitution of Collateral	4-17, 5-9
Supervisor Reports	15-3
Supervisory attorney	2-2
Suspension or revocation of CLP status.	6-2
Transaction Report on Loan Serviced by Lender	3-10
TRANSACTION REPORT ON LOANS SERVICED BY LENDER, SBA FORM 172	A4-i
Transcript of Account	5-3, A8-i
Transcript of Account, Lender's (verification of)	9-9
Transfer of Loans from One Participant to Another.	5-36
Typographical errors corrections	4-14

EFFECTIVE DATE: OCTOBER 1, 1999

UCC	3-1, 4-6
UCC filing	3-1
Uncured payment default	9-3, 9-5
Undisbursed balance, cancellation of	5-1
Uniform Commercial Code National Financing Statement (UCC)	3-1, 4-6
Unilateral Authority	4-12
Unilateral purchase privilege	9-2
Valuation of collateral	4-5
Valuation of Collateral, Liquidation Value	4-5
Voluntary Cancellation By lender.	10-2
Wall Street Journal	7-10
Wire transfer	9-12
Workout	
Actions Available	7-7
Lender	7-5
SBA's policy	7-2

EFFECTIVE DATE: OCTOBER 1, 1999