

SBA

SOP 10 07 1

SBIC Liquidation

Office of SBIC Liquidation

U.S. Small Business Administration

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CHAPTER 1 - Office of SBIC Liquidation: General Scope and Authority

1. Application of SOP.

This standard operating procedure (SOP) implements procedures and guidelines for liquidating Section 301(c) and Section 301(d) Small Business Investment Companies (SBICs) which are declared to be "in liquidation" status. This SOP applies to the administration of subsidiary corporations, partnerships, and assets of such SBICs which are acquired by the Agency or which come into the Agency's custody for the purpose of liquidation.

2. How to Read this SOP.

- a. The pronouns "you" or "your" as used in this SOP mean the Office of Liquidation "Analyst", as that term is defined in 1-6 of this SOP.
- b. Capitalizing Defined Terms. Terms defined in this SOP are capitalized throughout the text of this SOP.
- c. Mandatory Terms in the SOP. The use of the word "will" and "must" in this SOP denote mandatory directions and procedures.

3. What are the Structure, Goals, and Duties of the Office of SBIC Liquidation?

The Office of SBIC Liquidation (OL) is one of six offices within the Investment Division (ID). The other three offices are the Office of SBIC Operations (OSO), the Office of Examinations (OE), the Office of New Markets Venture Capital (NMVC) and the Office of the Chief Administrative Officer (CAO), which includes the Data Management Branch (DM) and the Funding and Administrative Branch. The Office of SBIC Liquidation performs all aspects of the liquidation function through its Account Resolution Branch (ARB) and the Corporate Liquidation and Receivership Operations Branch. (see appendix 1)

- a. Account Resolution Branch
 - (1) Analyzes those SBICs which are transferred to OL, to develop a liquidation strategy and to recommend a course of liquidation action;
 - (2) Receives, protects, maintains, and disposes of all assets (real and personal property, judgments, notes, debentures, warrants, and all other equity

securities) acquired by SBA in liquidation of SBICs;

- (3) Oversees SBICs operating under Self Liquidation and Wind Down Agreements;
- (4) Assists in the valuation, analysis, and disposal of assets within OL.

b. The Corporate Liquidation and Receivership Operations Branch:

- (1) Manages, oversees, and takes necessary actions on behalf of SBA, both as creditor and as receiver;
- (2) Oversees all third party receiverships, bankruptcy cases, and other forms of litigation; and
- (3) Operates all SBIC liquidations in which SBA is the appointed Receiver and those corporations owned or controlled by SBA.

4. What are the Goals of the Office of Liquidation?

- a. Primary Goal. Maximize net recoveries in liquidation, taking into consideration the time value of money, while recognizing the interests of other parties affected (such as Small Business Concerns (SBCs) funded by SBICs), and furthering program integrity.
- b. Informed Decision Making. Your recommended actions should be based on the best available information about the SBIC, its principals, officers, directors, partners and managers and its assets (in particular its portfolio accounts), its liabilities, and its current and historical operating results.
- c. Timeliness of Planning and Implementation. Your choice of an appropriate liquidation strategy and the particular course of action (the Liquidation Plan), and effective implementation of such actions, must ensure that the funds due SBA are recovered in a prompt and orderly manner.
- d. OL's Critical Success Factors. The critical success factors include, but are not limited to, the following:
 - (1) Promoting the timely transfer of SBICs to OL;

- (2) Determining and implementing the proposed method of liquidation in a timely manner;
- (3) Ensuring that SBICs and/or others comply with terms of agreements;
- (4) Ensuring that SBA complies with SBA's obligations under agreements;
- (5) Obtaining and marshaling Assets;
- (6) Addressing problems;
- (7) Complying with all legal, statutory and regulatory requirements;
- (8) Establishing appropriate plan(s) for disposition of Assets;
- (9) Completing transactions;
- (10) Responding to SBICs, SBCs, individuals or others to protect or enhance program integrity e.g. (regulatory compliance, licensing, criminal/Office of Inspector General (OIG) referrals, Congressional requests and inquiries, news-information reports);
- (11) Calculating recoveries from the liquidation of SBICs; and
- (12) Ensuring, when appropriate, that the SBIC's license has been revoked.

5. What are the Duties of the Office of Liquidation?

OL's duties include, but are not limited to:

- a Determining the appropriate plan for the most effective and efficient liquidation of and liquidating all SBICs classified as "in liquidation";
- b fulfilling duties as court appointed receiver;
- c Recovering funds due SBA from SBICs in liquidation; Monitoring, overseeing and disposing of Assets in liquidation;
- d Developing and maintaining a file for case management and tracking, and for analysis of liquidating and program activities;

- e. Developing, recommending, and implementing Agency policies regarding SBC liquidation; and
- f. Representing the SBA in a professional manner.

6. Definitions.

- a. Analyst includes any SBA employee, who is assigned immediate responsibility for managing the SBIC liquidation case on behalf of the Agency.
- b. Associate Administrator for Investment (AA/I) is the head of the Investment Division.
- c. Asset Inventory Data Base refers to the data base of information maintained in the Investment Division on each asset overseen by the OL.
- d. Asset or Assets mean all of an SBIC's presently owned or hereafter acquired, real or personal property, tangible or intangible, of whatever nature and wherever located, including, but not limited to, all fixed assets, fixtures, inventory, notes receivable, accounts receivable, contract rights, choses in action, cause of action, instruments, documents, electronic business records, licenses, warranties, rights to indemnification, leasehold and subleasehold interests in personal property, security interests held by or granted to an SBIC, tax refunds, tax refund claims, partnership and joint venture interests and goodwill, general intangibles, common stock, preferred stock, stock options, warrants, debentures, unfunded partner commitments and all rights to payment of money together with all additions and accessions thereto, all replacements and substitutions thereof, and all proceeds and products thereof.
- e. Chief refers to the principal supervisor of one of the OL branches and includes any person who is officially acting in that capacity.
- f. Claim refers to a cause of action held by the SBA or the SBIC.
- g. Colpur (or Collateral Purchased) refers to property owned by SBA, whether acquired by foreclosure, by transfer, or by purchase. For purposes of SBIC liquidations, Colpur does not include note receivables, as that term is defined below.
- h. Compromise means the settlement of a claim owing or owed to SBA (or to an SBIC in Receivership) for less than the full amount due at the time of settlement.

- i. Deputy Associate Administrator for Investment (DAA/I) assists the AA/I in managing the Investment Division and acts for the AA/I when he or she is absent.
- j. Director, Office of SBIC Liquidation is the head of the Office of SBIC Liquidation.
- k. Earned Prioritized Payments has the meaning set forth in 13 CFR, Part 107.
- l. Follow On Investments are subsequent investments in a small business concerns made by an SBIC to protect and/or further enhance potential recovery from its earlier investment. SBIC's in liquidation status must obtain SBA's approval before funding Follow On Investments.
- m. Impact Investments are investments in an SBIC's portfolio whose expected proceeds will repay 25% or more of the SBIC's outstanding leverage.
- n. In Liquidation status is the account classification effective when an SBIC has been transferred from the OSO to OL for recovery of funds. This designation may also result in the surrender, revocation, or suspension, as appropriate, of the SBIC's operating license.
- o. Leverage means financial assistance provided to a Licensee by SBA, either through the purchase or guaranty of Licensee's Debentures or Participating Securities or the purchase of a Licensee's Preferred Securities, and any other SBA financial assistance evidenced by a security of the Licensee.
- p. Licensee- see SBIC.
- q. Note Receivable means a debt instrument where there are specific terms and conditions regarding repayment, interest charged, etc.
- r. Persons and Parties Indebted to SBA refers to the SBIC and any co-obligor or guarantor to SBA. In the context of assets acquired or held by SBA, the reference will include the obligors on the assets acquired by SBA, and any guarantor.
- s. Portfolio Accounts refers to SBIC assets which primarily consist of debt and equity interests in SBCs in addition to Assets as defined in 1-6(c) of this SOP.
- t. Prioritized Payments has the meaning set forth in 13 CFR, Part 107.
- u. Profit Participation has the meaning set forth in 13 CFR, Part 107.

- v. Rule of Two means that all actions taken under delegated authority must reflect concurrence in the final action by at least two individuals in the chain of command. If there is disagreement between the original recommender and the approving official, the decision must be elevated through the chain of command until two individuals agree.
- w. SBA Form 327 (Form 327) is an SBA form used to accomplish modification or administrative actions on specific SBIC accounts. (See appendix 2.) This SOP will specifically detail those actions needing a Form 327.
- x. SBC means Small Business Concern that receives financing from an SBIC.
- y. SBIC, also known as Licensee, is a federally licensed and regulated entity pursuant to the Small Business Investment Act of 1958, as amended.
 - (1) Debenture SBICs obtained Leverage through the issuance of debt obligations held or guaranteed by SBA.
 - (2) Participating Security SBICs (PS SBIC) obtained Leverage in whole or in part through the issuance of a preferred limited partnership interest to SBA.

7. **What are the Statutory References and Applications?**

- a. Lending and Investment Authority. The SBIC Program is authorized by the Small Business Investment Act of 1958, as amended, (Title 15, U.S.C., Section 661, et seq.).(SBIA)
- b. Legislative Intent. In 1953, the original Small Business Act mandated that the Agency aid, counsel, assist and protect the interests of SBCs. The SBIC provided a new SBA-sponsored and regulated network of lenders/investors called SBICs, to provide debt and equity financing for long-term growth, expansion, and modernization of small business concerns. While these two major statutory mandates are complementary, not contradictory, they will be carefully applied in SBA liquidation of SBICs and of SBCs to ensure that the legislative intent regarding support of affected small business concerns is met.
- c. Statutes Relevant to SBIC Liquidation.
 - (1) 15 U.S.C. Section 631, Administrator's authority to liquidate.
 - (2) 28 U.S.C. Section 590, Receiver's power to sue and be sued, and

requirement for operation in accordance with State laws.

- (3) 28 U.S.C. Section 754, powers and responsibilities of Receiver.
 - (4) 28 U.S.C. Sections 958, 959, 960, no U.S. Government employee may be appointed receiver; responsibilities of receiver; tax duties of person operating business under powers of U.S. Court.
 - (5) 28 U.S.C. Sections 1962, 1963, recordation of judgments of U.S. District Court.
 - (6) 28 U.S.C. Sections 2001, 2002, 2003, 2004, 2005 sales of real and personal property under powers of U.S. District Court.
 - (7) 28 U.S.C. Sections 2410, jurisdiction, sale of property in U.S. District Court, rights of redemption, extinguishment of liens.
 - (8) 31 U.S.C. Section 3700, the Federal Claims Collection Act.
 - (9) 31 U.S.C. Section 3713, providing for priority payment of debts or claims due the United States, in stated instances.
- d. Regulations concerning SBIC Liquidation. The Administrator has published, and from time to time amends, regulations implementing the SBIA, detailing the manner in which the program objectives will be accomplished. The regulations are published in Title 13, Code of Federal Regulations (CFR), at Part 107 (the Regulations).

8. Who has Decision Making Authority Over the Office of Liquidation?

- a. Delegated Authority. The Administrator is given the authority to carry out the Agency's programs and responsibilities by the express powers language of the Small Business Act and the SBIA. The statutes provide that the Administrator can implement the law by publishing regulations, which has been done in 13 CFR. The Administrator has delegated much of that authority to Headquarters and field office staff, in Part 101 of the Regulations. The Administrator's Delegation of Authority, together with the mandatory provisions of the SOPs, govern every official Agency action to be taken on every account.

Typically the Director, OL, and the Chiefs have the delegated authority to take final action on most work under their supervision. Exceptions to the delegated authority of Chiefs are those actions reserved to higher authority including the

Administrator, and those actions specifically limited by this SOP.

The Director, OL, may redelegate authority to the OL Chiefs, Analysts, or others.

b. What are the Limitations on Decision Making Authority?

(1) Exceptions to Policy. Proposals which are contrary to the mandatory (will, must) provisions of the SOP must be treated as Exceptions to Policy. Final authority to approve exceptions lies with the AA/I. All Exceptions to Policy are to be approved on SBA Form 327 and must include comments and recommendations from the Analyst, Chief and Director, OL. The Office of General Counsel (OGC) must comment for legal sufficiency where appropriate.

(2) Rule of Two. All actions taken under delegated authority (other than matters reserved to the Claims Review Committees as specified in Chapter 13 of this SOP or to the Follow On Investment Committee as specified in Chapter 10 of this SOP) must be approved under the Rule of Two.

If your supervisor does not agree with your recommendation, he/she must forward the report with comment and recommendation to the next level of authority for approval or decline. The final action and the basis for it must be set forth in the report.

If the position taken at the next level of authority does not concur with any of the previous recommendations, the matter will be carried forward to succeeding levels of authority until there is concurrence with a prior recommendation.

(3) A Proposal Lacking in Merit or supporting documentation will not be approved. Your supervisor must provide a written response to the proposal for the file. The Rule of Two does not apply if the response indicates that the proposal is lacking in merit or supporting documentation.

c. Decisions Which Cannot Be Approved Under the Rule of Two.

(1) Proposals contrary to law or regulations. A proposal contrary to law or regulation must not be approved. Laws and regulations equally bind all officials and employees of the Agency. They may be changed by proper revision, i.e.: by an Act of Congress, but cannot be avoided or ignored. No SBA employee has the authority to approve proposals contrary to law.

(2) Compromises. A decision to compromise a debt for a sum less than the full

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balance due to SBA at the time of the compromise of an SBIC or SBC acquired account, is reserved to the SBIC Claims Review Committee. For purposes of this SOP, an Asset of an SBIC, when an SBIC has been classified in liquidation, may be compromised/sold for less than the balance due on it without the approval of Claims Review Committee provided that at the time of sale, the asset is an obligation owed to the SBIC, and not SBA. (See chapter 13 of this SOP.)

CHAPTER 2-Transfers of SBICs to Liquidation

1. What is OSO's Role in the Transfer Process?

The OSO is responsible for licensing, leveraging and regulating SBICs. OSO analyzes all submitted audited and unaudited financial statements, annual tax returns, and examination and investigative reports covering operations and practices of the individual Licensees, to evaluate the Licensees' financial stability, reliability, and compliance with the Act and the Regulations. OSO recommends actions to the AA/I to assure compliance with and invoke the protective sanctions provided in the Act and Regulations.

2. Preparation for Transfer.

Based upon OSO's Pre-Liquidation Conference Memorandum (see paragraph 3 below), the Director, OSO, will make the determination of probable removal of an SBIC from active status and of its subsequent liquidation. The AA/I, Director, OL or Director, OSO will schedule a "Liquidation Conference." The Director, OSO, will distribute a copy of the Liquidation Conference Memorandum to OL and OGC at least 5 business days prior to the scheduled conference. The Liquidation Conference Memorandum must be accompanied by a package that should include, but not be limited to, the following:

- a. A Core Analytical Document ("CAD") (see SOP 10-06);
- b. An SBA Form 327 transferring the case to liquidation status;
- c. The Licensee's most recent SBA Form 468 Report;
- d. The Licensee's most recent Report of the Valuations of Portfolio Company; and
- e. Other relevant documents. i.e., if Regulatory Violations are an issue, a copy of the last Examination Report.

3. What is a Pre Liquidation Conference Memorandum?

The Pre Liquidation Conference Memorandum, prepared by OSO, will provide a concise summary of all pertinent information available to the Agency concerning the current status of the SBIC and its history and operations. It should be sufficiently detailed to enable the conferees to make an informed and rational decision on the Agency's future dealings with the SBIC.

4. What are the Procedures for and the Purpose of the Liquidation Conference?

The AA/I, Director, OL or Director, OSO will schedule a liquidation conference and attach the notice as a cover memorandum attached to the Pre-Liquidation Conference Memorandum. The AA/I will give the OL and OGC at least 5 business days notice before the meeting. The AA/I will direct the conference which will be attended by the Directors of OSO and OL, and by a representative of OGC. The OSO analyst will present the proposed transfer of the SBIC. Any of these attendees may request that the AA/I include in the meeting any other SBA official or employee who may have special knowledge or information concerning the matters to be discussed.

- a. General Discussion Approach. The conferees will discuss the relevant history of the SBIC, the events of default, regulatory violations of the SBIC, possible third party liability, etc. The conferees will decide whether the supporting information is sufficient for the Agency to proceed with removal and/or liquidation actions.
- b. Additional Information and Review. If additional information is deemed necessary, the conferees may agree to have further review conducted by OSO prior to transfer, may authorize transfer of the case with further review to be made by OL, or may request a special examination or investigation by the OE.
- c. Analyst Meeting. Within 5 working days of receipt of the SBA Form 327 transferring an SBIC to OL, there shall be a meeting between the OSO Analyst who transferred the case and the OL Analyst to discuss the case in further detail. At this time, all case files should be transferred to the OL Analyst who will acknowledge receipt in writing. If there are outstanding regulatory issues, you must invite a representative of OGC to the meeting.
- d. Referral to Office of Inspector General (OIG). If there is any indication of fraud or abuse, or criminal violations in connection with an SBIC, its principals, or its operations, the Analyst must prepare a referral to the OIG for the AA/I's signature. The referral memo will specify the intended scope and purpose of the examination/investigation and any critical time requirements. Further, the AA/I will ask the OIG for advice on whether liquidation action should be restricted. If the referral to OIG is for an investigation of possible criminal activity, the AA/I may recess the Liquidation Conference until OIG advises how to proceed. If the referral is for developing supplemental information not essential to proceeding to liquidation, the Liquidation Conference should determine a course of action, taking explicit note of the pending activity of OIG.

- e. Transfer and Documentation. If all the parties to the Liquidation Conference determine that there are sufficient grounds for liquidation the AA/I will immediately transfer the case to OL by SBA Form 327 action classifying the case In Liquidation, signed by the AAI, the Director, OL, the Director, OSO and OGC, making specific reference to an attached copy of the Pre-Liquidation Conference Memorandum and the Memorandum of Proceedings, (the Liquidation Transfer Package). The OSO analyst will prepare the SBA Form 327 to be available for signature at the conference if the case transfer is approved. The SBA Form 327 will cite the regulatory violation that caused the transferring of the SBIC to OL. The original SBA Form 327 will be filed by the Analyst assigned to the case in the official liquidation case file with a copy to be filed with DM.

- f. Additional Administrative Requirements Upon Transfer. Within 5 working days of receipt of the SBA Form 327 transferring an SBIC to the OL, DM will request that the Office of the Chief Financial Officer (OCFO) change the SBIC's status from Operating to Liquidation on SBA's Loan Accounting System (LAS). DM will also enter the SBIC's assets into OL's Asset Inventory Database (AIDB), using the SBIC's most recent SBA Form 468 report. If the SBA Form 468 material is not current (within 1 year), DM will advise ARB, which will obtain the most current information available for entry into the AIDB. If current information is not available, DM will input the most recent information held by the Agency.

CHAPTER 3- Account Resolution Procedures: Establishing the Method of Liquidation**1. What are the Preliminary Steps Taken by Account Resolution?**

- a. Administrative Establishment. When you receive the liquidation transfer package, you should establish the official case file. File the case material in the following recommended manner.
 - (1) Authorizations Section. Contains the Liquidation Conference Memorandum, the SBA Form 327 transferring the case to OL, and a chronological record for OL actions. (The chronological record may be maintained in a notebook.)
 - (2) Credit Section. Contains financial statements of the SBIC and its portfolio companies. You should maintain separate files for each portfolio concern.
 - (3) Report Section. Contains relevant IG audit, examination, and investigative reports.
 - (4) Correspondence Section. Contains all correspondence initiated or received by OL.
 - (5) Loan Servicing Documents Section. Contains correspondence and materials relating to the purchase of the SBIC debentures, including certified statements of account, LAS/Loan Accounting printouts, copies of Leverage documents (for debentures, participating securities and preferred stock), copies of checks, and check transfer forms.
 - (6) Miscellaneous Section. Contains copies of materials from files maintained by other offices of ID, as well as other miscellaneous documents.
- b. Acceleration and Demand Letters for Debenture SBICs. Upon receipt of the liquidation transfer package for a debenture SBIC you must issue an acceleration and demand letter to the SBIC. Except in the most unusual case, i.e., if OGC or the AA/I determines that notice of acceleration may hamper SBA's ability to move quickly to obtain a Receivership of an SBIC, SBA's claim will be accelerated and demand will be made for immediate payment prior to any move to establish a liquidation strategy or plan, and prior to such negotiations with the SBIC. OGC must approve any deviations from the standard acceleration letters previously approved by OGC (see appendix 3).

- c. Notification Letter to PS SBICs. Within 5 days of receipt of the liquidation transfer package, you must send a Notification Letter to the PS SBIC advising that the case has been transferred to the Office of Liquidation (see Appendix 4.). The letter alerts the general partner and Board of Directors that it must continue to abide by the restricted operations conditions imposed on it by OSO and explains, as well, the terms and conditions being imposed on the PS SBIC by the OL.

- d. Joint Acceleration/Notification Letters. There are some cases where the SBIC has both Debenture and Participation Security Leverage. In such a case, you must:
 - (1) send a letter which accelerates the debentures;
 - (2) make demand for payment in full of the debentures;
 - (3) notify the SBIC that due to the fact that they also have participating security Leverage, that they must abide by the restricted operations conditions imposed on it by OSO and
 - (4) explain the terms and conditions being imposed by the OL. (see appendix 5)

- e. Additional Communications. While you are communicating with a Debenture SBIC to determine a liquidation strategy, establish with the SBIC what its obligations will be during this period. For example, the SBIC should submit monthly income statements, obtain prior SBA approval for the sale or disposition of any asset, remit the proceeds from such sale or disposition to SBA and continue to comply with the Regulations. The SBIC shall not incur any new obligations or make any further investments without prior SBA approval, (see appendix 6.)

2. How Do You Develop a Liquidation Strategy for Debenture Cases?

You should bring a careful analysis of the SBIC's assets and your possible remedies, such as method of liquidation, to your negotiations with the SBICs.

- a. Analysis and Valuation of SBIC Assets. You should use all available sources to verify the status and amount invested in each SBC and the other assets of the SBIC, and the current interest in and value of these assets. The valuation of these assets may be performed either in house by OL staff or by qualified outside parties as you deem necessary. You should evaluate each investment for collection potential or for convertibility to cash or credit on the SBIC account.

Valuation of hard collateral, such as real and personal property, should be based upon appraisals.

b. Review of Current Financial Data.

- (1) You should attempt to identify every creditor of the SBIC and should know the SBIC's position on the validity and the amount of its debt.
- (2) You should prepare an analysis of the SBIC's current financial position (including financial solvency) and should obtain the most current available financial report of the SBIC.

c. Cooperation of SBIC. If the SBIC fails to cooperate in providing current financial information or fails to cooperate in other material ways, you should transfer the case for Receivership or other legal action. See Chapter 7 of this SOP regarding receiverships.

d. Field Visit; Consultation with Debtor. Concurrent with OL review and analysis, you should meet with the SBIC's principals at the SBIC's offices to verify your initial findings and to inspect the records and assets. Together with an OGC representative, you should conduct an on-site review of the SBIC. In addition, schedule a meeting with the SBIC's counsel and OGC to discuss liquidation alternatives and their legal ramifications. Field visits may also include site visits to significant SBC's as well as consultation with the SBIC's accounting firm. You may also want to use an examiner from the Office of SBIC Examinations (OE) either prior to the visit or take one with you on the field visit.

e. Assessment of Alternative Methods of Liquidation. After you analyze the financial and situational information, you must assess alternative methods of liquidation and develop a Liquidation Plan. Consider the following alternative methods:

- (1) Immediate payment in full and revocation of SBIC license;
- (2) Settlement Agreement between the SBIC and SBA providing for self-liquidation and full term payout of the debt (including preferred stock and all accrued dividends) under close supervision of SBA and ultimate revocation of the SBIC license;
- (3) Receivership, under the direction of the U.S. District Court, to operate the SBIC or liquidate the assets of the SBIC and distribute the proceeds to creditors before revocation of SBIC license; and/or

- (4) Action for a money judgment in favor of SBA followed by the marshal's seizure and sale of SBIC assets for application on the judgment, with license revocation.

3. How do You Develop a Liquidation Strategy for PS SBIC Cases?

The Wind Down Plan

Within 5 business days after the transfer of the case to OL, you must, schedule a meeting at SBA headquarters with management and its legal representative to discuss liquidation alternatives and their legal ramifications. This meeting shall occur within 3 weeks of the transfer to OL. Prior to this meeting, you will request that the PS SBIC submit specific information to you as shown in Appendix 7. At this meeting you will want to request a wind down plan to assess the PS SBIC's eligibility for a Wind Down Agreement (see chapter 5).

- a. The Wind-down Plan should include the following to be submitted within 2 weeks of the meeting:
 - (1) a cash flow projection showing the remaining time expected to operate the SBIC
 - (2) expected liquidation time frame and anticipated proceeds for each investment;
 - (3) time frame for the anticipated repayments to SBA;
 - (4) anticipated budget; and
 - (5) any anticipated problems such as litigation, management concerns or LP issues.
- b. Additionally, the plan should specifically include the following for each SBC:
 - (1) description of the portfolio company's business;
 - (2) description of where the company stands against their business plan;
 - (3) expectations of the timing and amounts of Follow-On rounds of financing required by the portfolio company;

- (4) listing of other significant investors in the company and an assessment of the ability and desire to provide additional financing to the company;
 - (5) summary financial statements – income statement, cash flow statement, balance sheet, including projections for two years;
 - (6) current cash balance;
 - (7) burn rate and estimated months of cash on hand;
 - (8) explanation of the basis for the latest valuation based on SBA regulations;
 - (9) history of financing rounds and valuations (pre- and post-money) of the company established by those rounds, including dates and amounts of investments by the SBIC;
 - (10) exit options for the company and the most likely exit mechanism;
 - (11) anticipated exit timing; and
 - (12) anticipated exit values and proceeds to the Licensee as well as a discussion of the basis for the estimated exit values including appropriate documentation citing the metrics within industry practice.
- c. At the Initial Meeting with management, ensure that the principals are prepared to discuss their response to the Notification Letter supported by appropriate documentation, including enforcement of the unfunded commitment call, if applicable..
- d. Reduce Management Fees, if appropriate. Within 10 days of the meeting with the PS SBIC management, you should reset the PS SBIC's management fees, if appropriate. Normally, an appropriate management fee will be between 1.5% and 2.5% of portfolio value, not including cash, cash equivalents, or freely tradable public securities (securities trading at a volume that would allow them to be liquidated immediately). Factors to be considered when setting the fee include the number of Assets in the PS SBIC's portfolio of Assets, board representation, stage of Assets (seed, early, mezzanine or later stage) and the number of Impact Assets. The adjusted management fee shall be implemented prospectively and normally amended, if appropriate, on an annual basis. You must review expenditures not covered by management fees, i.e., legal and audit, verifying that they are reasonable. If you determine they are excessive, then you may require the PS SBIC to reduce these expenses.

4. How do you Prepare the Liquidation Plan?

You must recommend a liquidation strategy after evaluating the alternative liquidation methods available. For Debenture SBICs, the options include (but may not be limited to, a Self-Liquidation Settlement Agreement (see chapter 4 of this SOP) or a Receivership (see chapter 7 of this SOP). For PS SBICs, the options are a Wind-Down (see chapter 5 of this SOP) or a Receivership. Summarize your analysis, discuss the costs of the various methods of liquidation, the feasibility of each method, present the rationales for the liquidation method being recommended, and make a specific recommendation in the liquidation plan. Approval of the plan is by the Rule of Two.

5. When should you Charge Off PS SBIC Prioritized Payments?

A Charge Off of Prioritized Payments can occur at any time once you are able to document that the PS SBIC will be unable to pay any outstanding Prioritized Payments to SBA. You should consider whether a charge off of Prioritized Payments is appropriate no later than the time at which you make a PS SBIC liquidation recommendation. A Charge Off is appropriate when you determine that the value of the Assets of the PS SBIC are less than or equal to that of the outstanding debt and participating security balance of the PS SBIC plus all of the partner's capital contributions.

6. How do you Refer/Transfer Cases for Receivership or Other Litigation?

If you decide to refer the case for Receivership or other litigation, give a copy of the approved liquidation plan, together with a memorandum (see appendix 8) requesting the Receivership or other litigation, to OGC and the Chief of the Branch to which the case is being referred. Prepare an SBA Form 327 action referring the case. (see appendix 9) (All referrals of cases to other offices within SBA's Headquarters or to the field offices must be accomplished by SBA Form 327 action.) Give a copy of this package to the Chief, RO. In either case, prepare and send a DM Liquidation Status Code Change Form (see appendix 10) (by e-mail) to DM indicating the status code change.

CHAPTER 4 - Self-Liquidation Settlement Agreements for Debenture SBICs

1. What is a Self-Liquidation Settlement Agreement?

The OL uses Self-Liquidation Settlement Agreements (Settlement Agreements) as a method of controlling the liquidation of a Debenture SBIC. Generally, the SBIC's indebtedness to SBA is restructured into a new note extending the time for the SBIC to pay SBA in full. These agreements allow the SBIC to maintain control of its portfolio, to determine the best time to sell or otherwise dispose of sufficient assets to pay the SBA claim in full, and then to surrender its license and exit the program. In some cases, the OL may recommend that the SBIC re-enter the program after completing the Settlement Agreement.

- a. You will decide whether an SBIC is a candidate for this type of voluntary liquidation.
- b. You will negotiate the terms and conditions of the Settlement Agreement and other related documents.
- c. You will retain jurisdiction over and servicing responsibility for the case until the completion or termination of the Settlement Agreement, or until authorized and directed by the Director, OL, to transfer the case to another Branch or Office.

2. What Should You Consider When Recommending a Settlement Agreement?

You should consider, at a minimum, the following items when recommending a Settlement Agreement.

- a. Full Disclosure. The Agency will not enter into nor be bound by a Settlement Agreement which is not based upon full disclosure of all essential information by the SBIC and its principals.
- b. No Fraud, Misrepresentation, etc. There must be neither strong indication nor substantiated evidence of fraud, misrepresentation, insider dealing, or other civil or criminal misconduct by the SBIC or its management.
- c. Management Expertise and Performance. You should consider the SBIC principals' special expertise in effecting a timely and efficient liquidation, especially of complex assets or those assets with a limited market. In addition,

you must have confidence in the SBIC management's ability to operate within the Regulations and to meet the terms, timetables and conditions of the Settlement Agreement. You should consider management's past performance. You should, if feasible, negotiate a reduction in management's overall expenses, including salaries.

- d. Overview Capability. You must include adequate provisions in the Settlement Agreement to monitor the account and appropriate protective covenants, in the manner of a prudent lender, during the term of the Settlement Agreement. For example, you should require a monthly review of operating data, including cash receipts and disbursements, year end audited financial statements and aging reports on notes.
- e. Protection of Viable SBC's. While the SBIC's operating license is still in effect, the SBIC will be bound by the Regulations, including those provisions which pertain to the protection of SBCs.
- f. Adequate Net Recovery/Note Receivable. In the Settlement Agreement you must provide for a full recovery of the SBIC's current outstanding principal indebtedness owed to SBA plus interest or dividends accrued through the date of settlement and thereafter. Payment of less than 100 percent of the full SBA obligation is a compromise that must be approved by the SBIC Claims Review Committee as set forth in Chapter 12 of this SOP. If a note receivable restructures indebtedness, the note should either be a term note with specific payments due or a demand note.
- g. Interest Rate. The interest rate on a note receivable should be the blended rate of interest on the outstanding debentures of the SBIC. However, if circumstances dictate, the Director, OL, may approve another rate based upon written justification included in the Liquidation Plan.
- h. Payment of Accrued Debenture Interest. You must verify that all accrued interest owed by the SBIC is paid at the time the new note is executed. If the SBIC is unable to pay the accrued interest at settlement, you must recapitalize the interest into the note. You must not create a second, non-interest bearing note for the accrued interest. Note: If any of the SBIC's outstanding debentures are public debentures, the SBA may not purchase those debentures from the public market until the next semi-annual due date. If that date will not occur until after the settlement date, calculate how much interest SBA will have to pay and include that amount in the interest to be paid by the SBIC even though that interest has not yet actually accrued. (Public debentures are easily identified. The first two digits of the 10 digit SBA loan number are 04 for SBICs and 08 for SSBICs. All SBIC debentures issued after August 1986, and all SSBIC debentures issued after

May 1990, are publicly held.)

- i. Limited Time. Generally, you should base Settlement Agreements on a limited but reasonable time frame, usually no longer than 48 months. A Settlement Agreement for a longer period must be justified in the recommendation memorandum and approved by the AA/I as an exception to policy.
- j. Improvement of Creditor Position. SBA must take a secured position in the SBIC's Assets unless negative covenants in the underlying shareholder/subscriber agreements would trigger negative covenants. (See paragraph 4-3(b) of this SOP.). Consider improving collateral position by obtaining additional security, such as collateralized personal guaranties of the principals or others. All security interests must be properly perfected. Consult OGC on perfecting SBA's lien position.
- k. Protection of SBA Priority/Collateral Position. You must state in the Settlement Agreement that a material adverse change in the SBIC's financial condition or management will be considered an event of default. Material adverse changes include, but are not limited to, any material reduction in the value of the collateral, or any act of the SBIC which SBA believes, in its reasonable opinion, imperils the prospect of full performance or satisfaction of the SBIC's obligations to SBA (e.g., a 50 percent decrease in the value of the collateral, such value to be determined at the time of the execution of the Settlement Agreement).
- l. Assurance of Adequate Insurance. If the SBIC assets include real and personal property, directly or as collateral to portfolio claims, you must require evidence that such properties are adequately insured against loss or damage, with appropriate clauses protecting the SBIC.
- m. Surrender of License and Removal from Program. The Settlement Agreement must provide for surrender of the license and for removal from the SBIC's business documents (i.e., Articles of Incorporation, by-laws, Partnership Agreements, stationery letterhead, and office walls and exteriors) of all references to SBA, to the Small Business Investment Act, and to the SBIC program upon termination or completion of the Settlement Agreement. No surrender of the license will be necessary if the SBIC requests a return to the active program either during, or at the conclusion of, the term of the Settlement Agreement, and certain conditions are met. (See paragraph 4-6 of this SOP.)
- n. Receivership Option on Default. You must obtain, as part of the Settlement Agreement, a signed consent to Receivership to be filed in the event the SBIC breaches or defaults on the Settlement Agreement. The language of the Settlement Agreement will indicate that a receivership is merely one of the remedies

available to SBA.

- o. Option to Terminate. The Settlement Agreement should state that SBA may, at its discretion, terminate the Agreement for default, misrepresentation, bankruptcy or other insolvency, and other acts or events which could jeopardize the Agency's position or the SBIC's ability to perform under the terms of the Agreement.

3. **Negotiating, Obtaining Approval, and Closing the Settlement Agreement.**

- a. Negotiating the Settlement Agreement. You should negotiate the terms and conditions of the Settlement Agreement with the assistance of OGC, as necessary. When dealing with the SBIC's counsel, OGC must participate. You must negotiate terms favorable to SBA. If appropriate, you should obtain personal, corporate, or other guaranties of payment. In addition, if possible, you should negotiate a term payment plan. It may be appropriate to obtain a demand note when payments are dependent on the disposition of the SBIC's assets, so the Agency can declare default. Each Settlement Agreement will have its own set of conditions, determined on a case by case basis.
- b. Opinion Letter. You must obtain an opinion letter from the SBIC's counsel that the pledging of the SBIC's Assets as security for the note to SBA will not trigger any negative covenants in any of the SBIC's underlying subscription/shareholder agreements to the detriment of SBA. If such a negative covenant would be triggered, a decision must be made by you and your Chief as to whether it is appropriate to forego a security interest on that particular asset. You should request this opinion letter as soon as possible as it could take several months to obtain.(see appendix 11).
- c. Obtaining Agency Approval. For Agency approval of the Settlement Agreement, the Rule of Two applies.
- d. Closing.
 - (1) Preparation and Closing of the Agreement. Prepare the Settlement Agreement to be executed and any other documentation required, including, but not limited to, notes receivable, security agreements, and guarantees for OGC review. Schedule the closing at the SBIC location to ensure that all final details regarding the settlement can be addressed. If the Agreement or any collateral document requires a public or private filing or registry, ensure that such filings are made. If the loan agreement is to be secured by collateral, such as stocks, bonds, notes, etc., the collateral must be properly pledged to SBA at the closing by the execution of the appropriate blank stock/bond power or note assignment with a

signature guaranty. (See appendices 12 & 13).

- (2) Safekeeping of Documents. Deliver instruments requiring safekeeping (such as an original debt instrument, guaranty agreement, or other collateral documents) to OL's designated Collateral Clerk using SBA Form 649. (See appendix 14).
- (3) Receipt of the Completed Settlement Agreement. Provide a copy of SBA Form 515, "Note Receivable Report" (see appendix 15), indicating rescheduled payment terms together with copies of the note receivable and the Settlement Agreement to the Denver Finance Center, Programmatic Accounting Division (DFC PAD). In addition, prepare an SBA Form 327, indicating that the debentures have been satisfied by the execution of a new note receivable. Attach a copy of the SBA Form 515.
- (4) Notification of the Settlement Agreement. Use the Liquidation Status Code Change Form indicating that the case has been transferred from Pending to Settled status to notify DM of the Settlement Agreement.

4. What are the Servicing Requirements for Settlement Agreements?

You will retain oversight and servicing responsibility for the case until the termination of the Settlement Agreement. Servicing responsibilities include, but are not limited to:

- a. Monitoring compliance with the terms and conditions of the Settlement Agreement;
- b. Monitoring the financial condition of SBCs in the SBIC's portfolio;
- c. Monitoring the condition of any collateral held as security;
- d. Monitoring the SBIC's disposition of assets Such monitoring includes, but is not limited to, verifying that the disposition of Assets occurred at fair and reasonable terms and whether or not the disposition was in compliance with the SBA Regulations and the Settlement Agreement.;
- e. Reviewing the SBIC's financial statements; and
- f. Preparing fiscal year end liquidation reports, including estimated recovery reports of the SBIC's performance and how the SBIC is conforming to the terms and conditions of the Settlement Agreement.

5. What if There is a Default of the Settlement Agreement?

- a. Acceleration and Demand Letter Upon the Default of the Settlement Agreement. Most Settlement Agreements require that an Acceleration and Demand Letter be sent to the SBIC upon default. (See appendix 16.) Prepare the letter and have your Chief and OGC review it. Mail the letter by regular mail and by certified mail, return receipt requested, to the SBIC, any guarantors and any other interested parties.
- b. Remedies. Look to the Settlement Agreement to determine what remedies, in addition to those provided by law or regulation, are available to SBA upon default.
 - (1) Receivership. If you decide that a receivership would be in the best interest of the SBA, prepare a referral for receivership in the same manner as outlined in paragraph 3-4 of this SOP. If the SBIC agreed to the receivership prior to the default, include that fact in the referral, together with a copy of the signed consent.
 - (2) Asset Foreclosure: Strict Foreclosure. If SBA has a perfected security interest in the SBIC's Assets, and a Uniform Commercial Code (UCC) foreclosure and sale of those Assets is the only remedy available to SBA, after consulting with OGC, determine the appropriate method of foreclosure. The available methods include strict foreclosure or resale of collateral. A strict foreclosure requires that the SBIC surrender the collateral to SBA to satisfy its debt after default. The SBIC will be released of its obligation without liability for any deficiency upon SBA's disposition of the Assets. In turn, SBA will not have to account to the SBIC for any surplus upon disposition of the Assets. If you elect to pursue strict foreclosure, notify the debtor and any other party in interest, after you consult with OGC. If you receive no objection within 21 days of the notice, SBA may keep the collateral in satisfaction of the debt, with no further requirements of notice to the SBIC.
 - (3) Asset Foreclosure: Non-Strict Foreclosure: If SBA has a perfected security interest in the SBIC's assets and, after consulting with OGC, you determine that strict foreclosure is not an option, you may sell the collateral. However, the sale is subject to the notice and sale requirements of the UCC. All sales must be commercially reasonable as discussed in UCC 9-507. In both types of foreclosures, consult OGC to determine the appropriate foreclosure method. OGC will assist in the preparation of the documents and letters necessary to affect the foreclosure

- (4) Restructure. Prior to, or at the time of, a default to a Settlement Agreement, you may determine that it is in the best interests of SBA and the SBIC to restructure the terms of the Settlement Agreement. The Rule of Two is applicable to decisions to restructure debt.
- (5) Compromise. Prior to, or at the time of, a default to a Settlement Agreement, the SBIC's principals or some other party in interest may ask you to consider a compromise of the SBIC's debt to SBA. (See chapter 13 of this SOP for a more detailed discussion of the compromise process and the factors which you should consider before recommending a compromise.)

6. What are the Criteria for Transferring a Debenture SBIC from OL to OSO?

- a. A Debenture SBIC in liquidation may be transferred back to the OSO as an operating SBIC only after you determine that a transfer is in the best interests of the SBA.
- b. General Requirements.
 - (1) The SBIC must make arrangements to repay its obligations to SBA in full prior to transfer.
 - (2) The SBIC must be in complete compliance with all regulatory requirements prior to the transfer.
- c. What are OSO's Requirements for Accepting the Transfer of an SBIC from the OL?
 - (1) Licensing Requirements. The SBIC must meet all current licensing requirements for a new SBIC Licensee including, but not limited to, current capitalization requirements, management and business plan requirements. You must coordinate with OSO in determining whether the SBIC meets these requirements.
 - (2) Management/Ownership Review. OSO must find the management and ownership of the SBIC suitable for purposes of owning and operating an SBIC. OSO must consider current regulatory guidelines in determining the suitability of management/ownership as well as OSO and OL's past experience with the SBIC's managers/owners. The SBIC may be found acceptable (or unacceptable) for readmittance to the SBIC program based, in part, upon SBA's past experiences with the SBIC's current and former owners/managers. For further discussion on this issue, see SOP 10-06, 9-6.

- (3) If a debenture SBIC is transferred back to OSO, OSO should change the SBIC back to regular servicing.

Chapter 5- Wind Down Agreements For PS SBICs

1. What is a Participating Security Wind Down Agreement?

The OL uses participating security wind down agreements (Wind Down Agreements) as one method of liquidating PS SBICs. These agreements allow the PS SBIC to maintain control of its portfolio, to determine the best time to sell or otherwise dispose of assets and, with SBA's permission, to make Follow On Investments. Once it is determined that the PS SBIC meets the criteria outlined below, a Wind Down Agreement may be recommended.

- a. You will review the Wind Down Plan prepared by the PS SBIC to be sure it is feasible and that it meets the criteria for Wind Down Agreements.
- b. You will negotiate the terms and conditions of the Wind Down.
- c. You will retain jurisdiction over and servicing responsibility for the case until transferred to another Analyst.

2. What Should You Consider When Recommending a Wind Down Agreement?

PS SBICs must meet all the criteria listed below in order to be allowed to Wind Down:

- a. Management must be deemed to be competent, as evidenced both by their behavior prior to and after transfer to OL. The management team must have proven experience exiting and realizing profits from venture investments;
- b. Management must not have acted in a manner which is contrary to SBA's objectives and there is neither strong indication nor substantive evidence of fraud, misrepresentation, insider dealing, civil or criminal misconduct, or other information raising significant doubts about the integrity or honesty of the SBIC management; (As a general rule, if there is evidence of criminal misconduct or civil fraud by the SBIC, You should immediately move to put the SBIC into receivership.
- c. The PS SBIC must have a clean regulatory record with no outstanding regulatory violations, with the exception of capital impairment; (see chapter 4 2 b of this SOP for additional information regarding this issue.)
- d. The PS SBIC must have submitted an acceptable Wind Down Plan; (See chapter 3-3)

- e. Management has agreed to adjust management fees.
- f. Management has agreed to call all unfunded commitments, unless an agreement has been reached with OL to defer calling the commitment.
- g. Management must have agreed not to make any Follow On Investments without SBA's prior written approval; and
- h. Management has agreed not to make any distributions to any partners without SBA's prior written approval, with the exception of distributions to SBA.

3. What Items Must You Consider in Order to Allow a Wind Down?

PS SBICs must meet at least one of the following criteria in order to be allowed to Wind Down:

- a. It is determined by OL that the PS SBIC's assets, including unfunded commitments, are likely to pay SBA, in full, the principal balance of its outstanding participating security Leverage. In some instances, valuations from third parties may be necessary to confirm reported asset values.
- b. The PS SBIC's prior distributions to partners would have paid SBA's principal Leverage in full, had the PS SBIC not made distributions to its limited partners pursuant to SBA's regulations. This is an indicator that the fund managers have the ability to manage a fund and exit portfolio investments profitably.
- c. The PS SBIC has experienced significant realization on assets while in OL and you expect this trend to continue.
- d. Very little of the PS SBIC's original portfolio remains and changing management would have little effect on the liquidation of the remaining portfolio. For example: there may only be a single asset remaining or the ownership percentage in the remaining few assets would not allow management to impact the exit process.
- e. You have determined that there is something unique about the PS SBIC which would make a Wind Down the appropriate liquidation method. You must specifically identify what it is about the PS SBIC which makes it unique. Such unique factors could include a portfolio whose primary asset is under the control of the PS SBIC where the manager is one of the few recognized experts in the field.

4. When Should a Valuation be Ordered?

Concurrent with your analysis of the Wind-down Plan, you may find it appropriate to order a valuation of one or more Impact Investments, if this has not been done by the OSO analyst, to ensure you have the most accurate and timely profile of the SBIC. If a valuation is deemed necessary, you should require that the SBIC, at its expense, engage a valuation contractor to be approved by SBA. The valuation analysis should take into account market conditions, prospects for, and timing of, a liquidity event using appropriate metrics and the probability of different exit scenarios.

5. What are the Steps in Obtaining a Wind Down Agreement?

Within 60 days of receipt of the Wind Down Plan and all other critical documents you will review the Wind Down plan, determine if the PS SBIC meets the criteria for a Wind Down Agreement, and negotiate the terms of the Wind Down Agreement, with the assistance of OGC as necessary. When dealing with the PS SBIC's counsel, OGC must participate. As part of the final Wind Down agreement, the PS SBIC must agree, at a minimum to:

- a. Abide by the terms and conditions of the Restricted Operations Conditions as stated in Section 107.1820(f);
- b. Obtain SBA's prior written approval for all Follow On Investments (see chapter 6 of this SOP);
- c. Agree not to make any distributions to partners without SBA's prior written approval, with the exception of distributions to SBA;
- d. Agree to a reduction in management fees, if SBA requests it and agree that SBA may, at any time, further readjust management fees;
- e. Agree not to borrow any money without SBA's prior written approval; and
- f. Agree to sign a consent to receivership should SBA, in its discretion, determine that the PS SBIC is no longer meeting the terms of the Wind Down Plan or that circumstances have changed such that the Wind Down is no longer advisable and that a Receivership is the appropriate option. The consent may only be utilized by SBA after the expiration of 1 year from the signing of the Wind Down Letter Agreement. This does not preclude SBA from seeking a non-consensual receivership pursuant to the SBIA and Regulations if appropriate. SBA may seek a receivership without the consent of the SBIC at any time. A form of Wind Down letter agreement is shown in appendix 15. You must make it clear to the PS SBIC that final approval of the Wind Down Agreement must be obtained from your supervisor.

6. What should you include in a Liquidation Memorandum?

Once you have finalized negotiations with the PS SBIC, you will recommend to your Chief a liquidation strategy in a liquidation memorandum (the Liquidation Memorandum). The Liquidation Memorandum will recommend a liquidation method after evaluating the alternative liquidation methods available to the PS SBIC. At a minimum, the recommendation needs to discuss each liquidation method available and potential costs associated with each. Costs should encompass current and future management fees and expenses for no more than 3 years taking into account reduced management fees, based on an established percent of declining portfolio value. For receiverships, that cost should be an approximation of an average yearly cost to operate a receivership having similar numbers of assets and of a like nature, i.e., debt or equity, or a mixture of debt and equity and if possible, in similar industries. Cost factors should be discussed only as they are available or can be reasonably approximated. Costs shall never be the sole determining factor in choosing a liquidation method.

7. What is SBA's Principal Role in a Wind Down?

The SBA's principal role in a Wind Down is to ensure that progress on the liquidation of the SBIC through the wind down period is proceeding in an acceptable and beneficial manner in order to maximize repayment of outstanding SBA Leverage, Prioritized Payments and/or Profit Participation.

8. What are the PS SBIC's Duties and Responsibilities in a Wind Down?

For the duration of the wind down period the PS SBIC's management team is responsible for, but not limited to, the following activities:

- a. Reporting to SBA the financial condition of SBCs in the PS SBIC's Portfolio;
- b. Reporting to SBA the PS SBIC's Disposition of Assets;
- c. Preparing (or Obtaining) the PS SBIC's Financial Statements;
- d. Reporting and Remitting Asset Proceeds to SBA for Repayment of Outstanding Leverage;
- e. Ensuring that the PS SBIC complies with the Act, Regulations and its partnership agreement; and
- f. Complying with the Wind Down Agreement.

9. What are the SBA's Servicing/Monitoring Requirements for a Wind Down?

The Financial Analyst will retain oversight and monitoring responsibility for the case until the termination of the Wind Down Agreement. Servicing and monitoring responsibilities include, but are not limited to, the following:

- a. Monitoring compliance with the Wind Down Plan and SBIC regulatory requirements;
- b. Monitoring the performance and compensation of the PS SBIC's management team.
- c. Reviewing the PS SBIC's financial statements, including their cash flow projections;
- d. Monitoring the financial condition of the SBCs in the PS SBIC's portfolio;
- e. Monitoring the PS SBIC's disposition of assets;
- f. Monitoring any legal action brought by or taken against PS SBIC; and
- g. Preparing fiscal year end reports, including estimated recovery reports of the PS SBIC's performance and how the PS SBIC is conforming the terms and conditions of the Wind Down Plan.

10. How do you Monitor the Wind Down Agreement?

- a. Oversight and Status Meetings. The Financial Analyst has responsibility for maintaining oversight of Wind Down activities. Such oversight includes, but is not limited to:
 - (1) Communication. The Financial Analyst manages ongoing communication with all parties involved with the operation of the SBIC;
 - (2) Interim reports. The Financial Analyst should obtain from the SBIC a report of any material developments from the SBIC. Such reports should be provided either monthly or quarterly, depending on the circumstances of the case;
 - (3) Status Meetings. Every Wind Down case should be evaluated during a semiannual status meeting ("Status Meeting") at which time the Financial Analyst, Section Chief (when requested or as needed), and the SBIC

principal(s) meet to determine whether the Wind Down Plan is on track and to review the operations of the PS SBIC;

- (4) Prior to the Status Meeting, the PS SBIC must prepare a status meeting memorandum (the "Status Meeting Memo), as shown in appendix 18, which must be submitted to you at least 10 business days prior to the Status Meeting;
 - (5) Special Examinations. If needed, you will be responsible for coordinating with the Office of SBIC Examinations a special examination of the PS SBIC, evaluating the examination report prepared by the Examiner, and reporting any substantive findings to O/L management and OGC; and
 - (6) Third-Party Evaluation. The Financial Analyst shall require that the PS SBIC retain, for SBA's benefit, the services of an SBA approved outside contractor to evaluate the PS SBIC's compliance with the Wind Down Plan and the PS SBIC management team's optimization of exit strategies. See Appendix 19 for those items to be included in the review. The initial review shall occur approximately 1 year after the Wind Down Letter Agreement has been signed. Thereafter, a determination shall be made, by you, in concurrence with your Chief, as to whether further reviews are necessary. Waiver of the initial review must be approved by the Director, OL.
- b. O/L Records Maintenance. All case related materials produced during the Wind Down period should be maintained according to the manner recommended in this SOP, Chapter 3, Part 1(a).
- c. Authorization of SBIC Actions. For the duration of the Wind Down period, the SBIC is required to submit a written request to SBA for authorization for the below listed activities. Upon receipt of such a request, it is your responsibility to evaluate the request and to recommend a decision on the action based on the Rule of Two. In a Wind Down the PS SBIC must obtain Agency approval for the following activities:
- (1) Making Follow On Investments in portfolio companies;
 - (2) Borrowing funds or pledging Assets;
 - (3) Entering into any arrangement other than the immediate payment of Unfunded Commitments owed to the PS SBIC; and
 - (4) Altering Management Fee expenses or accruals.

11. When Should You Consider Deferring a Decision to Wind Down a PS SBIC?

There may be cases for which deferring the Wind Down decision is appropriate. This may allow time for the portfolio to mature to a greater extent, as in the case of early stage or start-up investment portfolios, or achieve specific milestones so the most appropriate decision can be reached. A memorandum recommending a deferral of a decision is subject to the Rule of Two.

12. What Items Should You Consider When Recommending a Deferred Decision?

A Wind Down decision may be deferred when ALL of the following terms are met:

- a. The fund's remaining assets were predominately early stage or start-up investments at the time of the investment.
- b. At least half of the remaining Impact Investments received significant funding within the last four years .
- c. A sufficient number of viable Impact Investments remain.
- d. The Impact Investments have either (1) reached positive cash flow, (2) project to be cash flow positive within 12 months, or (3) have sufficient cash to achieve profitability within a reasonable time. Exceptions can be made for investments in particular fields where cash flow is typically not positive prior to sale such as life sciences, health care, or a specialized technology (such as nanotechnology). In instances such as these, assessment should follow industry standards.
- e. The PS SBIC's management team has proven demonstrated experience exiting and realizing profits from venture investments of a type present in this portfolio.

13. How Long Should a Wind Down Decision be Deferred?

A Wind Down decision should be deferred long enough to allow the PS SBIC's portfolio time to mature or meet specified milestones, but should not exceed 18 months. However, if a major event occurs that leads the analyst to conclude either positively or negatively that a Wind Down should or should not be continued, there is no reason to wait until the conclusion of the deferral period.

14. How Do You Monitor a PS SBIC During the Deferral Period?

During the deferral period, the PS SBIC is subject to the same monitoring requirements as an PS SBIC in an approved Wind Down, as set forth in this 3-1 c of this SOP.

15. What Happens Upon Conclusion of the Deferral Period?

Upon conclusion of the deferral period, the PS SBIC must be able to meet the Wind Down eligibility requirements outlined in this SOP to be allowed to proceed in an approved Wind Down process.

16. What Happens When a PS SBIC Does Not Meet the Wind Down Criteria?

If the PS SBIC does not meet the Wind Down eligibility requirements, a referral for receivership should be prepared in the same manner as outlined in Chapter 3, paragraph 4 of this SOP.

17. What Happens When a PS SBIC Fails to Meet the Terms of the Wind Down?

If you determine that the PS SBIC is no longer meeting the terms of the Wind Down Agreement or that circumstances have changed such that the Wind Down is no longer advisable, SBA may immediately alter the liquidation course as a result of a change in circumstances or reach a different conclusion as to the advisability of continuing the Wind Down Plan.

The following remedies are available for a PS SBIC in such circumstances:

- a. Restructure liquidation course. The liquidation course can be altered to address the changing circumstances, thus allowing the SBIC to continue in a Wind Down.
- b. Refer for Receivership. If the liquidation course cannot be altered or if it is determined that a receivership is in the best interest of the SBA, a referral for receivership should be prepared in the same manner as outlined in Chapter 3-4 of this SOP.

CHAPTER 6 -Litigation Other Than Receivership

1. Introduction.

This chapter applies to SBIC cases transferred to OL which will be litigated outside of receivership. Cases are classified as in litigation and OGC will represent or monitor the Agency's interest in such cases when one or more of the following events occur.

- a. Commencement of litigation involving the Agency or an Agency official in any matter relating to the SBIC. Take the original process or notice of litigation served upon or received by Agency personnel to OGC immediately. You must receive prior approval from OGC to accept or waive service of process. Also, report informal notices or information of any litigation affecting SBA, the SBIC, an official of either, or affecting an SBIC portfolio company or asset promptly to OGC.
- b. Litigation instituted against an SBIC which could affect adversely the SBA interest, or which could affect ownership or management of the SBIC.
- c. Voluntary Federal or State Insolvency Proceedings, such as reorganization or debt restructuring, involving the SBIC or subsidiary company.
- d. Involuntary Proceeding of any kind instituted by a third party against the SBIC or a subsidiary company which remain undismissed or unstayed for a period of 60 days.
- e. Non-Judicial Assignment/Foreclosure Actions, such as an assignment for benefit of creditors or a summary or quasi-judicial foreclosure action which could adversely affect the SBA interest in the SBIC or its assets.
- f. The opening or administration of an estate or information received concerning the death of an SBIC guarantor or other obligor.
- g. A determination that SBA should pursue judgment for money, revocation of license, or other relief.

2. What are SBA's Responsibilities for SBICs Which are "In Litigation" Status?

- a. Responsibilities. As an analyst, you are responsible for servicing and monitoring the case and for supporting OGC, which is primarily responsible for the litigation.
- b. Contact Coordination. You will coordinate with OGC before contacting and dealing with the SBIC or any other party involved in the litigation. In some cases contact is confined to the respective attorneys, while in other cases you may be permitted to make direct contact.

3. Legal representation in non-receivership litigation.

Within the Agency, responsibility for SBIC/claims litigation lies with OGC. All claims litigation must be referred to OGC. OGC will prepare the necessary pleadings, memoranda, and related documents to effect referral to the appropriate DOJ or U.S. Attorney's Office and will pursue the litigation.

4. Why Seek a Money Judgment Against an SBIC Outside of Receivership?

OL may ask OGC to seek a money judgment and levy and sale under execution of judgment where, for example, virtually all of the SBIC's recoverable assets are unencumbered real and personal property not requiring extensive collection, storage, or maintenance. A money judgment without Receivership may also be pursued where SBA holds a claim against a guarantor.

- a. To Refer a Matter for Money Judgment to OGC. To refer a case to OGC for a money judgment, follow the procedures outlined in paragraph 3-4 of this SOP. Include a description of property or funds which may be reached if a judgment is obtained as part of the referral package to OGC. Also provide a certified Certificate of Indebtedness from DFC PAD and photocopies of the pertinent loan documents.
- b. Collections of Judgments are coordinated with DOJ and OGC or SBA field office counsel. Work with OGC to coordinate the referral to the appropriate DOJ office or SBA field office counsel.
- c. Particular Considerations for Judgment Collection.
 - (1) Evaluation of Collectability Prior to Referral. Before litigation is referred, you must evaluate potential collectability and analyze the SBIC's recoverable assets to determine whether extensive collection and marshaling is required. Consider the amount of legal fees and expenses of seeking a judgment or other relief.

- (2) Reporting to DFC PAD. Upon entry, filing, and recording of a final judgment, report the judgment information to DFC PAD on SBA Form 489, "Judgment Report," (appendix 20), with a copy of the judgment attached. Provide copies of SBA Form 489 to DFC PAD, OGC, and the liquidation case file. Also, add the judgment to the AIDB.
- (3) Collection Actions. Assist OGC in developing and implementing the collection strategy by, for example, identifying funds for attachment or offset; discovery proceedings; possible recovery from fidelity bonds or officer/director liability policies; or a regular program of offset, garnishment, and continual follow-up.
- (4) Compromise Settlement. Compromise settlements of judgments obtained by DOJ is reserved to the Department of Justice, which redelegates authority to the U.S. Attorneys who seek the advice of the client agency before agreeing to a settlement of judgment. If a viable settlement offer is received, OL, through the Rule of Two, will advise OGC of SBA's position, so OGC can inform DOJ.
- (5) Judgment Classification. After a money judgment is entered into Agency fiscal records, via SBA Form 489, it remains an active, separate account classified Judgment - In Litigation until it is:
 - (a) paid in full;
 - (b) settled by compromise; or
 - (c) closed as uncollectible by the U.S. Attorney/DOJ.

When one of these events occurs, change the account classification by SBA Form 327 action.

5. SBA Claims Against Obligors in Bankruptcy.

- a. Automatic Stay. The filing of a bankruptcy petition activates an automatic stay which prohibits many acts involving the debtor, its property, and the property of the estate. For example, a pending repossession, a public foreclosure sale, or any other commencement or continuation of any type of collection activity must cease or be suspended upon the filing of the petition. The stay remains in effect until the property no longer belongs to the estate or debtor, until the case is closed or dismissed, until discharge is granted or denied, or until the court lifts the stay upon request of an interested party. You must consult with OGC prior to continuing any action with respect to the debtor in bankruptcy. A relief of stay

may be granted by the court, in its discretion:

- (1) when the debtor has no equity in the property;
 - (2) when the property is unnecessary for reorganization;
 - (3) when the secured party does not have adequate protection; or
 - (4) for other good cause.
- b. Offset. You must review available information to determine whether there may be an offset available in the case. The Bankruptcy Code recognizes the right of offset of a pre-bankruptcy debt owed by the creditor to the debtor, against a pre-bankruptcy claim of the creditor against the debtor. This issue is most common between the bank of deposit and the debtor. Use of offset requires relief from the stay.
- c. Your Responsibilities in Bankruptcy Cases. When you receive notice of a bankruptcy filing and the first meeting of creditors, notify OGC promptly and begin compiling information on SBA's claim.
- (1) Obtaining Information. The filing of the petition places the debtor under the protection of the court and serves to protect the business and financial assets and information. They are available or visible to creditors only under conditions prescribed by the Act and by the court. OGC will advise on proper methods of contacting interested persons and of obtaining information.
 - (2) Documentation of Claim. Obtain a certificate of indebtedness and a statement of account from DFC PAD showing the amount of debt due on the date of the filing of the petition. Prepare and sign the Proof of Claim. Provide the proof of claim and attached copies of the debt instrument, collateral documents, and computer printout to OGC for filing with the Bankruptcy Court.
 - (3) Cooperative Efforts. Assist OGC in determining the Agency's position on actions related to cash collateral, adequate protection, and other such mixed legal/financial issues. You are responsible for evaluating, analyzing, and preparing, with OGC, the Agency's position on bankruptcy proceedings as they are issued.

6. Claims Against Deceased Obligors.

When the Agency learns of the death of a person obligated to SBA either as an obligor or guarantor of an SBA loan, ask OGC to file a claim in the decedent's estate.

CHAPTER 7- Receivership

1. What is a Receivership?

SBA also conducts SBIC liquidations through the use of Federal court receiverships authorized by 15 U.S.C. Section 687. Upon the finding of a regulatory or statutory violation, a Federal District Court, upon request of SBA, can appoint the SBA or other entity to serve as Receiver of an SBIC.

- a. Nature of a Receivership. For purposes of this SOP, a receivership may be defined as a proceeding in which a Federal court takes control of the SBIC and possession of all its assets and appoints an entity (typically SBA), to serve as Receiver. The Receiver serves as an officer of the court and, at the direction of the court, collects, cares for, administers, and, in most instances, disposes of the property of the SBIC in accordance with pertinent law and the orders of the appointing court. The appointing court, acting as a court of equity, may provide virtually any lawful or equitable remedy to achieve its mission.
- b. Types of Receiverships. A Receivership may be established for any legitimate purpose. The order of appointment should state that purpose. In most instances, the following types of receiverships are established for SBICs.
 - (1) Temporary, or caretaker, receivership used where a receiver is appointed to:
 - (a) Take control of and operate the SBIC until a thorough review, an accounting, or a hearing on the merits for permanent appointment occurs; and
 - (b) Monitor, maintain, and operate an SBIC while taking corrective actions to right a failing SBIC or while determining the feasibility of taking corrective steps.
 - (2) Permanent or liquidating receivership used when a receiver is appointed to liquidate the assets of the SBIC to satisfy the creditors of the SBIC in order of priority as determined by the appointing court.
 - (3) Operating receivership to take control and protect the SBIC's Assets pursuant to Section 107.1820 (d) of the Regulations.

2. What is SBA's Role in SBIC Receiverships?

- (a) SBA-Agency. SBA, as an Agency (SBA-Agency), is the regulator of SBICs in operation and in liquidation. In its role as regulator, SBA's concerns are with its programs and with the statutes and regulations governing those programs.
- (b) SBA-Creditor. As creditor (SBA-Creditor), SBA must react to each proposal or action of the Receiver in light of SBA's responsibility to recover its loans and investments and to protect the viable SBCs in the Debtor SBIC's portfolio.
- (c) SBA-Receiver. After SBA is appointed as Receiver (SBA-Receiver), SBA is a fiduciary, responsible to the court and to all creditors, including SBA-Creditor, and parties in the interest of the proper operation and/or liquidation of the debtor. The Receiver is a separate legal entity and, as such, its funds, records, claims, assets, and liabilities are not the funds, records, claims, assets, and liabilities of SBA or the Government. SBA-Receiver's decisions must be made for the benefit of the entire Receivership estate. In liquidating the assets of the estate, SBA-Receiver is bound by the orders of the appointing court, Federal receivership and other statutes, court rules, applicable state laws, etc., rather than the regulations of SBA.
- (d) Authority to Take Official Actions. The actions of SBA-Receiver may be taken by you, your Chief, or the Director, OL, through delegation provided to those positions. In particular cases or for particular Receivership functions, other SBA employees or the Receiver's agents may have authority to act for SBA-Receiver as a result of redelegation or specific memorandum, contract, or letter from the Director, OL or SBA counsel.
 - (1) Supervision and oversight of Receiverships within OL will be the responsibility of the Chief RO.
 - (2) Counsel of Record. A receivership is a case in litigation and is under the jurisdiction of a federal court so all legal actions must be approved by OGC. SBA's OGC will be the Receiver's counsel of record for each case in which SBA is the Receiver. Outside counsel may represent SBA as Receiver

3. Why is Receivership Utilized as a Liquidation Alternative?

- a. SBA Remedy. OL will refer and SBIC to OGC to request that a receivership be obtained, when the SBIC has been transferred to OL, is in violation of the Act or Regulations, and does not meet the requirements for a Settlement Agreement , or a Wind Down Agreement.

- b. Factors Tending to Support Receivership include, but are not limited to:
- (1) Violations of the Small Business Act or Regulations;
 - (2) Inability to effectuate a Settlement Agreement, or Wind Down Agreement with SBA;
 - (3) A default in a Settlement Agreement or termination of a Wind Down Agreement;
 - (4) Known or suspected fraud or other wrongdoing by the SBIC or its principals;
 - (5) Active or pending litigation against the SBIC or its principals;
 - (6) Assets or investments requiring specialized liquidation expertise;
 - (7) Known or suspected environmental problems of SBIC assets;
 - (8) The operation of subsidiaries or businesses controlled by the SBIC; or
 - (9) The lack of necessary information or likelihood of large SBA losses necessitating the need to find out what has taken place with SBIC funds.
- c. Advantages of Receivership. The court can establish a receivership tailored to fit the needs of a particular SBIC. For example, the court can devise remedies to compel individuals to provide information to the Receiver, can stay and enjoin legal and administrative actions that may affect the Receivership estate, and enable the Receiver to obtain whatever resources and expertise are required to affect the Receivership.

4. How is a Receivership Obtained?

- a. Consensual Receivership. Usually, SBA will try to obtain the SBIC's consent to the Receivership and to SBA's appointment as Receiver. In some instances, the Regulations mandate automatic consent. (See Section 107.1810 (i) and 1810 (d) of the Regulations). Such a consensual receivership is preferable to SBA because the receivership will start sooner, require less SBA staff time, and avoid litigation expenditures by the SBIC. Once a case is referred for Receivership, OGC will initiate all discussions of consensual receivership with the SBIC.

- b. Litigated Receivership. If the SBIC does not consent to a receivership or SBA's appointment as Receiver, or has not automatically consented pursuant to the Regulations, SBA will seek a court ordered receivership with the Agency as receiver. SBA's appointment as Receiver is usually granted on the basis of:
- (1) Its expertise and experience in liquidating SBICs;
 - (2) Its resources which limit cost expended in receivership operations;
 - (3) Its incentive to maximize receivership recoveries; and
 - (4) Its access to additional funds for operating the receivership or recovering on assets if the Agency approves an advance.

5. What are the Duties and Responsibilities of the OL Staff Pre-Receivership?

- a. Interaction with OGC. You will be assigned the Receivership case by your Chief and will work with OGC in obtaining a Receivership. Your responsibilities include reviewing all offers from the SBIC and any substantive changes proposed in the relief being sought. Although all procedural and litigation matters are the responsibility of OGC, you may be called in to assist in such activities as preparing documents, reviewing regulatory violations, executing affidavits, and testifying at hearings or trials.
- b. Communication with SBIC. While obtaining a Receivership, communication between you and the SBIC's personnel may be restricted. You should seek OGC's guidance on the extent and level of communication.
- c. Identification of Independent Contractor as Principal Agent. Prior to obtaining the Receivership order You and the Chief, RO, in consultation with OGC litigation counsel, should identify a qualified individual or company to serve as the Principal Agent of the Receivership (Principal Agent). The Principal Agent is an independent contractor engaged directly by the Receivership under the authority provided by the appointing court. The contractor is not a Government employee, but is retained, compensated, and terminated in accordance with a contract, executed between SBA-Receiver (not SBA-Agency) and the Principal Agent. Considerations in selecting the Principal Agent include, but are not limited to:
- (1) The expertise that will be required to liquidate the SBIC's specific investments and assets, address the problems of the SBIC, and manage the corporation during the Receivership;

- (2) The expertise of the SBA staff assigned to the receivership;
- (3) The hourly rate and time commitment negotiated; and
- (4) Prior court supervised liquidation experience.

6. How is a Receivership Commenced?

- a. Entry of Receivership Order. The Federal Court Order appointing SBA as Receiver (the Receivership Order) establishes the Receivership and grants the power and authority under which the receivership operates. The Receivership Order may grant the Receiver broad authorities and powers; it also may specifically list the Receiver's powers. Typically, the Receivership Order provides that the court take jurisdiction over the SBIC and all its assets wherever located. The Receivership Order also typically grants the Receiver the authority to:
 - (1) Liquidate all assets and satisfy the claims of creditors;
 - (2) Exercise the powers of former SBIC officers, general partners, managers or directors;
 - (3) Borrow and disburse funds for administration of the estate and open Receivership bank accounts;
 - (4) Compel discovery; and
 - (5) Procure outside resources and expertise. The Receivership Order also typically dismisses the SBIC's officers, directors, general partner, management company, managers, employees, members and agents and stays and enjoins all legal proceedings.
- b. Authority for Receivership. The Receivership Order is typically the primary source of authority for the SBA-Receiver. SBA-Receiver derives its authority from the Receivership Order of appointment, subsequent court orders and directives, rules of court (local court rules should routinely be checked), and statutes. Additional requests to the Court should be a coordinated effort between you, OGC, and the retained agents.
- c. Receiver's Agents, Contracted Parties, Equipment, Facilities, Services, Etc.
 - (1) Pursuant to the Receivership Order, SBA-Receiver may contract and compensate for services.

- (2) If contract assistance is retained, ensure that a contract and/or letter of retention setting forth the activities of the retained party is executed by the Chief, RO or the Director, OL.

7. What are the Duties of the Receiver?

- a. Source of Receiver's Responsibilities. Typically, the Receivership Order sets forth certain duties and responsibilities of the Receiver. Additional duties and responsibilities may be imposed by subsequent orders of the appointing court, court rules, Federal statutes applicable to Federal court receivers and receiverships, state statutes applicable to the SBIC in receivership because it is incorporated in that state, and applicable local regulations and ordinances. The Receiver also has duties as a fiduciary to the creditors, shareholders and/or partners of the SBIC and as a servant of the court to the appointing court.
- b. Obligations Imposed on the Receiver by Statute.
 - (1) The Receiver must manage and operate the Receivership estate according to the requirements of the federal and state law as applicable in accordance with 28 U.S.C. §959(b) or as ordered by the Court.
 - (2) The Receiver must make appropriate filings with applicable Federal, State, and local taxing authorities as required under 28 U.S.C. §960 if reasonably possible.
 - (3) If the Receiver has possession or title to all or substantially all of the assets of a corporation, it is required to file a Federal income tax return for the corporation, if reasonably possible, even if the corporation is no longer operating in accordance with 26 U.S.C. § 6012(b)(3).
 - (4) The Receiver must ensure the accurate and timely preparation of IRS Form 1099 for each service provider that receives payment from the Receivership in excess of \$600 and Forms 1096 for each SBIC in Receivership.
 - (5) The Receiver must follow the procedures set out in 28 U.S.C. §§ 2001-2005 in arranging for the orderly liquidation of certain assets of the Receivership estate specified in the statute

8.. How Do You Establish Control of the Receivership?

- a. Ten-Day Notice Requirements

- (1) Notice to Federal District Courts Under 28 U.S.C. Section 754. Within 10 days of the date of entry of the order, the Receiver must file a copy of the complaint and the Receivership Order with every Federal district court. This Section 754 filing enables the appointing court to exercise jurisdiction and control over all assets of the SBIC in any jurisdiction where the filing is made. Late filings should still be made as courts have given effect to such filings.
 - (2) Notice to the Internal Revenue Service. Section 301.6036-1(a)(2) of the Treasury Regulations requires that, within 10 days of appointment, the Receiver must give notice of appointment to the District Director for the Internal Revenue District in which the debtor is/was required to file a return.
 - (3) Notice to United States Post Office. Within 10 days of appointment, the Receiver must send notice to the Post Office in the jurisdiction where the SBIC was located of the change of address of the SBIC.
 - (4) Responsibility for Notice. You and, in some cases, the Principal Agent are responsible for ensuring that the notices in (1) and (2) above are sent in a timely fashion.
- b. Control of SBIC Bank Accounts. The Receivership Order should provide the authority for the Receiver to exercise dominion over the SBIC's accounts. Find out the location and account numbers as early as possible from the SBIC's most recent SBA Form 468 and/or from an officer, director, partner, manager or other employee of the SBIC.
- (1) Seizing the accounts. Immediately after the Receivership Order is entered, the Receiver must serve a copy of the Receivership Order upon each bank with which the SBIC has been doing business. This freezes the accounts and notifies the bank of the cancellation of the authority of prior signatories on the account(s).
 - (2) Obtaining statements. You or the Principal Agent must obtain statements of each account as of the date of notice. In addition, you or the agent should request a written statement from the bank listing all other accounts, certificates of deposit, investment accounts, etc. of the SBIC at the bank, as well as any safekeeping or safety deposit boxes.

- (3) Obtaining codes, signature cards, and keys. You, or an agent, must obtain signature cards, account numbers and codes, keys, box numbers, etc., necessary for exercise of control.
 - (4) Closing the accounts. As soon as practical, the Chief, RO or the Principal Agent shall ask the bank to close the account(s) and issue cashier check(s) or wire funds for the remaining balance(s), payable to the Receivership. Request a final statement from the bank to ensure that accounts are closed. To avoid penalties, you may allow fully insured certificates of deposit to transfer at maturity. As soon as practical, you and the agent, together, or with another person, must close any safekeeping account or safety deposit box and retrieve the deposited items.
- c. Control of SBIC property, records, assets, and portfolio. The Receivership Order should provide that upon its entry, the former officers, directors, general partner, management company, managers, employees, members and agents are dismissed. At that time the court has exclusive jurisdiction over the SBIC and its assets. You, the court-appointed receiver or the Principal Agent should take physical possession of the SBIC and its property as soon after the entry of the Receivership Order as possible. (See Appendix 21, "Initial Checklist for New Receiverships.")

9. How Does the Receivership Operate?

The appointing court and local rules determine how to operate its Receivership(s). The OL has developed non-exclusive, general approaches, requirements, and guidelines to assist in the orderly administration and liquidation of the Receivership estate in those areas where the court has left matters to the discretion of the Receiver. You and the retained agents, with the assistance of OGC (and others who may be retained consistent with or by permission of the appointing court), will perform the necessary tasks.

- a. Receivership Cash Control
 - (1) Receivership Bank Accounts. The Receivership Order will typically authorize the Receiver to establish bank checking, savings, and other accounts as are necessary for efficient operation of the Receivership.
 - (a) Opening Accounts. Receivership accounts will be opened in the name of Small Business Administration, Receiver for (SBIC name). Necessary accounts will be established with letter authorization or agreement from the Chief, RO or Director, OL (and all authorized signatories). The safety of the funds is the paramount concern.

- (b) Monthly Statements. Bank statements must be reconciled no later than 1 month after they are received, by individuals without review or approval authority over receipts or disbursements for the reconciled account.
 - (c) Authorized Signatures. The Director, OL, or the Chief, RO, will designate the authorized signatories for each bank account. Only the designated signatories are authorized to sign and no one may act on their behalf. Every disbursement must have at least two signatures and be reviewed for appropriate supporting documents by a third party reviewer. Typically the Director, OL, or the Chief, RO, will authorize all disbursements unless he or she is unavailable, in which case, one of the other authorized signatories will sign. Except for extraordinary circumstances at least one authorized signatory must be an SBA employee.
 - (d) Identification Number for the Receivership. The SBIC's Federal Identification number will be used to open the Receivership bank account.
 - (e) Investment of Idle Funds. Investments of idle funds must be in instruments providing highest safety in accordance with SBA's fiduciary duties. Usually such investments will be made in obligations of the United States of investments guaranteed by the full faith and credit of the United States. If the balance of the account is significant, you must try to ensure that the funds are earning interest.
- (2) Authorizing Disbursements from the Accounts. The Director, OL, will establish procedures for recommending, verifying, and documenting authorizations for disbursement of funds from the Receivership accounts. The comments below are provided as guides for establishing such procedures.
- (a) The check request or the check will require at least two authorized signatures. The Principal Agent and the Analyst are responsible for initiating the authorization and attaching proper documentation.
 - (b) Documentation accompanying the authorization form or check, usually an original invoice, must be approved by the Principal Agent and/or an SBA employee.

- (c) You must verify the authorization for payment. As the Analyst assigned to the case, you will sign the requests for payment indicating your authorization to pay.
 - (d) Either you or the responsible agent or retained party must ensure that a receipts and disbursement register is maintained and is accurate. A summary report on each such registry will be made monthly to you or your designee, preferably an SBA employee.
 - (e) Meaning of the signatures. The initiating signature certifies the validity and propriety of the disbursement and the supporting documentation. The second, or authorizing signature, verifies that the authorization and supporting documentation appear to be valid and sufficient.
- b. Initial Analysis. At the outset of the Receivership, SBA-Receiver must determine:
- (1) The operation and liquidation objectives of the Receivership given the nature of the SBIC and its particular problems;
 - (2) The nature of the assets, records, and resources which the Receiver has obtained from the SBIC; and
 - (3) The remaining resources (personnel, services, facilities, etc.) required by the Receiver to operate/liquidate the Receivership. To assist in this analysis, the Principal Agent should, within 1 year from the date of the order, complete a Liquidation Report as shown in Appendix 22. This report is a collection of essential information about the SBIC, its previous activities, and its assets and assists the development of a liquidation strategy. This Liquidation Report should be utilized as a benchmark to reference progress of the liquidation activity (see Chapter 15-3 of this SOP).
- c. Operating/Liquidating the Receivership. SBA-Receiver typically must meet various corporate, liquidation, and administrative objectives, and the objectives and duties of the Receivership.
- (1) Operating the corporation/partnership/LLC includes, but is not limited to, performing accounting functions, paying bills, preparing tax returns, handling personnel matters, handling litigation, and maintaining equipment and property until it is liquidated.

- (2) Liquidating the corporation's/partnership/s/LLC's assets entails marshaling, valuing, marketing, and ultimately, collecting or selling the portfolio accounts and other assets.
 - (3) Pursuing the corporation's/partnerships, LLC's claims requires determination of any potential claims against portfolio concerns, shareholders or partners, former officers, or others. This activity also requires coordination with OGC in the event of litigation.
 - (4) Retaining services, facilities, and personnel. SBA-Receiver generally will need a wide variety of skills and services to deal with the affairs and liquidation of the SBIC. Necessary service providers may include attorneys, accountants, appraisers, realtors or property managers, among others. The Receiver must enter into contracts, letters of retention, etc., to procure the necessary services.
- d. Reporting to and communicating with the Receivership court.
- (1) Receiver's Reports describe the Receiver's activities for a designated time period (usually 1 year) in accordance with the Court's local rules. The report addresses the status of assets, liabilities, litigation, receipts, and disbursements and should be filed at least annually unless the order or local rules dictate otherwise.
 - (2) Petitions/Motions are prepared to seek prior court approval for specific actions the receiver proposes, such as the sale of real property.
 - (3) Claims Bar Date Petitions/Motions request approval for procedures the Receiver will follow in identifying creditors and makes recommendations to the court with respect to the disposition of those claims.
 - (4) Closing Petitions/Motions request approval for procedures the Receiver will follow in winding up the affairs of and closing the Receivership.
- e. Oversight and Status Meetings. You are responsible for overseeing Receivership activities to ensure that the goals and requirements in agent contracts and established liquidation plans are achieved to the extent possible through:
- (1) Ongoing communication with all parties involved with the operations of the Receivership;
 - (2) Review of documents, correspondence, and cash expenditures;
 - (3) Review of Receivership activities, i.e., asset sales, travel requests, etc.;

- (4) Preparation or review of liquidation and Receiver's reports;
 - (5) Quarterly status meetings at which you, your Chief (when requested or as needed), the Principal Agent, and OGC's designee must be present to assess the progress and operations of the receivership in light of the liquidation plan and prior status meetings and to assess ongoing costs., and to determine whether litigation is desirable or necessary or is on track. A Status Meeting Agenda must be prepared, in advance, by the Principal Agent; (See appendix 23)
 - (6) Prepare post status meeting reports to effectively implement decisions reached at the status meeting. Within 14 days of the status meeting, each Analyst will provide an "Action Plan" summarizing decisions reached and follow up actions to be taken. This report should be sent to all relevant parties as well as to the Chief, R.O. A copy of the Status Meeting Agenda should be attached to the action plan. In those few instances where only a few issues remain to be resolved, a copy of the Status Meeting Agenda, with decisions and follow up actions noted thereon, may serve as the action plan.
 - (7) Preparation of Estimated Loss/Recovery Reports on an annual basis. (See appendix 24.)
- f. Use of SBA Resources. Several areas of SBA, including OIG, field offices, and the Office of Administrative Services, may provide services to benefit the Receivership. For example, SBA field offices may provide lists of local service providers such as auctioneers, appraisers, accountants, or lawyers. Outside counsel must be approved and retained by OGC. You, an OGC attorney or an agent will determine if SBA-provided services are suitable, available, and in the best interest of the Receivership. To the extent SBA is providing services to the Receivership estate, SBA may receive payment for such service upon the approval of the court. Although SBA may provide services and equipment to Receiverships, Receivership assets, and personnel may not be used for the Agency's benefit. SBA-Agency may, however, request and receive information from the Receivership if such information would be similarly available to other creditors.
- g. Receiver's Certificates. In the event additional funds are needed to operate the SBIC in Receivership, or to facilitate maximum recovery of SBIC assets, the Principal Agent should submit to you a request indicating the need for the funds, prospects for recovery, and the fact that such borrowing has been approved by the court. If the borrowing is authorized by a Court order and you concur with the Agent's recommendation, you will process the request for funding. . To establish a receiver's certificate account on the LAS, a 327 action must be provided to DFC

PAD authorizing the set of the receiver certificate account. A properly signed Form 341 requesting the disbursement of funds just be sent to DFC PAD which will process the disbursement request for issuance of the Treasury check. Upon approval, a Treasury check will be issued, a loan number will be assigned, and a Receiver's certificate will be prepared. The check will be forwarded to the Receivership and the Receiver's certificate will be executed and delivered to the Agency for safekeeping. When a Receiver's certificate is repaid, the Analyst will be responsible for returning the Receiver's certificate to the Receivership, marked paid. See appendices 25, 26 and 27 for copies of the documents used in this process.

- h. Maintenance of Separate Records. You and the Principal Agent should ensure that files and records in the possession of SBA-Agency and SBA-Receiver are properly segregated and labeled. SBA-Agency should maintain the Agency's files on the SBIC including the pre-Receivership Operations and OL files. SBA-Receiver's files have two components: the SBIC records and the Receivership records. You must collect the SBIC's files from the SBIC when the Receivership Order is entered and should maintain these files in the condition received. The Receivership operations' files will include necessary copies of documents from the SBIC corporate files, as well as any documents originating from Receivership activities such as court filings, asset sale documents, correspondence, etc.
- i. Communicating with Outside Parties. When communicating with outside parties (verbally or in writing), you must differentiate between SBA-Agency and SBA-Receiver's roles. The retained Receivership agent must only speak for the Receivership and should clearly identify her/himself as an independent agent working for the Receivership. Unless otherwise provided, all individuals working on receivership matters should also clearly indicate that final approval on Receivership actions rests with the appointing court. (The appropriate signature identification on letters and agreements is illustrated in appendix 28.)

10. What are Receivership Liquidation Activities?

Receivership assets remain titled in the name of the pre-Receivership owner but are under the court's jurisdiction, control, and right of possession. The court has power to order, authorize, and approve sales by the Receiver and to enjoin interference with the purchaser's ownership and subsequent possession of the property.

- a. Applicable Statutes. Any disposition of Receivership assets must comply with the requirements of 28 U.S.C. Sections 2001-2004 which provide the authority, with the Order, for such sales.

- b. Sales Alternatives. Typically, the Receiver may sell assets for cash or terms, although a cash sale is usually preferable. The Receiver also may sell assets by either public or private sale. Follow the sales procedures below for real property and generally, for personal property in accordance with 28 USC § 2001-2002, when applicable or unless otherwise provided by the Receivership court.
- (1) Private Sale Approval Procedure. After the receiver establishes the asset's value, he/she may elect to pursue a private sale. If so, the Receiver must contact potential purchasers, negotiate the terms of the sale, and petition the court for approval of the sales contract and procedures for sale. The court will generally require that notice of the sale be given to all interested parties prior to the court's confirmation of the sale. Specific requirements include (unless otherwise waived by the court):
- (a) That the receiver obtain three appraisals by Court approved appraisers.
 - (b) That the sales price be at least two-thirds of the appraised value.
 - (c) That an opportunity to offer be given to all known interested parties who will be given notice of sale, as the court directs.
 - (d) That the terms of sale be published in newspaper(s) of general circulation at least ten days prior to the confirmation hearing.
 - (e) That the proposed sale be confirmed only if a bona fide offer on the same terms for 110 percent or more of the proposed sale price is not received.
- (2) Public Sale Approval Procedure. If the court has not provided authority for a private sale, the Receiver may request permission from the court to offer an asset at auction or other public sale. Prior to requesting such permission, the Receiver should obtain appraisal(s), identify an auctioneer (if needed), and establish a minimum acceptable sales price. All public sales should be conducted after proper legal notice to interested parties, i.e., by direct mail for identified parties, and by posted and published legal notice for the public at large. Notice of sale should include the following information:
- (a) Type of sale to be conducted;
 - (b) The time, date, and place of sale;

- (c) Description of the property being sold;
 - (d) Instructions for arranging for inspection of the property;
 - (e) Whether the seller will be bidding or reserves the right to reject bids;
 - (f) Requirements for approval of the sale;
 - (g) Requirements for removal of purchased property and any clean up or related requirements;
 - (h) Whether the sale will be for cash or on terms; and, if for cash, what constitutes cash and when it will be delivered; and, if for terms, what the terms are and how bidders must prequalify for bidding on terms; and
 - (i) Appropriate disclaimers and disclosures.
- c. Receiver's Counsel. Outside counsel may be retained with OGC approval to assist the Receiver with asset disposition, litigation or other legal matters. Outside counsel must be familiar with the state laws and local practices. When retained, outside counsel will pursue any necessary litigation and advise the Receiver. Payment of monthly bills to outside counsel must be approved, in writing, by OGC.

11. How are Claims Against the Receivership Resolved?

- a. Claims Against the Estate. Generally, the Receivership Order provides that the Receiver will liquidate the assets of the SBIC and pay the SBIC's creditors in a priority established by the Court. The Receiver will identify the creditors and claimants of the estate so that it may defend against unjustified claims and recommend acceptance of proper obligations.
- b. Bar Date Procedure.
 - (1) Court Approval. OGC or the Principal Agent should prepare a petition requesting a court order (the Claims Bar Date Order) providing for a procedure for notifying all potential claimants. The Order should also seek an expedited process for handling any claims received and establishing a date by which all claimants must properly file a claim or be barred from sharing in the proceeds of the receivership estate (the Bar Date). After review, you should submit the petition to OGC for filing with

the court.

- (2) Timing. Begin the bar date procedure after you and the Principal Agent are familiar with the SBIC's finances and investments and with the individuals and businesses with which the pre-Receivership SBIC had contact. The Principal Agent should assemble a list of such parties based on records and information obtained from the SBIC. This should generally occur about 6 to 12 months after commencement of the Receivership.
 - (3) Compliance with order. Upon receipt of the Claims Bar Date Order, the agent and Analyst should ensure prompt publication in a newspaper of general circulation and mailing of notice.
- c. Notification to the Court of Claims and Recommendations regarding Payment. You, the OGC attorney assigned to the receivership and the Principal Agent will review the claims and any supporting documentation which were submitted in accordance with notice of the Bar Date. After close of the Bar Date, make sure that a Receiver's petition/motion notifying the court of the claims filed, recommending the payment or non-payment of the claims, and requesting an order approving the Receiver's recommendations is prepared.
- d. Final Determination as to Claimants. The court will review the Receiver's recommendations and any other pleadings, and make the final determination of the priority, amount, or payment of a claim.

12. How Do You Close the Receivership?

- a. Determination to Close Receivership. The Receiver must complete all of its duties or have the court alter those duties before the Receivership may close. Because the Receiver's duties involve interests of others (e.g., tax authorities, courts, creditors) the Receiver does not exercise total control over the timing for completion of its tasks. When it is advantageous to do so, the Receiver should initiate closing procedures. (See Appendix 29, "Checklist for Closing a Receivership," and Appendix 30, "Closing Notebook Checklist.") In preparation for final closing, the Receiver generally ensures that:
- (1) All assets have been liquidated or otherwise properly disposed of or addressed in the court's closing orders;
 - (2) All possible claims against obligors, guarantors, partners, directors, officers, members, agents, accountants, fiduciaries, and third parties have been resolved;

- (3) All litigation has been concluded or appropriate disposition of such litigation will be requested of the court;
 - (4) All required local, State, and Federal reports, tax returns, and filings have been made;
 - (5) A final accounting of receivership cash activity will be prepared upon entering of the final order;
 - (6) The SBIC license has been surrendered or revoked or will be revoked upon entry of the final order;
 - (7) If the SBIC was a partnership, that its Certificate of Limited Partnership has been cancelled in accordance with state law. If the partnership is to survive, that its Certificate of Partnership and Agreement of Limited Partnership are amended, in accordance with state law, with all references to SBA, the SBIA or the SBIC program being deleted. If the SBIC is an LLC, that it has filed a certificate of cancellation in accordance with state law. If the LLC is to survive, that its Certificate of Formation and company documents are amended in accordance with state law, with all references to SBA, the SBIA or the SBIC program being deleted. You must consult with the assigned OGC attorney to determine what steps need to be taken.
 - (8) All other requirements that the Receiver is obligated to complete before closing have been properly completed or a request to the court for modification of the requirement has been made.
- b. Wind-Up Order. When you, the OGC attorney assigned to the receivership case and the Principal Agent determine that a particular Receivership has nearly completed its tasks and may soon be ready to close, wind-up pleadings should be prepared, which will set forth proposed procedures for winding up the Receivership, as well as indicating which items or activities still need to be completed. The "Wind-Up" order typically directs the Receiver to:
- (1) Prepare a final report to the Court summarizing the activities of the Receivership, recommending revocation of the SBIC license, and recommending that the Receiver be discharged;
 - (2) Finalize the assignment and transfer of Assets; and
 - (3) Prepare the final Federal and State tax returns.

- c. Implementation of "Wind-Up" Order. When the Court signs the "wind-up" order, the Receiver must begin to implement the procedures set forth in the Order.
- d. Final Order. After completing the tasks approved by the court in the "Wind-Up" order, a final report must be filed with the Court together with a motion/petition requesting a Final Order (the "Final Order") closing the Receivership. The Final Order approves the final report of the Receiver and unconditionally discharges the Receiver, its employees, and agents.
- e. Final Notice. Once all Assets, including cash, have been disposed of by the Receiver, SBA counsel, on behalf of the Receiver, will file with the court a final notice stating that the Receivership has been terminated. A final cash receipts and disbursements listing must be included.
- f. Final Tax Returns, together with a final trial balance must be prepared by the Receiver's accountants. A copy of the final trial balance, and the tax returns should be sent with the books and records to the former shareholders, partners, members or other appropriate parties of the SBIC if applicable.

13. What Happens to the Assets of a Receivership when the Receivership is Closing?

- a. If Assets Remain and all Creditors Except SBA have Been Repaid.

Once the Court has approved the winding-up of the Receivership and all of the creditors of the Receivership (except SBA) have been paid, there may be Assets remaining in the Receivership. These remaining Assets will be assigned by the Receivership to SBA to be applied towards the outstanding indebtedness owed by the SBIC Receivership to SBA. (The only Assets which should remain are those which have value. If any of the remaining Assets have no current or anticipated value, they must be abandoned by the Receivership. Abandonment should take place prior to the transfer to SBA.)

Step 1- Principal Agent's Responsibilities. After determining what Assets the Receivership will transfer to SBA, you must require the Principal Agent to prepare all of the documents necessary to transfer those assets. (A checklist of the documents and procedures necessary to complete the transfer process is shown in appendix 31.)

Step 2- Your Responsibilities. After all the procedures necessary to transfer Assets have been completed, schedule a transfer meeting during which all of the documents will be executed by you and the Principal Agent. The Principal Agent or the appropriate party will sign the necessary documents and the transfer will then be complete. This transfer process must be completed in compliance with

any time frames and conditions established by the Receivership Court's orders.

- b. If Non-Cash Assets Remain and all Creditors Have Not Been Paid. After the Court has approved the winding up of the Receivership, some non-cash assets may still remain. If the creditors have not been paid in full, you must not transfer those non-cash assets to SBA (assuming that SBA is a subordinated creditor) until arrangements are made with the other creditors. For example, if the assets are non-liquid at the time the receivership is to close, but liquidity is anticipated sometime in the future, you may want to arrange with the other creditors to allow SBA to take an assignment of those assets subject to an agreement among all the creditors that SBA will pay the creditors, in the absolute or agreed order of priority, when SBA liquidates the assets. Under no circumstances may Assets be transferred to SBA without an arrangement with the senior creditors and the Receivership Court's approval.
- c. Placing the Transferred Assets on SBA's Loan Accounting System (LAS) for Tracking. Each Asset transferred from a Receivership to SBA becomes an SBA acquired asset and you must place it on SBA's LAS for tracking. (See chapter 10 of this SOP for the procedures required to place SBA acquired Assets on the LAS.)
- d. Charging-Off the Balance Due SBA After Set Up of Acquired Assets. After you have set up the acquired Assets on the LAS, you must prepare an SBA Form 327 action charging-off the difference between the outstanding indebtedness owed to SBA by the SBIC and the value of the assets transferred to SBA. (See chapter 14-3 of this SOP for the procedures necessary to effectuate a charge-off.)
- e. Post Receivership Checks. Checks payable to the SBIC, received after the close of the receivership are assets of SBA (provided SBA obtained a general assignment of all assets as part of the closing process). These checks shall be forwarded to a designated Analyst in OL. Upon receipt, the designated Analyst will ensure that the check is deposited to the appropriate SBA account.

CHAPTER 8 - Sale of SBA's Preferred Limited Partnership Interest

1. Participating Securities and SBA's Preferred Limited Partnership Interest?

Participating Securities are securities issued in the form of a "Preferred Limited Partnership Interest" with SBA as the preferred limited partner. Participating Securities are used by SBA to provide Leverage to Participating Security SBICs.

2. What are the Benefits of Selling SBA's Preferred Limited Partnership Interest?

The benefits from a sale of SBA's Preferred Limited Partnership Interest ("PLP Interest") are:

- a. A Significant increase in the speed of SBA's recovery (all funds are received at one point in time);
- b. A savings in transactional costs by effectuating one sale as opposed to multiple sales of portfolio Assets.
- c. Avoidance of negative covenants and rights of first refusal in the SBC's financing documents.

When a fair price can be obtained for SBA's PLP Interest, this approach is the preferred manner of resolving the case in liquidation.

3. What are the Drawbacks to Selling SBA's PLP Interest?

The drawbacks to selling SBA's PLP Interest include:

- a. SBA relinquishes the opportunity to maximize the potential recovery from a sale of each individual Asset in the SBIC's portfolio .
- b. There are many potential difficulties in concluding a sale of SBA's PLP Interest which arise from provisions in the Participating Security instrument. (see paragraph 8-5 of this SOP)
- c. SBA, SBIC or the Receiver has no ability to recover costs if the sales efforts do not succeed.

As a result of these drawbacks, a sale of SBA's PLP Interest should only be pursued in cases in which there is a substantial likelihood of success.

4. What Factors Should You Consider for a Successful Sale of SBA's PLP Interest?

There is a secondary market for the sale of limited partnership interests. The secondary market currently requires, at a minimum:

- a. A marketable deal size, as measured by value, not cost.
- b. Portfolio Characteristics including, but not limited to:
 - (1) Significant Upside potential; and
 - (2) More than one Impact Investment.
- c. An experienced and competent management team;
- d. A willingness by the SBIC's GP and its private LP's to sell their position in the SBIC and/or to amend the SBIC's Partnership Agreement. (see paragraph 8-5 and 8-6 of this SOP).
- e. The Absence of Negative Factors such as regulatory violations, internal disputes or litigation.

You need to be aware that the secondary market criteria may change over time.

5. What are the Challenges/Barriers to a Sale of SBA's PLP Interest?

Due to the unique structure of SBA's PLP Interest, particularly with regard to the distribution rights and lack of control provisions contained therein, serious challenges to its sale exist.

- a. Private LPs receive most of the profit distributions while having contributed a lower percentage of capital than SBA. SBA's profit participation typically ranges from 6% to 12% although, on average, SBA contributes 60% of the capital.
- b. SBA's PLP interest does not contain any of the normal LP protective rights usually found in a partnership agreement which could then be transferred to a buyer. SBA's rights are contained in the Regulations and the Small Business Act and are not transferable. Normal LP rights include, but are not limited to:
 - (1) Voting rights;
 - (2) The ability to limit management costs;

- (3) The ability to remove the GP if necessary;
- (4) The ability to suspend new investment by the GP;
- (5) The ability to control the use of proceeds from the sale of portfolio assets;
and
- (6) The ability to require the liquidation of the portfolio/fund.

As a result, a restructuring of the SBIC's partnership agreement to now include protective rights is necessary in order to effect a sale of SBA's PLP Interest. This restructuring increases the time and complexity of the transaction and reduces the likelihood of a successful sale.

6. How is the Partnership Agreement Amended?

The requirements for amending the partnership agreement will be set out in the actual partnership agreement. Amending the partnership agreement typically requires the approval of the GP, and a threshold percentage of the LP economic interests. SBA's approval is always required (see Reg. Section 107.400-470). You must consult with OGC to determine what is required to amend the Partnership Agreement for each SBIC.

7. How do You Evaluate the Prospects for a Sale of SBA's PLP Interest?

In order to determine if a sale of SBA's PLP Interest in the secondary market is feasible, you must weigh certain critical factors.

- a. You should gather information on:
 - (1) Portfolio Valuations including current valuations, future expectations, upside potential and exit opportunities;
 - (2) The anticipated cash flows including anticipated management fees and Follow On Investment needs for SBCs;
 - (3) The number of Impact Investments;
 - (4) Management quality and experience;
 - (5) The anticipated cooperation of the SBIC's partners with SBA ;
 - (6) How to amend the partnership agreement including the approval

requirements;

- (7) The prospects of successfully amending the limited partnership agreement;
 - (8) The expectations the LPs have concerning future distributions;
 - (9) Claims pending against the SBIC;
 - (10) Ongoing or anticipated litigation in which the SBIC is or will be a party;
 - (11) Any outstanding regulatory violations;
 - (12) Any current disputes among partners; and
 - (13) The amount of any unfunded commitments.
- b. Communicate with the GP to ascertain if the GP is willing and committed to a sale of SBA's PLP Interest . You need to ascertain whether the GP believes the necessary LP approvals can be obtained. In most instances, the GP will be crucial in procuring the approval of the LPs.

8. What is the Approval Process for a Sale of SBA's PLP Interest?

Meet with your Chief and the Director, O/L. to determine, based on your review of all the factors listed above, if there is potential for a sale of SBA's LP Interest in the secondary market. If so, proceed to paragraphs 8-9 and 8-10 of this SOP. However, if a sale is:

- (1) Unlikely now or in the future to meet the factors listed above for a successful sale of SBA's LP Interest, then terminate consideration of the sale.
- (2) Unlikely now, but may meet the factors in the future, then you should continue with the approved method of liquidation. However, you should revisit the factors periodically as part of the Receivership or Wind Down Status Meetings to determine if the factors have changed such that a sale might be appropriate.

9. Retention of a Secondary Market Broker.

- a. If it has been determined that it is appropriate to proceed with the effort to sell SBA's LP Interest, you may consider retaining the services of a Secondary Market Broker. You should consider the following in making this determination:

- (1) The willingness of the SBIC's GP and LPs to retain a broker;
 - (2) The existence of a viable purchase offer (see paragraph 8-10 of the SOP) for SBA's PLP Interest; and
 - (3) The time and cost of a marketing effort.
- b. If your Chief or the Director, OL concludes that a broker should be retained, you must ensure that the broker is engaged at terms acceptable to SBA. A broker may be retained:
- (1) By the SBIC subject to SBA's approval and oversight .This will typically apply to those cases in a Wind-Down status.
 - (2) By SBA pursuant to an agency contract; or
 - (3) By SBA as Receiver subject to prior approval from the Receivership court, which may require the consent of all LPs.

If no broker is engaged, sales efforts will be undertaken by the SBIC's management team or by the Receivership agent subject to your oversight.

10. How do You Assess Offers to Purchase SBA's PLP Interest?

- a. Discounted Cash Flows: In assessing an offer to purchase SBA's PLP Interest, you must weigh the purchase offer against SBA's anticipated recoveries from the liquidation/sale of the portfolio Assets over time, discounted for the time value of money. You should attempt to obtain cash flow estimates from the current management of the SBIC including anticipated management fees and costs if the current liquidation method was continued.
- b. Current Valuations: You must obtain current portfolio valuations to support your determination of a fair price. Typically, one complete valuation of all significant assets should be obtained. A second valuation should be obtained of at least the impact assets. If unfunded commitments remain outstanding, they are considered Assets of the SBIC and need to be included in the analysis.
- c. Requirements concerning the GP/LP: The proposal for sale should not allow for any improvement in the GP's current position or for any distributions to the GP or LPs until SBA, at a minimum, has received payment for its outstanding principal leverage and earned prioritized payments.

Your assessment of the offer must be in writing, in a memorandum to your Chief. The

memorandum must include a recommendation to either reject the offer, make a counter offer or accept the offer. All of the factors in reaching your assessment must be discussed. This memorandum must be signed by your Chief and the Director, OL. In addition, OGC must sign the recommendation indicating that the proposed sale meets legal sufficiency,

11. What Warranties does SBA Provide Upon the Sale of its PLP Interest?

SBA typically provides the following warranties:

- a. That SBA owns the PLP Interest;
- b. That SBA has not previously sold or pledged its PLP Interest; and
- c. That SBA has the ability to sell its interest.

Any additional warranties must be approved, in writing, by the Director, OL and by OGC for legal sufficiency.

12. What Documents are Needed to Complete a Sale of SBA's PLP Interest?

The documents necessary to complete a sale of SBA's PLP Interest will depend upon the SBIC's partnership structure and the needs of the Buyer, the SBIC, and SBA. Typically, the documents required include a purchase and sale agreement, a security opinion(s) of Counsel, an amendment to the partnership agreement, and an assignment of SBA's PLP Interest. Documents may require execution by SBA, the Buyer, the GP, and some or all of the LPs. These documents will need to be prepared and reviewed by the attorneys for the Buyer, the SBIC, and the SBA. You need to consult with the assigned attorney in the OGC to determine what specific documents need to be prepared to complete a sale.

13. Why Time is of the Essence in Completing a Sale of SBA's PLP Interest.

Time is of the essence in completing a PLP Interest sale because a narrow window of opportunity exists in which to close the sale at an acceptable price. This opportunity can be lost due to delays in the due diligence process and/or significant changes in the valuation of portfolio Assets.

- a. Delays in the Due Diligence process: The due diligence process required by buyers of partnership interests is frequently a very lengthy process. The SBA and the SBIC's GP and /or the Receiver will facilitate the contact between potential buyers and the managers of the most valuable SBCs in the portfolio. Obtaining valuations and consents of the LPs, the security opinions of counsel, necessary consents of the SBCs to the disclosure of confidential information and other

necessary items may also require significant time commitments.

- b. Significant Changes in Valuation: A sale of SBA's PLP Interest can be negatively impacted as a result of events which can occur during the sales process and which affect the value of the portfolio Assets. If the portfolio declines significantly in value, then the buyer likely will walk away from the sale. If the portfolio experiences significant exits or increases significantly in value, then obtaining the necessary approvals from SBA or from the other Partners may not occur.

14. What are Your Servicing Requirements While Attempting to Complete a Sale?

Closing the sale of SBA's PLP Interest even when an acceptable offer has been obtained may be beyond SBA's control. The inability to obtain the agreement of numerous parties, particularly LPs, may result in the sale not being completed. Additionally, , the buyer may change its mind as a result of its due diligence, the occurrence of negative portfolio events or disputes within the buyer group.

As a result, you need to continue the chosen method of liquidation (Receivership or Wind Down) for each case while simultaneously continuing with efforts to sell the PLP Interest. All the requirements of the case in Wind Down or Receivership must continue to be observed.

CHAPTER 9 - Follow On Investments

1. What is a Follow On Investment?

A Follow On Investment is a subsequent investment in a small business concern made by an SBIC to protect and/or further enhance potential recovery from its earlier investment. SBICs in liquidation status must obtain SBA's approval before funding Follow On Investments.

2. How are Follow On Investments financed?

Follow On Investments may be funded in two ways:

- a. by the SBIC's available cash reserves (SBIC Funded) or
- b. by the SBIC's borrowing of additional funds from SBA (SBA Funded).

3. How does the Follow On Investment process begin?

- a. SBIC management must submit to you a request for approval for a Follow On Investment. (see appendix 32) Requests should be sent to you with at least a 20 working day notice.
- b. You will assess the information provided and either
 - (1) Ask the Licensee for additional information if needed or
 - (2) Submit the request to your Chief and/or Director, O/L for approval or denial, as appropriate, together with a memorandum which provides detail of the request and the Follow On Investment Cover Sheet. (see appendix 33.)

4. What other information may be required?

In some instances you may require that an assessment of the potential Follow On Investment be performed by an independent valuation company as additional support for the request. This assessment will be paid for by the SBIC. Follow-On requests for \$1,000,000 or more will usually require an outside valuation. Follow-On requests of \$250,000 to \$1,000,000 may require an outside valuation. SBA must approve the SBIC's choice of outside valuation company as well as the scope of work to be performed.

5. How are Follow On Investments authorized?

- a. For SBIC funded Follow On Investments, approvals are issued pursuant to the Rule of Two.
- b. For SBA funded Follow On Investments of \$1,000,000 or less, approvals are issued pursuant to the Rule of Two.
- c. For SBA funded Follow On Investments exceeding \$1,000,000, approvals are sought from and issued by the Follow On Investment Committee (FOIC).

6. Who are members of the Follow On Investment Committee (FOIC) and how many votes are needed for approval?

- a. The FOIC is comprised of five members with backgrounds and/or experience relevant to venture capital and/or the SBIC program. Standing members include the Director, O/L, the Associate Administrator for Investment, and the Deputy Associate Administrator for Investment. The other members and an alternate will be nominated by the Director, O/L and appointed by the Associate Administrator for Investment.
- b. Typically, three votes are necessary for approval. However, emergencies may arise, such as the need for the SBIC to fund the payroll of an SBC, that do not allow the time for the FOIC to meet. If the FOIC is unavailable to meet and make a decision, You must:
 - (1) attempt to speak to the SBIC and determine if an extension of the SBIC's commitment deadline to fund the SBC is possible;
 - (2) attempt to arrange an emergency meeting of the FOIC; and
 - (3) place a memorandum in the file memorializing your efforts to achieve (1) and (2) above and the reasons a decision had to be made in the absence of a full FOIC meeting. Any decision that is made under these circumstances will be subject to the Rule of Two with the recommendation to be approved by the AA/I. If the AA/I is unavailable, then Your recommendation may be approved, in descending order, by the following persons, the Deputy AA/I, the Director, OL, the longest serving member of the FOIC available and finally, the Acting Director, OL.
- c. Once a request has been approved or denied the decision will be so noted on Follow On Investment Cover Sheet by way of signatures.

d. A Follow On Investment request for any dollar amount to be funded by either funding source may be presented to the FOIC if you or an approving official believe such presentation to be beneficial.

7. What additional documents are required for SBA Funded Follow On Investments?

- a. For all SBA funded Follow On Investments, the following documents must be executed:
- (1) a note payable to SBA from the SBIC;
 - (2) a loan agreement; and
 - (3) a consent to Receivership to be filed in the event the SBIC is in default under the terms of the note and loan agreement.
- b. For approved Follow On Investments of \$1,000,000 or more, SBA will require that the financing be secured by some or all of the SBIC's portfolio investments. In making the determination concerning collateral requirements, you will consult with OGC and outside counsel as appropriate to consider the effect of any negative covenants. In the event collateral is required, the following additional documents must be executed:
- (1) security agreement and
 - (2) an opinion from the SBIC's counsel regarding, among other things, potential negative covenants in the underlying collateral documents that could adversely impact SBA's interest.

8. How are Follow On Investments tracked?

- a. Follow On Investment Coordinator: The Director, O/L will designate a Financial Analyst to serve as the Follow On Investment Coordinator. This functional duty will involve keeping all analysts apprised of Follow-On guidelines and forms, as well as tracking the outcomes of SBA funded Follow On Investments.
- b. Reporting: At the end of each fiscal year, the Follow On Investment Coordinator will report on SBA Funded Follow On Investments approved by O/L. The purpose of the Reporting is to provide a useful tool for assessing how successful Follow On Investments have been in enhancing O/L recovery prospects. Reports will include information such as:
- (1) the number and dollar amounts of financings approved / funded/repaid and

(2) status on the SBC funded.

CHAPTER 10 - Set-Up and Servicing of SBA Owned Assets

1. How Does SBA Acquire Assets?

Generally, SBA acquires an SBIC's Assets two ways:

- a. From SBA's execution of its security interest pursuant to a defaulted Settlement Agreement (see chapter 4 of this SOP); or
- b. From a closed Receivership (see chapter 7 of this SOP).

Each asset must be recorded (set up) on SBA's LAS so that SBA can keep track of its owned Assets.

2. Step 1 - Valuing Acquired Assets.

- a. General Policy. To set up an asset on the LAS, you must provide a value for that asset. If the value is not immediately obtainable, you must initially set up the asset at book value until a more formal valuation is performed. Only assets determined to have some realizable or recoverable value will be set up.
- b. Valuation Guidelines for Notes Receivable and Judgments. When you set up notes receivable or judgments on the LAS, use as a value the outstanding balance on the note or judgment unless all or a portion of the asset is being charged off by SBA Form 327 action. (See chapter 14 of this SOP for a detailed description of charge-offs.)
- c. Valuation Guidelines for Collateral Purchased (Colpur). DFC PAD has established valuation guidelines for entering asset values on LAS. The value to be used is Net Realizable Value (NRV). (See appendix 34 for OFO's guidelines). Net Realizable Value is generally computed by subtracting from fair market value all estimated costs for servicing, valuing, and selling the Asset, and adding any estimated income from the asset through the estimated sale date. DFC PAD requires that Assets be entered into the LAS at book value until the NRV value is established. The following guidelines should help you determine fair market value:
 - (1) For publicly traded equities, for the initial fair market value calculation, use 95 percent of average closing price for the last 5 days;
 - (2) For privately held equity securities, a written analysis or valuation is

required;

- (3) For all debt security instruments (notes with convertibility features), a written analysis or valuation is required;
- (4) For real or personal property not included 1,2 or 3. above, an appraisal should be obtained; and
- (5) Minimal Value Assets. Certain debt, equity, judgments, or real or personal property acquired by SBA may have little recoverable value. However, proper tracking, monitoring and marketing of these assets must continue until collections occur or evidence of no collectability is established. In such cases, these assets will be set up for accounting and tracking purposes at a nominal value of \$1.00.

- d. Valuation Responsibility. You may be asked to prepare financial valuations of SBCs. Other sources, such as independent contractors and outside counsel also may be retained if procurement (and payment by BLIF or other means) requirements are met. The final decision whether to use outside resources rests with your Chief. You are responsible for reviewing the valuations for completeness and reasonability.

You should maintain up-to-date financial information on acquired assets to enable OL to update valuations periodically.

- e. Use of Valuations. In addition to using the valuation as the basis for determining value, valuations are necessary for establishing the starting point for the negotiated sale or compromise of Assets, to determine if an Asset should be charged-off or written down. Valuations, coupled with other factors, help you determine the best liquidation alternative for the Asset.

3. Step 2 - Setting Up Acquired Assets on the SBA LAS.

- a. What Types of Assets Are Set Up on the LAS? The assets set up within the LAS fall into two categories: (1) Notes Receivable; and, (2) Colpur. All debt instruments (agreements where there are specific terms and conditions regarding repayment, interest charged, etc.) are considered notes receivable. Colpur includes all other assets acquired by SBA from SBICs (equity interests, limited partnership interests, real estate, and other property).
- b. How are Note Receivables Set Up on the LAS? To record a note receivable on SBA's LAS, prepare an SBA Form 515, which will include the outstanding principal balance and the outstanding accrued interest. The SBA Form 515 must

be transmitted to DFC PAD who will set up an asset account in LAS and record the value of the asset.. A copy of the Form 515 must be given to DM. The original must be placed in the OL file.

- c. How is Colpur Set Up on the LAS? To set up Colpur on the LAS, use an SBA Form 297, Collateral Purchase Report (see appendix 35) and send to DFC PAD, who will set up a separate asset account in LAS and record the value of the asset. A copy of the Form 297 must be given to DM. The original must be placed in the OL file.

4. Step 3 - Preparing the Liquidation Strategy.

- a. General. After the acquired SBIC assets have been valued and set up on the LAS, you must provide a recommended liquidation strategy based on two primary objectives:
- (1) Maximizing net recoveries to SBA; and
 - (2) Minimizing adverse impact to the SBC resulting from SBA's liquidation efforts.
- b. Analysis. You must recommend which liquidation strategy to follow for each asset or for an entire acquired SBC portfolio. You should:
- (1) Provide a short write-up on each asset transferred including payment/operating status and its current balance (document justification for conclusion that asset is not collectible, if applicable);
 - (2) Recommend a disposition method for each asset;
 - (3) Provide an analysis estimating the anticipated costs associated with implementing the recommended disposition method; and
 - (4) Provide an estimate of total net recoveries in dollars and percentages for the individual SBIC case.

5. Step 4 - Servicing SBA Acquired Assets.

- a. General. Servicing of acquired Assets, including monitoring, marketing, and sale is primarily Your responsibility or the responsibility of a designated SBA field office. If You determine that the servicing, monitoring, or sale (liquidation)

of an Asset may be expedited through an SBA field office or servicing center, seek approval for the transfer of servicing authority from the Director, OL, using SBA Form 327. You may recommend a transfer when there are short-term performing and/or non-performing notes requiring servicing or other corrective action, small parcels of real estate, and fixed or other assets requiring liquidation/litigation. You must continue to monitor liquidation of such assets.

b. Equity And Debt Securities.

(1) Information Collection. You must make reasonable efforts to ensure that adequate information is available to effectively monitor equity and debt securities. Collect the following information for such assets:

- (a) For public companies, order all publicly available financial information (annual report, 10K, 10Q, proxy, other relevant shareholder information) and ask to be placed on the SEC's mailing list; and
- (b) For private companies, request from the SBC financial information (audited and unaudited), management reports, and other relevant shareholder information. If you believe the information collected is insufficient, you should consider obtaining an outside valuation.

(2) Protection of SBA's interest. SBA may elect to exercise maturing warrants or options or to participate in a new debt or equity issue if SBA believes such action is necessary to protect the value of its current investment or if an opportunity to significantly increase recovery is about to lapse. Such participation requires the approval of the Director, OL.

c. Legal Recourse. You will work with OGC to determine whether and what legal action is required. You must refer any legal actions to OGC. After a matter has been referred for litigation, all contact with the debtor or opposing parties will be through OGC, unless OGC directs otherwise.

d. Third Party Collection. You may recommend the use of a collection agency to recover amounts owed to SBA on uncollateralized, non-performing debt instruments, or judgments. Before submitting any debt instrument to the SBA-contracted collection agencies, you must compile all relevant loan information such as principal outstanding, interest rate, repayment terms, accrued interest, penalty fees, payment history, etc., and collect the original loan documents.

CHAPTER 11- Asset Liquidation Procedures

1. What are the Policies Concerning Liquidation of SBA Owned Assets?

Liquidation of real and personal property, including securities, bought and sold by the Federal Government is done through fair notice, full disclosure, public offering, or solicitation basis, to ensure fairness and openness in Government operations.

- a. Claims/Collection Statutes. Claims of the Federal Government will be collected by the head of the responsible agency. If the debtor is insolvent, the Federal claim must be paid first. However, some debt instruments specifically subordinate the Government's claim to that of other creditors.
- b. SBIC Regulations provide that SBA, upon such conditions and for such consideration as it deems reasonable, will collect or compromise all claims relating to Preferred or Participating Securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to SBA (13 CFR Section 107.1710).

2. What Issues Must I Consider Prior to the Sale of Assets?

- a. For all methods of liquidation, you must complete or facilitate the necessary due diligence on the assets to be liquidated. This is done primarily to determine the value of the Asset, who has title to it, and how title can be transferred. The primary due diligence is to determine whether SBA or the relevant party has an unencumbered right or title to the Asset and whether the planned liquidation action complies with all applicable State and Federal laws and the covenants and other terms or conditions of the existing financing and contractual agreements.
- b. Appraisals. SBA must not engage in the sale of Assets unless it has a reasonable understanding of the current market and liquidation values of the property. As a general rule, an appraisal within 6 months may be considered to be a current appraisal. However, judgment must be used to determine whether a reappraisal or a confirmation of values (a quick recheck rather than a full appraisal) is appropriate. Changes in the national, regional, or local economies may warrant a new appraisal. A slow market may require simply a confirmation or update of a previously prepared analysis. In receivership cases, some jurisdictions have local rules of practice which guide the use of appraisals.
- c. Bid and Release Values or Prices. You must establish such values to determine whether SBA should enter a bid to protect its interest in the asset (a "protective bid"). In addition, you should generally set a minimum bid price. Values must be

based on a current appraisal of market and liquidating values, and recommended and approved using an SBA Form SBA 327. In establishing bid values and release prices, you must consider:

- (1) The circumstances of the pending sale;
- (2) The costs and expenses of owning and maintaining the property;
- (3) How long it will probably take to resell the asset, if bought in;
- (4) Whether the property is subject to prior liens, including accrued or accruing taxes;
- (5) The legal requirements, foreclosure decree, or the contract by which the property is to be sold; and
- (6) The effect of the bid-in or release on persons obligated for a deficiency balance.

d. Protective Bids. When establishing a protective bid, you must deduct from the estimated liquidating value of the property the following items if applicable.

- (1) Senior security Interests. Deduct the amount of all prior liens which must be paid.
- (2) Tax liens. Deduct the amount of all tax liens, e.g., local or Federal, which will not be discharged either by SBA/IRS agreement or by operation of law and which must be paid by the purchaser.
- (3) Acquisition cost. Deduct any cost of acquisition such as administrative expenses, court costs, or stamp or filing charges which the purchaser must pay.
- (4) Net cost of ownership. Calculate any expected income and expected gain in resale price. Deduct from that figure the cost of maintenance, protection, necessary upgrade costs, and the expenses of resale. Then add to or deduct this net cost of ownership from the proposed bid or release price.
- (5) Pertinent appraisal factors. Make sure that the liquidation value established by the appraiser has taken into account pertinent factors such as: whether the property has a limited-purpose; whether the Asset is easily removed, and what economic effect the removal of buildings or machinery and equipment will have; and whether economic use of the

property depends upon special license, permit, zoning, and other such requirements, and whether such items are reasonably available at a stated cost.

- (6) No Bid Position or Limited Consideration Sales. As a result of this analysis of values, costs, and expenses you may find that it is not appropriate to enter any bid to purchase the property, i.e., that no reasonable recovery is likely to come from resale. If so, the property should be sold at whatever sale price can be achieved. If the Agency or SBA-Receiver already owns the property, it should be sold for whatever price it may bring. It is not in the best interests of SBA or the Receivership estate to own or maintain useless property or collateral with no value which could become a liability.
 - (7) Extinguishment. A procedure for extinguishment of lien upon request of a prior lien holder is set forth in 28 U.S.C. Section 2410(e). The Administrator can extinguish a lien under his/her general powers, even without receipt of money or property as collateral. The lien holders may consider giving a partial release for minimal consideration.
 - (8) Abandonment. Sometimes, such as when the cost of sale could exceed proceeds, it is appropriate for an owner of real property to abandon real property. When abandonment is appropriate, you should contact both Federal and state governments regarding possible receipt of such property.
 - (9) Environmental Costs if information is available.
- e. Disbursement of Protective Bid. If a disbursement is required for a protective bid, the CPC system should be utilized to request the disbursement of funds from Treasury. The Administrative Accounting Division of DFC processes the disbursement requests coming through the CPC system.
- f. Responsibility for Maintaining Fire and Extended Coverage Insurance on buildings, equipment, and contents should be considered.
- (1) Maintenance of Insurance by SBA. SBA will not, on its own, insure real or personal property it owns or is liquidating. However, participating lenders or investors may, in cases they are handling, decide to maintain insurance and SBA may share in the cost of such insurance.
 - (2) Maintenance of Insurance by Debtors. SBA requires its debtors to maintain fire and extended insurance on insurable collateral, with the equivalent of the New York Standard mortgagee clause in favor of SBA.

This clause ensures payment of loss to SBA, even if the insured's acts preclude payment to insured; notice to SBA before cancellation; and option to continue policy in force following notice of cancellation upon payment of premium. An 80 percent co-insurance clause is generally acceptable. You should get evidence of premium-paid acceptable insurance. Upon receipt of any notice of proposed cancellation of coverage, immediately contact the insured and other obligors to require maintenance of proper coverage.

- (3) Maintenance of Insurance by SBA-Receiver. SBA-Receiver must protect the receivership assets without undue expense to the estate. The statute, 28 U.S.C. Section 959, requires that the receiver is to maintain insurance required by the contracts of the creditors. The insurance decision is a business determination based on the merits of risk and potential returns.

3. What are the Procedures for the Sale of Real Property Owned by SBA?

Agency policy permits the disposition of real property by public auction or private sale.

- a. Public Auction. A public auction of real property may not be the preferred course of action in circumstances if:
 - (1) The expected aggregate expenses associated with the sale of the property may exceed more than 20 percent of SBA's minimum bid price on the property; or
 - (2) The net proceeds to SBA after payment of all expenses is less than \$10,000.
- b. Private Sales. A private sale of real property may be approved when the sales price will equal 80 percent of the appraised fair market value on residential property, 70 percent of the appraised fair market value on commercial property, or 50 percent of appraised fair market value on raw land.
- c. Property with a Large (Multi-State) or National Market (Major Properties). Major properties may be offered for sale through Headquarters or as determined by the Director, OL.

4. What are the Procedures for the Sale of Real Property Held as Security by SBA?

Real property held as security for SBA as creditor shall be sold in accordance with the terms of the debt and security instruments and with the applicable state law. Ask OGC about local law and practice regarding sales and bidding practices as well as the

requirements for confirmation, deficiency judgment, and redemption.

- a. Deeds of Trust (with power of sale). The deed of trust, itself, and state law direct how the required notices are to be given, when and how the property may be redeemed or the debt maturity reinstated, and how the sale will be conducted. Typically there is a notice of default and acceleration of maturity; a demand notice from the trustee; 30 days notice by publication of time, place, and terms of sale; a public auction sale by the trustee; and a trustee's deed and settlement. If there is an IRS tax lien on the property, follow the procedures noted in paragraph 448(4)(d) of the Internal Revenue Code (IRC).
 - (1) State requirements. States or localities may impose different or additional requirements, such as having the creditor prove the debt and the default before a court official, and giving the debtor an opportunity to correct the default. Some states require judicial confirmation of the sale for validating the sale or as a condition precedent for collecting any deficiency.
 - (2) SBA employees as trustee on deeds of trust. An SBA employee may not serve as a trustee of a trust deed.
 - (3) Substitute trustees/fees. SBA should determine if there is a right to replace the named trustee or to negotiate for limited duties and limited compensation. Such agreement must clearly state the duties to be performed by the trustee.
 - (4) Use of a professional auctioneer. In many trust deed jurisdictions it is possible for the trustee to be a professional auctioneer, or for the named trustee to employ a professional auctioneer to assist in the promotion and sale.

- b. Real estate mortgage with power of sale. Foreclosure sales of real property secured by a mortgage are governed by local law and the terms of the mortgage. Either an official of the mortgagee or a designated public official will conduct the sale. Required procedures typically include:
 - (1) Formal written notice of default, acceleration of maturity, and demand;
 - (2) Newspaper publication and on-site posting of notice of dates, time, place, terms of sale, and description of the property, usually published 30 days prior to sale;
 - (3) A public auction sale, usually at the courthouse or on premises; and
 - (4) A settlement including delivery of deed.

If an IRS tax lien is on the property, consult with OGC to determine whether the taxes must be paid and the priority of the liens.

- c. Additional variations by jurisdiction. Many different variations and additional procedures are used in different jurisdictions. Some jurisdictions have quasi-judicial procedures for proof of debt and proof of notice; opportunities to reinstate the terms of payment; and notice of statutory or Constitutional right of redemption after sale. Some require a confirmation of sale either to validate the sale or to allow collection of deficiency balances.
 - (1) Right of redemption. This right may be waivable, but in some states, it is not.
 - (2) Use of a professional auctioneer. In many jurisdictions you may employ a professional auctioneer to handle the sale for the mortgagee or for the sheriff or other official who ordinarily would conduct the sale.
 - (3) On-premises sales. You should also consider the appropriateness of an on-premises sale, and, whenever feasible and cost effective, conduct the sale at the property.
- d. Recoverable Expenses. In all cases involving the liquidation of SBA real estate collateral, SBA will seek to recover attorneys' fees and costs of litigation.

5. What are the Procedures for the Sale of Personal Property (Including Securities)?

- a. Definition. Personal property refers to Assets other than real estate.
- b. General Categories of Personal Property. Personal property is generally divided into five basic categories:
 - (1) Straight debt instruments - Primarily loan or notes receivable;
 - (2) Debt with equity conversion instruments - Primarily loans or debentures with exercisable warrants or conversion to equity features within the financing agreement(s);
 - (3) Equity instruments - Both publicly and privately held stocks, partnership interests, warrants, etc;
 - (4) Tangible property - Fixed assets such as furnishings, equipment, machinery, etc; and

- (5) Other Property - Leases, liquid assets, judgments in favor of the SBIC, patents, etc.

- c. Selling Debt or Equity Securities: General Rule. Generally, before you sell any debt or equity security you must review the applicable Federal and State laws and the covenants and restrictions in the financing agreements. Consult with your Chief to determine if outside counsel should be retained to prepare an opinion letter on the proposed sale. Unrestricted, publicly traded securities may be sold through a brokerage firm, and no opinion of counsel is necessary.

- d. Rule of Two. Sales of personal property, other than unrestricted, publicly traded securities, must be approved under the Rule of Two.

- e. Alternatives Exist for the Disposition of Personal Property. Use the following general guidelines to dispose of personal property.
 - (1) UCC Requirements. If Assets were acquired pursuant to a foreclosure under a Security Agreement, you must sell those Assets in accordance with UCC requirements. (See paragraph 4-5 of this SOP.) You must consult with OGC about any UCC requirements that might be applicable to the sale and what procedures need to be followed.

 - (2) Servicing. Often the most viable liquidation option is for SBA to hold and service acquired Assets. These include notes receivable with relatively short maturities (typically less than 2 years); where the terms and conditions are not attractive to outside investors; or where it is in the best interests of the SBC to accelerate repayment or tender an offer in compromise.

 - (3) Negotiated Sale(s) Back to SBCs or their Affiliates (i.e., Directors, Officers, Other Shareholders, Partners, or Investors). For equity instruments, this alternative may provide access to the only market or interest in a given SBC.

 - (4) Negotiated Sales of Assets to Qualified Investors. You may, subject to SEC restrictions, negotiate the sale of single or grouped assets to qualified investors.

 - (5) Public Auction of SBIC Assets. Because of the complexity of investments and ownership and resale restrictions on the typical SBC debt and equity financings, public auction is usually not recommended for disposing of these types of securities. Generally, a public auction may be used for the disposition of tangible and other property.

- (6) Forced Sale or Collection. Foreclosure, seeking a judgment, levying on assets, executing on collateral, pursuing a guarantor, etc., are viable disposition alternatives when an SBC is in default.

6. Agency Guidelines on Paying Expenses for the Sale and Preservation of Collateral?

You must fully justify expenditures for the sale, care, and preservation of collateral. The total of such expenditures, including the purchase of prior liens, should not exceed 75 percent of the current appraised liquidation value of the asset. The AA/I must approve expenditures exceeding \$50,000 (not including the purchase of prior liens).

a. Definitions.

- (1) BLIF. The "Business Loan Investment Fund" (BLIF) is a Congressional appropriation used for liquidating financings by the Government, including SBA financings of the SBIC Program.
- (2) Federal Credit Reform Act of 1990. This legislation was designed to more accurately measure the costs of Federal credit programs and make the cost of credit programs equal to other Federal spending programs. For OL's purposes, an SBIC in liquidation is deemed to be pre-credit reform debt if any one of its unpaid financings was approved prior to October 1, 1991.
- (3) Recoverable Expenses. Recoverable expenses are those that can be charged by SBA to the obligor/debtor if authorized by agreement, by law or by court order. Typically they include costs related to the foreclosure, management, or sale of collateral and can include auctioneer fees and appraisal expenses.
- (4) Non-Recoverable Expenses. Non-recoverable expenses are those that can not be charged back to the obligor/borrower. Typically they are expenses associated with the cost of doing business and are administrative in nature, such as your wages.

- b. Accounting for Recoverable and Non-Recoverable Expenses. Use the following table to determine how SBA is to account for expenditures associated with the sale, care and preservation of collateral assets.

HOW SBA ACCOUNTS FOR EXPENDITURES
ASSOCIATED WITH THE SALE, CARE AND PRESERVATION
OF COLLATERAL ASSETS

If the Expenditure is a:	Then the expense will be paid through the SBA:	And the expense will be charged to the SBA's:
Recoverable Expense	Automated Misc. Disbursement System (CPC)	BLIF account
Non-Recoverable Expense (with pre-credit reform debt outstanding)	Federal Financial System (FFS)	BLIF account
Non-Recoverable Expense (with <u>no</u> pre-credit reform debt outstanding)	FFS	Salary and Expense Fund

CHAPTER 12- Compromising Claims Against SBICs And SBIC Portfolio Companies

1. Introduction.

This chapter deals with the compromise/settlement of claims due SBA from SBICs (including SBA's claim against an SBIC in receivership), as well as claims due SBA from SBIC portfolio companies.

2. What is the Purpose of the Compromise Process?

In some cases, a compromise is the most effective recovery. A compromise settlement of a claim is appropriate when the obligor cannot pay the obligation in full or when other circumstances indicate that a compromise settlement will result in the best recovery for the Agency. The principal criterion for determining whether to settle a debt is whether it is in the best interests of the Government. The amount received through compromise settlement must bear a reasonable relationship to the present value of the projected net recovery available through other means of collection. Net recovery includes, but is not limited to, gross estimated recovery, less the estimated costs of forced collection, the risks of forced collection, the litigative risks, liquidation value, the time value of money, and other appropriate information.

3. What is the Authority for Compromise of Claims?

- a. Delegation of Compromise Authority. The Administrator has authority to compromise claims of the Small Business Administration under the Small Business Act of 1956 and the SBIA. The Administrator has delegated that authority to specific Claims Review Committees at field office and Headquarters levels. Authority to compromise claims in connection with the Small Business Investment Company Program has been delegated to the AA/I, and re-delegated to the SBIC Claims Review Committee in Headquarters.
- b. The Federal Claims Collection Act. (31 U.S.C. 3701 et.seq.) This Act provides a means for settling, adjusting, and compromising claims by Federal agencies. The Code of Federal Regulations (31 CFR §285.1 et.seq.) provides guidance for compromising claims under the Federal Claims Collection Act.
- c. Limits on SBA's Compromise Authority.
 - (1) The person or committee taking final action on a compromise offer must have delegated authority to take the action or else the settlement is not binding on the United States.
 - (2) DOJ Authority. SBA will recommend action on an offer to compromise a debt, but the authority to take final action rests with DOJ in the following

cases:

- (a) SBA claims referred to DOJ for collection;
- (b) A judgment in favor of the Administrator, or of the Agency, or of the United States in favor of either, including judgments against SBICs and judgments which have been returned to SBA for collection; and
- (c) In accordance with the Federal Claims Collection Act, claims which are fraudulent, false, or are misrepresented by a party in interest, or which violate antitrust law (these may be referred through OGC or OIG to the DOJ).

4. What is the SBIC Claim's Review Committee?

The SBIC Claims Review Committee, established in Headquarters by delegation of authority from the AA/I, is comprised of the DAA/I (who is the chairperson); the Director, OL; the Director, OSO; and the Associate General Counsel for Litigation; or those officially acting on their behalf.

- a. Committee Authority. The Claims Review Committee has authority, upon unanimous vote, to approve a compromise settlement of SBA claims against SBICs; provided that, for claims held by the DOJ, the committee's final action will be a recommendation to DOJ on the compromise proposal.
- b. Appeals of Committee Decisions. The AA/I, or designee, can take final Agency action on appeals from committee decisions submitted by the Chiefs and on requests for reconsideration of committee actions. In such cases, the committee will review the appeal or request and will forward it to the AA/I with the committee's rationale and recommendation.
- c. Compromise of SBIC Portfolio Accounts (Debt Financings) Acquired by SBA. These compromises will be processed through the SBIC Claims Review Committee.

5. What are Compromise Offers from Individual Obligors?

- a. General Requirements.
 - (1) Inform obligors how the compromise process works, and how important full disclosure and accurate information are for a fair result.
 - (2) Consider the following information when evaluating a compromise:

- (a) SBA Form 1150, Offer in Compromise (see appendix 36);
 - (b) SBA Form 770, Financial Statement of Debtor (see appendix 37), plus inheritance and trust information; and
 - (c) Signed copies of the obligor's/guarantor's Federal tax returns for the past 3 years (if deemed necessary).
- b. Analysis of Compromise Offers. Your analysis must conclude that the proposed compromise would be the most effective recovery; serve the best interests of the Government on both a monetary and non-monetary basis; and be reasonable compared to the net recovery available through other means. Determine the following.
- (1) Liquidation Value. First, determine the gross estimated recovery, i.e., the liquidation value or the net forced sale value of obligor's assets, together with the net recoverable sum of obligor's anticipated earnings over a reasonable period of time.
 - (a) Real Property. The liquidation value calculations require a realistic view of a liquidation or forced-sale value of obligor's property (like a residence) regardless of whether the property could actually be seized and sold.
 - (b) Personal Property. You must establish an equivalent forced sale value for property with value. High value antiques, motor vehicles, or other items of special value must be independently valued. Cash and cash equivalents (checking, savings, IRA, Keoghs, and Cash Value of life insurance) are valued only to the extent that they exceed basic living expenses (per SBA Form 770).
 - (c) Obligor's Income. Your evaluation is primarily based on the present value of the property, but may also include potential recovery from obligor's income. The Agency has not established a formula for determining what portion of income should be considered reasonable normal living expense. Suggested reference points are the Federal Consumer Credit Protection Act and the Bankruptcy Code limitations on the amount of income subject to garnishment.
 - (2) Risks of Collection. Determining a net recovery figure requires an evaluation of the risks of collection. For example:

- (a) A parcel of realty may be jointly owned or under a long term uneconomical lease or use which renders the realty undesirable for another owner or co-owner; or
 - (b) Income may be from sources not susceptible to garnishment, or may be fully exempt under State law.
- (3) Costs of Collection. Consider your time, and the attorney's time, costs of appraisal, promotion, protection and sale, court costs, and related expenses, as well as the contractual or statutory ability to charge and collect such costs from the obligor.
- (4) Litigative Risks. Determining projected net recovery requires consideration of litigative risk. OGC or outside counsel will estimate the extent of this risk based on such factors as referability, legal validity of claim, specific legal obstacles to collection, equities of the case, and jury appeal.
- (5) Time Value of Money. After you have made a reasonable estimate that forced recovery will produce specific cash flows for credit on the debt, the present cash value of those cash flows must be calculated. This is useful for immediate cash settlement of the debt, and for negotiation of a "base plus interest" for a term settlement.

6. What is the Compromise Report?

When you receive a final, firm offer and have evaluated all relevant information, prepare a report on SBA Form 327 with a narrative attachment. This report, with copies of the financial and valuation data relied upon, is a complete profile of the obligor's ability to repay the debt with the likely results. The report must include your recommendation.

7. How Do I Distribute and Act on the Compromise Report?

- a. A complete report, including narrative and other attachments, will be provided for each member of the SBIC Claims Review Committee. The Chief will forward four sets of the report to the chairperson and committee members of the committee, schedule a meeting of the committee within 10 days, and distribute such notice with a copy of the report to each committee member.
- b. The committee will meet and consider the report at the time scheduled, each member having carefully reviewed the material prior to the meeting. The committee must complete its review and take action on a compromise proposal within 10 working days of receipt of the proposal unless extended by the chairperson. At the direction of the chairperson, the Analyst will prepare a clear

and concise written summary of the meeting, including the specific action taken, and each member of the committee will sign such summary to indicate his or her concurrence.

- c. Retain one fully executed copy of the report in the SBIC Claims Review Committee files, and promptly return the other three sets to the Chief who forwarded the report. The initiating branch will be responsible for making sure that the approved actions are signed, giving appropriate notices of the actions, and furnishing necessary copies of the action to DFC PAD and DM.
- d. If the committee declines the recommendation, it must state the reasons for decline and offer guidance for further handling of the claim. The initiating branch must follow any directions or advice to conclude collection activity in the proper manner.
- e. The Chief, or the DOJ, if applicable, may request reconsideration of the Committee action, by filing a written request with the chairperson within 30 days after date of the action. The Committee will make a recommendation on the request within 10 days after receipt, and deliver such recommendation to the AA/I. The AA/I will take final action on the reconsideration and promptly advise the requesting party of the decision.

CHAPTER 13- CARE AND PRESERVATION OF COLLATERAL

1. Introduction.

This chapter prescribes safeguards necessary to ensure adequate control of all collateral and other negotiable instruments held by OL.

2. Who is the OL Collateral Clerk?

Two or more employees of the OL will serve as Headquarters OL Collateral Clerk (OL CC) and alternate(s) for SBICs in liquidation. An OL CC or alternates(s) does not have the authority to add or remove collateral or to process checks for any case on which he/she is assigned as analyst.

3. How are Negotiable Instruments Safeguarded?

(a) Facilities. The Director, OL, must provide appropriate facilities for the OL CC(s) to properly safeguard the documents.

(1) A Locking File Cabinet(s). This file cabinet will be under the exclusive control of the OL CC(s) and will be locked when documents are not being accessed. A copy of the combination and/or spare key to the file cabinet will be kept in a sealed envelope in a secure place available in an emergency only to the Director, OL, or designee. The OL CC will initial and date the envelope across the sealed flap, and will place transparent tape across the top flap in such a manner as to detect tampering. The Director, OL, will be responsible for keeping the envelope in a secure place.

(2) Physical Location. The file cabinet must be located so that unauthorized personnel do not have access to the OL CC area without being observed by other SBA employees.

4. What are Collateral Documents?

a. Collateral. Collateral is defined as those items pledged by a borrower to SBA to secure the repayment of an indebtedness owed to SBA, and those items which are held by, or assigned to, SBA. Such items include, but are not limited to:

(1) Collateral notes;

(2) Original mortgages;

- (3) Stocks;
 - (4) Bonds;
 - (5) Debentures;
 - (6) Guarantees;
 - (7) Pledged inventories;
 - (8) Assigned contracts;
 - (9) Assigned accounts receivable;
 - (10) Assigned life insurance policies;
 - (11) Original Partnership Agreements;
 - (12) Original Financing Agreements;
 - (13) Original assignment documents, stock powers, and appropriate corporate resolutions;
 - (14) SBIC Debentures; and
 - (15) Original assignment documents, stock powers and appropriate corporate resolutions.
- b. Negotiable Collateral. Negotiable collateral is collateral evidenced by a document which, when presented, may be converted to cash or other assets in the ordinary course of business. Examples of such items are:
- (1) Bearer instruments;
 - (2) Instruments endorsed in blank;
 - (3) Instruments endorsed or executed in favor of SBA; and
 - (4) All stocks, bonds, and debentures.
- c. Custody Documents. Custody documents are documents which do not represent collateral and which are returned to the borrower or third parties when the loan (or debt) is paid in full. Examples are:
- (1) SBIC's original promissory notes to SBA and other like obligating

- instruments;
 - (2) Security agreements;
 - (3) Loan agreements;
 - (4) Standby agreements;
 - (5) Abstracts of title; and
 - (6) Title policies.
- d. Non-Custody Documents. Non-custody documents are original documents, other than collateral or custody documents, which are required under the loan authorization and closing schedule, but which are not returned to the borrower or third party when the loan is paid in full, such as lists of assets or letters.

5. How Do I Control and Keep Safe Collateral and Custody Documents?

- a. Collateral Listing. You must prepare in duplicate SBA Form 649, Listing of Collateral Documents and forward the form to the OL CC. The OL CC will sign the original SBA Form 649, and place it in the collateral file folder. The OL CC will also sign the copy and return it to you to place in the liquidation file.
- b. Missing Collateral. Identify any missing documents on SBA Form 649. When you receive a missing item, list it on the inventory for the case and have it placed in the proper collateral file by forwarding an SBA Form 649 to OL collateral CC.
- c. Action by CC. Upon receipt of the SBA Form 649, the OL CC will:
 - (1) Review the form and all original documents to ensure that the listing is accurate;
 - (2) Sign the original of the SBA Form 649, and return a signed copy to you;
 - (3) Complete a log sheet, Office of Liquidation Schedule of Original Documents (see appendix 38), and place the log sheet on the left side of the collateral file folder; and
 - (4) Keep the original of the SBA Form 649 in front of all original documents on the right side of the collateral file.
- d. OL CC's Responsibility. The OL CC controls and safeguards all collateral and custody documents in OL, including negotiable items, from the time they are

received in OL until they are released.

- e. Permanent Removal of Collateral Items. When collateral items are to be removed from inventory permanently (i.e., paid in full, released, exchanged, charged-off, etc.):
 - (1) You must prepare an SBA Form 219, "Collateral Record" (see appendix 39), obtain your chief's signature on the form, and give the form to the OL CC;
 - (2) The OL CC must remove the item(s) from the collateral file and mark the log sheet in the collateral file accordingly; and
 - (3) The OL CC must return the original item(s) along with a copy of SBA Form 219 to you for disposition.
- f. Proper Recording on the Permanent Removal of Collateral Items. The OL CC maintains the original of SBA Form 219 in a binder labeled Office of Liquidation, Removal of Collateral and SBA Form 223, Register of Collateral Items Permanently Released (see appendix 40). The item(s) on this register must be kept in consecutive date order. This register tracks all collateral items removed from inventory and the disposition of those items.
- g. Temporary Removal of Collateral items. When items are temporarily removed from the collateral file, the following procedures will be followed.
 - (1) Temporary removal of the items will be listed on the Collateral File Cabinet Logout Sheet (see appendix 41). The removal of any file or item(s) requires two signatures; yours and the OL CC's.
 - (2) Replacement of the same items in the collateral file will also be recorded on the Collateral File Cabinet Logout Sheet. The date of the return must be noted and both you and the OL CC must sign the log sheet.

6. **Inspection of Collateral.**

During the last quarter of the fiscal year, and whenever key personnel responsible for collateral items change, all collateral items and records must be examined to determine that the inventory of such items agrees with the control records.

- a. Designated Employee. The employee designated by the Director, OL, to make the inspection will be someone other than an employee responsible for custody and control of collateral items.

- b. Presence of OL CC. Personnel responsible for custody of these items will be present and observe the entire verification.

- c. Certification. The inspection will be documented by means of SBA Form 989A, "Annual Inspection of Facilities for Safeguarding Custodial Items" (see appendix 42). Any instructions for corrections and exceptions will be noted and provided to the OL CC for reconciliation. The annual inspection report will be maintained in a separate folder and be stored in an area designated by the Director, OL.

CHAPTER 14-Collections, Charge-offs, and Closeouts**1. What Procedures Must be Followed When an Account is Paid in Full?**

When a loan, note receivable, or debenture is paid in full or compromised, mark the loan document as Paid-In-Full or satisfied, as appropriate, include the date and your signature and the signature of the Director, OL, (if necessary under delegations of authority), and return the original to the debtor. Keep copies for OL's asset and liquidation case file. The asset file should be retained for 1 year and then sent to off-site storage. Notify DM, via the status code change form,, of the change of status of the asset and note the payment on applicable internal tracking reports.

2. Charge-Offs.**a.. Charge-Off of Notes or Colpur.**

If you determine that there will be no further recovery from an SBC due to the SBC's cessation of business, bankruptcy, or prior disposal of its assets, you must obtain third party verification. This verification may be a letter from the SBC's legal counsel, bankruptcy trustee, etc., and should include proof of corporate dissolution. If you cannot verify the SBC's situation by these means, request a letter from the principal(s) and copies of the SBC's signed final tax returns. Whether the documentation is sufficient for verification is subjective and requires that you and your Chief exercise judgment in each situation.

Your decision about how much effort to expend in seeking to verify an SBC's situation will depend on the facts of the particular case. Sometimes the amount of the indebtedness will not justify extensive verification efforts on your part. In other cases, using all reasonable methods available, you may be unable to locate the SBC or some of its principals. In these cases you may determine that SBA's investment is not collectible and the asset should be charged-off.

b. Charge-Off of the Remaining Balance on Notes Receivable Acquired via a Settlement Agreement.

If a note receivable executed by an SBIC pursuant to a Settlement Agreement is in default, all reasonable legal efforts should be made to collect the indebtedness. If all legal means of recovery, including pursuit of guarantors, have been exhausted, the balance of the indebtedness should be charged-off.

c. Charge-Off of Judgment Balance after the Close of a Receivership.

See Chapter 7, paragraph 13 d. of this SOP.

d Charge-Off of Principal and Interest on Debentures and Principal on Participating Securities.

Once a determination is made that there is no further recovery available against the principal and interest on an SBIC's debentures or against an SBIC's participating securities, You must prepare an SBA Form 327 action charging-off the balance. (See paragraph 14-3 a for procedures to effectuate a charge-off.)

e. Charge-Off of Prioritized Payments: See Chapter 3, paragraph 5 of this SOP.

3. What Procedures are Required to Effectuate a Charge-Off?

a. Debentures, Loans/Notes Receivable/Prioritized Payments.

When a debenture, loan, note receivable or prioritized payment is charged-off, complete an SBA Form 327, documenting the indebtedness, the amount due, and the efforts made to obtain recovery. Recommend charge-off by SBA Form 327 action and obtain approvals from your Chief and the Director, OL, and concurrence by OGC. Send SBA Form 327 to DFC PAD to record the charge-off in the Agency's loan accounting system. Retain case files for 2 years after charge-off and then forward them to off-site storage.

b. Colpur.

Complete SBA Form 297 to abandon Colpur. Send the form to DFC PAD to record the abandonment in the Agency's loan accounting system.

4. How is a Case Closed?

After you dispose of all assets obtained from an SBIC in liquidation, or the SBIC pays its obligation in full, or the balance due on a note receivable is charged-off, the SBIC case will be considered closed. Send DM status code change form to DM indicating that the case is closed. Retain the SBIC case file on-site for a period of 2 years after the case is closed and then forward it to off-site storage.

5. Notification of License Surrender.

When an SBIC surrenders its operating license, either pursuant to a completed settlement agreement, or otherwise, prepare a Federal Register Notification After Surrender of License Form and bring it to SBA's Administrative Information Branch (AIB), (see appendix 43) requesting that it publish a Notice of License Surrender in the Federal Register. OGC will sign and date the Federal Register Notification form. You must then forward the Federal Register Notification After Surrender of License Form together with a Federal Register Notice of License Surrender (See appendix 44), to the AA/I for signature. After the AA/I returns the form to OL, forward one original Federal Register Notice and 5 copies to AIB together with a computer disk which contains a copy of the notice, and a memo stating that the document is the same on disk as

on paper. (See SOP 00 03, Federal Register Documents.)

CHAPTER 15 - Correspondence, Documentation, Reports, And Controls

1. What is the General Policy and Procedure on Communications?

- a. Incoming and outgoing letters, e mail, correspondence, and internal memoranda involving a liquidation account must be filed in the official liquidation case file.
- b. Signature Authority and Limitations. You may sign routine correspondence concerning work in your area which does not require approval of or clearance by another SBA official. Correspondence stating possible Agency policy, the Agency's financial or legal position, either as a general statement or as applicable to a specific pending matter, must be signed by an official who has authority in the matter.

2. What Documentation is Required for Official Agency Actions?

Official actions taken by SBA under delegated authority may be effected by use of SBA Form 327. OGC must review all SBA Form 327s involving legal matters. Complete the SBA Form 327 including all information essential to an informed decision on the action under consideration. Each SBA Form 327 will cite the authority for the action to be taken, usually by noting the applicable paragraphs of this SOP, or by citing the applicable Delegation of Authority. Copies of all executed SBA Form 327s will be distributed to Data Management, as well as to those persons listed on the bottom of the form.

3. What Fiscal Year-End Reports are required?

a. Branch Requirements. Periodically, during the fiscal year, each branch Chief will prepare an annual report, in concise narrative form, to the Director, OL, comparing the fiscal year's activities to the Office's goals for each of the primary liquidation methods managed by the Branch. The report should address goals and indicators that measure the efficiency, effectiveness and timeliness of collective efforts of each of the settlement agreements, wind down agreements and receiverships. The report may include but is not limited to,

- (1) The number of SBIC accounts scheduled to be concluded compared to those actually concluded;
- (2) The number of portfolio accounts scheduled to be concluded compared to those actually concluded;
- (3) The dollars projected to be collected compared to the dollars actually collected;

- (4) The costs projected to be incurred compared to the costs actually incurred; and
- (5) The number of time milestones met (such as bar dates, dates for execution of agreements, etc.).

b. Analyst Requirements.

Prepare a mid-year and an annual report, in concise narrative form, to your Chief, analyzing your activities for the period. At a minimum, include a brief overview of the progress of your casework, functions and projects.

4. Asset Inventory Data Base (AIDB).

You must update the AIDB for each of your assigned cases at the end of the fiscal year. Provide these changes or corrections to DM on the AIDB printout. All assets must be maintained on the AIDB until sold or charged off. In addition, if information on an Asset changes at any other time during the year, you may immediately E-mail notice of the change to DM, rather than waiting for the annual update.

5. Collection Objectives.

At the beginning of the fiscal year, the OL will establish collection objectives. These collection objectives will be the result of a mathematical calculation which includes the subsidy model, expected recovery rates, the Leverage transfer balances, age of the accounts in OL and past collections for each SBIC financing instrument type (debenture, participating security or preferred stock).

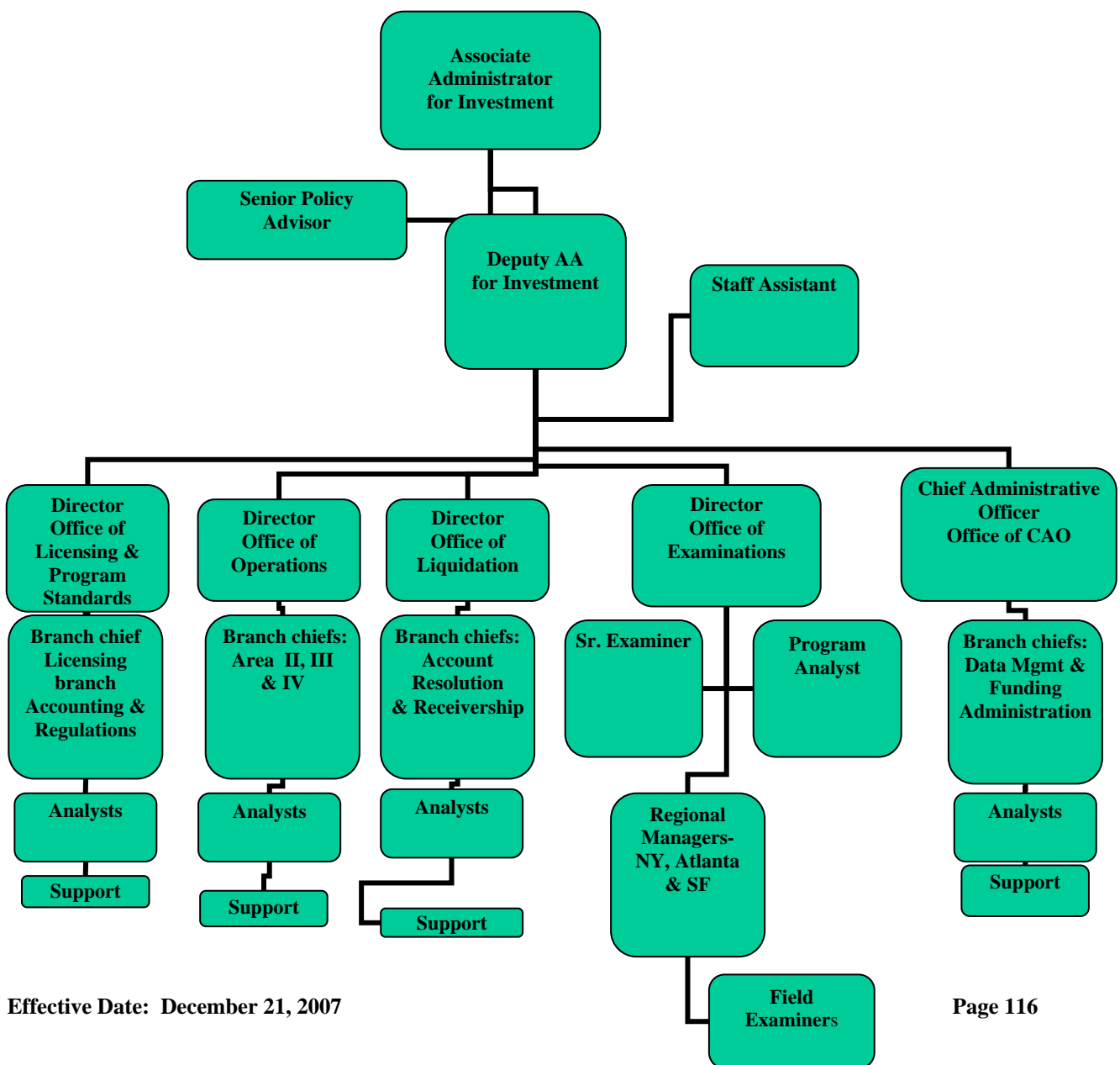
6. Annual Assessments.

The Director, OL,, Chiefs, designated analysts and OGC representative(s), if appropriate, will meet and review the date captured in paragraph 5 above, and will identify cases which require further inquiry and/or corrective action. Corrective action concerning specific cases will be addressed and follow up will occur at quarterly Receivership status meetings and semi annual Wind Down status meetings. Corrective action could include, but not be limited to, a recommendation that the liquidation method being utilized be changed. Additionally, the Director, OL, Chiefs and designated Analysts will attempt to ascertain, on an annual basis, if the information gathered reveals or suggests the need to amend substantive liquidation processes, such as altering the wind down criteria. At the conclusion of the fiscal year, the OL, utilizing the information captured by all other year end reports, will review the performance of each SBIC utilizing agency collections, SBIC receipts and expenditures, assets resolved and anticipated recovery results. Additionally, the Director, OL, Chiefs and designated Analysts will periodically, during the fiscal year, compare OL's performance against the overall goal(s) and performance indicators established at the beginning of the fiscal year. OL will utilize this review to make changes to the address the efficiency, effectiveness and timeliness of the liquidation of

SBICs.

Appendix 1

Investment Division Organization Chart



Appendix 2

SBA Form 327, Modification or Administrative Action

MODIFICATION OR ADMINISTRATIVE ACTION (For Inter-Office Use Only)		2. Loan Approval	5. Servicing Office No.										
SECTION A - IDENTIFYING DATA - Prior to this Action		Date _____ Gross _____ SBA Sh. _____ SBA Part % _____	6. Classification: Current <input type="checkbox"/> Definq. <input type="checkbox"/> Col. Pur. <input type="checkbox"/> In. Liq. <input type="checkbox"/> Chg. Off. <input type="checkbox"/> 7. Delinquencies: No Payments <input type="checkbox"/>										
1. Name (incl. Trade) and Address (incl. ZIP): Borrower/ Lessor		3. Type Bank Serviced <table border="1"><tr><td>D</td><td>IP</td><td>G</td><td>X</td><td>L</td></tr><tr><td></td><td></td><td></td><td>GP</td><td>G</td></tr></table> SBA Serviced _____ Date - XGP Purch. _____	D	IP	G	X	L				GP	G	8. Loan Balance \$ _____ 9. Appraised Date _____ By Whom: _____ 10. Values (\$000): All Col. or Col. Pur. _____ Prior Liens _____ 11. Maturity Date: _____
D	IP	G	X	L									
			GP	G									
Partic. _____ (Name and Address): SBC _____ Lessor _____		4. Disbursement (Gross) 1st _____ Last _____ Tot. Amt. _____ Fully Disbursed? <input type="checkbox"/> YES <input type="checkbox"/> NO											
a. Loan/Case No. _____	b. This Action No. _____	REFERENCE											
c. Report Date: _____		5. Redesignate Servicing Office _____											
SECTION B - INSTRUCTIONS TO COMPTROLLER - For this Action		6. Revise Instal. Type (Enter F, P, or X) _____ Revise Instal. Freq. (Enter M, Q, S, A, or X) _____											
REFERENCE		COMPTROLLER USE ONLY											
1. Charge off Loan (Enter 416) _____		J F M A M J J A S O N D											
2. Re-establish Ch. Off (Enter 410) _____		Revise Instal. Amount _____											
3. Terminate Gly. Loan (Enter F or V only) _____		Revise Next Instal. Due Date _____											
Effect. Date (Gly. Loan Term) _____		Revise Maturity Date _____											
4. Approval Amount _____		If above revised installment amt. is temporary, Future Instal. Amount _____											
Increase Gross by + _____		Future Instal. Due Date _____											
Incr. SBA Sh. by + _____		7. Issue New Repay cards to Bor. (Enter 00) _____											
Reduce Gross by - _____		Transfer Loan to In-Liquid. (Enter 436) _____											
Red. SBA Sh. by _____		Trans. Loan from In-Liq. to Servicing (Enter 437) _____											
Reinstate Gross _____		Date Loan Trans. to or from Liquid _____											
Reinstate SBA Sh. _____		Date Loan Trans. to In-Litigation _____											
Ref. 9-30 (Explain) _____		Enter Date Loan Removed From In-Lit. _____											
SECTION C - JUSTIFICATION AND APPROVAL SIGNATURES - For this Action		SOP _____											
		PARA _____											

SBA FORM 327 SOP 20 21 (6-93)

Appendix 3

Debenture Acceleration Letter

Date

Name
SBIC

License No. 01/01-0381

Re: Acceleration of Indebtedness/ Demand for Payment

Dear Name:

Pursuant to the Small Business Investment Act of 1958, as amended (the "SBIA"), the Small Business Administration (SBA) provided financing to _____ (Licensee), through purchase or guaranty of the following subordinated debentures ("the Debentures"):

<u>Loan Number</u>	<u>Prepayment Amount as of</u>
Various	\$ _____

The Debentures incorporate, by reference, provisions of SBA's Regulations (13 C.F.R.) ("the Regulations") as if fully set forth therein, including, but not limited to, 107.1810, Events of default and SBA's remedies for Licensee's non-compliance with the terms of Debentures. Section 107.1810(g) of the Regulations provides, in part, that upon written notice to the Licensee of the occurrence of one or more of the events in paragraph (f) of Section 1810, and subject to the conditions of paragraph (g)(2) of Section 1810, SBA may declare the entire indebtedness evidenced by Licensee's debentures, including accrued interest, and/or any other amounts owed SBA with respect to the Debentures, immediately due and payable and may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver under Section 311(c) of the Act.

By letter dated _____, Licensee was given an opportunity to cure its condition of Capital Impairment within 15 days. Licensee has failed to cure its Capital Impairment within the time frame set out by SBA in writing. Therefore, SBA has determined that the Licensee has violated Section 107.1810(f)(5), Capital Impairment.

You should be advised that the Licensee's account has been transferred to liquidation status. Your remittance of payment in full for the accelerated Debentures, including accumulated interest and fees thereon, should be submitted to the undersigned before the expiration of fifteen (15) days from the date

Effective Date: December 21, 2007

of this letter. As of _____ the Licensee is indebted to SBA upon the Debentures in the total principal amount of \$ _____ plus accrued interest through the next semi-annual due date of March 1, 2004 in the amount of \$ _____ plus fees through the next semi-annual due date of _____. The per diem amount on all the debentures after March 1, 2004 will be \$ _____.

No right or cause of action of SBA shall be waived by this notice of acceleration of maturity and demand for payment.

In the absence of a satisfactory response to the foregoing within the time specified, please be advised that this Agency will commence appropriate legal action for the collection of this indebtedness. If you wish to propose a means of settling the amount owing to SBA by a method other than a cash payment, such proposal should be submitted within the fifteen (15) day time period referred to above.

Sincerely,

Gail G. Green
Chief, Account Resolution Branch
Office of SBIC Liquidation

cc: Office of General Counsel

Appendix 4

PS SBIC Notification Letter

Writer's telephone (202) 205-6503

Date

CERTIFIED MAIL- RETURN RECEIPT

General Partners
(address)

Re: Notice of Transfer to Office of Liquidation
License No.

Dear General Partners:

Pursuant to the Small Business Investment Act of 1958, as amended ("the Act"), the Small Business Administration ("SBA") licensed and provided financing to

(Name of Licensee), through the guarantee of \$ of participating securities ("Leverage").

You are hereby notified that (Licensee) has been transferred from operating status to liquidation status at SBA.

(Licensee's) financial statements of March 31, 2005 indicated a condition of capital impairment in excess of %.

By letter dated June 1, 2005, (Licensee) was directed to cure its condition of capital impairment within 15 days. If (Licensee) failed to cure the capital impairment within the time frame set by SBA, they would be placed in restricted operations. By letter of June 6, 2005, signed by , Managing Member of () the General Partner of (Licensee), acknowledged the condition of capital impairment. To date, (Licensee) has failed to cure its capital impairment and therefore, SBA has determined that pursuant to Section 107.1830(b) of the Regulations, you have a condition of capital impairment and are not in compliance with the terms of your Leverage.

In addition, by letter dated June 1, 2005, (Licensee) was notified that it was also in violation of the Small Business Investment Act of 1958, as amended (the "Act") and SBA regulations § (This is where you would put in any additional violations). Failure to comply with any substantive regulation under the Act is a Restricted Operation condition, Noncompliance, 107.1820(e)(7).

In accordance with Section 107.1820(f) of the Regulations, you are hereby notified that you must comply with the following restricted conditions:

1. You are prohibited from making any additional investments except for investments under legally binding commitments you entered into before such notice, and, subject to SBA's prior written approval, investments that are necessary to protect your investment;

2. Until all leverage is redeemed and amounts due are paid, you are prohibited from making any distributions to any party other than SBA, its agents or Trustee;

3. You are required to immediately call down the Licensee's remaining unfunded commitments from Private Partner's capital (general and limited) and to provide SBA with copies of your demand letters and with a bank letter verifying these deposits; and

4. You are required to immediately limit you management fees and expenses to

5. You are still bound by the Regulations found in Part 107 of 13 C.F.R. Any exception to those regulations must be approved, in writing, by SBA.

(Licensee) is expected to cooperate so as to maximize net recoveries while in liquidation within the shortest time possible, while recognizing the interests of other parties affected, such as other limited partners. SBA is continuing its review of this matter and may provide notice of other violations of the Act and/or Regulations as the circumstances warrant.

The foregoing is made without prejudice to any other rights of SBA, and SBA specifically reserves the right to seek and impose further remedies upon the SBIC as warranted.

Please do not hesitate to contact me at (202) 205-6503 with any questions.

Sincerely,

Gail G. Green
Chief, Account Resolution Branch

cc: Office of General Counsel

Appendix 5

Joint Debenture/PS SBIC Acceleration/Notification Letter

DATE

CERTIFIED MAIL- RETURN RECEIPT

General Partners
ADDRESS

Re: License No.
Acceleration of Indebtedness/Demand for Payment
Notice of Transfer to Office of Liquidation

Dear General Partners:

Pursuant to the Small Business Investment Act of 1958, as amended (“the Act”), the Small Business Administration (“SBA”) licensed and provided financing to NAME (“NAME” or “Licensee”), through the guaranty of \$AMOUNT of participating securities (“Leverage”). Additionally, SBA provided financing to NAME through purchase or guaranty of the following debentures (“the Debentures”):

NAME’s financial statements as of DATE indicated that Licensee had a condition of capital impairment in excess of PERCENTAGE and in violation of Section 107.1830 of the Regulations governing Licensee, which Regulations are found at 13 C.F.R. §107.1830 (“the Regulations”). By letter dated DATE, NAME was directed to cure its condition of capital impairment within 15 days. The letter went on to inform NAME that if the violation was not cured within 15 days, NAME would be placed in restricted operations, in accordance with Section 107.1820(e)(3) of the Regulations, and would be subject to restricted operations conditions as set forth in Section 107.1820(f) of the Regulations. To date, NAME has failed to cure its condition of capital impairment and therefore SBA has determined that, pursuant to Section 107.1830(b) of the Regulations, Licensee has a condition of capital impairment, is not in compliance with the terms of its Leverage and is not in compliance with the terms of the Debentures.

The Debentures incorporate, by reference, provisions of the Regulations as if fully set forth therein, including, but not limited to, Section 107.1810, Events of default and SBA’s remedies for Licensee’s non-compliance with the terms of Debentures. Section 107.1810(g) of the Regulations provides, in

part, that upon written notice to the Licensee of the occurrence of one or more of the events in paragraph (f) of Section 1810, and subject to the conditions of paragraph (g)(2) of Section 1810, SBA may declare the entire indebtedness evidenced by Licensee's Debentures, including accrued interest, and/or any other amounts owed SBA with respect to the Debentures, immediately due and payable and may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver under Section 311(c) of the Act. As described above, Licensee failed to cure its condition of Capital Impairment within the time frame set out by SBA in writing. Therefore, SBA has determined that the NAME has violated Sections 107.1810(f) (5) of the Regulations and Section 107.507(a) of the Regulations due to Licensee's uncured condition of capital impairment.

You are hereby notified that Licensee has been transferred to liquidation status. Additionally, you are hereby notified that, in accordance with Section 107.1810, the Debentures have been accelerated and Licensee's remittance of payment in full for the accelerated Debentures, including accumulated interest and fees thereon, should be submitted to the undersigned before the expiration of fifteen (15) days from the date of this letter. As of DATE, Licensee is indebted to SBA upon the Debentures in the total principal amount of \$AMOUNT, plus accrued interest through the next semi-annual due date of DATE in the amount of \$AMOUNT plus fees through the next semi-annual due date of DATE of \$AMOUNT. The per diem amount on all the Debentures after DATE will be \$AMOUNT.

You are also hereby notified that in accordance with Section 107.1820(f) of the Regulations, Licensee must comply with the following restricted operations conditions:

1. You are prohibited from making any additional investments except for investments under legally binding commitments you entered into before such notice, and, subject to SBA's prior written approval, investments that are necessary to protect your investment;
2. Until all leverage is redeemed and amounts due are paid, you are prohibited from making any distributions to any party other than SBA, its agents or Trustee;
3. You are required to immediately call down the Licensee's remaining unfunded commitments from Private Partner's capital (general and limited) and to provide SBA with copies of your demand letters and with a bank letter verifying these deposits; and
4. You are required to immediately limit you management fees and expenses to \$AMOUNT per year (which represents XX% of stated value of assets as of DATE).

NAME is expected to cooperate so as to maximize net recoveries while in liquidation within the shortest time possible, while recognizing the interests of other parties affected, such as other limited partners. SBA is continuing its review of this matter and may provide notice of other violations of the Act and/or Regulations as the circumstances warrant.

Licensee must make payment in full of the Debentures within the time specified. If Licensee wishes to propose a means of settling the amount owed SBA under the Debentures and under the Participating

Securities Leverage, such proposal should be submitted within fifteen (15) days from the date of this letter.

The foregoing is made without prejudice to any other rights of SBA, and SBA specifically reserves the right to seek and impose further remedies upon Licensee as warranted, including the commencement of legal action for the collection of Licensee's indebtedness under the Debentures and for the appointment of SBA as receiver for Licensee.
Please do not hesitate to contact me at (202) 205-6503 with any questions.

Sincerely,

Gail G. Green
Chief, Account Resolution Branch
Office of SBIC Liquidation

cc: Office of General Counsel

Appendix 6

Pre-Settlement Agreement

Date: _____

[Name and Address]

License No.

Dear _____ :

This is to follow-up on our conversation of _____ regarding the transfer of _____ (“Licensee”) _____ to the Office of Liquidation. Until final resolution of your case, i.e., repayment of SBA obligation in full, or acceptance of a plan of liquidation by the Agency, Licensee will:

- a) submit monthly cash receipts and disbursement report;
- b) obtain prior SBA approval for the sale or disposition of any corporate assets/investments;
- c) remit all proceeds from the sale or disposition of any assets/investments to the SBA for repayment on Licensee’s obligation; and
- d) not incur any new obligations or make any investments without the prior approval of SBA.

Further, please submit Licensee’s FYE _____ 468 report along with an interim financial for the period ending _____ not later than _____. Also, as specified in the notice of default letter dated _____, “If you wish to propose a means of settling the amount owing to SBA by a method other than a cash payment, such proposal should be submitted, in writing...In the absence of a satisfactory response to the foregoing...please be advised that this Agency will commence appropriate legal action for collection of the indebtedness.” The deadline for submission of a proposal is _____. This plan must include a proforma cashflow statement which shows how your obligation to the SBA will be repaid.

Please indicate your concurrence with these terms by signing below and returning this letter to me.

Sincerely, _____ Licensee: _____

Loan Specialist _____ President _____

Appendix 7

List of Items to Bring to Initial PS Meeting

Date

[Name], Managing General Partner

[SBIC]

[ADDRESS]

Re: Request for Wind Down Plan

License No XX/XX-XXXX

Dear General Partners:

In accordance with Section 107.660(e), Other Reports, SBA requests that [SBIC] submit a proposed Wind Down Plan in writing to SBA by no later than [DATE]. The proposed plan should include:

- 1) The remaining time expected to operate,
- 2) The expected liquidation date and anticipated proceeds for each investment,
- 3) The timing of repayments to SBA, and
- 4) The expected timing and reductions in management fees.

Additionally, the plan should specify the following for each portfolio concern:

1. Description of the portfolio company's business
2. A description of where the company stands against plan
3. Summary financial statements - income statement, cash flow statement, and balance sheet – including projections for two years.
4. Current Cash Balance
5. Burn Rate
6. Estimated months of cash on hand
7. Next major milestone for this company
8. Explanation of the basis for the latest valuation based on SBA Regulations
9. History of financing rounds and valuations (pre-money and post-money) of the company established by those rounds, including the dates and amounts of investments by the SBIC
10. Expectations of the timing and amounts of follow- on rounds of financing required by the portfolio company

11. A list of other significant investors in this company and an assessment of their ability and desire to provide additional financing to the company
12. Exit options for this company and the most likely exit mechanism
13. Anticipated exit timing
14. Anticipated exit values and proceeds to the licensee. Discuss the basis for the estimated exit value and include appropriate documentation. For example, the small concern is expected to be sold at 5X EBITDA based on comparable M&A transactions.

Please provide this information by fax or email by [DATE] followed by a bound original through the mail or delivery services. The information provided will assist in SBA's oversight capacity and in assessing future actions. This request is not an indication of any decision or approval by SBA. Please call if you have any questions.

Sincerely,

Name
Financial Analyst
Account Resolution Branch
Office of SBIC Liquidation

Appendix 8

Memorandum to OGC Requesting Receivership

TO: (Name)
Assistant General Counsel
for SBIC Litigation/Liquidation

FROM:

DATE:

RE:

Please initiate litigation against the above SBIC at your earliest convenience. In your pleading, please request injunctive relief, a money judgment,(only for debenture SBICs) and revocation of Name's (“ ”) license, together with the appointment of SBA as Receiver.

Attached hereto is a memo dated _____ which approved the referral of this matter to OGC and which was signed by the Director, OL. The memo gives a history of the case and highlights significant matters. Also attached is a 327 formally referring this matter to OGC.

If you have any questions or comments, please do not hesitate to contact me.

cc: Chief, RO
Director, OL

Appendix 9

Form 327 Referring Case for Receivership

See appendix 2 for form--

In the Ref. Section state the following: "This action seeks to refer (SBIC name) to OGC in order for OGC to seek a receivership. See attached memorandum which details the reasons for the referral. **

Section C- Justification and Approval Signatures-

Attached hereto is a memorandum outlining the reasons for recommending a referral to OGC in order for OGC to seek a receivership for (SBIC name). **

_____ Date:
Analyst

Approve/Do Not Approve
_____ Date:
Chief

Concur/Do Not Concur

_____ Date:
Assistant General Counsel
For SBIC Liquidation

** In the case of debenture SBICs, you will also need to seek a money judgment.

Appendix 10

Liquidation Status Code Change Form

MEMORANDUM

DATE:

TO: _____ in
Data Management

FROM: _____ in
Office of Liquidation

RE: SBIC transfer within the Office of Liquidation

Please be advised that _____
(SBIC NAME & LICENSE NUMBER)

was transferred from _____ to _____
(O/L BRANCH NAME) (O/L BRANCH NAME)

on _____, and it is now assigned a status code of _____.
(EFFECTIVE)
DATE

Signature

Printed Name

Appendix 11

Attorney Opinion Letter

(FILL IN THE BLANKS AS APPROPRIATE- MANY SECTIONS ARE SUGGESTED ONLY)

Date

United States Small Business Administration
Account Resolution Branch
Office of Liquidation
409 Third Street, S.W., 6th Floor
Washington, D.C. 20416

Ladies and Gentlemen:

This Firm represents XXXXXX L.P., a (State) limited partnership ("Borrower"), in connection with that certain Loan Agreement entered into on (date) (the "Loan Agreement"), between Borrower and the United States Small Business Administration ("Lender"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the Loan Agreement.

In connection with the opinions hereinafter expressed, we have examined the following Documents:

- a. the Loan Agreement;
- b. the Promissory Note dated as of _____, by Borrower in favor of Lender in the principal amount of \$ _____.
- c. the Security Agreement dated as of _____, by and between Borrower and Lender (the "Security Agreement");
- d. certified copy of Agreement of Limited Partnership dated (the "Partnership Agreement") of Borrower;
- e. certified copy of Certificate of Limited Partnership (the "Certified of Limited Partnership") of Borrower issued by the Secretary of State of Delaware;
- f. certified copy of Agreement of Limited Partnership dated (the "Partnership")

Effective Date: December 21, 2007

Page 131

Agreement”) of L.P., a (State) Limited partnership and the general partner of Borrower;

g. certified copy of Certificate of Limited Partnership (the Certificate of Limited Partnership) of issued by the Secretary of State of

h. certified copies of the Articles of Incorporation (the “ Corp Articles”) and Bylaws (the Corp Bylaws”);

i. certified copy of resolutions of the board of Directors of Corp adopted at a meeting of the board of directors of Corp authorizing the execution of the Loan Documents; and

j. an unfilled copy of UCC-1 Financing Statement naming Borrower as debtor and Lender as Secured Party (the “Financing Statement”).

The documents described in clauses (a) through (c) above are collectively referred to herein as the “Loan Documents.”

In rendering the opinions herein set forth, we have, with your permission, assumed (i) the legal capacity of all natural Persons, (ii) the genuineness of all signatures (other than of the Borrower); (iii)-the authenticity of all documents submitted to us as originals, (iv) the conformity to authentic original documents of all documents submitted to us as copies, (v) that each party to the Loan Documents (other than the Borrower) is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, (vi) that each party to the Loan Documents (other than the Borrower) has all requisite power and authority to execute and deliver the Loan Documents to which it is a party, (vii) that each Loan Document has been duly executed and delivered by each party thereto (other than the Borrower), (viii) that the execution and delivery of the Loan Documents by each party thereto (other than the Borrower), and the performance of such party's obligations thereunder, have been duly authorized by all requisite corporate and other action on behalf of such party, (ix) that the Loan Documents constitute valid, binding and enforceable obligations of each party thereto (other than the Borrower),. and (x) that, except as required under Applicable Law in the case of the Borrower, no authorization, approval, consent or other action by, and no notice to or filing with, any governmental authority or regulatory body, is required for the execution or delivery of the Loan Documents by the parties thereto that has not been duly obtained or made and that is not in full force and effect. As to various questions of fact material to our opinion, we have relied upon the representations made in the Loan Documents and upon certificates of officers of the Borrower.

As used in this opinion letter, “Applicable Law” shall mean the laws of the state of , the Revised Uniform Limited Partnership Act (“ ”) (only to the extent the Borrower is organized under such law), and those laws, rules and regulations of the United States of America and the rules and regulations adopted thereunder that, in our experience, are normally applicable to transactions Of the type provided for in the Loan Documents. Furthermore, the tetra “Applicable Laws” does not include, and we express no opinion with regard to (i) any state or federal laws, rules or regulations relating to: (A) pollution or protection of the environment; (B) zoning, land use, building or construction; (C) occupational, safety and health or other similar matters; (D) labor, employee rights and benefits,

including the Employment Retirement Income Security Act of 1974, as amended; (E) the regulation of utilities, including without limitation, the Public Utility Holding Company Act of 1935, as amended, and the Public Utility Regulatory Policy Act of 1978, as amended; (F) antitrust and trade regulation; (G) taxes; (H) securities, including without limitation, federal and state securities laws, rules or regulations and the Investment Company Act of 1940, as amended; (I) corrupt practices, including, without limitation, the Foreign Corrupt Practices Act of 1977; (J) copyrights, patents and trademarks; and (K) the Federal Assignment of Claims Act (31 U.S.C. 3727) or any similar state or local law and (ii) any laws, rules or regulations of any county, municipality or similar political subdivision or any agency or instrumentality thereof.

Based upon the foregoing and subject to the assumptions, qualifications, exceptions and limitations set forth herein, it is our opinion that:

1. Borrower is a limited partnership validly existing and in good standing under the laws of the State of _____ and is qualified to do business in the State of _____
2. Borrower has the limited partnership power and authority to execute and perform its obligations under the Loan Documents. The execution and delivery by Borrower of the Loan Documents and the performance of its obligations thereunder have been duly authorized by all necessary limited partnership action on the part of Borrower.
3. Except as described on Exhibit B, the execution and delivery by Borrower of the Loan Documents will not violate, or result in a breach of the provisions of, or constitute a default under, any of the Material Agreements. As used in this opinion letter, "Material Agreements" shall mean the agreements listed on Exhibit K to the officer's Certificate of Borrower dated the date hereof delivered to us in connection with this opinion, which agreements are certified therein by Borrower to us as being the only agreements related to Borrower's investments listed on Exhibit A hereto.
4. Except as described on Exhibit B, the execution and delivery by Borrower of the Loan Documents will not give any party to a Material Agreement the right to exercise any right of first refusal, right of co-sale or other similar right which such party may have under or pursuant to such Material Agreement.
5. The Loan Documents have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with their terms.
6. The provisions of the Security Agreement are effective to create in favor of Lender to secure borrower's obligations under the Loan Documents, a valid security interest in all of Borrower's right, title and interest in and to that portion of the Collateral (as defined therein) in which a security interest may be created under Chapter 9 of the Uniform Commercial Code (the "UCC") as in effect on the date hereof in the State of _____ (the Article 9 Collateral"). To the extent that the filing of a financing statement can effective to perfect a

Security interest in the Article 9 Collateral under the UCC, the security interest in favor of Lender in that portion of the Article 9 Collateral described in the Financing Statement will be perfected upon the per filing of the financing Statement in the Office of the Secretary of State of the State of

8. With respect to the portion of the Article 9 Collateral consisting of certificated Securities (as defined in Section 8.102 of the UCC), upon Lender taking possession of such certificates which are indorsed in the name of Lender or in blank by an effective endorsement or accompanied by undated stock powers with respect thereto duly indorsed in blank by an effective endorsement or in the name of Lender, the security interest of Lender therein is perfected by “control”(within the meaning of Section 8.106 of the UCC).

9. With respect to that portion of the Article 9 Collateral consisting of promissory notes, upon Lender's taking possession of such promissory notes, the security interest of Lender therein is a perfected security interest under the UCC.

Our opinions are subject in all respects to the following qualifications, exceptions, assumptions and limitations.

A. The opinions expressed herein are as of the date hereof only, and we assume no obligation to update or supplement such opinions to reflect any fact or circumstance that may hereafter come to our attention or any change in law that may hereafter . occur or become effective even though such fact, circumstance or change in law may affect the legal analysis, a legal conclusion, or any other matter set forth in or relating to this opinion letter. Accordingly, any party relying on this opinion letter at any time, other than the date hereof, should seek advice of its counsel as to the proper application of this opinion letter at such time.

B. Our opinions contained herein to the extent they relate to matters of limited partnership law are based solely on our review of the opinions published in the Corporation Service Company compilation entitled Laws Affecting Business Entities (Spring Edition). You should be aware that for the purposes of the opinions expressed herein (to the extent they relate to matters of (state) limited partnership law), we have not reviewed any other laws of the State of (including, without limitation, any interpretations of the) or retained or relied on any opinion or advice of Counsel, and our opinions are limited to the application of the

C. In rendering the opinions expressed in paragraphs 3 and 4 above, (i) we have not reviewed, and express no opinion with respect to, documents other than the Material Agreements, irrespective of whether they secure, support or otherwise relate to or are referred to in the Material Agreements or might under certain circumstances result in an event of default or require early payment under any of the Material Agreements; (ii) we have made no examination of, and express no opinion with respect to, any financial, accounting or similar covenant or provision contained in the Material Agreements to the extent that any such covenant

or provision would require a determination as to any financial or accounting matters; (iii) we have not made any calculations of and express no opinion as to Borrower's percentage ownership interests represented by warrants, capital stock, limited liability company interests, limited partnership interests or similar equity interests in any entity; and (iv) we express no opinion as to any breach of any confidentiality provision contained in any Material Agreement caused by any Loan Document or Borrower's actions pursuant thereto or in contemplation thereof. In every case, we have assumed that a court would enforce the Material Agreements as written and we have limited our opinion to matters readily ascertainable from the face of the Material Agreements.

D. For purposes of the opinions contained in paragraphs 3 and 4 above, (i) we have assumed, without so opining, that each of the consent and, waiver letters (the "Consents and Waivers") described on _____ Exhibit C hereto has been duly authorized, executed and delivered by the parties thereto and constitutes the valid and binding obligation of the parties thereto, enforceable against each such party in accordance with its terms, and (ii) in determining who are the parties to the Material Agreements, we have made our determination based upon the terms of the Material Agreements and upon information provided to us by Borrower and by counterparties to the Material Agreements and have assumed such information was correct when provided to us and as of the date of the execution and delivery of the Consents and Waivers. Without limiting clause (ii) . preceding, we note that we have not reviewed the stock transfer, minute books or other records of any issuer of any notes or securities evidenced or governed by the Material Agreements or otherwise made any investigation to determine the individuals and entities that may be entitled to the benefits of, or that may be parties to, the Material Agreements.

E. We do not render any opinion regarding whether any right of first refusal, right of co-sale or other similar right contained in any of the Material Agreements would become exercisable as a result of the enforcement by Lender of any rights it may have under the Loan Documents.

F. In rendering the opinion expressed in paragraph 3 above, we have assumed (i) that Lender is exempt from registration and prospectus delivery requirements under applicable Federal and state securities laws and (ii) that Borrower's execution and delivery of the Loan Documents will not cause a termination of (NAME)LLC's status as a limited partnership for federal income tax purposes, or cause (NAME)LLC to become ineligible to elect status as a partnership.

G. With respect to our opinion set forth in paragraph 5 above, we express no opinion with respect to the validity or enforceability of the following provisions to the extent that they are contained in any Loan Document: (i) provisions releasing, exculpating or exempting a party from, or requiring indemnification or contribution of a party for, liability for its own negligence or to the extent that the same are inconsistent with the public policy underlying any law, rule or regulation; (ii) provisions purporting to waive, subordinate or not give effect to rights to notice, demands, legal defenses or other rights or benefits that cannot be waived, subordinated or rendered ineffective under applicable law; (iii) provisions purporting to provide

remedies inconsistent with or any other applicable law; (iv) provisions purporting to render void and of no effect any transfers of the Borrower's rights in any collateral in violation of the terms of the Loan Documents; (v) provisions relating to powers of attorney, severability or set-offs; (vi) provisions stating that a guarantee will not be affected by a modification of the obligation guaranteed in cases in which that modification materially changes the nature or amount of such obligation; (vii) provisions restricting access to courts or purporting to affect the jurisdiction or venue of courts (other than the courts of the State of with respect to Loan Documents governed by the laws of the State of); (viii) provisions relating to waiver of jury trial; (ix) provisions purporting to exclude all conflicts-of-law rules; (x) provisions pursuant to which a party agrees that a judgment rendered by a court or other tribunal in one jurisdiction may be enforced in any other jurisdiction; (xi) provisions providing that decisions by a party are conclusive or may be made in its sole discretion; and (xii) provisions purporting to establish standards of commercial reasonableness.

H. Our opinion set forth in paragraph 5 above is, to the extent relating to enforceability of the Loan Documents against Borrower in accordance with their terms, limited to enforceability under (STATE) law and we render no opinion as to the enforceability of the Loan Documents under Federal law:

I. The enforceability of the Loan Documents may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or other laws now or hereinafter in effect relating to or affecting enforcement of creditors' rights generally and by general principles of equity (including without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether such enforcement is considered in a proceeding in equity or at law.

J. Insofar as our opinion set forth in paragraph 5 above relates to the enforceability under (STATE) law of the provisions of the Loan Documents choosing (STATE) as the governing law thereof, such opinion is rendered solely in reliance upon Section 35.51 of the Business and Commerce Code, which applies to transactions in which a party pays or receives, or is obligated to pay or entitled to receive, consideration in excess of \$1,000,000.

K. With respect to our opinions set forth in paragraphs 6 through 9 above, we have assumed that Borrower has, or has the power to transfer, rights in the properties in which it is purporting to grant a security interest sufficient for attachment of such security interest within the meaning of Section 9.203. of the UCC.

L. With respect to our opinions set forth in paragraphs 6 through 9 above, we have assumed that Lender has acquired its interests in the Article 9 Collateral for value within the meaning of Section 9.203 of the UCC.

M. Certain of the remedial provisions with respect to the Article Collateral (including waivers with respect to the exercise of remedies against the collateral) contained in the Security Agreement may be unenforceable in whole or in part, but the inclusion

of such provisions does not affect the validity of the Security Agreement, taken as a whole, and the Security Agreement, taken as a whole, together with Applicable Law, contains adequate provisions for the practical realization of the benefits intended to be provided thereby (it being understood that we express no opinion as to the adequacy of such provisions to the extent it is necessary to seek execution or enforcement of rights or remedies under the laws of any jurisdiction outside the State of . . . Additionally we note that the remedies under the Security Agreement to sell or offer for sale the Article Collateral are subject to compliance with applicable state and federal securities laws.

N. In the case of property which becomes Article 9 Collateral after the date hereof, our opinion in paragraph 6 above, as to the creation and validity of the security interests therein described, is subject to the effect of Section XX of the Federal: Bankruptcy Code, which limits the extent to which property acquired by a debtor after the commencement of a case under the Federal Bankruptcy Code maybe subject to such security interest arising from a security agreement entered into by the debtor before the commencement of such case.

O. We express no opinion as to the perfection of the security interests in any Article 9 Collateral that is subject to a state, statute or a statute, regulation or treaty of the United States referred to in Section of the UCC.

P. With respect to our opinion in paragraph 7 above, we express no opinion as to the perfection of a security interest in any items of collateral that are or are to become fixtures.

Q. With respect to our opinions set forth in paragraphs 6 through 9 above, we express no opinion as to the priority of any security interest.

R. We express no opinion herein regarding the enforceability of any provision in a Loan Document that purports to prohibit, restrict or condition the assignment of such Loan Document to the extent that such restriction on assign ability is governed by Sections through of the UCC.

S. With respect to our opinions set forth in paragraphs 6 through 9 above, the' attachment and perfection of Lender's security interest in proceeds is limited to the extent set forth in Section of the UCC.

T. We express no opinion as to any actions that may be required to be taken periodically under the UCC or under any other applicable law in order for the effectiveness of the Financing Statement or perfection of any security interest to be maintained.

The opinions herein have been furnished at your request in connection with the subject transaction and are solely for the benefit of Lender and may not be relied upon for any other purpose or by any other party or furnished to anyone else without the prior written consent of the undersigned, provided that copies of this opinion may be furnished by Lender to regulatory agencies and other governmental authorities with regulatory authority over Lender.

Very truly yours,

EXHIBIT A
INVESTMENTS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

EXHIBIT B

Breaches and Rights Exercisable Under Material Agreements


Material Agreements	Ancillary Rights
 Corporation	

EXHIBIT C

Consents and Waivers

Appendix 12

Stock/Bond Power

IRREVOCABLE STOCK OR BOND POWER

FOR VALUE RECEIVED, the undersigned does (do) hereby sell, assign and transfer to

(SOCIAL SECURITY OR TAXPAYER IDENTIFYING NO.)

IF STOCK,
COMPLETE
THIS
PORTION

_____ shares of the _____ stock of _____
represented by Certificate(s) No(s). _____
inclusive, standing in the name of the undersigned on the books of said Company.

IF BONDS,
COMPLETE
THIS
PORTION

_____ bonds of _____
in the principal amount of \$ _____, No(s). _____
inclusive, standing in the name of the undersigned on the books of said Company.

The undersigned does (do) hereby irrevocably constitute and appoint _____
_____ attorney to transfer the said stock or bond(s),
as the case may be, on the books of said Company, with full power of substitution in the premises.

Dated _____

IMPORTANT - READ CAREFULLY

The signature(s) to this Power must correspond with the name(s) as written upon the face of the certificate(s) or bond(s) in every particular without alteration or enlargement or any change whatever. Signature guarantee should be made by a member or member organization of the New York Stock Exchange, members of other Exchanges having signatures on file with transfer agent or by a commercial bank or trust company having its principal office or correspondent in the City of New York.

C133 - Irrevocable Stock or Bond Power

(PERSON (S) EXECUTING THIS POWER SIGN (S) HERE)

SIGNATURE GUARANTEED

Appendix 13

Note Assignment

FOR VALUE RECEIVED, _____ (SBIC) hereby sells, assigns, and transfers on a non-recourse basis to the U.S Small Business Administration all the rights of the undersigned under that certain Promissory Note of _____ in the principal amount of \$ _____ dated _____, 19__ , issued to _____.

Date: _____ By: _____
Title: _____

Appendix 15

SBA Form 515, Note Receivable Report

RCN 428

SMALL BUSINESS ADMINISTRATION

NOTE RECEIVABLE REPORT

Name and Address of Original Borrower:	Name and Address of Participant:
--	----------------------------------

Original Loan No.:	Type of Loan: <input type="checkbox"/> Direct <input type="checkbox"/> GP <input type="checkbox"/> x GP	Percent Participation _____ %	Note Receivable Serviced By: <input type="checkbox"/> SBA <input type="checkbox"/> Participant
--------------------	--	----------------------------------	---

Name and Address of Note Receivable Obligor:	Note Receivable Number: NR- _____
--	--------------------------------------

Note Receivable Created By:

Full or Partial Sale of Col. Pur. (If Yes, Complete Form 297)

Other (Compromise, Other Financing, Etc.)

Minority Code _____

Amount of Note Receivable: \$ _____	Rate of Interest: _____ % Per Annum
--	--

Date of Note Receivable: _____	Maturity Date: _____
--------------------------------	----------------------

Note Receivable Repayment Terms: *(Specify Exact Amount of Payment, Monthly, Quarterly, Etc... and Due Date of 1st Installment, Etc...)*

Comments:

SBA Loan Officer	Date	FTS #	SBA Office & Code
------------------	------	-------	-------------------

SBA Form 515 (5-97) Ref: SOP 50 51

Use 5-82 Edition Until Exhausted

White Copy to OAO (Attach Copy of Note Receivable)
Yellow Copy to FOB
Pink Copy to Docket File



Appendix 16

Demand Letter Upon Default of Settlement Agreement

By: Certified and Regular Mail

Re:

Dear

As you are aware, obligation to SBA, evidenced by a Promissory note (“Note”) date November 1, 1990, signed by as President of and amended June 1, 1993, matured on June 1, 1995, and has not been paid pursuant to the terms of the Note.

Pursuant to the Note terms, demand is hereby made for payment in full on the above referenced obligation. The present principal balance of the Note as of July 10, 1994, is \$192,448.61 plus accrued interest of \$166,615.11 for a total due of \$359,063.72. The per diem interest charge is \$38.38 for each day thereafter.

Please remit payment in full of the above referenced amount. Failure to do so within 30 days of receipt of this notice will cause SBA to pursue its legal rights including, but not limited to, transferring title to collateral to SBA pursuant to SBA’s security interest in collateral. Please contact me as soon as possible to discuss this matter.

Sincerely,

Appendix 17**Wind Down Letter Agreement**

Writer's telephone (202) 205-6503

Date

CERTIFIED MAIL- RETURN RECEIPT

General Partner
PS SBIC
Address

Re: Wind Down Letter Agreement between SBA and Name of PS SBIC

Dear _____ :

SBA has reviewed all of the documentation you have provided to us on the portfolio assets of (PS SBIC name). Effective immediately, and subject to the terms in this Wind Down Letter Agreement, PS SBIC will be allowed to wind down its portfolio, subject to SBA's discretion, on the following terms:

1. You are prohibited from making any additional investments except for investments under legally binding commitments you entered into before the transfer to liquidation, and, subject to SBA's prior written approval, follow on investments that are necessary to protect your investment;
2. Until all leverage is redeemed and amounts due are paid, you are prohibited from making any distributions to any party other than SBA, its agents or Trustee;
3. SBA retains the right to review and re-determine your approved Management Expenses. At present, your management fees are to be \$ _____ annually.
4. SBA will require semi-annual status meetings.
5. You shall provide quarterly updates to your wind down plan in order to assess the progress of the plan.
6. You agree not to borrow any money without SBA's prior written approval.
7. You agree to sign a consent to receivership should SBA, in its sole discretion, determine that you are no longer meeting the terms of the Wind Down Plan or that circumstances have changed such that the Wind Down is no longer advisable and that a Receivership is the appropriate option. The consent may only be utilized by SBA after the expiration of one (1) year from the signing of this Wind Down Letter Agreement. SBA may seek a receivership without the consent of the SBIC at any time.

8. You are still bound by the Small Business Investment Act of 1958, as amended and the Regulations found in Part 107 of 13 C.F.R. Any exception to the Regulations must be approved, in writing, by SBA.

The foregoing is made without prejudice to any other rights of SBA, and SBA specifically reserves the right to seek and impose further remedies upon the SBIC as warranted.

If you have any questions or concerns, please do not hesitate to contact me at 202-205- .

Sincerely,

Name

Read and Agreed:

General Partner

Appendix 18

Wind Down Status Memorandum

Portfolio Summary												
SBIC:	Name of Licensee				Date Prepared:							
					Prepared By:							
Company Name:	Name of SBC				Location:							
NAICS:												
Responsible Partner:					Co-Investors:							
Lead Investor:												
Board Representation(Describe):												
INVESTMENT INFORMATION:												
Date(s) of initial investment:					Total Investment Cost:							
Current Book Value (MMDDYYYY):					Type of Security:							
SBIC fully diluted ownership (%):					Preferred Attributes/Collateral:							
FINANCIAL/KEY METRICS/FORECAST:												
FYE:	Unaudited	Audited										Total
(in \$000s)	2005	2006	Q1 - A	Q1 - P	Q2 - A	Q2 - P	Q3 - A	Q3 - P	Q4 - A	Q4 - P		2007 P
No. Employees	108	110										
Key Metric:												
Revenue:	19.8	26.8		6.4		8.4		10.2		11.2		36.2
Net Income:	11.9	17.4		4.1		5.5		6.6		7.3		23.5
EBITDA	17.4	19.3		4.9		5.4		5.4		5.5		21.2
Cash Flow	(5.8)	(2.2)		N/A		N/A		N/A		N/A		N/A
Cash	5.1	3.7		N/A		N/A		N/A		N/A		N/A
LT Debt	0	0		N/A		N/A		N/A		N/A		N/A
Gross Profit Margin	60.6%	64.7%		63.9%		65.0%		65.0%		65.0%		64.8%
EBITDA Margin				N/A		N/A		N/A		N/A		N/A
DISCUSSION: (PLAN versus ACTUAL)(Follow-on investment projections)												
Please address comparative advantage and competitors, as well as any other substantive analysis.												
VALUATION ASSUMPTIONS												
	Low	Probable	High	Orig. Plan	Variance	Third-Party						
Multiple on (Revenue,EBITDA)	4X	5.5X	7X									
Enterprise Value:	\$150	\$200	\$250		200							
Less: Debt	-	-	-									
Plus: Cash	-	-	-									
Equity Value:	\$150	\$200	\$250									
SBIC's share	\$6.5	\$8.8	\$10.9		8.8							
Exit Timeframe:												
REASON FOR VALUATION CHANGE FROM ORIGINAL PLAN:												
EXIT STRATEGY:												
ISSUES/PROBLEMS												
ACTIONS												
TIMETABLE												

Exhibit 2: Portfolio Summary

Wind Down Plan Cash Flow Worksheet										Prepared by: J. Smith	
Name of Licensee	Liquidation Year 1		Liquidation Year 2			Liquidation Year 3		Liquidation Year 4		TOTALS	
Reporting Period (in \$000s)	Actual	Orig. Plan	2007 Actual to 10/31/07	2007 Proj 10/31-12-31	Orig. Plan	2008 Proj	Orig. Plan	2009 Proj.	Orig. Plan	Act + Proj	Orig. Plan
Cash - Beginning of Period	\$ 100	\$ 100	\$ 450		\$ 3,588	\$ (10)	\$ 3,413	\$ 8,040	\$ 3,363	8,580	10,463
CASH INFLOWS											
Unfunded Commitments	500	750	35	15	25	50	50	125	125	725	950
SBA-funded borrowing(s)	-	-	-	-	-	-	-	-	-	-	-
Total Incoming Capital	\$ 500	\$ 750	\$ 35	\$ 15	\$ 25	\$ 50	\$ 50	\$ 125	\$ 125	725	950
Interest & Dividend Income											
Company A	5	5	-	-	-	-	-	-	-	5	5
Total Interest & Dividend Income	\$ 5	\$ 5	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	5	5
Loan Principal Payments:											
Company A	250	213	-	-	-	-	-	-	-	250	213
Total Loan Principal Payments	\$ 250	\$ 213	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	250	213
Exit Proceeds											
Company A	2,000	2,000	-	-	-	3,000	-	-	-	5,000	2,000
Company B	-	3,000	-	-	-	5,000	-	-	-	5,000	3,000
Company C	200	200	-	-	-	-	-	-	-	200	200
Total Exit Proceeds	\$ 2,700	\$ 5,625	\$ -	\$ -	\$ -	\$ 8,000	\$ -	\$ -	\$ -	10,200	5,200
TOTAL INFLOWS:	\$ 3,455	\$ 6,593	\$ 35	\$ 15	\$ 25	\$ 8,050	\$ 50	\$ 125	\$ 125	\$ 11,180	\$ 6,368
CASH OUTFLOWS											
Operating Expenses											
Management Fees	400	400	175	25	200	-	100	-	-	600	700
Interest Expense	-	-	-	-	-	-	-	-	-	-	-
Audit and Tax Expenses	30	30	-	-	-	-	-	-	-	30	30
Legal Expenses	50	50	-	-	-	-	-	-	-	50	50
Other Expenses	75	75	-	-	-	-	-	-	-	75	75
Total Operating Expenses	\$ 555	\$ 555	\$ 175	\$ 25	\$ 200	\$ -	\$ 100	\$ -	\$ -	\$ 755	\$ 855
Distributions											
Distribution - LPs	-	-	-	-	-	-	-	-	-	-	-
Distribution - SBA	2,500	2,500	-	-	-	-	-	-	-	2,500	2,500
Total Distributions	\$ 2,500	\$ 2,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,500	\$ 2,500
Add-On Investments											
[company a]	50	50	-	-	-	-	-	-	-	50	50
Total Add-On Investments	\$ 50	\$ 50	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50	\$ 50
TOTAL OUTFLOWS:	\$ 3,105	\$ 3,105	\$ 175	\$ 25	\$ 200	\$ -	\$ 100	\$ -	\$ -	\$ 6,710	\$ 6,710
Ending Cash	\$ 450	\$ 3,588	\$ 310	\$ (10)	\$ 3,413	\$ 8,040	\$ 3,363	\$ 8,165	\$ 3,488	\$ 13,050	\$ 10,120
Regulatory Capital	\$ 30,000	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
SBA Leverage Outstanding	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000		

Exhibit 1: Wind Down Cash Flow Worksheet

Licensee:	<input type="text"/>	License #:	<input type="text"/>
Analyst:	<input type="text"/>	Date Licensed:	<input type="text"/>
Date:	<input type="text"/>	Transfer Date:	<input type="text"/>
		Date of Restricted Ops Letter:	<input type="text"/>

Cash Flow Summary (000s)

	Prior Yrs	2007	2008	2009	Total
Original Wind-Down Plan	2,000	500	250	4,500	7,250
Revised Wind-Down Plan	2	2	0	3	7
Leverage Owed to SBA Expenses	10	8			
Distributions to SBA	2				
Outstanding Amt owed to SBA	8				
Approved Cash Reserve:					
SBIC Cash Balance:			As of:	<input type="text"/>	
Projected Cash Needs					
Date of Last Form 468:					Form 468 FMV: <input type="text"/>

SBIC Distribution Waterfall Analysis

Total SBA Follow-On Loans (P & I)(see attached detail)					Eff. Date: <input type="text"/>
Senior Third Party Debt					<input type="text"/>
SBA Commitments Drawn:					<input type="text"/>
Less Redemptions Pre_Liquidation					<input type="text"/>
Less Redemptions In Liquidation					<input type="text"/>
Current Leverage Owed					<input type="text"/>
Total Private Capital Drawn:					<input type="text"/>
Total Amount Owed Before Prioritized Payments:					<input type="text"/> \$
Advanced/Purchased Prioritized Payments					<input type="text"/>
Accrued Prioritized Payments					<input type="text"/>
Total Owed before Profit Participation					<input type="text"/>
Prior Private Investor Distribution			<input type="text"/>		
Prior Distributions to SBA - Prioritized Payments			<input type="text"/>		
Prior Distributions to SBA - Annualized Charge			<input type="text"/>		
Prior Distributions to SBA - Profit Participation			<input type="text"/>		SBA Profit Participation Percent: <input type="text"/> %

Management Discussion

Include Board Seats held, significant committee, lead investor and any other significant involvement

Current Management Fee (per annum):	<input type="text"/>	\$	<input type="text"/>
Effective Date:	<input type="text"/>	Basis:	<input type="text"/>
Management Fee Recommendation:	<input type="text"/>		

Plan versus Actual Discussion

Portfolio:

Operations:

Unfunded Commitment Discussion

Include unpaid GP Note and date to be paid back.

Additional Funding Requirements

Legal and Other Issues

Is there need for third-party evaluation of plan? Is there need for financial audit/examination?

Wind-Down Review Summary (or Exam History Summary)

O/L Analyst Recommendation

Date of Next Status Meeting:

Recommended By:

Approved BY:

Financial Analyst

Date

Chief Account Resolution Date

Exhibit 1: Wind Down Plan Cash Flow Worksheet

Exhibit 2: Portfolio Summary

Exhibit 3: Investment Waterfall Analysis

Appendix 19

Third Party Evaluation Review Checklist

Scope of Work

Effective Date: December 21, 2007

For the period under review, Contractor, as defined per this agreement, shall review compliance with the Transfer to Liquidation Letter, compliance with the Wind-Down Plan, and Performance of the Management Team. In addition, contractor will analyze cash receipts and disbursements for the period under review. Specifically, the contractor will perform the services for Client as listed below.

Prior to beginning work, contractor will obtain the Transfer to Liquidation Letter and most recent wind-down plan from the Financial Analyst. In addition, contractor will contact the Financial Analyst to determine if the Office of Liquidation has any concerns or outstanding issues to be addressed.

- I. Contractor will review the Wind-Down Plan presented to the U.S. Small Business Administration (“SBA”) by the Client. Contractor’s review will consist, at a minimum, of the following components:
 - a. Compliance with plan
 - b. Reasons for variance and whether factors were controllable or uncontrollable
 - c. Assessment as to whether plan is still viable or whether lower or higher recoveries are now expected
 - d. Timeframe until SBA will have its leverage repaid according to Wind-Down Plan
 - e. Financial strength of portfolio companies identified by Financial Analyst
 - f. Need for an independent valuation of portfolio companies reviewed
- II. Contractor will review the performance of the Client’s Management Team. Contractor’s review will consist, at a minimum, of the following components:
 - a. How active has the management team been in managing the portfolio companies
 1. Identify number of portfolio concern board meetings attended
 2. Determine participation in portfolio concern non-board meetings/calls
 3. Analyze influence over portfolio concern transaction and operations
 4. Identify materials and information received from portfolio concerns on a recurring basis
 - b. Has management actively analyzed and pursued all possible exit opportunities
 - c. Has management contributed to the growth in the value of the portfolio
 - d. Does the management team appear to be operating well together
 - e. Has management been effective in conserving capital
 - f. Do management fees seem reasonable for the activity of the management team and in line with industry standards
 - g. Have there been any changes in the management team since transferred to the Office of Liquidation
 - h. Are the management fees in compliance with those set forth in the Transfer to Liquidation Letter or Notice of Management Fee Reduction
- III. Contractor will review the financial records of the SBIC. Contractor’s review will consist, at a minimum, of the following components:

- a. Are the expenditures consistent with the cash budget submitted to the SBA
 - b. Are there any expenditures that appear to warrant a closer review by the SBA
- IV. Contractor will review the Transfer to Liquidation Letter or Restricted Operations Letter. Contractor's review will consist of, at a minimum, the following items:
- a. Verify additional investments made received SBA written approval
 - b. No distributions were made to parties other than the SBA unless all leverage is redeemed and amounts due are paid
- V. Other relevant issues that consultant believes are worthy of comment, particularly if they impact the repayment from the SBIC.

Client understands and agrees that SBA may review the report and have additional clarifying questions of the Contractor. Contractor shall be permitted to answer any questions from the SBA as a provision of this contract.

Deliverable: Contractor shall provide a draft report to the Client and to the SBA concurrently. Any proposed edits by Client, before the final report is presented, will be noticed to the SBA. A final written and electronic report shall be delivered to Client and SBA concurrently by [insert date].

Appendix 20

SMALL BUSINESS ADMINISTRATION

RCN 436

JUDGMENT REPORT

Name and Address of Borrower:	Name and Address of Participant:
-------------------------------	----------------------------------

Loan No: _____	Type of Loan: <input type="checkbox"/> Direct <input type="checkbox"/> GP <input type="checkbox"/> XGP	Percent Part: _____ %	Judgment Served By: <input type="checkbox"/> SBA <input type="checkbox"/> Participant
----------------	--	-----------------------	---

JUDGMENT

Perfected Against: (Name, address of each Debtor, including ZIP Code, Jurisdiction and County, etc.)

	<u>1</u>	<u>2</u>	<u>3</u>
Name:	_____	_____	_____
Street:	_____	_____	_____
City (and County):	_____	_____	_____
State (and ZIP Code):	_____	_____	_____

Judgment Debtor is: Borrower Guarantor Other

Date of Judgment: _____ Date Judgment Expires: _____

Total Amount of Judgment: \$ _____

Judgment Interest Rate: _____ % Annual

Attorney and Court Fees: \$ _____

Comments:

SBA Loan Officer	Date	FTS #	SBA Office & Code
------------------	------	-------	-------------------

SBA Form 489 (11-82) Ref. SOP 50 51
Use 7-82 Edition Until Exhausted

Original to OAO (Attach Copy of Judgment)
Yellow to Docket File
U.S. GOVERNMENT PRINTING OFFICE: 1984 - 439-620/7275

Appendix 21

Initial Checklist for New Receivership

INITIAL CHECKLIST FOR NEW RECEIVERSHIP

The following list of actions is advisory since each SBIC will be different. However, an affirmative effort should be made to determine the applicability of all of the items listed.

1. Preliminary Matters

- a. **ORDER** Prior to taking any action on a new receivership, a non-employee agent should determine that an order appointing the SBA as receiver has been entered.
- b. **LETTER OF APPOINTMENT AND AUTHORITY** Prepare a letter of appointment and authority as agent for signature by the Chief, Receivership Operations, or other appropriate authority. Obtain at least six originals so that if requested an original can be given to a bank or other who holds SBIC assets.
- c. **SECTION 754 NOTICE** Pursuant to 28 U.S.C. Section 754, a copy of which is attached, the Receiver obtains jurisdiction of all property of the company in receivership by filing, within 10 days of the date of entry of the order appointing SBA receiver, a copy of the file-stamped complaint and order with the U.S. District Court for the district in which receivership property is located. The actual mailing is coordinated by Chief, Receivership Operations. Since the filing must be made within 10 days of entry of the order, it is essential that arrangements be made to provide the Chief with a file stamped copy of the order as soon as it is signed.
- d. **CASH STATUS** Determine whether the SBIC has any cash accounts. If it does not have cash, initiate a request for a receiver's certificate with the designated financial analyst. Also, provide the Receiver's accounting firm with the SBIC name and TIN/EIN Number so receivership cash accounts may be opened. (See also 3.c.1 below.)

2. Preparation for Site Visit

- a. obtain review:
 - order appointing SBA receiver
 - complaint
 - consent judgement, stipulation
 - other pleading or filing
- b. review if possible:
 - liquidation file
 - forms 468
 - forms 1031

any reports from the IG
other documents on file with agency

- c. discuss SBIC with liquidation and general counsel people to determine scope and nature of entity and any problems specific to the SBIC.
- d. identify significant SBIC persons:
 - officers, directors
 - attorneys for SBIC
 - specific contacts within the SBIC and in the SBA District

Office

- e. determine whether arrangements have been made for transfer of SBIC and if not, work with OGC, Receivership Operations
 - (1) to set up appointments with principals, attorneys, accountants, others
 - (2) to determine if timely response pursuant to order has been made or is being drawn up (check with SBA personnel)
 - (3) to determine scope of task, e.g., quantity of files, office equipment, automobiles, trucks, leases, telephones, etc., and bank accounts (this is information that is required to be provided to the receiver pursuant to the order)
- f. make travel arrangements
- g. make preliminary contact with shippers, e.g., Beking, and arrange to open up overnight mailing accounts
- h. determine need for and organize any supplies to take to site (shipping labels, overnight mailing supplies, tape, scissors, envelopes for organizing and inventorying collateral, etc.)
- i. organize information on SBIC and assets to assist in interviews and review on site (form 468, pleadings, reports, blank form A-1s form liquidation report)

3. Site Visit

- a. meet with contact (s)
 - (1) review order and its significance
 - (2) discuss activities and work out timetable for bank visits, portfolio review, shippers arrangements, etc. and also for meetings with attorneys, accountants and others if not previously arranged
 - (3) obtain full names, current addresses, phone numbers, and if possible social security numbers of principals and employees

b. file identification and transfer

(1) loans and investments—portfolio companies

- (a) original loan documents, collateral documents, mortgages, deeds, stock certificates, warrants, documents (e.g., agreements) for partnerships, subsidiaries, participations, etc.—specifically inventory these documents and if possible make arrangements to hand carry
- (b) related operating files—correspondence, memoranda, application and payment information, financial statements, amortization schedules, payment records
- (c) review each investment with principal to determine status, type of business, any other information relevant to dealing with the account
- (d) names, addresses, phone numbers and any other relevant information about principals of portfolio concerns

(2) general corporate books, records—SBIC

- (a) articles of incorporation, bylaws, minute books (including board of directors and shareholders meetings), corporate seal, stock certificates & books (or partnership agreements, documents)
- (b) SBIC license and any other business licenses or certificates
- (c) corporate agreements: leases, equipment rentals, utility accounts (phone, electric, gas, etc.), contracts, management agreements
- (d) employment records and/or retainer agreements—to include names, addresses, telephone numbers, social security numbers, nature of tasks performed for employees, consultants, contractors, accountants, attorneys and others
- (e) list of all current and anticipated creditors, including judgment creditors, and loan documents
- (f) correspondence files - general corporate and of each officer and director and employee
- (g) any files related to creditors (e.g., participation agreements, promissory notes)
- (h) take possession of any computer programs, disks, thumb drives, etc. belonging to the SBIC, in the event the computer hardware is not the property of the SBIC download all information stored on the computer

hardware.

(3) financial records

(a) general ledgers and subsidiary ledgers (e.g., portfolio accounts receivable and payable, payroll, cash receipts and disbursements, and related correspondence)

(b) tax returns, federal, state, city, employer

(c) cash disbursements and receipts files

(d) vendor files, including purchase orders, invoices, records of payment, etc.

(e) check books, bank statements, cancelled checks, bank reconciliations

(f) payroll records, including quarterly 940, 941 and state payroll returns

(g) SBA Form 468s, financial statements, any other financial report

(h) take possession of computer programs, disks, thumb drives, system configurations for processing general ledgers and generating financial information

(i) Forms W-2, W-3, 1096, 1099

(4) inventory to the extent possible, pack, seal, and arrange for shipment of all files

c. identification, location, shipment of assets

(1) cash accounts

(a) identify existing bank accounts and immediately freeze the accounts—checking, saving, certificates of deposit, safety deposit or lock boxes

(b) determine if any deposits or withdrawals have been made since date of receivership appointment

(c) arrange to visit bank(s) and serve with copy of order and agent's authorization letter to freeze account(s) or to obtain cashiers check(s)
[Note: arrange for wire transfer of funds when receivership cash account opened]

(d) obtain keys for and arrange for inventory and removal of safety deposit box contents

(2) equipment, furniture, vehicles [Note: SBA District Office personnel are frequently excellent sources of information and assistance in dealing with tangible assets]

(a) identify and obtain keys, title, registration, insurance certificate for all vehicles owned by SBIC

(b) identify and compile inventory of all furniture and equipment owned

(i) determine whether to ship or sell

(ii) if shipping to receivership office make arrangements with movers for pick up and delivery

(iii) if selling contact auctioneers/appraisers, arrange for valuation and pick up

4. Identify and if possible contact attorneys

a. General Legal Service

(1) name, address, telephone number of all attorneys who do or have represented the SBIC in advisory manner and a description of the matter(s) on which advice was provided

(2) description of matter on which advise was given and nature of advice

b. Litigation

(1) case name

(2) attorney (name, address, phone number)

(3) terms of representation (fees)

(4) description of matter in Litigation, status, likelihood of recovery

5. Identify and , if possible, contact accountants

a. name, address, telephone number, description of matter handled, identification of records held

Appendix 22

Liquidation Report and Supplemental Report Formats

ANALYSIS OF ASSETS AND LIABILITIES
AND LIQUIDATION PLAN FOR

SBA, RECEIVER FOR

March 31, 1990

Prepared by
, Agent

CONFIDENTIAL AND PRIVILEGED

This report is prepared for the exclusive
use of the U.S. Small Business Administration

CONFIDENTIAL AND PRIVILEGED

Attachment A

U.S. SMALL BUSINESS ADMINISTRATION

Receiver for _____ License No. _____

STATEMENT OF PORTFOLIO ACCOUNT as of March 01, 1991

PORTFOLIO COMPANY						
Name:				Employer I.D. Number		
Address:				Phone:		
Principals (Name & Title)						
STATUS OF ACCOUNT						
Type	Date	Face Amount	Terms:			
Loan						
Equity			Description:			
COLLATERAL						
<input type="checkbox"/> Current		<input type="checkbox"/> Past Due		<input type="checkbox"/> In Liquidation		
<input type="checkbox"/> In Litigation		<input type="checkbox"/> Judgment		<input type="checkbox"/> Bankruptcy Proceedings		
Last Payment					Present Balance	
Date Due	Date Paid	Amount	Principal	Interest	Principal	Interest
COLLATERAL						
Description			Security Interest			
			Prior Liens (Holder, Amount)			
Valuation: Amount		Date		Basis		
Other Significant Information:						

Attachment A1
CONFIDENTIAL AND PRIVILEGED

SBA, Receiver for _____

Plan of Liquidation for

(Asset)

Background:

Current Status:

Potential Problems
or Possible Defenses:

Options for Resolution:

Recommendations:

Estimated Time for Completion:

Estimated Cost for Completion:

Anticipated Gross Recovery:

Attachment B
CONFIDENTIAL AND PRIVILEGED

SBA, Receiver for _____

CASH ON DEPOSIT STATEMENT

As of

Account No.:

Institution: Riggs National Bank of Washington D.C.

Address: 808 17th Street, N.W.
Washington, D.C. 20090-6202

Contact Person: Lois Shortell

Type of Account: Trust

(If CD, provide
maturity date/
restrictions)

Amount on Deposit:

Interest Rate: The interest rate is based on the weekly auction of 91 day
Treasury Bills or Riggs Retail Money Market, whichever is higher

Insured Amount: FDIC insurance applies to \$100,000 and the balance of
funds are collateralized by direct obligations of the U.S. government.

Signatories:
(Two required per withdrawal)

#1 Director, OL
#2 Chief, RO

Receiver's Principal Agent(s):

Attachment C
CONFIDENTIAL AND PRIVILEGED

SBA, Receiver for _____

Litigation Summary

for _____

A. Case Caption:

Case No.:
Court:
Judge:
Date Filed:
Service:

B. Counsel:

- (1) For Receiver:
- (2) For Aligned Parties:
- (3) For Opposing Parties:

C. Status of Receivership
Court Stay and Order
of Enjoinment:

D. Receiver is (P, D, App, etc.):

Description of claims:

P

claims:
seeks:
alleges:

Affirmative defenses:

Counter claims:

D

claims:
seeks:
alleges:

E. Case Schedule
(Pre-trial conference, discovery cut-off, trial date, etc):

- 1 -

CONFIDENTIAL AND PRIVILEGED
(cont'd)

Attachment D

V. Intangible Assets

- A. Contract rights
- B. Participation interests
 - a) SBIC serviced
 - b) non-SBIC serviced
- C. Patents, copyrights, franchise rights
- D. Unified potential causes of action
- E. Other

VI. Litigation	<u>Cost</u>	<u>Amount of Claim</u>	<u>Est Rec</u>
A. Collection Actions			
B. Foreclosure actions			
a) judicial			
b) non-judicial			
C. contract claims			
D. tort claims			
E. breach of duty/ultra vires actions			
F. fraud actions			
G. Bankruptcy proceedings			
H. other			

VII. Assets Held in Trust

VIII. Other

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Attachment E

SBA, Receiver for _____

Claim or Liability Statement

Please provide for each claim or liability:

- 1) the full name, address, and telephone number of the person or entity asserting the claim.
- 2) amount of claim.
- 3) a summary of the factual and legal basis of the claim.
- 4) comment upon the documents or other materials which the claimant believes supports the claim.
- 5) a brief discussion of possible defenses, an analysis of the claim, and the current status of the claim.

If security interests, liens or priorities have been granted or imposed upon the SBIC on any obligation or liability please provide details.

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Attachment F

SBA, Receiver for _____

Cumulative
Liabilities Summary Listing

1. Receiver's certificate(s):
2. Tax and other Governmental Obligations:
 - A.
3. Judgements:
 - A.
4. Debt:
5. Claims asserted (not listed above):
6. Other liabilities:
7. Guarantees issued by SBIC:
8. Outstanding financing commitments:

Indicate for each liability the amount, security for the obligation and whether all or a portion of the liability is disputed.

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Attachment H

SBA, Receiver for

STATUS REPORT SBIC IN RECEIVERSHIP
ACTIVITY AND PROCEDURE

(I) RECEIVERSHIP COURT

- A. Date Receivership Commenced:
(A copy of Complaint, Receivership Order and any amending orders attached)

Court appointing Receiver:
Case No:
Name of Judge:
Judge's Clerk:

- B. List of District Courts in which a copy of the complaint and Receivership Order were filed pursuant to 28 U.S.C. 754:

- C. Receivership Reports:
 - 1. Date Filed:
Date Approved:

- D. Bar Date Procedure:

- E. Receivers Certificate(s):
 - Amount:
 - Date Issued:
 - Repayment Status:

- F. Motions seeking payment of creditors and distribution of property of the estate
 - Filed:
 - Approved:
 - Status:

Attachment H
CONFIDENTIAL AND PRIVILEGED
(cont'd)

G. Motion seeking termination of Receivership and Discharge of Receiver

Filed:
Approved:
Effective Date:

Matters to be completed pursuant to order:

H. Other matters:

(II) Administrative

- A. Parties which the Receiver has engaged or retained indicate for each the name, address, telephone number, purpose, and terms of engagement:
- B. Receivership non-personnel contracts, leases, equipment rentals, insurance, etc:
- C. Accounting

1. Status of Pre-Receivership Accounting

Bills paid through:
Cash account reconciled through:
General ledger and detailed trial balance completed through:
Last prepared financial statement:
Last filed Federal and State tax returns:

2. Status of Receivership Accounting

Bills paid through:
Cash accounts reconciled through:
General ledger and detailed trial balance completed through:
Last prepared financial statements:

D. Tax Return Filings

- 1. Federal Income Tax
Completed through:
Date filed:
Years not filed:

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Attachment H

(cont'd)

2. State and City and County,(if applicable)
 - Income Tax
 - Completed through:
 - Date filed:
 - Years no filed:
- E. Annual Reports, Franchise tax, License Fees and Other Filing required
1. State of incorporation
 - Completed through:
 - Dates filed:
 - Years not filed:
 2. Foreign States
 - Completed through:
 - Date Filed:
 - Years not Filed:
- F. Property Tax Filings:
- G. Other comments:

(III) Corporate

- A. Date of Incorporation:
 Date SBIC License issued:
 Status of SBIC license:
- State of incorporation:
 (Copies of Articles of Incorporation; By-laws, and all Amendments attached)
- Resident Agent for service of Process:
- B. States in which licensed as a foreign corporation:
 Resident Agent in foreign states:
- C. Employer identification number:
 Fiscal Year end:
- D. Corporate Ownership:
- E. Additional Comments:

-3-

LIQUIDATION REPORT

Table of Contents

Attachment A	Statement of Portfolio Account
Attachment A1	Plan of Liquidation for Portfolio Asset
Attachment B	Cash on Deposit Statement
Attachment C	Litigation Summary
Attachment D	Cumulative Asset Summary Listing
Attachment E	Claim or Liability Statement
Attachment F	Cumulative Liability Summary Listing
Attachment G	Cash Receipts and Disbursements Summary
Attachment H	Status Report SBIC in Receivership Activity and Procedure

H1. Receivership Court

- A. Court Information
- B. 754 Filings
- C. Receiver's Report
- D. Bar Date
- E. Receiver's Certificate
- F. Action Seeking Payment and Distribution
- G. Motion Seeking Termination and Discharge
- H. Other Matters

H2. Administrative

- A. Contractors Engaged/Retained
- B. Non-Personnel Contracts, Leases, Equipment Rental, Insurance, etc
- C. Accounting
- D. Tax Return filings
- E. Annual Reports, Franchise Tax, License Fees, Other Filings
 - 1. State of Incorporation
 - 2. Foreign States
- F. Property Tax Filings

G. Other Matters

H3. Corporate

- A. Date of Incorporation
 - Date of SBIC License
 - Status of License
 - State of Incorporation
 - Companies Articles of Incorporation by Laws, Amendments
 - Resident Agents for Service of Process
- B. States in Which Licensed
- C. Employer Identification Number Fiscal Year End
- D. Corporate Ownership Employees
- E. Additional Matters

Appendix 23

Status Meeting Agenda

STATUS MEETING AGENDA

- I. COMMENCEMENT OF RECEIVERSHIP
 - A. Date Order entered
 - B. Amount of judgment Awarded
 - C. Payments to SBA post-receivership

- II. FINANCIAL CONDITION
 - A. Cash Position
 - Cash balance as of
 - Anticipated changes to balance in the next 6 months
 - Status of Receiver's Certificates
 - Estimated Recovery/Loss Variance

- III. REPORTING STATUS
 - A. Claims Bar Date Process
 - Bar Date Order entered on
 - Publication Dates in
 - Claims Bar Date –
 - Recommended Disposition of Claims –

 - B. Reporting
 - 1. Liquidation Report-
 - 2. Receiver's Report –

 - C. Tax Returns –
 - Returns for period ended _____ filed by Receiver on _____.

 - D. Reconstruction/Accounting

- IV. PORTFOLIO ASSETS – (indicate an exit plan & set priorities)
 - A. Loans
 - B. Equities
 - C. Other Assets

V. SUBSIDIARIES

VI. LITIGATION

- current
- pending

VII. OTHER ISSUES TO RESOLVE

VIII. WINDUP/CLOSURE

- targeted dates for wind up/closure
- assets for possible transfer to SBA
- major items to resolve prior to closing

IX. NEST SCHEDULED STATUS MEETING (date, time, place)

Attendees- 48 hours notice of meeting

Appendix 24

Estimated Recovery Statements

Estimated Recovery Statement		Estimated Closing Date
Office of Liquidation		
September 30, 2007		
_____		_____
{Name of Case}		
Cash as of 9/30/2007		(A) _____
Asset Recoveries	- attach only the total pages from the Short Form Database Reports.	(B) _____
Net Lawsuit Recoveries		
Please list cases or potential cases indicating the defendants, along with the a summary of the net lawsuit recovery calculation.		
1.		0
2.		0
	Subtotal	(C) 0
Administrative Costs	from 10/1/2007 to estimated closing date _____	
1.	Accounting costs	0
2.	Tax Return preparation	0
3.	Corporate compliance	0
4.	Maint. Costs, Property Taxes, etc.	0
5.	Rent, Misc. other	0
6.	Bar Date Procedure (publication costs)	0
7.	Agent fees	0
8.	Appraisal/consultant fees	0
9.	Outside legal counsel fees	0
10.	Other _____	0
	Subtotal	(D) _____
Net Liabilities	- attached cumulative Liabilities	
1.	Total owed creditors, other than SBA.	0
2.	Accrued, unpaid interest - Receiver Certificates	0
	Subtotal	(E) 0
Net Potential Recovery	(A + B + C - D - E)	0
SBA Analysts will complete this section		
Balance due SBA upon transfer to Liquidation		(1) _____
For Receivership Cases		
	Balance of Receivers' Certificate - Principal only	(2) 0
	Net Potential Recovery (above)	(3) 0
	Amt Paid to SBA - Prin. only Current Year 10/1/2006 - 9/30/2007	(4) 0
	Amt Paid to SBA - Prin only Prior years	(5) 0
For SBA Owned Assets / Participating Securities		
	Previous Expenditures to protect/maintain {CPC payments}	(2) _____
	Previous Expenditures to protect/maintain {Contractors except Deva}	(3) _____
	Previous Expenditures to protect/maintain {Add - On Investments}	(4) _____
	Net Potential Recovery (above)	(5) 0
	Amt Paid to SBA - Prin only Current Year 10/1/2006 - 9/30/2007	(6) _____
	Amt Paid to SBA - Principal only Prior years	(7) _____
Estimated Loss	(1 + 2 + 3 - 4 - 5 - 6) _____ %	0
Charge off of \$ _____ of advanced prioritized payments.		

Appendix 25

Receiver's Certificate Request

FORMS: BLANK MEMO RE: RECEIVER'S CERTIFICATE REQUEST

Memorandum _____, 19____

To: _____
Chief, Receivership OperationsFrom: (SBA Financial Analyst w/ Receiver's Certificate
Function)
Financial AnalystSubject: Receiver's Certificate Request by
License No. _____Amount Requested:

_____ is in need of a receiver's certificate to be issued in the amount of \$_____. The Order of _____, 19____ set the borrowing limit and terms as follows: \$_____, for _____ months at _____% per annum.

Justification:

Background information regarding _____ is as follows:

_____ originally was placed into receivership on _____, 19____.

The _____ Receivership bank account contained \$_____ as of _____, 19____.

The start-up of the _____ Receivership under SBA will require labor intensive work including the re-identification and contact of portfolio company accounts, and, the reorganization and reconstruction of accounting and collateral records. There may also be need for travel. There may be a need for legal action to collect on judgments owed

Prospects of Repayments:

SBA was awarded a Judgment against _____ for \$_____, plus accrued interest, accrued dividends and post-judgment interest. _____'s investment portfolio includes: _____; however, as _____'s accounting records and portfolio files are not yet available for review, some uncertainty remains.

cc: (SBA Financial Analyst Assigned)

Appendix 26

Recommendation for Issuance of a Receiver's Certificate

License No.

Date: ___/___/___

**Recommendation for Issuance of a Receiver's Certificate
for the _____ Receivership;
Required to Fund Administrative & Legal Expenses**

The Office of Accounting Operations is requested to commence procedures for the issuance of a U.S. Treasury check in the amount of \$_____ made payable to: Small Business Administration, Receiver for _____.

The U.S. Small Business Administration, hereinafter "SBA", began administering the Receivership pursuant to an Order dated _____, 19____, in the U.S. District Court for the _____ District of _____. The commencement of the _____ Receivership by SBA's Agent is requiring labor-intensive work including the identification and contact of portfolio company accounts, and, the organization and reconstruction of accounting and collateral records.

The sum of \$_____ is required to fund administrative and legal expenditures. Failure to procure such funds would jeopardize the Receiver's efforts to maximize recovery from the corporate portfolio and claims _____ has against third parties resulting from its past operations.

In view of the foregoing, SBA in its capacity as Receiver of _____ will cause to be issued a Receiver's Certificate in the amount of \$_____ with an interest rate of ___ percent per annum, and with a maturity date of not more than _____ months from the date of issuance. Pursuant to the _____, 19____, Court Order, the Receiver's Certificate will have priority in payment over all other debts and obligations of _____ excluding administrative of the Receivership.

Recommended By: Dated: _____

Approved By: Dated: _____

Chief, Receivership Operations
Office of Liquidation

Director
Office of Liquidation

PLEASE HOLD CHECK AT CASHIER'S OFC. & CONTACT LIQUIDATION UPON RECEIPT.

Appendix 27

Blank Receiver's Certificate

FORMS: BLANK RECEIVER'S CERTIFICATE

UNITED STATES DISTRICT COURT
DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
_____,)
)
Defendant.)
_____)

RECEIVER'S CERTIFICATE OF INDEBTEDNESS

On or before _____ months after the date of this Certificate, the undersigned, Receiver for _____, appointed in the above-captioned proceedings, and in no other capacity, promises to pay to the order of the Small Business Administration, an agency of the United States, the sum of _____ thousand dollars with interest thereon at the rate of _____ per-cent per annum.

This Certificate of Indebtedness is issued pursuant to an Order of this Court entered in the above-captioned proceeding on _____, 19_____. Pursuant to said Order, this Certificate is given priority in payment over all other debts and obligations of _____, excluding administrative expenses, whether presently existing or hereinafter incurred, including without any limitation any claims of stockholders of _____.

This Certificate of Indebtedness is executed by the undersigned solely as Receiver in the above-captioned proceedings.

IN WITNESS WHEREOF, the undersigned Receiver has caused this document to be executed this _____ day of _____, 19____.

U.S. SMALL BUSINESS ADMINISTRATION
Receiver for _____

_____, Director
Office of Liquidation

Appendix 28

Signatures on Receivership Correspondence

SIGNATURES ON RECEIVERSHIP CORRESPONDENCE



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416



To: Receivership Agents

From: _____
Chief, Receivership Operations

Date: _____

Subject: Signatures on Receivership Correspondence

It is very important to properly identify the Receivership's name and the letter writer's relationship to the Receivership (title) in all Receivership correspondence, especially letters drafted on SBA Letterhead.

In the following example, the Receivership's name has been identified both in the letterhead and in the typewritten signature block. The writer's title follows his/her name under the signature line.

EXAMPLE:

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416
Receiver for X Corporation

Sincerely,
U.S. SMALL BUSINESS ADMINISTRATION, Receiver
for X Corporation

By: _____
Name
Principal Agent/Agent for the Receiver
666 11th Street, N.W., 9th Floor
Washington, DC 20001
(202) 272-3618

Thank you for your cooperation. If you have any questions, please contact me at at 205-_____.

Appendix 29

Checklist for Closing Receiverships

1. File Wind-Up Pleadings
2. Prepare Transfer of Assets Package
3. Begin preparation of Receivership Closing Book(s) - 3 copies (obtain missing pleadings from Court)
4. Schedule Transfer of Assets Meeting
5. File Final Closing Pleadings (notify all agents and outside contractors of absolute closing date)
6. Prepare for Sale of Fixed Assets
7. Finalize sale of Fixed Assets (obtain approval of Branch I, O/L)
8. Prepare Final Reconciliation (obtain approval of Branch I, O/L)
9. Prepare Final Notice to the Court (Final Cash Receipts and Disbursements)
10. Accountants Prepare Final Trial Balance and File Final Tax Returns
11. Send boxes to Federal Records Center
12. Complete Receivership Closing Book(s)

Appendix 30

Receivership Closing Book

TABLE OF CONTENTS.DOCKET SHEET

INITIAL PLEADINGS

Complaint
Consent Stipulation
Order
Judgment, if separate from Order

CLAIMS BAR DATE

Petition for Approval or Procedure
Memorandum for Points & Authorities
Order Approving Form & Manner
Notice/Publication
Report of Claim(s) Approval/Denial
Specific “Contested Claim” Pleadings

RECEIVER’S REPORTS

Petition for Approval
Receiver’s Report
Order Approving Receiver’s Report

WIND-UP PROCEDURE

Petition for Approval of Procedure
Memorandum of Points & Authorities
Accompanying Receiver’s Report
Order Approving Wind-Up

FINAL PLEADINGS

Petition for Approval of...
Memorandum of Points & Authorities
Final Receiver’s Report
Final Order

OTHER

Final Notice of Court of Closing
Revocations/Assignments
Inventory of Boxes to the Federal Records Center

Appendix 31

Procedures for Closing Receiverships

Assignment of Assets to SBA

BACKGROUND:

When there are assets remaining in a receivership that is ready to be closed, the following procedures must be followed to effect the transfer of the assets to the SBA.

Attached is a copy of the “TRANSFER OF ASSETS TO THE SBA CHECKLIST” to be completed by each receivership. **THIS CHECKLIST MUST BE CAREFULLY COMPLETED BEFORE THE ACTUAL TRANSFER.**

GENERAL INFORMATION:

Items on the checklist will be completed beginning with the early stages of the transfer process (filing of the wind up order), and will continue through completion. The senior paralegal (“SP”) will maintain the original checklist until actual transfer is completed. The designated financial analyst (“FA”) will keep a “working” checklist solely for the purpose of monitoring and tracking.

IMPORTANT:

Each Agent is responsible to the analyst assigned to their particular receivership of all relevant transfer information. However legal matters will be dealt with strictly by the OGC attorney assigned, and proper assignment documentation is the responsibility of the FA and the SP.

**"TRANSFER OF ASSETS TO THE SBA CHECKLIST"
(for receivership close-out)**

Agent Name: _____ Receivership: _____

SBA RO Analyst: _____ OGC Attorney: _____

Date initiated: _____ Estimated transfer Date: _____

Actual Date of Transfer: _____

Please complete ALL items listed below and give the date performed. If an item does not apply, please state "N/A". The attached transfer procedures correlate instructions with each item listed on the checklist.

P H A S E I

(1) _____ Initial memorandum with preliminary background information on each asset.
Total number of assets to transfer: _____

(2) _____ Copy of Wind-Up Order (signed).

(3) _____ Copy of Final Order (signed).

(4) _____ SBA form(s) 1358 - "Statement of Portfolio Account" (with brief history).

(5) _____ Litigation Summary(ies). Asset Name: _____

(6) _____ General Assignment of assets document.

_____ Specific Assignment of assets document for each asset.

(7) _____ Notification Letter to borrower(s).

(8) _____ Notification Letter to SBIC's Shareholder of SBIC returning corporate control.

(9) _____ Notification Letter to proper taxing authorities (Federal, State, and Secretary of State).

(10)a. _____ Endorsement (legend) of Notes.

b. _____ Assignment of Stock and Bonds.

(11) _____ Revocation and surrender of license notice and memorandum.

(12) _____ Affidavit of Lost Original. _____ Note _____ License Other: _____

(13) _____ *Potential Problems/Conflicts Memorandum.*
Asset Name(s): _____

(14) _____ *(If applicable to #10 above only). OGC Attorney approval of all necessary documents needed to perfect SBA's security interest. DATE:* _____

(15) _____ *Documents to perfect SBA's interest. (State asset name in "()" brackets next to each document type below.*

Document Type: ___ UCC (_____) ___ Deed (_____)
 ___ Mortgage (_____) ___ Letter of Credit (_____),
 ___ Guaranty (_____) ___ Judgment (_____),
 ___ Other (_____),
(Describe): _____

(16) _____ *SBA Form 649 "Collateral and Custody Documents".*

(17)a. _____ *Memorandum prepared by ARB to OGC Attorney for review. (ARB will complete this item) DATE:* _____

b. _____ *Legal Review by OGC Attorney performed. DATE:* _____

c. _____ *LVF notified by ARB and draft transfer package returned to Rec. office. DATE:* _____

P H A S E I I

(18)a. _____ *Necessary changes made by LVF and reviewed by Agent. Date:* _____

b. _____ *2nd review by OGC attorney of changes. Date:* _____

c. _____ *Documentation returned to LVF by ARB. Date:* _____

P H A S E I I I

(19) _____ *Sale of Fixed Assets Negotiated and Approved by Branch I, OL, SBA.*

(20) _____ *All asset files prepared for transfer to SBA.*

(21) _____ *2 certified copies of the "Final Order".*

(22) _____ *Updated Database Inventory Listing.*

(23) _____ *Final review/closing held by authorized personnel (Agent, LVF, ARB) DATE:* _____

(24) _____ *Delivery of all physical asset files. All completed signed documents and all relevant information to ARB (the complete package) DATE:* _____

(25) _____ *COMMENTS/MISCELLANEOUS:* _____

TRANSFER PROCEDURES:

PHASE I

- (1) After determining what assets are to be transferred to the SBA, please provide a memorandum describing basic information regarding what each asset consists of (note, stock, agreement, guaranty, etc.). At this time, information may be kept relatively simple and short.
- (2) Attach to the memorandum a copy of the "Wind-Up order" after it is signed.
- (3) Provide 2 copies of the "Final Order" to FA (signed is o.k. at this point in the process). Note: 2 certified copies will need to accompany the final transfer package at actual transfer.
- (4) Prepare SBA Form 1358 – "Statement of Portfolio Account" on each asset to be transferred (copy of form attached). Please provide the most current data, and make sure all blocks are completed. If a block does not apply, state "N/A". Also, attach to Form 1358 on a separate sheet of paper a brief description of the company's business including its current operating status. Please also provide a brief history of the investment including the date(s) and amount(s) of the SBIC's investment, details of any stock splits or an initial public offering, a complete loan repayment history (both principal and interest), the next due date and the amount and date of any dividend payment. Please detail all liquidation efforts while the asset was in receivership.
- (5) Litigation representation. Provide short summaries describing the nature and current status of any litigation involving the assigned assets. This information should be prepared by the Agent for review by the OGC attorney so that a solution can be found prior to the assignment. If no litigation exists, then please state so at the bottom of Form 1358 under "Other Significant Information".
- (6) Prepare "Draft" documents of the General Assignment and Specific Assignment (for each asset). (sample copies attached).
- (7) Prepare Notification Letter to borrower in draft. **DO NOT** send to borrower until after final review by OGC and FA of the transfer documents. Mail the letters on the day the actual transfer takes place. In instances regarding receivables that are already repaying on a regular basis, mailing of the notification letter may be sent earlier, if necessary. (sample copies attached).
- (8) Prepare Notification Letter to the SBIC's Shareholders returning corporate control, books and records of company.
- (9) Prepare letters to proper taxing authorities regarding closing out receivership (Federal, State, and Secretary of State).
- (10) a. NOTES – Make sure that all original instruments, especially notes are

endorsed on their face (see below). IMPORTANT NOTE: Before endorsing original documents, make a copy and type the information onto the copy ONLY. Additional or different language may be required by state law. This issue will be addressed by the OGC attorney assigned to the receivership.:

“Pursuant to an order (give order #) of the court (state district court) date the _____ day of _____, 20__, and for value received this instrument is unconditionally assigned to the Small Business Administration this _____ day of _____, 20__.”

Be sure to include signature line (or lines as mandated by the wind up or final order filings). Also, type under the agent’s signature the following (example):

John Smith, Principal Agent
SBA, Receiver for XYZ Corp.

If SBA’s representative is to sign the document(s) also then add the following signature line:

Office of Liquidation
U.S. Small Business Administration

10. b. STOCKS AND BONDS – are to be assigned by a stock/bond power. The stock/bond power must bare a signature guaranty obtained from a commercial bank or trust company, or a member of a major stock exchange. Guaranties are evidenced by the guarantor’s signature and an official signature guaranty rubber stamp. Please do not use the back of the certificate to assign the stock or bond (copy attached).
11. REVOCAION/SURRENDER OF LICENSE. Prepare the revocation and surrender of license memorandums for publishing in the Federal Register. (samples attached).
12. AFFIDAVITS OF LOST ORIGINALS. In some instances, originals of the financing instruments and/or the SBIC license has been misplaced or lost. Affidavits will need to be completed and signed by the Agent (see samples attached). Note: Affidavits should be listed on the SBA Form 649 – collateral listing.
13. POTENTIAL PROBLEMS/CONFLICTS THAT MAY AFFECT PERFECTING SBA’S INTEREST. In any and all instances, issues (problems, conflicts, etc.) that may affect SBA’s position as a creditor must be remedied. Legal matters will be handled with the assistance and guidance of the OGC attorney. However, it is till the responsibility of the Agent to make sure any problems or conflicts are settled PRIOR to the actual assignment. In extremely rare circumstances, if the issues
- (14) a,b,c Any necessary changes will be made by SP. She will notify and work with the agent. FA will handle the second review procedures with OGC and return the package back to SP.

PHASE III

- (15) Sale of fixed assets negotiated and approved by FA, OL, SBA. This issue deals strictly with fixed assets consisting of furniture, equipment, and fixtures that will need to be either sold or disposed of prior to actual transfer of the remaining assets to the SBA. For further information please contact FA directly.

IMPOPRTANT: Once the agency has received an acknowledgement that the final order has been signed the agent should immediately start negotiating the sale and obtain approval from FA. The approval and sale of these items is to be done prior to closing, and a copy of the bill of sale(s) is to be provided in the closing package. NOTE: no transfer will take place until number 19 has been resolved.

, Joan H.

- (16) Provide 2 certified copies of the final order. These copies must accompany the completed transfer package BEFORE transfer can take place.
- (17) An updated Database Inventory Listing is to be provided at closing. This item is to be completed by the Agent.
- (18) FINAL PHYSICAL REVIEW/CLOSING. FA will then meet with the agent and SP to review all documents and information relevant to the transfer.
- (19) ACTUAL TRANSFER (SIGNED COMPLETED DOCUMENTS AND ALL RELEVANT INFORMATION) – Upon the actual signing and transfer of the assets to the SBA, please provide all of the information contained in the transfer process (forms, original instruments, file information, general notes, etc.,).

NOTE – The “original” documents are to be presented in an organized manner (i.e., in a file folder or similar fashion with table on each item, matching in order with the items listed in the “Transfer of Assets to SBA CHECKLIST”). The checklist is to be attached to the front of the package. Also include any and all asset files at this time for delivery to SBA.

- (20) MISCELLANEOUS/COMMENTS – Please notate at the bottom of the “Final Checklist” under “Comments” any other documents or information that will be, or may be coming to the SBA in the near future, after the actual transfer has taken place.

Following the procedures above will allow all involved personnel the benefits of being fully informed of the progress of the transfer, as well as the assurance of a smooth transition in transferring the remaining assets from a receivership to the SBA.

Appendix 32

Request for Follow On Investment

REQUEST FOR APPROVAL OF ADD-ON INVESTMENT

SBIC Name: Date of Request:

Request:

Name of Small Business Concern ("SBC"):

Date SBC started:

Briefly describe industry, competitors, competitive advantage:

Comment on experience and competence of management. Are management changes planned?

Total private capital raised:	<input type="text"/>		
Major Co-Investors	(Pre-financing % owned on a fully-liquidated basis)	% Owned	Amount

Proposed Round: Expected Funding Date:

Description of Financing:

Funds will be used for?

Preferences?

Total Round: SBIC's share (\$):

Pre-money value: SBIC's % Ownership if approved: If declined?

Round Led By:

Are major investors providing their pro-rata shares? (Yes / No)

If not, why?

New Investors ? (Name) None Amount: \$0
 (Name)

SBIC's History of Investments in this company:		Date	Amount
Initial	<input type="text"/>		
Add-on	(Describe) <input type="text"/>		\$0
Add-on	(Describe) <input type="text"/>		\$0
Add-on	(Describe) <input type="text"/>		\$0
Add-on	(Describe) <input type="text"/>		\$0
Current Cost Basis of Investment			\$0
Current Valuation: (as of) <input type="text"/>			

Justification for Apprec/Deprec:

Has an independent evaluation of this company been performed? (Yes/No)

If so, what was conclusion?

SBC's Performance:	(Provide data relevant for this SBC)			Fiscal Year End:
	FYE 9/30/04	FYE 9/30/05	FYE 9/30/06	Projected - Year ending 9/30/07
(In 000's)				
Revenues				
EBITDA				
Net Income ?				
Other Metric ?				
Comments:	(Is SBC meeting projections / expectations / Milestones?) <input type="text"/>			

SBIC Cash Position:	What is SBIC's cash balance at date of request?	
Need SBA funds?		
Overline:		
Exit Plans:		
Risk Factors:		
Consequences		
Future financings/ Other Comments:		
SBIC Contact:		

Appendix 33

Cover Sheet For Follow On Investments

REQUEST FOR APPROVAL FOR ADD ON INVESTMENT

SBIC NAME:

License#:

SBC NAME:

HOW MUCH MONEY IS BEING REQUESTED:

WILL SBA NEED TO ADVANCE THE MONEY TO THE SBIC FOR THE FUNDING:

IF THE SBA NEEDS TO ADVANCE THE MONEY, WILL THE MONEY BE PRE(10/1/91) OR POST BLIF:

IS OVERLINE APPROVAL NEEDED:

WHAT WILL THE MONEY BE USED FOR: (Summarize here- attach justification memo to this request)

WHAT HAPPENS IF THE REQUEST IS GRANTED/DENIED: (Summarize here- detail in attached Memo)

LOAN #:

WHICH PARTIIPATING SECURITY SHOULD WE DRAW AGAINST (choose oldest)

Recommend:

Analyst

Concur:

Appendix 34

Net Realizable Value

Calculation Guidelines

Net realizable value is, in essence, the total recovery that is expected to be obtained on an asset account from all sources less all expenses estimated to be incurred in the pursuit of that recovery. If income property is involved, the net present value of the income stream needs to be taken into consideration in establishing the initial appraised value.

Adjust to Liquidation Value

Starting with the appraised value of the collateral (colpur), an adjustment should be made to reduce this to liquidation value. In the absence of local information as to the appropriate size for this adjustment, the following guidelines will be used:

Commercial Real Estate	70%
Residential Real Estate	80%
Unimproved Land	50%
Leasehold Improvements	5%
Machinery & Equip.	50%
Furniture & Fixtures	10%
Accts Rec./Inventory	10%

Deduct: Existing Encumbrances.

Identify all outstanding senior liens against the property and deduct the amounts involved from the liquidation value. Senior liens would include pre-existing ad valorem taxes, prior mortgages, superior security agreements and the like. The resulting figure will be the equity in the property available for realization.

Deduct: Estimated Expenses.

Estimate the likely sales costs and expenses for the care and protection of the collateral (colpur) and deduct these amounts from the "equity" figure indicated above. Typical expenses will be appraisal fees, repair and maintenance costs, legal fees, auctioneer's commissions, advertising costs and utility bills.

Add: Expected Net Recovery from other sources such as rental income or dividends.

**SAMPLE COMPUTATION
NET REALIZABLE VALUE**

The following example the shows the types of calculations which would be used in determining the Net Realizable Value for a property.

Appraised value of residential real estate	\$200,000	
Liquidation value (adjusted to 80% per "rule of thumb")	\$160,000	
Less:		
Prior lien (\$90,000) and Ad valorem taxes (\$10,000)	\$100,000	
CPC expenses (repair, maintenance, utilities, etc.)		6,000
Direct selling expenses (appraisal, legal fees, etc.)		11,000
Plus:	<u>6,000</u> -	
123,000		
Expected Net Recovery from other sources (rental income or dividends)	<u>+3,000</u>	
Net realizable value	40,000	

Appendix 35

Collateral Purchase Report

SMALL BUSINESS ADMINISTRATION

COLLATERAL PURCHASE REPORT

Name and Address of Borrower (City and State)		Collateral Purchased From:			
Loan No.	Type of Loan: <input type="checkbox"/> Direct <input type="checkbox"/> XGP <input type="checkbox"/> Prct. %	ColPur Serviced by: <input type="checkbox"/> SBA <input type="checkbox"/> Participant		Purchase is: <input type="checkbox"/> Partial <input type="checkbox"/> Full	Satisfaction of Debt
Type of Purchase: <input type="checkbox"/> Foreclosure Sale <input type="checkbox"/> Prior Lienholder <input type="checkbox"/> Other (Explain in Remarks) <input type="checkbox"/> Tax Redemption <input type="checkbox"/> Assignment					
PART I PURCHASE DATA					
COLLATERAL	Date Purchased	Purchase Price	Other Expenses	Current Colpur Liquidating Value	
Land and/or Buildings		\$	\$	\$	
Other		\$	\$	\$	
Total		\$	\$	\$	
Prior Liens (Inc. Taxes) Against ColPur: <input type="checkbox"/> None <input type="checkbox"/> Listed Below					
<u>Type of Lien</u>	<u>Amount</u>	<u>Status</u>	<u>Comments</u>		
Additional Description, Comment or Special Instructions, if any:					
Treasury check requested to pay for colpur <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required Date _____					
Loan Officer _____	Date _____	FTS # _____	Supervisory L/O _____	Date _____	SBA Office _____
PART II SALES DATA					
COLLATERAL	DATE OF SALE	GROSS SALE PRICE AND/OR COLLECTIONS	OTHER EXPENSE NOT PREVIOUSLY REPORTED		
Land and/or Buildings		\$	\$		
Other		\$	\$		
Total:		\$	\$		
Sale of ColPur is: <input type="checkbox"/> Full <input type="checkbox"/> Partial Sale Price is: <input type="checkbox"/> Cash <input type="checkbox"/> Note <input type="checkbox"/> Both					
Comment Re: Sales/Collection (Prior Lien Disposition, Other Expenses Deducted)					
Loan Officer _____	Date _____	FTS # _____	Supervisory L/O _____	Date _____	SBA Office _____

Part I is for Purchase only. Part II is for sale of ColPur only, 297 required for each sale until all ColPur is sold.

SBA Form 297 (1-83) Ref: SOP 50 51 Use 6-81 Edition Until Exhausted

Copy: Original and pink to OAO Yellow for Docket File

COLLATERAL PURCHASE REPORT

Accurate records of the Agency's purchases and sales of property and of the expenses related thereto must be maintained. This form is the primary vehicle to accomplish the necessary control. The following instructions are provided to provide clarity and assure uniformity in the use of the form.

Headings: The heading information is primarily for account identification (name, address, type loan, etc.) and should be immediately accessible from the loan file.

Collateral Purchased from: Indicate name, and address of seller (Bankruptcy, trustee, sheriff sale, foreclosure, borrower, guarantor, etc.)

Part I "Purchase Data": This portion of the report must be completed promptly upon purchase of any colpur.

"Land and/or Buildings": Includes all real property and plants involving a combination of real property and equipment being held as a package. However, if the equipment constitutes, by far, the major value of the colpur or if separate sales are anticipated, the assets may be reported separately. If the purchase was accomplished by a single bid amount, it is usually better to report as a package. If the property was purchased in separate bids, it should be reported separately.

"Other": This category includes all assets purchased except realty. The variety of colpur types may include machinery, equipment, furniture, fixtures, accounts receivable, stock, etc.

"Date Purchased": Date of purchase for the purpose of this report does not have to correspond to the date the Agency acquires full legal title. Use the date the Agency is the successful bidder at the sale or the date of the written conveyance agreement, where applicable. Since that date may be in variance with the date of acquisition of legal title, the report date should not be used as the date of cleavage in computing the amount of any deficiency judgment, or in making any other computations concerning the personal liability of borrower or other obligors. In the event the Agency does not ultimately acquire full title to such property, it will be necessary to inform office of comptroller by a revised SBA Form 297.

"Purchase Price": The purchase price shall mean, in the case of a public sale, the bid price or amount of consideration set by the court having jurisdiction and, in the case of a voluntary conveyance, the consideration set forth in such agreement. Cost is increased to the extent of prior liens not extinguished through acquisition.

"Other Expenses": Report all actual expenses incurred which are attributable to the property and not recoverable from the borrower. For instance costs of the auction sale are usually attributable to the borrower's account, and to the extent that they are so attributable, should not be charged to the property. On the other hand, costs of winterizing, repairs, etc., incurred after acquisition are expenses of ownership. They cannot be charged to the loan account and should be expensed against the colpur.

"Prior Liens": Reflect the basic information regarding liens to which the property acquired is subject (i.e., "first mortgage, \$10,000, current," or "R/E tax, \$5,000, Past Due. Represents two years of pre acquisition taxes and penalties").

"Additional Description, Comment, or Special Instruction Re Colpur": This space may be used to provide any additional information or instruction to OAO regarding the property purchased. Indicate whether treasury check required to pay for colpur.

Part II "Sales Data": Part II is for sale of colpur only. A form 297 is required for each sale until all colpur is sold. Do not complete Part I if previously submitted. However, heading information should be provided on each report of sale.

"Land and/or Buildings" and "Other": The criteria for determination between these categories is, basically, the same as reflected above.

"Date of Sale": Indicate the actual date on which the Agency sold the property (i.e., closing date).

"Gross Sales and/or Collections": Reflect the total of all sales proceeds plus all income earned from the property. (A breakout is provided below to provide an analysis resulting in the net.)


"Partial or Full Sale of Colpur": Indicate by the use of the words "partial" or "full" whether the sale is a final and complete disposition or not. If colpur required more than one sale, 297 required for each sale until all colpur is sold.

"Comments Re Sales/Collections": Provide any comments necessary for a clear understanding of the transaction by OAO. Utilize the following structure in recapping the matter:

Gross Sales Price		XXXXX
Deductions	XXXXX	
Prior Liens Paid	XXXXX	
Expenses of Sale		XXXXX
Net Collected:	XXXXX	
Cash	XXXXX	
Note		XXXXX

Appendix 36

Offer in Compromise

 U.S. SMALL BUSINESS ADMINISTRATION OFFER IN COMPROMISE		
NAME AND ADDRESS OF OBLIGORS (<i>proponents</i>)		NAME AND ADDRESS OF BORROWER
SOCIAL SECURITY NUMBER(S)	LOAN NUMBER	LOAN BALANCE
SEE INSTRUCTIONS ON BACK OF THIS FORM BEFORE COMPLETING		
1. This offer is submitted by the undersigned to compromise a claim of the Small Business Administration resulting from a loan to the above borrower which is now fully due and payable and for which I (we) am alleged to be liable.		
2. In full settlement thereof I (we) hereby make the following offer:		
3. The following facts and reasons are submitted as grounds for acceptance of this offer:		
4. It is understood that this offer will be considered and acted upon in due course and that it does not afford relief from the obligation sought to be compromised unless and until it is accepted in writing by The Small Business Administration and there has been full compliance with the terms of the offer.		
With knowledge of the penalties for false statements provided by 18 United States Code 1001 (<i>\$10,000 fine and/or five years imprisonment</i>) and with knowledge that this proposal is submitted to affect action by the Government; I (we) declare that I (we) have examined this offer, including accompanying schedules and statements, and to the best of my (our) knowledge and belief, it is true, correct and complete.		
SIGNATURE OF PROPONENTS (<i>Person(s) making the offer</i>)		
SIGNATURE	DATE	
SIGNATURE	DATE	

SBA Form 1150 (11-77) REF: SOP 5051

Printed on Recycled Paper 

**COMPROMISE OFFER
BASIC CHECK LIST**

Instructions for Presenting Offer:

The offer made in Item 2 should be clear and concise. Dollar amounts should be given first followed by an indication of any concessions anticipated from the Agency (*release of lien, etc.*). Lump sum payment is the preferred method of concluding a compromise settlement. Special requirements may apply to installment payment settlements (*i.e., confess-judgment note, etc.*).

Provide in Item 3, the basic reasons as to why a compromise settlement is necessary.

Provide, as an attachment hereto, a reasonably current, complete, sworn statement of income and expenses on SBA Form 770, "Financial Statement of Debtor." All transfers and/or acquisitions of real property and major items of personal property since the date the debt to SBA was created must be itemized. Show names and addresses of transferees, relationship to obligor (*if any*), and the type, amount and disposition of any consideration received.

In cases referred by the Department of Justice, a copy of DOJ Form DJ-35, "Financial Statement of Debtor" may be utilized instead of the aforesaid SBA Form 770. In such cases, a statement of any beneficiary status under a pending inheritance or an established trust should be included as an attachment thereto.

Elements of a Workable Compromise Offer:

1. Amount offered bears a reasonable relationship to the net amount recoverable through enforced collection.
2. No fraud or misrepresentation.
3. Full disclosure of financial capacity of obligor(s) has been made (*SBA Form 770, etc.*).
4. Borrower has ceased operations and all business collateral (*assets*) has been liquidated.
5. Participating bank, if any, concurs in the action.
6. Valuations provided for realty mortgaged to SBA or subject to judgment by SBA are supported.
7. Source of funds for payment of the offer clearly identified.

The items identified above are for general information and are provided primarily to assist in the proper development of a compromise package. While most cases can be decided using this "generally applicable" information, the Agency is not limited to these factors in any given matter.

Appendix 37

Financial Statement of Debtor



U.S. SMALL BUSINESS ADMINISTRATION
FINANCIAL STATEMENT OF DEBTOR
 (INSERT THE WORD "NONE" WHERE APPLICABLE TO ANY OF THE FOLLOWING ITEMS)

1. NAME		2. DATE OF BIRTH (Month, Day and Year)	
3. ADDRESS (Include ZIP Code)		4. PHONE NO.	5. SOCIAL SEC. NO.
6. OCCUPATION	SBA LOAN NUMBER	7. HOW LONG IN PRESENT	
8. EMPLOYER'S NAME		ADDRESS (Include ZIP Code)	PHONE NUMBER
9. MONTHLY INCOME:	10. OTHER EMPLOYERS WITHIN LAST 3 YEARS		
Salary or wages \$ _____	Name	Address	Dates of Employment
Commissions \$ _____			
Other (state source) \$ _____			
Total \$ _____			
11. NAME OF		SOCIAL SEC. NO.	12. DATE OF BIRTH (Month, Day and Year)
13. OCCUPATION		14. HOW LONG IN PRESENT	
15. SPOUSE'S EMPLOYER (Name)		ADDRESS (Include ZIP Code)	PHONE NUMBER
16. MONTHLY INCOME OF	17. OTHER EMPLOYERS WITHIN LAST 3 YEARS (Of Spouse)		
Salary or wages \$ _____	Name	Address	Dates of Employment
Commissions \$ _____			
Other (state source) \$ _____			
Total \$ _____			
18. OTHER		23. FIXED MONTHLY EXPENSES: (TO NEAREST DOLLAR)	
Name	NUMBER	Relationship	Age
19. TOTAL MONTHLY INCOME OF DEPENDENTS (Except \$ _____)		Rent or House Payment	\$ _____
20. FOR WHAT PERIOD DID YOU LAST FILE A FEDERAL INCOME TAX RETURN?		Utilities	\$ _____
21. WHERE WAS TAX RETURN FILED?		Food	\$ _____
22. AMOUNT OF GROSS INCOME REPORTED \$ _____		Interest	\$ _____
		Insurance	\$ _____
		Debt repayments:	
		Household furnishings	\$ _____
		Personal Loans	\$ _____
		Automobile	\$ _____
		Doctors and Dentist	\$ _____
		Other (Specify)	\$ _____
		TOTAL FIXED MONTHLY	\$ _____
24. ASSETS: (Fair Market Value)		(SHOW AMOUNTS TO NEAREST LIABILITIES	
Cash	\$ _____	Bills owed (grocery, doctor, lawyer, etc.)	\$ _____
Checking accounts: (Show location)	_____	Installment debt (car, furniture, clothing, etc.)	_____
Savings Accounts: (Show location)	_____	Taxes owed:	
Cash surrender value of life insurance	_____	Income	_____
Motor Vehicles:		Other: (Itemize)	_____
Make Year License No.			
		Loans payable (to banks, finance companies, etc.)	_____
		Judgments you owe (Held by whom?)	_____
Debts owed to you: (Name of debtor)			
Stocks, bonds and other securities:		Small Business Administration	
		Loans on Life Insurance	
Household furniture and goods		Mortgages on Real Estate	
Items Used in Trade or Business		Margin Payable on Securities	
Other Personal Property: (Itemize)		Other debts: (Itemize)	
Real Estate: (Itemize)			
Other Assets: (Itemize)			
		Total Liabilities	\$ _____
TOTAL ASSETS:	\$ _____	CONTINGENT LIABILITIES	\$ _____

25. LOANS PAYABLE:					
Owed To	Date of Loan	Original Amount	Present Balance	Terms of Repayments	How Secured
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	
26. REAL ESTATE OWNED: (Free & Address)		How Owned (Jointly, individually, etc.)		Present Market	
				\$	
27. REAL ESTATE BEING PURCHASED ON CONTRACT OR MORTGAGE		Date acquired		Balance Owed	
Address				\$	
		Name of Seller or Mortgagor			
		Purchase Price		Date Next Cash Payment	
		\$			
		Present Market Value		Amount of Next Cash	
		\$		\$	
28. LIFE INSURANCE					
Company		Face Amount		Cash Surrender Value	Outstanding Loans
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
29. LIST ALL REAL AND PERSONAL PROPERTY OWNED BY SPOUSE AND DEPENDENTS VALUED IN EXCESS OF \$200:					
30. LIST ALL TRANSFERS OF PROPERTY, INCLUDING CASH (BY LOAN, GIFT, SALE, ETC.), THAT YOU HAVE MADE WITHIN THE LAST THREE YEARS. (LIST ONLY TRANSFERS OF \$300 OR OVER.)					
Property Transferred		To Whom		Date	Amount
					\$
					\$
					\$
31. ARE YOU A CO-MAKER, GUARANTOR, OR A PARTY IN ANY LAW SUIT OR CLAIM NOW PENDING?					
<input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, GIVE DETAILS					
32. ARE YOU A TRUSTEE, EXECUTOR, OR ADMINISTRATOR?					
<input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, GIVE DETAILS					
33. ARE YOU A BENEFICIARY UNDER A PENDING, OR POSSIBLE, INHERITANCE OR TRUST, PENDING OR ESTABLISHED?					
<input type="checkbox"/> NO <input type="checkbox"/> YES IF YES, GIVE DETAILS					
34. WHEN DO YOU FEEL THAT YOU CAN START MAKING PAYMENTS ON YOUR SBA DEBT?			35. HOW MUCH DO YOU FEEL THAT YOU CAN PAY SBA ON A MONTHLY OR PERIODIC BASIS?		
<p>With knowledge of the penalties for false statements provided by 18 United States Code 1001 (\$10,000 fine and/or five years imprisonment) and with knowledge that this financial statement is submitted by me to affect action by the Government, I certify that all the above statement is true and that it is a complete statement of all my income and assets, real and personal, whether held in my name or by another.</p> <p>Under the provisions of the Privacy Act, loan applicants are not required to give their social security number. The Small Business Administration, however, uses the social security number to distinguish between people with a similar or the same name. Failure to provide this number may not affect any right, benefit or privilege to which an individual is entitled by law but having the number makes it easier for SBA to more accurately identify to whom adverse credit information applies and to keep accurate loan records.</p> <p>Any Person concerned with the collection of this information, its voluntariness, disclosure or routine under the Privacy Act may contact the Freedom of Information/Privacy Acts Division, Small Business Administration, 409 3rd St., S.W., Washington, D.C. 20416</p>					
SIGNATURE				DATE	

Appendix 38

Schedule of Original Documents

Licensee

Issuing Company; Document	Date Received	Date Removed	Signatures

Appendix 39

SBA Form 219, Collateral Record

Small Business Administration COLLATERAL RECORD		1. Office/Branch:	
2. Name and Address of Asset Company:		3. Type of Loan	4. Loan No
		5. Lender/SBIC Name	6. Date
7. <input type="checkbox"/> Negotiable		<input type="checkbox"/> Other Collateral	
8. Item	9. Description	10. Amount	
11. The above described documents have been released.		Signature of Cashier	
12. Signature of Loan Officer		Date	
_____		_____	
13. Signature of Supervisor		Date	
_____		_____	

SBA Form 219 (12-98)

Appendix 42

Annual Inspection of Facilities for Safeguarding Collateral

ANNUAL INSPECTION OF FACILITIES FOR SAFEGUARDING COLLATERAL

1. Key locking file cabinet under exclusive control of cashier(s).
2. Collateral file cabinet key retained by office head, and duplicate key retained in sealed envelope in a secure place available only to supervisory administrative personnel in the event of emergency.
3. Key(s) inspected annually and:
 - Changed when new equipment is acquired
 - When a person having access to the combination is transferred from the office.
4. Access to the cashier area can be observed by other SBA personnel.
5. Collateral file cabinet is locked at all times when not under the immediate physical control of authorized persons.

I certify that the inspection was made as of _____ day of _____, 19____, and that each of the above items meets prescribed requirements for the protection and safeguarding of collateral assigned and/or held by SBA, except as noted below.

Title

Date

EXCEPTIONS:

Appendix 43

Public Register Notification After Surrender of SBIC License

DATE:

TO: Administrative Information Branch

FROM: _____
Associate Administrator
for Investment

SUBJECT: Federal Register Notice

Please have the enclosed Notice of License Surrender published in Federal Register. I certify that the paper copy and diskette are the same, and have enclosed the original document, five copies, and the diskette.

If you have any questions, please contact (author of the document) at (telephone number).

Legal

Date

Appendix 44

Notice of License Surrender

AGENCY: U.S. Small Business Administration

ACTION: Notice of License Surrender

SUMMARY: This is Notice that a Small Business Investment Company
has Surrendered its License.

DATES: [insert date]

FOR FURTHER INFORMATION CONTACT: [contact name, phone# & email address]

SUPPLEMENTARY INFORMATION

Notice is hereby given that _____,
("_____"), _____, has
surrendered its license to operate as a small business investment company under the
Small Business Investment Act of 1958, as amended ("the Act"). _____
was licensed by the Small Business Administration on _____.

Under the authority vested by the Act and pursuant to the regulations promulgated
thereunder, the surrender of the license was accepted on _____, and
accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business
Investment Companies)

Authority: 13 C.F.R §107.1900

Dated: _____

[name]
Associate Administrator for Investment