ARC Loan Program

Frequently Asked Questons for Lenders

1502 Reporting

When will guidance become available on lenders' interest billing procedures through Colson via the 1502 reports?
Information Notice 5000-1115, Instructions on 1502 Reporting and ePayments of Accrued Interest to Lenders for ARC Loans, was issued on July 1, 2009 and is located on the SBA.gov website at http://www.sba.gov/aboutsba/sbaprograms/elending/RECOVERY_INFO_LENDERS.html. Instructions are also available on the Colson website at www.colsonservices.com.

When will Colson Services be ready to process 1502 reports for ARC Loans?
Colson will accept 1502 reports for ARC Loans beginning with a lender's usual July report for SBA loans.

Accounts Payable

Can ARC Loan proceeds be used towards paying trade debt to vendors (Accounts Payable)?
ARC Loan proceeds cannot be used as working capital to pay accounts payable, accrued expenses, or other operating expenses. The proceeds may only be used to make principal and interest payments on Qualifying Small Business Loans (QSBLs). SBA has established that a QSBL must have a note with scheduled payments of principal and/or interest. Accounts payable and accrued expenses are not loans. One of the purposes of an ARC Loan is to free up the business income that would have been used to make monthly payments on notes payable for other business purposes such as paying accounts payable and accrued expenses. However, if the small business is past due with accounts payable and the vendor or other creditor has converted the past due amount to a note with scheduled payments, the note may be an eligible QSBL, provided that it meets all of the other QSBL requirements. (See next question.)

If a small business has existing accounts payable, can the vendor create a note allowing the borrower to use an ARC loan to pay that debt?
ARC Loans cannot be used to pay anything other than principal and interest payments on existing loans. If a borrower has an existing account payable that is more than 30 days past due and the borrower and vendor have converted the payable into a note with a payment schedule, the note may be considered a QSBL eligible to be paid with an ARC Loan, provided that it meets all of the other QSBL requirements.

Allocation of ARC Loan Proceeds

How should a lender make decisions about which QSBLs to pay with ARC Loan Proceeds?
SBA is not providing specific direction but expects the lender to work with the borrower to allocate the proceeds in a manner that best supports the borrower's on-going viability. Every situation is different, so these decisions cannot be standardized. An example might be where the lender only approves payment on its own debt when the borrower has a significant number of other institution loans with outstanding balances that would qualify as QSBLs and could be paid with the ARC Loan. Since each business is limited to one ARC Loan, this would potentially prevent the borrower from getting the best benefit under the program, even though the lender's debt gets paid. There may be good reasons for using the ARC Loan to make payments only on the lender's debt, but the use of proceeds needs to be in the best interest of the borrower.

May ARC Loan proceeds be used to make past due payments on QSBLs and bring a borrower current?
Yes, the QSBL may be brought current with the first disbursement, with the ARC Loan proceeds used to make the regularly scheduled payments for the remainder of the disbursement period. However, a QSBL must not be more than 60 days past due if the ARC Loan that will pay the QSBL is being processed under delegated authority.

How should a lender make decisions about how to allocate ARC Loan Proceeds; may the loan amount exceed the total of the six scheduled monthly payments for the QSBLs? For example, a borrower has a term loan with an outstanding balance of $50,000 with monthly P&I payments of $1,000. May the borrower take the entire $35,000 ARC Loan and pay down the principal on the term loan or can the borrower only take the six monthly payments which would equate to a $6,000 ARC Loan?
The first priority for disbursements is to make the scheduled principal and interest payments on QSBLs. Lenders are expected to look at the entire debt burden of the borrower, and determine how best to allocate payments over the six months -- whether it is their own debt or not. Borrowers are only allowed one ARC Loan so its benefit must be maximized and need not be limited to payments on just one loan. Once all scheduled debt payments have been identified, if there are remaining funds available, those funds may be used in the sixth month to pre-pay principal on one or more QSBLs. The total amount of the ARC Loan must be determined based on the debt outstanding and the borrower's ability to repay the QSBLs and the ARC Loan.

May proceeds of an ARC Loan be used to make one monthly payment of $35,000 as opposed to making six monthly payments of scheduled principal and interest?
The priority of payment disbursements is first to pay six months of scheduled principal and interest on QSBLs. Then, in the sixth month, any remaining ARC Loan funds may be used to pre-pay principal on a QSBL. Lenders should consider a borrower's overall debt burden in making allocations for the ARC Loan and not just pay one loan if there are other, eligible QSBLs that could be paid with ARC proceeds. Further, by making a single disbursement only, the borrower will not receive the full benefit of six months of disbursement (with no payment due on the QSBLs or the ARC Loan) followed by 12 months of deferment. Thus, SBA discourages lenders from making only one lump sum disbursement on the ARC Loan.

Cash Flow Projections

What method should be used to prepare a cash flow statement?
A cash flow statement does not have to be prepared by an accountant, but must represent the cash flow into and out of the business. A sample cash flow statement is available on SBA's website at:
http://www.sba.gov/aboutsba/sbaprograms/elending/RECOVERY_INFO_LENDERS.html.
As an example, the cash flow projection could be structured as follows.

Beginning Cash Balance
Cash Inflows
Accts. Rec. Collections
Loan Proceeds Received
Sales & Receipts
Other:

Total Cash Inflows

Cash Outflows
Advertising
Bank Service Charges
Credit Card Fees
Delivery
Health Insurance
Insurance
Interest
Inventory Purchases
Miscellaneous
Office
Payroll
Payroll Taxes
Professional Fees
Rent or Lease
Subscriptions & Dues
Supplies
Taxes & Licenses
Utilities & Telephone
Other:

Subtotal of Cash Expenses
Capital Purchases
Loan Principal Paid
Owner's Draw
Other:

Subtotal
Total Cash Outflows
DIFFERENCE

What are the time periods that cash flow projections need to cover?
Cash flow projections provide an indication of repayment ability. If an application is received on June 15th and the first disbursement is expected by month end, cash flow projections should begin with the quarter starting July 1st showing the projected cash flow for two quarters, when the ARC Loan will be disbursed to make payments on QSBLs, then four quarters when the ARC Loan is deferred, demonstrating that the borrower is able to resume timely payment on the QSBLs, and then two quarters showing that the borrower is making timely payments on all of its debt including the ARC Loan. The projections must identify the assumptions the borrower is making regarding future income and expenses.

May an applicant submit two years of quarterly profit and loss projections instead of two years of quarterly cash flows to evidence the ability to repay?
The borrower needs to demonstrate that they will have sufficient income to be able to resume timely payments of the QSBLs that are being paid by the ARC Loan as well as any other debt and operating expenses for the ARC Loan disbursement and deferment period, and, then, in addition, to make timely payments on the ARC Loan after the 12 month deferment period. Either a projected profit and loss statement or a cash flow statement that has sufficient detail to make that determination is sufficient. SBA specified a cash flow statement because it takes out the non-cash expenses such as depreciation which are typically included in a profit and loss statement.

Does the cash flow projection have to show that there is sufficient cash flow to meet debt service and operating expenses for the two year period covered by the projections?
The cash flow projection should indicate that the borrower will be able to resume payments on the QSBLs after the disbursement period and will also be able to pay the ARC Loan after the deferment period ends, as well as meet its other debt obligations and operating expenses in a timely manner during the life of the loan. If the borrower cannot demonstrate that they will resume payments on the QSBLs and other debt after the ARC Loan is disbursed, then it is questionable whether the small business is viable.

Change of Ownership

The Procedural Guide states that a loan originally used to fund a change in ownership would not meet the definition of a QSBL. Is this correct?
There is a typo in the Procedural Guide which will be corrected. If a loan funded a 100% change of ownership or a business repurchasing 100% of an owner's interest, then it would be eligible as a QSBL, as long as it meets all other 7(a) eligibility requirements. See, SBA Form 2316 (Part C).

Collateral

If a lender generally does $35,000 conventional loans on an unsecured basis, may the lender also do ARC Loans on an unsecured basis?
Yes, if a lender does $35,000 conventional business loans on an unsecured basis, it may make ARC Loans on an unsecured basis.

If a lender's collateral policy for similar-sized non-SBA guaranteed commercial loans specifies both the type and security position to be held and the borrower does not have available collateral to meet the security position required by this policy, is the borrower not eligible for an ARC Loan? For example, bank policy requires a security interest in a first lien position and there are already two liens ahead of the ARC Loan.
The collateral policy for ARC Loans addresses whether or not the loan should be secured. If a lender takes collateral for a similar-sized, non-SBA guaranteed commercial loan, then the ARC Loan must be collateralized. In the above example, the lender should take the type of collateral consistent with its conventional policies.

However, for the ARC Loan Program, the lender does not have to be in the same position as the lender's conventional policy requires if the required lien position is not available.

Credit Cards and Lines of Credit

Do credit cards and/or credit lines have to be closed out or the credit limit lowered if they are paid with an ARC Loan?
Since credit cards frequently may be with other institutions, SBA did not establish a firm requirement that the line must remain open unless it is same institution debt. If it is same institution debt, the limits on credit cards and credit lines may not be reduced for at least 18 months after disbursement of the ARC Loan.

If a lender wants to participate in the ARC Loan Program, may it decide not to make payments on credit card or line of credit debt with ARC Loan proceeds?
SBA encourages lenders to look at a borrower's total debt burden, including credit card debt, in allocating ARC Loan proceeds. However, SBA also understands that lenders will have differing approaches to delivering this loan product and may chose to limit ARC Loan proceeds to certain kinds of debt.

If an Applicant has more than $35,000 in credit card debt and they can validate that the debt was used for business purposes, may the ARC Loan proceeds be used to pay-off $35,000 immediately or must it be used for up to six monthly payments to the credit card company?
Section 4.e. of the Procedural Guide provides the following guidance for making payments on credit card debt:
Payments for QSBL credit card obligations may not exceed the principal amount used for business purposes documented above, and must be monthly payments unless the entire balance is paid off. Paying off the balance must be in the best interest of the small business concern and, if same institution debt, may not be accompanied by a reduction in the small business' credit limit consistent with the provisions included in paragraph c above.

What documentation is required to qualify credit card debt as a QSBL and eligible to be paid with ARC Loan proceeds?
Section 4.e, of the Procedural Guide provides the following guidance on required documentation for credit cards being paid with ARC Loans:
If the ARC Loan is used to make payments on QSBL credit card obligations, the Lender must confirm that the proceeds of the QSBL credit card obligations were used for business-related purposes. Lenders must document the specific business purpose the QSBL credit card obligation was used for and the borrower must certify that the ARC Loan proceeds are being used only for business-related debt (National ARC Authorization Boilerplate). Documentation required for payments on QSBL credit card obligations includes a copy of the credit card statements and documentation of the type and business purpose of each use/purchase. In addition, the borrower must certify that the amounts were exclusively business expenses.

May a lender make 5 disbursements for the payments on another lender's HELOC and on the 6th disbursement, provided it doesn't exceed the $35,000 maximum, pay off the loan if it makes sense for the business?
The priority in the Procedural Guide is that the ARC Loan proceeds must first go to scheduled payments of principal and interest, and then in the sixth month, they may pay down principal. SBA encourages lenders to consider the entire debt burden of the business and make the monthly payments on the debt that qualifies. Then, if there are remaining funds, ARC Loan proceeds may be used to pre-pay principal. Typically, monthly payments should not be focused on one debt unless that is the only eligible debt the small business has. In the above scenario, if after making monthly payments there are funds available to pay down principal, the lender may do so. Remember that ARC Loan proceeds may only be used for documented business purposes and the ARC Loan proceeds may not be used for personal expenditures. And, as noted, the total amount of the loan may not exceed $35,000.
There are special rules governing HELOCs included in the Procedural Guide. Those guidelines have also been provided here for reference.

If the ARC Loan is used to make payments on a QSBL home equity loan (line of credit or term loan), the Lender must confirm that the proceeds of the QSBL home equity loan were used for business-related purposes. Lenders must document the specific business purpose the QSBL home equity loan was used for and the borrower must certify that the ARC Loan proceeds are being used only for business-related debt (National ARC Authorization Boilerplate). Documentation required for payments on QSBL home equity loans includes a copy of the loan statements and documentation of the type and business purpose of each use/purchase. In addition, the borrower must certify that the amounts were exclusively business expenses. Monthly payments for QSBL home equity loans may not exceed the principal amount used for business purposes documented above. Interest payments must be pro-rated to reflect the amount associated with valid business purposes. If total payments on the QSBL home equity loans are less than six, the Lender should include a statement in the loan write-up why this disbursement is in the best interest of the borrower. If the home equity loan is a line of credit, and is same institution debt, the provisions of paragraph c above apply. No non-business expenses on home equity loans may be paid with the proceeds of an ARC Loan. If the use of proceeds of the home equity loan was not for business expenses, the home equity loan is not a QSBL and is not eligible for payment by an ARC Loan.

Credit Elsewhere Test

Does the credit elsewhere test apply to ARC Loans?
The ARC Loan program was built upon the 7(a) framework and the credit elsewhere test applies. SBA will consider lender compliance with the certification and documentation requirements regarding the immediate financial hardship being experienced by the small business sufficient to meet the credit elsewhere test.

Credit Scores

What credit scoring system is SBA using?
SBA is using LiquidCredit® which is a commercial off-the-shelf product developed and offered by FICO®.

Will SBA share its credit scoring system with lenders?
SBA is using LiquidCredit®, a commercial off-the-shelf product developed and offered by FICO®. Links to the LiquidCredit® website for more information on the service are as follows:
http://www.fico.com/en/Products/DMApps/Pages/FICO-LiquidCredit-Service.aspx
http://www.fico.com/en/FIResourcesLibrary/LiquidCredit_Decision_Manager_2359PS.pdf

What happens if an application credit scores too high or too low?
If an application scores too low, e-Tran will refer it to the Standard 7(a) Loan Guaranty Processing Center (LGPC) and the lender will receive a message in e-Tran saying that the credit score was too low and the application has been referred to the LGPC for processing. The lender will need to contact the LGPC and follow-up to see what additional information may be needed to complete the processing of the loan application.
If an application scores too high, e-Tran will refer it to the Standard 7(a) LGPC and the lender will receive an e-mail message that the credit score was too high and the application is being referred to the LPGC for review. E-Tran instructs the lender to provide documentation to the LGPC as to the immediate financial hardship being experienced by the borrower.

If the credit score for the application is either too high or low, is the bank mandated to send the application to the Standard 7(a) LGPC, or can the loan to the applicant be denied?
If the loan application credit scores too high or too low, e-Tran automatically refers it to the LGPC and advises the lender by email to contact the LGPC. If the lender decides not to proceed with the application, it must inform the LGPC and the small business applicant of its decision. SBA encourages lenders, however, to submit those loans to LGPC for review.

D&B/DUNS Numbers

Why do I need a DUNS Number?
A DUNS Number for the small business is needed to obtain the LiquidCredit® score.

How do I get a DUNS Number?
Instructions for getting a DUNS Number are posted on SBA's web site at
http://www.sba.gov/aboutsba/sbaprograms/elending/RECOVERY_INFO_LENDERS.html

How do I find out if I already have a DUNS Number and what it is?
Instructions for finding an existing DUNS Number are posted on SBA's web site at
http://www.sba.gov/aboutsba/sbaprograms/elending/RECOVERY_INFO_LENDERS.html

Does the bank have to pull a D&B report on each ARC applicant/customer?
No, but the small business must have a DUNS Number for SBA to obtain a LiquidCredit® score for the business. (If the lender has a D&B report on the small business, the DUNS Number is located in the upper left corner.)

Disbursements

If a lender chooses to disburse ARC Loan Funds through a check(s) made out jointly to the borrower and the creditor, may the lender give the check(s) to the borrower to deliver to the creditor?
Yes, as long as the check(s) is made out jointly.

Due Date

May the due date for an ARC loan be any day of the month or should it be a particular day of the month?
A lender may make a due date consistent with its existing practices. The due date may be any day of the month; however, SBA plans to make interest payments at the end of the month. Thus, the lender may choose to make the due date towards the end of the month to correspond with the timing of the expected interest payments from SBA. Assuming a complete and timely 1502 report is received by SBA, SBA plans to pay interest by the last business day of the month the 1502 report is submitted.

Eligible Passive Companies/Operating Companies (EPC/OC)

In the situation where there is an Eligible Passive Company (EPC) holding real estate that is leased by an Operating Company (OC), may ARC Loan proceeds be used to pay the mortgage on the real estate for the EPC or the rent due from the OC to the EPC?
SBA will issue guidance shortly on EPC/OC eligibility for ARC loans. EPCs are not currently eligible for ARC loans. However, an Operating Company which is a co-borrower with an EPC (not just a guarantor) on a mortgage note is eligible for an ARC loan to make payments on the mortgage note. If the small business OC is not a co-borrower on the mortgage note, then at this time, neither the small business OC nor the EPC is eligible for an ARC loan to repay the mortgage. The OC would be eligible (assuming it meets the other eligibility requirements) for an ARC Loan to pay on its own QSBLs.

Fees

Can a lender charge an extraordinary servicing fee to disburse the loan over a 6-month period?
No. Lenders may only charge borrowers fees associated with the direct costs of securing and liquidating collateral. No other fees may be charged for ARC Loans by the Lender or SBA. Lenders receive a 100% guarantee of principal and SBA is paying the interest on the loans. Also, there are no guarantee fees associated with ARC Loans.

How are the closing costs, "the direct costs associated with securing and liquidating collateral" being handled? Is the borrower responsible for the payment outside of the ARC; is it to be included in the ARC; is SBA paying it?
A lender may charge fees for the direct cost of securing and liquidating collateral, but the Borrower may not use ARC loan proceeds to pay these fees. The ARC Loan is for the "sole" purpose of making principal and interest payments on QSBLs.

When making payments on QSBLs, if the loan payment amounts include "over-age fees" and "late fees," may these be paid with the proceeds of an ARC Loan?
Yes, late fees and penalties on QSBLs may be paid with ARC Loan proceeds.

May fees for lenders' out-of-pocket expenses for things such as flood plain determinations, credit checks (personal and business), tax verifications, lien searches made to ascertain debts -- not incurred to secure collateral -- be passed on to the customer?
Such fees cannot be charged to the ARC Loan borrower. Lenders may only charge borrowers fees associated with the direct costs of securing and liquidating collateral for the ARC Loan. No other fees may be charged for ARC Loans by the lender or SBA.

Does the lender have to pay the "on-going" guaranty fee for ARC Loans?
There are no guaranty fees — upfront or on-going — associated with the ARC Loan Program. No fees other than the direct costs of securing and liquidating collateral may be charged for ARC Loans by either the Lender or SBA.

Financial Statements and Tax Returns

What financial statements are required for an ARC Loan?
Either two years of financial statements (balance sheets and income statements) OR two years of tax returns. Historical cash flow statements are not required and lenders may make cash flow determinations based on financial information provided. Cash flow projections are required to determine repayment ability.

Is tax return verification a mandatory requirement?
Yes, IRS verification of financial information is required.

When must lenders obtain the IRS verification?
The IRS verification must be obtained prior to closing. If the loan is being submitted to the LGPC for approval or is referred by e-Tran to the LGPC for further processing, the application package must include the date the verification was submitted to the IRS or a completed copy of the IRS Form 4506-T that was submitted. If the SBA guarantee is cancelled after loan disbursement has begun due to character ineligibility, financial information verification issues, or for any other reason, any interest payments disbursed to the Lender prior to such cancellation must be promptly repaid to SBA.

The Procedural Guide says a business must have been profitable in one of the last two years. If a borrower was not, but otherwise fits the credit and eligibility criteria and would be a good loan candidate, is the business eligible for an ARC Loan? May the application be submitted to the LGPC for processing on a non-delegated process?

A small business has to have been profitable in one of the past two years for the loan to be processed under delegated authority. If a small business was not profitable in one of the past two years and the lender believes the loan should be made, it may submit the loan to the LGPC for review under non-delegated procedures.

Franchises

Are franchises eligible for ARC Loans?

Franchise businesses must be eligible under 7(a) franchise eligibility requirements in order to be eligible for an ARC Loan.

Immediate Financial Hardship

If a borrower is experiencing an increase in cost of doing business of 20% or more in the preceding 12 months, does this qualify as meeting the requirement for "immediate financial hardship" even if revenue growth over the same period is also increasing?

A business's increase in expenses by 20% or more over the past 12 months is one indicator that a small business is experiencing financial hardship. If a business also has revenues increasing while expenses are increasing by a comparable percentage, it would not appear that that the increase in operating expenses is contributing to a financial hardship and a more detailed explanation would be required to explain the actual hardship.

What documentation is required to demonstrate immediate financial hardship?

Sufficient supporting documentation will depend upon the immediate financial hardship being experienced. If it is a loss in sales or revenue, a statement as to what the exact loss is and over what period of time should be provided, with evidence to support the statement. In many cases, the evidence can come from the financial information provided by the borrower as part of the application. In any event, the hardship identified should not be contradicted by the financial information provided.

Interest Payable

Is the interest paid by SBA considered income to borrowers and do lenders have to issue IRS Form 1099s to borrowers?

The interest paid by SBA is not considered income to borrowers and lenders do not have to issue IRS Form 1099s.

When will guidance become available on lenders' interest billing procedures through Colson via the 1502 reports?

Information Notice 5000-1115, Instructions on 1502 Reporting and ePayments of Accrued Interest to Lenders for ARC Loans, was issued on July 1, 2009 and is located on the SBA.gov website at: www.sba.gov/aboutsba/sbaprograms/elending/RECOVERY_INFO_LENDERS.html.

What is the rate of interest on an ARC Loan?

SBA will pay interest to lenders at the rate of Wall Street Journal Prime plus 2%, adjusting monthly on the first business day of the month.

How is interest calculated for ARC Loans?
Lenders calculate interest payable on ARC Loans in one of the two methods approved by SBA for 7(a) loans:

(1) The outstanding principal balance times interest rate times 30 days divided by 360 days; or
(2) The outstanding principal balance times interest rate times the actual number of days in the period divided by 365 days.

Lenders calculate interest using one of these two methods and bill SBA for the amount due through their 1502 reporting.

How frequently is interest paid on ARC Loans?
SBA will pay interest in arrears on a monthly basis provided that the lender has submitted a timely and complete 1502 report.

When will SBA and Colson be ready to accept 1502 reports for ARC Loans for purposes of paying interest?
Colson will accept 1502 reports for ARC Loans beginning with a lender's usual July report for SBA loans. SBA, through the Denver Finance Center (DFC), will begin paying interest at the end of July for those ARC Loans disbursed in June. The lender's 1502 reports must be complete and timely. DFC will review and validate the amount of interest requested. If the amount requested is within established tolerance limits, DFC will pay the requested amount. If not, no interest will be paid, and the lender will be contacted to resolve the discrepancy.

Will the interest payments be made by check or electronically?
SBA will use ePayment to make interest payments electronically to lenders. Information Notice 5000-1115, Instructions on 1502 Reporting and ePayments of Accrued Interest to Lenders for ARC Loans, issued on July 1, 2009, provides instructions on how to receive interest payments electronically. If the required information for ePayment is not provided to SBA by the lender, SBA will instead issue paper checks for each interest payment.

Will interest payments be one single aggregated payment for all ARC loans or individual payments for each ARC Loan made?
Individual payments for each ARC Loan will be made, whether electronically or in paper form. The payments will identify the particular loan for which the interest is being paid. See, Information Notice 5000-1115 which explains the data which will accompany each electronic payment.

Lenders

May Community Development Corporations (CDCs) make ARC Loans?
ARC Loans may only be made by SBA approved 7(a) lenders.

May Microloan Intermediaries make ARC Loans?
ARC Loans may only be made by SBA approved 7(a) lenders.

Miscellaneous

The Procedural Guide states that SBA Form 148, Guaranty, is to be used to secure the personal guaranty of each 20% business owner, while SBA's web page shows that a specific SBA Form 2320, Unconditional Guarantee, has been developed for this program. Can a lender use either the 148 or 2320 to secure personal guarantees, or must it use the 2320?
Either SBA Form 2319, ARC Loan Limited Guaranty or SBA Form 2320, ARC Loan Unlimited Guaranty must be used. The reference to Form 148 was a typo and will be corrected.

Are SBA Note (SBA Form 2318) and SBA Guaranty (SBA Form 2319 or 2320) required? May lenders petition to use their own forms?
These forms are required given the nature of the ARC Loan Program. The forms are available on SBA's website at www.sba.gov/aboutsba/sbaprograms/elending/RECOVERY_INFO_LENDERS.html.

Since the funding for this program is so limited, what steps is SBA taking to manage small businesses' expectations?
SBA has provided information to small businesses about the nature of and eligibility for ARC Loans on its website at www.sba.gov. SBA's district offices are also advising small businesses on what ARC Loans may be used for, how they may qualify, and what steps they should take to apply for an ARC Loan.

Is SBA planning to have a 'countdown' clock on its website so that lenders can readily see what funding remains so that they (lenders) won't continue to accept applications when funds are already used up?
SBA may make use of such a tool on the SBA website. Data on usage of the Recovery Act programs is now available on www.recovery.gov. SBA will communicate to lenders and small businesses as ARC Loans begin to approach the full program level.

How many loans is SBA projecting can be made under available funding?
The program level for the ARC Loan Program is approximately $335 million. SBA expects that about 10,000 loans can be made.

New Businesses

If a business has been in operation for less than two years, can demonstrate that it has been operating profitably during its initial phase, and can project sufficient cash flow to meet current and future loan payments over a two year period from loan approval, is it eligible for an ARC Loan?
If a business has been in operation for less than two years, the loan must be submitted to the Standard 7(a) LGPC for processing with a recommendation as to why the borrower should receive an ARC Loan. The request cannot be submitted under delegated authority.

Number of ARC Loans

If a borrower has two companies, are each eligible for an ARC Loan of up to $35,000 each?
There is only one ARC Loan per business (legal entity). Affiliated businesses may each obtain an ARC Loan but only the first loan may be processed using delegated authority. Any additional loans to affiliates must be processed through the LGPC.

Processing

If an application for an ARC Loan may not be made using delegated authority, e.g., it does not meet all the credit criteria established for the program; may the loan be processed on a non-delegated basis?
If an application does not meet the credit requirements or other processing requirements established for the ARC Loan Program in order to process the loan on a delegated basis, the loan may be submitted to the LGPC for review. SBA encourages lenders to submit those applications not meeting all the criteria to the LGPC if they believe it is a viable small business that can be assisted using an ARC Loan. The LGPC cannot waive eligibility requirements but can review credit and processing requirements for possible approval.

What should be submitted to the LGPC for processing on a non-delegated basis?
The following information needs to be submitted as part of the ARC Loan application package for review by LGPC:

- SBA Form 2315, ARC Borrower Information for
- Owner
- Officer
- Director
- 20% Stockholder
- Manager
- Statement on Nature of & Evidence of Immediate Financial Hardship
- SBA Form 2316, Part A, ARC Loan Guaranty Request
- SBA Form 2316, Part B, Lender's Supplemental Information for ARC Loan Guaranty Request
- SBA Form 2316, Part C, Eligibility Information Required for ARC Loan Submission
- DUNS Number
- Listing of QSBL(s), Amount Due and Monthly Payment
- Documentation for Credit Card and HELOC Payments (if applicable)
- Lender Certification of Collateral Policies
- Financial Statements (balance sheet/income statement) or Tax Returns (2 years)
- Cash Flow Projections (2 years)
- Lender Credit Memorandum
- Borrower Status
- Character
- Reputation of Business
- Business Structure
- Age of Business
- Experience of Management
- Current/Past Financial Condition
- Projected Cash Flow
- Financial Hardship
- IRS Form 4506-T (completed copy of form submitted to IRS)

Purchases and Liquidation

How do lenders collect on the guarantee for ARC Loans?
A lender may request the purchase of the ARC Loan guarantee when there has been an uncured payment default exceeding 60 days or when the borrower has filed bankruptcy. SBA requires lenders to submit a request for purchase no later than 120 days after the earliest uncured payment default on the ARC Loan. Lenders are reminded that a default under the ARC Loan Note (SBA Form 2318) may occur during the 18 month disbursement/deferment period, for example, if there is an adverse change in the financial condition or business operation of the borrower that the lender believes may materially affect the borrower's ability to pay the ARC Loan Note. In the event that such a default occurs, the lender should consider accelerating the ARC Loan Note and requiring immediate payment. If the loan is accelerated and immediate payment demanded, the lender may request a purchase 60 days after the date of acceleration and demand for immediate payment (uncured payment default). SBA will only pay interest for 120 days after the earliest uncured payment default on the ARC Loan.

Where do lenders submit purchase requests?
Purchase requests for ARC Loans are handled by the Fresno and Little Rock Commercial Loan Servicing Centers. Contact information on the Centers may be found at www.sba.gov/aboutsba/sbaprograms/elending.

If the business encounters serious business problems, short of closing down operations, during the 18 months disbursement/deferment period, even though no payments have been due, so none have been missed, should a lender pursue guarantee payment from SBA?
During the 18-month disbursement/deferment period, if there is an adverse change in the financial condition or business operation of the borrower that the lender believes may materially affect the borrower's ability to pay the ARC Loan, this constitutes a default under the ARC Loan Note (SBA Form 2318). In the event that such a default occurs, the lender should consider accelerating the ARC Loan Note and requiring immediate payment. If the ARC Loan is accelerated and immediate payment demanded, the lender may request a purchase 60 days after the date of acceleration and demand for immediate payment (uncured payment default). SBA will only pay interest for 120 days after the earliest uncured payment default on the ARC Loan.

Are lenders responsible to pursue collection/liquidation efforts before requesting purchase? Will lenders be reimbursed for its expenses?
Lenders are responsible for servicing ARC Loans including collection and liquidation activities but may request purchase 60 days after the latest uncured payment default. SBA will only purchase reasonable and necessary lender fees and expenses associated with the direct costs of liquidating collateral up to the amount of the recovery.

Qualifying Small Business Loans (QSBL)

Does the requirement that a loan be no more than 60 days past due apply to the QSBLs being paid with the ARC Loan or does it apply to any of the business' debt?
The 60 days past due requirement for delegated processing applies only to Qualifying Small Business Loans being paid with ARC Loan proceeds. The lender must make a viability determination considering the overall credit situation and ability to repay of a borrower when they review the cash flow projections, if the borrower has other debts that are more than 60 days past due.

What is the date from which the 60 days past due is calculated?
For purposes of determining whether a loan is not more than 60 days past due, a lender may use the date of the borrower's application to the lender. However, at closing, a lender must certify there has been no adverse change. If there is a significant delay in obtaining an SBA loan number and closing the loan, a lender will have to determine if the increasingly delinquent loans represent an adverse change.

May microloans made before February 17, 2009 be paid with the proceeds of an ARC Loan?
If a loan was made directly by the microloan intermediary to the small business and thus not guaranteed by SBA, then it would be eligible to be paid with ARC Loan proceeds regardless of when it was made.

Does a lender have to identify all the QSBLs being paid with an ARC Loan?
A lender must ascertain what a borrower's debt burden is and determine which loans are QSBLs and which are not in order to calculate the monthly principal and interest payments. Then, if there is additional funding available, it can be used to pre-pay principal. However, the borrower must be able to demonstrate that it can pay back both the QSBLs and the ARC Loan when the lender determines the size of the ARC Loan. That determination cannot be made without knowing what debt is being paid with the ARC Loan.
A lender and borrower have to certify that the ARC loan proceeds are being used for eligible QSBLs. The lender and borrower must identify all QSBLs to make these certifications. In addition, a borrower has to provide cash flow projections that demonstrate how the ARC proceeds are being used and how the loans will be repaid. Cash flow projections must incorporate the specific QSBLs being paid with ARC Loan proceeds. Further, the ARC Loan Authorization requires the lender to list all QSBLs and provide the borrower with a schedule of QSBL payments.

Bottom line, lenders have to itemize which QSBLs are being paid with ARC Loan proceeds at the time of application to SBA for a loan number or for approval if submitted to the LGPC.

Are loans to builders to finance speculative homes eligible for ARC Loans?
Speculative businesses are not eligible for ARC Loans. While there is an exception for speculative home builders under a particular 7(a) loan program, to be eligible for ARC, the business must be eligible for 7(a) loans generally. Spec home builders are typically not eligible for 7(a) loans. Home builders that engage in building homes under contract with identified purchasers are eligible for 7(a) loans generally, and are therefore eligible for ARC Loans.

Are loans in the farming industry QSBLs?
Yes, loans to farms and agricultural enterprises are eligible as long as they meet the other 7(a) eligibility requirements including the size standards for farms and agricultural enterprises. The size standard (as established by statute) for farms and agricultural enterprises (including affiliates) is annual receipts not in excess of $750,000. The temporary 7(a) alternative size standard set forth in SBA Information Notice 5000-1104 issued on May 5, 2009 does not apply to farms and agricultural enterprises as their size standard is statutorily established. The exceptions are NAICS code 112112 (Cattle Feedlots) where the size standard is $2 million in annual receipts and NAICS code 112310 (Chicken Egg Production) where the size standard is $12.5 million in annual receipts. The temporary 7(a) alternative size standard does apply to businesses with NAICS codes 112112 and 112310. The size standards are found in Part 121 of 13 CFR.

Are loans guaranteed by Federal agencies other than SBA a QSBL?
Yes, loans guaranteed by Federal agencies may be considered QSBLs as long as they meet the other eligibility requirements of the program. The prohibition included in the Recovery Act against using ARC Loan proceeds only applies to loans made or guaranteed by SBA before February 17, 2009.

Are demand notes QSBLs?
Yes, demand notes may be QSBLs if they meet the eligibility requirements and have scheduled payments of principal and interest.

When paying on another bank's debt, are lenders required to verify that the loan was for a qualified business purpose? How should that information be obtained from the borrower or another bank?
The lender must ascertain from the borrower the purpose of the loan, the outstanding balance and the required payments to determine if it was for an eligible business purpose. The borrower must certify that this loan was used for the business purpose identified.

Can an SBA borrower with non-SBA loans get an ARC loan to assist specifically with the non-SBA loan?
Yes, ARC Loan proceeds may be used to pay conventional loans as long as the loans meet the QSBL eligibility requirements, regardless of whether the small business has an SBA loan or not. Lenders should consider a borrower's overall debt burden in making allocations for the ARC Loan and not just pay one loan if there are other eligible loans that could be paid with it.

If the non-SBA loan is on unreasonable terms and could be taken out in full with the $35,000, would it be eligible?
ARC Loan proceeds may be used to pay conventional loans as long as the loans meet the QSBL eligibility requirements (unreasonable terms are not an eligibility requirement). Lenders should consider a borrower's overall debt burden in making allocations for the ARC Loan and not just pay one loan if there are other eligible loans that could be paid with it. The priority of payment is for six months of scheduled principal and interest; then, in the sixth month, any remaining funds on the ARC Loan may be used to pre-pay principal.

Regulatory Issues

How will ARC Program loans be considered by SBA when evaluating a lender's 7(a) performance, i.e., will they be included in a lender's risk rating score?
SBA will evaluate an SBA Lender's performance as described in the lender oversight regulations at 13 CFR 120.1000 et seq. SBA expects that ARC Loans will have a higher default rate than 7(a) loans. Lender participation in the ARC Loan Program will be evaluated relative to the overall performance of the SBA ARC Loan portfolio.

Will ARC Loans count towards a lender's loan volume for purposes of qualifying the lender for PLP status?
Since ARC Loans are not 7(a) loans, they will not be included in a Lender's loan volume for PLP purposes.

Has SBA had discussions with lender regulators to determine how they will regard a loan made to a borrower that cannot currently meet its existing obligations? Will a regulator later penalize banks for knowingly booking such loans – even with SBA's 100% guarantee? Will a lender automatically receive greater scrutiny because of its ARC Loan Program participation?
SBA has been advised generally that financial regulators will not criticize government guaranteed loans or subject them to adverse classification. They will look to see that the bank is complying with SBA Loan Program requirements in order to maintain the guarantee.

Are there any fair lending compliance issues associated with limiting lenders to only 50 approvals per week? Two borrowers could submit a ARC loan request on the same day, but only one of them gets approved by the SBA that week due to the 50 application approval limit.
SBA imposed the limitations to ensure full access to the ARC Loan Program both by lenders and their customers. Given the limited size of the program, it could be fully used by a limited number of lenders with large portfolios. If a lender has 50 ARC loan applications approved in a week, any additional loan applications submitted by the lender during that week are not denied; they are held and deemed submitted the following week. SBA does not see this as conflicting with fair lending requirements.

Rent

May ARC Loans be used for rent (not capital lease) payments?
ARC Loan proceeds may only be used to make principal and interest payments on qualifying small business loans. Rent is an operating expense and does not qualify. SBA has established that a QSBL must have a note with scheduled payments of principal and/or interest. If the landlord or other creditor has converted past due rent payments to a note with scheduled payments, the note may be eligible for payment with ARC Loan proceeds. (See next question.)

If a small business owes rent for its business facility, can the landlord create a note allowing the borrower to use an ARC loan to pay that debt?
ARC Loans cannot be used to pay anything other than principal and interest payments on existing loans.
If a borrower is past due more than 30 days on its monthly rent expense and the borrower and landlord have converted the past due amount into a note with scheduled payments, the note would be considered a QSBL and eligible to be paid with an ARC Loan.

Restructuring

May a lender convert a revolving loan facility to a term loan and offer an ARC loan for the first several months P&I on the converted term loan while closing the revolver (eliminating any availability)?
Lenders may restructure multiple existing QSBLs as part of an ARC Loan transaction. Closing the revolver facility will depend upon the borrower's circumstances. If it reduces available credit, it may have a negative impact on the borrower's operations. If only a revolving loan facility is being restructured, then the Special Rules for Lines of Credit apply.

May a lender consolidate all of a borrower's non-SBA debt into a new non-SBA loan and structure an ARC Loan to fund the payments on the newly written consolidated debt? Is the new loan eligible?
The Procedural Guide allows for restructuring as part of the ARC Loan Program. If the debt already existed and the lender is consolidating the existing debt as part of the restructuring, it would be eligible for an ARC Loan as long as the remaining eligibility requirements are met.

SBA Loans

Why is a 504 first position loan payment eligible for an ARC Loan but not a 7(a) loan made for a similar purpose?
The Recovery Act prohibits proceeds of ARC loans from paying on 7(a) or 504 guaranteed loans approved prior to 2/17/09. A 504 first mortgage does not have an SBA guaranty.

Is it true that ARC loan proceeds can be used to make payments on 7(a) loans made on or after February 17, 2009? What about 504 loan payments and 504 first mortgage payments?
ARC Loan proceeds may be used to pay 7(a) loans and 504 debentures approved on or after February 17, 2009, if all other eligibility requirements are met. ARC Loan proceeds may be used to pay 504 first mortgage payments regardless of the date the Third Party Loan was made. However, a new 7(a) or 504 loan application should not be submitted to SBA for approval with the intent that any payments on the loan will be made by an ARC Loan. When approving a 7(a) or 504 loan application, a lender must demonstrate in its credit analysis that the small business has the ability to make the payments on the loan in a timely manner through the small business' cash flow. In contrast, an ARC Loan is for small businesses that are experiencing immediate financial hardship.

Is it possible to use an ARC loan on an existing SBA loan made prior to February 17, 2009 that was used to make payments on a business credit card or other business debt when the small business also has a 7(a) or 504 loan?
Borrowers with 7(a) or 504 loans made before February 17, 2009 are not prevented from receiving an ARC Loan and making payments on QSBLs, but they cannot use the ARC Loan proceeds to make payments on those SBA loans.

Secondary Market

Will these loans be allowed to trade in the secondary market?
No, ARC Loans are not eligible for sale on the secondary market.

Taxes

May ARC Loan proceeds be used to make any type of tax payments under a tax payment plan or otherwise?
Generally, ARC Loans may not be used to pay taxes.

All SBA programs and services are provided on a nondiscriminatory basis.