

# **SBA**

**SOP 50 52 1**

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## **CONSUMER LOAN SERVICING AND COLLECTION FOR DISASTER HOME LOANS**

**Office of Financial Assistance  
Portfolio Management**

**U.S. Small Business  
Administration**



**SMALL BUSINESS ADMINISTRATION  
STANDARD OPERATING PROCEDURE  
National**

SUBJECT: Consumer Loan Servicing and Collection for Disaster Home Loans	S.O.P.		REV
	SECTION 50	NO. 52	1

INTRODUCTION

1. Purpose. SOP 50 52 1, Consumer Loan Servicing and Collection for Disaster Home Loans, provides guidelines and requirements for servicing and collecting SBA disaster home loans.
2. Personnel Concerned. All SBA employees.
3. Directives Canceled. None
4. Originator. Office of Financial Program Operations, Office of Financial Assistance.

AUTHORIZED BY:		EFFECTIVE DATE 6/24/2002
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SBA Form 989 (5-90) Ref: SOP 00 23

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## TABLE OF CONTENTS

PURPOSE AND SCOPE OF THIS SOP .....	1
1. What is the purpose of this Standard Operating Procedure? .....	1
2. What are Mandatory Servicing Actions? .....	1
3. What is the Scope of this SOP? .....	1
SERVICING DISASTER HOME LOANS .....	1
1. Servicing Actions .....	1
2. SBA Form 327, Modification or Administrative Action .....	1
3. Maintaining Records .....	4
4. Authority to Take Servicing Actions .....	4
5. Actions the Approving Official May Approve .....	5
6. Actions Not Delegated to the Approving Official .....	6
7. The Approving Official Does Not Approve the Recommendation .....	6
8. Requests for Reconsideration .....	7
9. Non-Deserving Verbal Requests for Servicing .....	7
10. Exceptions to Policy .....	7
11. Servicing Actions Involving a SBA Employee or Employee's Relative as the Borrower .....	7
ADMINISTRATIVE ACTIONS FOR LOAN SERVICING .....	1
1. Transferring Loans to Another SBA Servicing Office .....	1
2. Transferring Loans into Liquidation .....	1
3. Transferring Collateral Files .....	1
4. Transferring Case Files .....	1
5. Management Review of the Delinquent Loan Portfolio .....	2
LOAN SERVICING REQUESTS AND ACTIONS .....	1
1. Guidelines For Loan Servicing .....	1
2. Preparing to respond to a Servicing Request .....	1
3. Information provided by the Borrower .....	1
4. Additional Requirements for Loans with Collateral .....	2
Correcting Deficiencies as Part of a Servicing Action .....	3
SERVICING ACTIONS REQUESTED INITIATED BY OR ON BEHALF OF THE BORROWER .....	1
1. Informational Requests from Borrowers .....	1
2. Informational Requests from Third Parties .....	2
3. Name and Address Changes .....	4
4. Returning Documents to the Borrower .....	4
5. Electronic Payments .....	4
6. Changes in Frequency of Payments .....	4
7. Hazard Insurance Requirement Changes .....	5
8. Flood Insurance Requirement Changes .....	5
9. Proceeds from Insurance Claims for Losses on Collateral .....	8
10. Subordination of Collateral .....	10
11. Release of Collateral .....	11

12. Substitution of Collateral..... 12  
 Assumptions..... 13  
 14. Reinstatement of a Loan..... 14  
 15. Paid-in-Full Loans..... 14  
**SERVICING ACTIONS TO CURE DELINQUENCIES..... 1**  
 1. Deferments of Loan Payments..... 1  
 Reducing the Amount of Loan Payments on a Temporary Basis..... 2  
 3. Reducing the Amount of Loan Payments on a Permanent Basis..... 3  
 4. Extending the Maturity of the Loan..... 3  
 5. Changing the Borrower's Interest Rate..... 4  
 6. Compromise Actions..... 4  
 7. Borrowers Who Suffer a Loss in a Declared Disaster..... 10  
 8. Claims Against Estates of Deceased Borrowers..... 10  
 9. What Are CPC Expenditures?..... 11  
 10. Placing a Loan "In Liquidation" or "In Litigation"..... 12  
 11. Removing a Loan from In Litigation and In Liquidation..... 13  
**CHARGE OFF PROCEDURES..... 1**  
 1. SBA Policy Regarding Charge Off Accounts..... 1  
 2. Effects of Charging Off a Loan..... 1  
 3. Determining When a Loan May Be Charged Off..... 1  
 4. Determining When a Loan Cannot Be Charged Off..... 2  
 5. Procedures for Charging Off a Loan..... 2  
**WHEN SBA WILL DISCLOSE LOAN INFORMATION..... 1**  
 1. What Is SBA's Policy Governing Disclosure of Information About SBA's Loans?..... 1  
 2. Types of Information That Generally are Available to any Requester Under the  
 Freedom of Information Act (FOIA)..... 1  
 3. Types of Information That Generally is "Not" Available to any Requester..... 2  
 4. What Must You Determine if You Receive a Request for Information Contained in a  
 Loan File?..... 3  
 5. What Must You Do if You Receive a Subpoena for Your Testimony or for SBA  
 Records?..... 6  
**REFERRAL OF IRREGULARITIES..... 1**  
 1. What is SBA's Policy Regarding Referrals to the Office of Inspector General?..... 1  
 2. What Matters must you refer to the OIG?..... 1  
 3. How to Refer a Matter to the OIG?..... 2  
 4. What is the Format and Content of a Written OIG Referral?..... 3  
 5. What Happens After you Refer a Matter to the OIG?..... 5  
 6. What are Your Ongoing Responsibilities after You Have Referred a Matter to the  
 OIG?..... 6  
 7. What are Areas That Commonly Generate OIG Referrals?..... 7  
**LOAN COLLECTION MONITORING & REPORTS..... 1**  
 1. General Guidelines for Loan Collections..... 1  
 2. Computer Databases For Loan Collection Status..... 1  
 3. Reporting of Delinquent Loans..... 1  
 4. Basic Steps in the Loan Collection Procedure..... 2  
 5. Recording the Results of a Call in the Delinquent Loan Collection System (DLCS).... 4  
**APPENDIX 1..... 5**

SBA FORM 327, MODIFICATION OR ADMINISTRATIVE ACTION..... 5

APPENDIX 1 ..... 6

    LOCALLY GENERATED FORM 327 ..... 6

APPENDIX 1 ..... 7

    SBA 327 STAMP – EXAMPLE ..... 7

APPENDIX 2..... 8

    PRE-AUTHORIZED DEBIT SYSTEM ..... 8

    NOTIFICATION OF CHANGE CODES ..... 25

APPENDIX 3 ..... 29

**SBA FORM 397, NOTICE OF FULLY PAID ACCOUNT** ..... 29

APPENDIX 4..... 30

**EXCERPTS FROM UNITED STATES CODE SERVICE**..... 30



## PURPOSE AND SCOPE OF THIS SOP

### 1. What is the purpose of this Standard Operating Procedure?

This Standard Operating Procedure (SOP) provides guidelines and requirements for servicing and collecting U. S. Small Business Administration (SBA) disaster home loans. It will identify which actions you must take and which actions you should take to ensure the repayment of the SBA loan.

### 2. What are Mandatory Servicing Actions?

In this SOP, "**MUST**" refers to servicing activity, which is mandatory. "Should" refers to servicing activity, which is prudent, but at the discretion of the office servicing the loan. This is a departure from SOP 50 52 in which the three words, "must," "shall," and "will" denoted mandatory actions. You should note that "**MUST**" is now the only mandatory word used in this SOP.

### 3. What is the Scope of this SOP?

This SOP provides the regulations, policy and procedures you need to know to perform your job in loan servicing. All servicing actions you take must conform to:

- First: Small Business Act.
- Second: Federal Regulations.
- Third: SBA policy and procedures.

#### a. Federal Regulations.

During the year, SBA publishes proposed rules in the Federal Register in order to implement legislation or to clarify or modify existing rules. A period of time is allowed for the public to comment on these proposed rules. After SBA considers any comments, it publishes in the Federal Register final regulations, which may include some of the suggested changes. The preamble to the final regulations discusses the substantive changes. SBA counsel should keep you apprised of these regulatory amendments. The final regulations are published annually in Title 13 of the Code of Federal Regulations (CFR). SBA policy must be read together with the CFR.

Part 123 of **Title 13 CFR** provides regulations for the disaster loan program. **Section 123.16** states that rules for servicing disaster loans are found in part 120. Part **102** of **Title 13** pertains to disclosure of regulations under the Freedom of Information and Privacy Act of 1974.



**b. SBA Policy and Procedures.**

This SOP provides the policy to follow for the servicing of disaster home loans. On occasion, SBA policy may not adequately address special circumstances you are handling. In those cases, you may be able to justify an exception to policy while still practicing prudent loan servicing. Exceptions to mandatory policy require approval of the Assistant Administrator for Office of Financial Program Operations (AA/FPO). See Chapter 2 paragraph 10 for details.

The policy in this SOP is applicable to SBA disaster home loans classified as in "regular servicing" status. For SBA loans classified as "in liquidation" status, refer to SOP 50 51 2.

## SERVICING DISASTER HOME LOANS

### 1. **Servicing Actions.**

A servicing action is any request for a change in the existing terms of the loan. Usually, the borrower requests the change. Loan servicing officials use a SBA Form 327, Modification or Administrative Action to complete servicing actions.

#### a. **Customer Service.**

Managing the portfolio consists of two components - collection and servicing. While orderly repayment of loans is important, your efforts to strictly enforce repayment must be tempered by a clear recognition that the borrowers are disaster victims and that the results of your action or inaction have a significant impact on the borrowers' financial recovery. Prompt courteous responses to borrowers' inquiries and requests are paramount. What you say and how you say it must be in the highest professional manner. To borrowers, you are a representative of their government and in some cases their last resort. They should be provided the utmost consideration you can provide.

### 2. **SBA Form 327, Modification or Administrative Action.**

The term "Modification or Administrative Action" refers to an action to modify the Note, the Loan Authorization and Agreement, or collateral documents.

Modifications or administrative actions on specific loans are taken by completing a SBA Form 327 or by using the 327 stamp format or a 327 letter overlay. The result is a "327 action."

**b. SBA Form 327.**

SBA Form 327 is available on pre-printed forms or on computer screens. (See Appendix 1 Page 1) The 327 report should contain all the information pertinent to the request or problem being considered, such as status of the loan, collateral, and your comments. Your comments should include:

Summary of the request;

Evaluation of supporting documentation; and

Recommendation for approval or denial.

**b. Locally Generated Form 327.**

You may use an alternative locally generated 327 Form. The document must include:

Borrower's name;

Loan number;

Servicing center or office code;

Sequential action number;

Date of the action;

Loan information pertinent to the action;

Reason for the action;

Description of the action with appropriate financial and collateral analysis;

Recommendation of action to be taken; and

Signatures of the required SBA officials.

See Appendix 1 Page 2 for a sample format.

**c. 327 Stamp Action and 327 Letter Overlay.**

You may recommend routine or uncomplicated 327 actions by either a 327 Stamp Action or a 327 Letter Overlay:

**(1) 327 Stamp.**

The 327 stamp is an approved stamp format, which is affixed to incoming correspondence or a Delinquent Loan Collection System (DLCS) printout to reflect a servicing action. Use the 327 stamp in those cases where you are not required to distribute the action to the Office of Financial Operations (OFO), limit its use to less involved requests where the incoming letter and enclosures or the DLCS printout satisfactorily describes and justifies the action requested.

See Appendix 1 Page 3 for the format of this stamp.

**(2) 327 Letter Overlay.**

A Letter Overlay is permissible when the letter responding to the request is self-explanatory and is the basis for the action taken. Complete only the pre-printed part of SBA Form 327, and use letterhead stationery to overlay the face of the form. An Approving Official (defined in paragraph 2-4a(2) of this SOP), with title shown, must sign the action or letter.

You must consecutively number these actions with other 327 actions and must sign them, showing your title.

**d. SOP Authority for Action Taken.**

On all 327 forms, stamp action and letter overlays, you must cite the SOP paragraph number, which authorizes your action. If you take more than one action on the 327 form, stamp action or letter overlay, cite all applicable SOP paragraph numbers.

**e. File 327 Forms, Stamp Actions and Letter Overlays.**

File the approved 327 form, stamp action or letter overlay document (with related documents, such as letters, etc.) with other 327 actions in the loan case file.

**f. Actions Requiring Approval by Another Office.**

- (1) You must use SBA Form 327 to recommend loan-servicing actions, which require approval at the next level SBA office. The proposed action and the signatures and titles of the recommending officials must be on the report. The report must contain all the pertinent information necessary for the approving official in another office to make an informed decision.
- (2) The originating office will forward the action to the next level SBA office (branch to district, district or servicing center to Office Financial Program Operations) with a copy retained by the originating office pending final action. The report must include comments and recommendations of the highest supervisory official at each office and of counsel (on legal

aspects).

- (3) The office taking final action will do so on the form, or if needed, by separate letter. The office taking final action will retain a copy of the Form 327 and return the original action to the originating office.
- (4) Where the action taken requires notice to the requester, you must give such advice by separate letter. You must file a copy of the letter in the loan case folder.

### **3. Maintaining Records.**

You must maintain a record of all servicing requests, actions approved or declined and other communications regarding specific loans. Such a record is critical to loan servicing personnel in all offices that service loan accounts.

#### **a. Servicing Request/Action Log.**

The servicing center must maintain a log of all servicing requests. The log should identify from whom the request was received, the name of the borrower, the loan number, the type of loan, the date the request was received, the date the action was taken and whether the action was approved or declined.

With the possibility that both an originating office and a servicing office will receive inquiries on the same loan, the log provides a basis to track the status of actions.

#### **b. Delinquent Loan Collection System.**

You must record all servicing requests and actions in the Delinquent Loan Collection System (DLCS). The DLCS allows any SBA employee to view the servicing activity for the loan.

When you receive a letter or telephone call regarding a specific loan that is important for future servicing actions, you must summarize the communication into the DLCS for that loan.

If your office is not servicing the loan, forward the information to the servicing office. This may be a copy of the letter or a summary of the phone call sent by e-mail. The servicing office is responsible for updating the DLCS.

### **4. Authority to Take Servicing Actions.**

The (RULE OF TWO) - approval process is required for all servicing actions.

#### **a. Rule of Two.**

The (RULE OF TWO) process provides that the action is recommended by one individual and approved by another individual.

**(1) Authority to Recommend a Loan Servicing Action.**

To recommend a loan servicing action on a disaster home loan, a SBA employee must:

Be certified in writing by the Associate Administrator for Financial Assistance (AA/FA) or designee.

This certification will:

Set forth any limitations of the authority to recommend,

Identify the duration, which may be indefinite, and

Be revocable at any time by the AA/FA or designee.

**(2) Authority to Approve a Loan Servicing Action.**

To approve a loan servicing action on a disaster home loan, a SBA employee must;

Be certified in writing by the AA/FA or designee.

This certification will:

Set forth any limitations of the authority to approve,

Identify the duration, which may be indefinite, and

Be revocable at any time by the AA/FA or designee.

Note: An acting approving official also must be certified.

**5. Actions the Approving Official May Approve.**

The approving official may approve the following actions on disaster home loans:

All actions necessary to administer, service, and collect the loans.

Charge off unsecured loans.

Abandonment of collateral and charge off loans secured with consumer household goods.

Charge off loans secured with mobile homes or real estate if the collateral has been abandoned by a SBA liquidation action.

Offers in compromise when the amount forgiven does not exceed \$100,000.00.

Reinstatement of loans.

## **6. Actions Not Delegated to the Approving Official.**

- a. Offers in compromise when the amount forgiven exceeds \$100,000.00 must be forwarded to the Headquarters Claims Review Committee (HCRC) for review and action.
- b. Appeals of decisions made by the servicing center or office and all exceptions to mandatory policy must be forwarded to the AA/FPO.

## **7. The Approving Official Does Not Approve the Recommendation.**

- a. If your approving official does not approve your recommendation for action, he or she must add comments and recommendations to your 327 action and refer the case to the next level of authority. That next level of authority must indicate the final action taken and the basis for the decision.
- b. If the position taken at the next level of authority is contrary to the differing recommendations of both you (the recommending official) and the first approving official, the matter will go forward, under the next level of authority, to the point of concurrence in a prior recommendation.

Example: You are a loan specialist and you recommend subordination in a 327 action.

Your approving official is a supervising loan specialist (SLS). If the SLS approves your 327 action, the action is final and the subordination is approved.

If the SLS declines the action, he or she must refer the action to the next level of authority, which, in this example, is the servicing center manager. If the center manager concurs with your recommendation or with the SLS's, the action is final. For example, if the center manager concurs with your recommendation to approve the subordination, the subordination is thereby approved. On the other hand, if the center manager concurs with your SLS's decision to decline the subordination, the subordination is thereby declined.

If the center manager does not uphold your recommendation or the SLS's decision and recommends yet another action, the center manager must refer the action to the next highest level of authority. In most cases, the center manager would refer the action to the AA/FPO.

## 8. **Requests for Reconsideration.**

You should handle requests for reconsideration or appeals in the same manner as the original request. Then you must submit it to the next level of authority.

## 9. **Non-Deserving Verbal Requests for Servicing.**

You may reject any verbal request for loan servicing, which is grossly lacking in merit or supporting documentation. You do not need to write a recommendation or refer the case to an approving official. Be sure to document the request and your response in the DLCS.

## 10. **Exceptions to Policy.**

Any servicing action, which is not in full compliance with the mandatory policy ("must") sections, are "**EXCEPTIONS TO POLICY.**" Final authority to approve exceptions to mandatory policy lies with the AA/FPO. If you are recommending a 327 action that is an Exception to Policy, you must:

Justify fully in the 327 action the reason for deviating from standard policy;

Route the 327 action through your SBA counsel for comments if legal matters are involved;

Recommend that your approving official approve the action; and

If approved, your approving official must refer the action to the AA/FPO for action.

## 11. **Servicing Actions Involving a SBA Employee or Employee's Relative as the Borrower.**

You must refer all requests for substantial relief from a SBA employee or "close relative" of a SBA employee who is an obligor on a loan, through the chain of command, to AA/FPO for final action (approval or decline). Substantial relief actions include the release of an obligor on a loan, substantial restructuring of payments, substantial release of collateral, etc. - when in doubt, consider it substantial.

The regulations define close relative as; "Close Relative is a spouse; a parent; or a child or sibling; or the spouse of any such person." 13 CFR § 120.10



## **ADMINISTRATIVE ACTIONS FOR LOAN SERVICING**

### **1. Transferring Loans to Another SBA Servicing Office.**

The ultimate goal is to collect the money that SBA has loaned. Accordingly, servicing centers and offices are willing to accept cases or perform tasks for other servicing centers and offices if the borrower moves. A servicing center or office should not transfer an account to accomplish a function it can do. Charged off losses are attributed to the originating office.

When collateral is substituted for a property in another center or office's area, both centers or offices must cooperate to ensure that SBA liens are properly perfected in the new jurisdiction. Any disagreement should be resolved by the AA/FPO.

### **2. Transferring Loans into Liquidation.**

Loans should be transferred into liquidation when :

Routine collections will be discontinued after a loan is in past due status of 120-150 days, depending upon the workout status of the loan.

Requested by the liquidation center or district office.

### **3. Transferring Collateral Files.**

Collateral files and collateral documents must be forwarded by the Collateral Cashier. The collateral files and documents must be listed in detail and forwarded by Registered Mail or another traceable method. Overnight delivery may be used if time restrictions exist.

### **4. Transferring Case Files.**

Case files and related documents must be forwarded by certified mail, return receipt requested, or another method with receipt acknowledgement. Overnight delivery may be used if time restrictions exist.

## 5. Management Review of the Delinquent Loan Portfolio.

### a. Responsibility for the Review.

The loan servicing supervisor or designee must conduct periodic portfolio reviews of delinquent loans. The goal of the review is to determine whether loan-servicing officials are monitoring the delinquent loans in the portfolio. The emphasis is on taking timely actions to cure the delinquency.

### b. Frequency of the Review.

(1) The loan servicing center manager or designee must intensely monitor at least 15 percent of all loans 120+ days past due in DLCS once each quarter.

(a) This is very important in curtailing as many problems as early as possible.

(b) All collection efforts by the loan servicing officials and review comments must be noted in DLCS.

(2) Loan servicing supervisors in servicing offices must review:

(a) 100 percent of loans 30-60 days past due once every quarter (90 days), and

(b) All loans which have been returned to "regular servicing" status from "in liquidation" status and are more than 15 days past due.

### c. Scope of the Review.

The reviewing official may determine the format of the review, whether face-to-face with loan servicing personnel or via the DLCS. The scope of the review should answer the following questions on each account reviewed:

(1) When was the last payment made?

(2) What is the next installment due date?

(3) How many payments are past due?

(4) What is the reason for the delinquency?

(5) When did the loan servicing official last have contact with the borrower?

(6) How much did the borrower promise to pay and when?

- (7) What does the loan servicing official recommend for corrective action?
- (a) Plan to bring the loan current.
  - (b) Plan to defer or restructure.
  - (c) Plan to accelerate or transfer into liquidation or charge off.

## LOAN SERVICING REQUESTS AND ACTIONS

### 1. Guidelines For Loan Servicing.

This Chapter provides a description and guidance for processing of servicing requests received from borrowers.

You should:

- a. Recognize the circumstances, under which these loans were made,
- b. Identify the cause of a borrower's problem, or the end result of a borrower's request, and
- c. Determine a positive solution to the problem or request while protecting SBA's interest.

### 2. Preparing to respond to a Servicing Request.

You must be familiar with all documents, which contain the terms and conditions for the loan.

Documents you may need to review are:

- a. Loan application and related documents,
- b. Loss Verifier's Report,
- c. Loan Officer's Report,
- d. Note,
- e. Loan Authorization & Agreement, and
- f. Deed of Trust, Mortgage, or other lien instrument.

### 3. Information provided by the Borrower.

This section provides general guidelines about information needed to support servicing actions. The borrower must submit sufficient information to support the requested action and to allow you to make the correct decision.

You must keep in mind that disaster home loan borrowers include a wide range of sophistication. Sometimes a verbal explanation of a borrower's problem is all that can be expected. In other situations, you will need a complete financial analysis.

The extent of the financial analysis should be dictated by the amount of the loan, the nature of the request and its effect on SBA's collateral position. When considering significant changes to the loan terms or collateral support, you should obtain current financial information when deemed necessary. You should use SBA Form 770, Financial Statement of Debtor, for the more complex purpose and the simple income format letter for the less complex situations. You may obtain credit bureau reports to substantiate the information on the financial statement when circumstances warrant.

Requests for a change to the terms or conditions of the Note or Loan Authorization and Agreement should be in writing. You should ask the borrower to provide all supporting documents necessary to consider the request. These may include:

- Financial statement (SBA Form 770 may be used),
- Pay check stub,
- Employment termination notice,
- Federal income tax returns,
- Doctor's statement regarding medical condition, and
- Other documents which support the borrower's request.

Repeated requests should require more detailed documentation and analysis.

#### **4. Additional Requirements for Loans with Collateral.**

You must protect SBA's interest in collateral pledged to secure the loan. Actions affecting collateral should receive a full review of the benefits and risks.

For all actions that affect collateral, you must provide a summary analysis of SBA's collateral position before and after the requested change.

- a. Valuation of Collateral.
  - (1) Appraisals.

The borrower should provide a copy of a recent (no older than 6 months) appraisal prepared by a licensed appraiser to establish the fair market value of the collateral. If an appraisal is not available, you may use alternative forms of valuation, such as comparable sales, market analysis,

or a property tax assessment (if the property has been reassessed within the last 12 months).

(2) Valuation Adjustments.

You should calculate the net value of collateral by applying the following liquidation percentages to fair market value (if you use another liquidation value, you must justify):

Commercial RE.....	75%
Residential RE.....	80%
Unimproved Land.....	50%

b. Lien Position.

The borrower should provide a copy of a title report, preliminary title report or property profile. This document will help you determine SBA's lien and equity position.

c. Funds in Escrow.

For actions involving the sale or refinance of the collateral, the borrower should provide a copy of the estimated closing statement. This will help you determine if other creditors or the borrower will receive funds to the detriment of SBA.

d. Best Interest of Borrower.

You should not decline a servicing request if the action is in the best interest of the borrower and lack of collateral is the sole reason for the decline, providing the result of the action leaves SBA in a like equity position.

**Correcting Deficiencies as Part of a Servicing Action.**

- a. As a condition of the action, you should require the borrower to correct any deficiencies in the documentation for the loan, to the extent possible. This can include bringing all of the loan documentation up-to-date and correcting any legal deficiencies.

Examples of correcting deficiencies include:

Obtaining the borrower's signature on a UCC-1 Financing Statement which you will need to re-record to prevent a lapse.

Obtaining the borrower's signature on a deed of trust or mortgage if the borrower did not sign at closing, and ensuring that the deed of trust or mortgage is recorded.

Asking the borrower to verify that the borrower has reinstated the required hazard and flood insurance on SBA's collateral.

Asking the borrower to repay any over disbursement.

## SERVICING ACTIONS REQUESTED INITIATED BY OR ON BEHALF OF THE BORROWER

### 1. Informational Requests from Borrowers.

A common loan-servicing request is for individual loan information. Borrowers may obtain information from a loan servicing center or district office.

#### a. Information provided by the Servicing Center or District Office

You may respond to telephone inquiries from the borrower, but first you must determine if the requester is the borrower. If you are unsure, ask the borrower to put the request in writing.

For requests or information requests not covered in this section, follow the disclosure policy guidelines in Chapter 8.

#### (1) Loan Payoff Amount

Obtain payoff amounts from the PMQD09 computer screen on your computer. The display provides the principal balance, accrued interest as of the specified date and the daily interest accrual. If the request is by telephone, have the borrower send a request letter to avoid misunderstandings.

#### (2) Certified Statement of Account.

OFO will furnish to the field office a Certified Statement of Account (SBA Form 1032) upon request. Usually, you will need this certification only in cases involving litigation, court action, etc. It indicates the principal outstanding loan balance, and accrued interest to a specified date and daily rate of interest accrual.

#### (3) Transcript of Account.

Two formats are available:

#### (a) History of Payments; and



A history of payments (principal and interest) is available on the PMQD11 computer screen. For most situations, this information should respond to the borrower's request. CAUTION: Do not send copies of PMQD11 screens that show journal voucher entries with asterisks. These may cause confusion.

(b) Official Transcript.

OFO manually prepares the official transcript (SBA Form 466). It may cover the entire period from loan inception to current date or a specific period only (e.g., last 12 months). It includes:

All applicable disbursements and collection transactions and dates;

The application of payments to principal and interest; and

Ending principal and interest balances.

As this report is voluminous and time consuming to prepare, request transcripts only when necessary. In most cases it is not necessary to reconcile all transactions from loan inception. Determine the last date when the borrower and SBA's records were in agreement and request a transcript accordingly.

You should not request a transcript if a borrower's concern is whether or not SBA received a particular payment. First check the PMQD11 screen. If the payment is not reflected, ask the borrower for a copy of the canceled check, both front and back. Forward this to OFO Denver with a request to trace the check.

(4) Statement of Interest Paid.

The second monthly (February) Installment Notices, SBA Form 1201, mailed each year to disaster home loan borrowers includes a statement of interest paid during the prior calendar year. This primarily is for tax purposes. These are sent to any loan with an outstanding principal balance as of December 31 or that was paid in full or charged off during the calendar year. It excludes loans charged off in prior years.

A copy of the PMQD10 screen display may be provided to borrowers who request this information. If the request is made by telephone, send the copy to borrower's address in SBA records.

## 2. Informational Requests from Third Parties.

Be careful when responding to requests from third parties for information about a

borrower and his or her loan. The three most common requests from third parties are demands for payoff, credit verification and correction or verification of credit bureau reports.

a. Requests for Demand for Payoff.

When the SBA loan will be paid as a result of the sale or refinance of the collateral, the escrow or title company requests the payoff amount of the loan, including interest. You may provide the following information from the PMQD09 computer screen only with written authorization from the borrower, Accounting Payoff Data in response to a written request from an escrow or title company for payoff demand:

Principal balance due;

Accrued interest; and

Daily interest accrual.

To minimize errors, you should not provide information unless the SBA loan number is provided.

NOTE: Sometimes when reviewing the PMQD09 screen, you may find an item placed in suspense. This will freeze the account. Contact OFO Denver. They can usually resolve the suspense item. This will permit you to obtain the payoff information locally. If the item cannot be removed from suspense, ask OFO Denver to provide payoff information to you.

The payoff demand should provide information to enable the escrow or title company to make payment by wire transfer.

b. Requests for Credit Verification.

Requests for credit verification must be in writing along with the borrower's written authorization. You should provide this information from local records available (PMQD09, PMQD10, PMQD11, etc.).

c. Dispute of Information Reported to Credit Bureau.

When a borrower disputes data regarding an SBA loan on a credit report, the credit reporting bureau requests in writing that SBA verify or correct the information. You may respond to these requests without the borrower's authorization, as this authorization is inherent in the request. You should provide information from local records (case file, DLCS, PMQD and PMBI screens). If the bureau does not receive a response from SBA within 10 days, disputed information is removed.

For further guidance regarding releasing information to third parties, see Chapter 8 (FOIA).

### **3. Name and Address Changes.**

Upon receipt of any notice of a change in the name (in writing) or address (may be by phone) of a borrower, you must:

Change all "in-house" records as appropriate, and

Forward all name changes to the collateral cashier for updating of the name on the collateral file.

Because of the far-reaching effect an incorrect address has on forwarding computer generated mail to the borrower, you must immediately process name and address changes.

### **4. Returning Documents to the Borrower.**

At the request of the borrower, you may return various papers or documents (i.e. appraisal reports, tax returns, environmental reports, plans and specs, etc.) which, in your opinion, are of no further value to the Agency. A copy of the cover letter or memorandum to the borrower identifying the material must be cleared by counsel and placed in the loan file, and a copy of the documentation must be maintained. You must also place in the file a copy of the portion of the document containing representations that SBA relied in processing or servicing the loan (e.g., summary report/conclusion for appraisals and environmental reports).

### **5. Electronic Payments.**

An electronic payment allows the borrower to pay monthly payments directly from his or her bank account to SBA. The payment is sent to SBA electronically from the borrower's bank as a pre-authorized debit.

#### **a. Pre-Authorized Debits.**

The Pre-Authorized Debit (PAD) system allows SBA to electronically debit a borrower's bank account for monthly loan payments. All borrowers are encouraged to utilize PAD for their monthly loan payments. This payment procedure reduces manpower requirements for SBA and results in more timely application of payments.

Instructions for processing PAD requests are in Appendix 2.

### **6. Changes in Frequency of Payments.**

#### **a. You may change the frequency of payments. Payments may be monthly, quarterly, or annually. Annual payments must be justified. The change should**

not result in a change in the amount of principal reduction.

- b. You must consider the impact on the borrower's ability to repay the loan. A change in frequency of loan payments may be a part of a plan to cure a delinquency.

## **7. Hazard Insurance Requirement Changes.**

- a. The borrower must maintain hazard insurance coverage as required in the Loan Authorization and Agreement. The policy must reflect appropriate loss payee clauses covering SBA.
- b. Each month SBA Form 1201, Installment Notice, reminds borrowers of their responsibility to maintain hazard insurance.
- c. You may approve a reduction in coverage only if the assets covered by the insurance have been sold or depreciated.
- d. As general policy, SBA does not purchase or maintain payments on hazard insurance on property securing a loan.
- e. If circumstances are such that adequate insurance (or assignment of interest in insurance) on collateral is not obtainable or is available only at an exorbitant cost, you must prepare and put in the loan file a memorandum explaining the unavailability of coverage.

## **8. Flood Insurance Requirement Changes.**

### **a. Background.**

- (1) The National Flood Insurance Program (NFIP) is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act). The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas (SFHA) if their community participates in the NFIP. An SFHA is an area within a flood plain having a 1 percent or greater chance of flood occurrence in any given year. The SFHA's are shown on maps issued by the Federal Emergency Management Agency (FEMA) for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.
- (2) The 1973 Act amended the NFIP by directing lenders to require flood

insurance on improved real estate or mobile homes serving as collateral for a loan if the property was located, or was to be located in an SFHA in a participating community. Lenders were required to notify borrowers that their security property is located in an SFHA and of the availability of Federal disaster assistance with respect to the property in the event of a flood.

- (3) The National Flood Insurance Reform Act of 1994 comprehensively revised the Federal flood insurance statutes. It is intended to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal Government, taxpayers, and flood victims.

**b. Requirements.**

- (1) When any loan secured by improved real estate or a mobile home and any personal property is located in a special flood hazard area (SFHA), as determined by FEMA, and if the community participates in the NFIP, the borrower is required to obtain flood insurance. The policy must reflect a loss payee clause covering the SBA.
- (2) After the loan is made, the borrower must maintain such flood insurance throughout the life of the loan. This means that if SBA increases, extends, or renews the loan, it must review the adequacy of flood insurance coverage. SBA must use FEMA Form 81-93 Standard Flood Hazard Determination Form, to ascertain whether the property is in an SFHA in which flood insurance is available. The Form may be used in a printed, computerized, or electronic manner, and SBA must retain a completed copy in its files.

**c. Amount of Flood Insurance.**

The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property. Flood insurance coverage is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

**d. Forced placement of flood insurance.**

If SBA, or a service provider acting on behalf of SBA, determines at any time during the life of a loan, that the building or personal property securing the loan is not covered by flood insurance or is covered by an inadequate amount of flood insurance, SBA or its service provider must notify the borrower that the borrower must obtain flood insurance. If the borrower fails to obtain flood insurance within 45 days, the SBA or its service provider must purchase the insurance on the

borrower's behalf at the borrower's expense. The borrower can be charged for the cost of premiums and fees incurred in purchasing the insurance, or the amount can be added to the principal loan balance as a recoverable expense.

**e. Reduction in coverage.**

You may recommend a reduction in flood insurance as you release affected collateral, but the amount of the insurance must not go below the required amounts as set forth above.

**f. Events which trigger a review of the adequacy of flood insurance coverage.**

The events which trigger SBA's obligation to review the adequacy of flood insurance coverage are the increasing (through additional loan disbursement), extending, or renewing of a loan

**g. Unavailability of flood insurance.**

If a borrower had the requisite flood insurance at the commencement of the loan, and the community drops out of the NFIP, it is possible that flood insurance would no longer be available for the remaining life of the loan. If such is the case, this information must be maintained in SBA's file to explain the subsequent unavailability of flood insurance coverage.

**h. General rule to provide notice of flood insurance requirement when ColPur is transferred.**

If SBA transfers collateral [i.e. it is collateral purchased or acquired by SBA (ColPur) through SBA liquidation action], SBA is required under the National Flood Insurance Reform Act of 1994 to provide notice to the transferee.

**(1) ColPur.**

This requirement applies to commercial, personal, or residential property for which:

- (a) Federal flood disaster assistance has been provided,
- (b) Such assistance was conditioned upon the owner obtaining flood insurance, and
- (c) The borrower did not obtain or maintain flood insurance.

**(2) Notice.**

Before SBA transfers such property, you must notify the transferee of the requirement to obtain and maintain flood insurance.

- i. You may approve a reduction in coverage as you release affected collateral.
- j. As general policy, SBA does not purchase or maintain payments on Federal Flood Insurance for the loan.
- k. If circumstances are such that adequate Federal Flood Insurance for the property is not obtainable or is available only at an exorbitant cost, you must prepare and place in the loan file a memorandum explaining the unavailability of coverage.

**9. Proceeds from Insurance Claims for Losses on Collateral.**

You must promptly deliver to, and have recorded by, the collateral cashier all insurance checks and drafts for loss or damage to collateral, which are presented to SBA for endorsement (including those presented by "walk-in" borrowers). The collateral cashier will notify the responsible loan officer. When borrowers request release of such insurance funds, the following instructions apply:

- a. Checks of \$10,000.00 or Less.

To release checks of \$10,000.00 or less, you do not need a 327 action.

The approving official should initial the check register and endorse the check if the loan is current and the funds are not a duplication of SBA benefits.

The loan officer should return the check to the borrower. A copy of the letter to the borrower (if used) and a copy of the check should be placed in the loan file.

- b. Checks in Excess of \$10,000.00.

In order for the Agency to treat disaster victims consistently during loan making and loan processing, different requirements apply for insurance checks that are for the same disaster as the SBA loan and dated within 3 years of final disbursement of the SBA loan.

- (1) Checks for the same disaster as the SBA loan and dated WITHIN 3 years of final disbursement:

You must complete a 327 action. A copy of the check should be placed in the loan file. The 327 action should document,

The loan is current or arrangements to cure any defaults have been made, and

The insurance proceeds do not duplicate SBA disaster loan funds.

- (2) Checks for the same disaster as the SBA loan and dated AFTER 3 years of final disbursement  
 and  
 Checks that are not for the same disaster as the SBA loan (e.g., house fire)

(a) 327 Action.

You must complete a 327 action. A copy of the check should be placed in the loan file. Your 327 action should document:

The loan is current or you have made arrangements to cure any defaults, and

The property has been repaired, restored or replaced or is excess to SBA's collateral needs. Usually, this can be accomplished by reviewing copies of paid bills or photographs of the property. A field visit should rarely be necessary.

Where the request is for the release of six figure funds replacing or repairing property, you may require documentation to ensure discharge of materialmen's or workmen's liens.

Note: You may refer to Chapter 2, page 2-1 to 2-4 for 327 actions in general.

(b) Monitor of Repairs.

Sometimes an insurance check will be submitted for endorsement before repairs are made. If there is reason to believe the repairs will not be made, repairs and disbursement of funds should be monitored if possible. This is usually done by a senior lien holder. If a lien holder will not monitor the funds, the borrower may arrange for a third party (attorney or escrow company) to act as an escrow agent. The check can be released to the agent, who will monitor repairs and disbursement of the funds. Or, the borrower may open a Federally insured savings account jointly with SBA. As repairs are made and invoices are presented for payment, SBA will notify the savings institution to release appropriate funds. This will allow the borrower to earn interest on the funds, and ensure that the repairs are made and paid for.

c. Paid in Full Loans.

When the loan is Paid in Full, you must promptly release any remaining balance of insurance funds.



## 10. Subordination of Collateral.

### a. What Is Subordination?

A subordination is when the SBA allows a new or existing loan to take a superior lien to the SBA loan.

### b. Guidelines for Subordinating an SBA Loan.

- (1) Generally, you may permit the subordination of the collateral for refinancing of senior liens if:

The refinancing is on more favorable terms for the borrower; and

There is no increase in the principal balance of the senior lien except for reasonable and customary closing costs of refinancing; and

There is no cash to the borrower.

You do not need to prepare a complete financial analysis for this type of subordination.

- (2) In order to avoid a hardship or to satisfy a legitimate need, it may become necessary to allow subordination to new money. This should occur only in instances where the borrower's SBA payment record is acceptable, credit reputation is good and SBA's loan remains secure. Ability and intent to maintain a responsible payment plan should be evident. This avenue should be utilized only after consideration of other available alternatives.

Avoid subordinating where the amount of senior liens becomes larger than it was at the time the loan was made.

- (a) If the use of the new money is to preserve SBA collateral and does not adversely impact the SBA security position (relatively modest dollar transactions), the subordination may be approved. An example of legitimate need is:

Uncompensated medical expenses.

- (b) Sometimes the size of the request is substantial and it is apparent that the borrower has a sound financial condition and has fully recovered from the disaster circumstance. These requests should be subjected to negotiation designed to develop a pay down of the SBA loan or should be denied. If the pay down is at least 50 percent of the SBA loan balance, you may consider subordinating to new money for almost any use.

NOTE: The purpose of the SBA disaster home loan is to assist the borrower in returning to a pre-disaster condition. Substantial upgrades, i.e. home improvements, are not in keeping with this purpose. When they are involved, you should not allow subordination.

c. Processing a Subordination.

The borrower submits a request as provided in chapter 4, paragraphs 3 and 4.

- (1) You must evaluate the request, analyze SBA's collateral position and recommend that the request be approved or denied.
- (2) You must work with counsel to prepare required subordination documents for execution by the borrower and the SBA.
- (3) SBA counsel must review all 327 actions involving subordination of SBA collateral.

## 11. Release of Collateral.

a. What Is a Release of Collateral?

A release of collateral is when the SBA releases its security interest or lien on collateral for the loan before the loan is paid in full. The request may be for a full release of all collateral or a release of only a portion of the collateral.

b. Guidelines for Processing a Release of Collateral.

Sometimes the collateral for a loan is in excess of what SBA needs. You may release any part of the collateral as long as what remains is sufficient to secure the loan.

Sometimes the original home is completely destroyed and the borrower chooses to rebuild at a different location. SBA regulations require a lien be taken on the disaster property as well as the relocation property. When the disaster property is sold, net proceeds (after payment of costs of sale and any existing prior liens) must be applied to the SBA disaster home loan in inverse order of maturity to avoid duplication of SBA benefits.

- (1) The borrower submits a request as provided in chapter 4, paragraphs 3 and 4.
- (2) You must review the documentation to ensure that it addresses the critical elements described in chapter 4, paragraphs 3 & 4.
- (3) You must make a credit decision involving the interests of the borrower and SBA. SBA should retain collateral coverage at an amount to protect the remaining balance of the loan.

- (4) You must work with counsel to prepare required release documents for SBA to execute.
- (5) SBA counsel must review all 327 actions involving release of SBA collateral if the loan is not paid in full.

## 12. Substitution of Collateral.

### a. What Is a Substitution of Collateral?

Substitution of collateral is when SBA takes a security interest in one piece of collateral and releases its interest in another.

### b. Guidelines for Substitute Collateral.

You may substitute collateral when the borrower uses all or part of the proceeds of the sale of the present residence to acquire a new residence. The SBA lien is transferred to the new property. The release should be concurrent with the substitution, or proceeds should be held in escrow pending a new lien. A second lien in substitution of a first lien is permissible if sufficient collateral value exists.

If the basic security position of the Agency is nearly the same on the new residence as on the old one, you may permit the substitution. In those instances in which proceeds of the sale provide the borrower cash in addition to that used to purchase the new residence, those proceeds should be applied, in inverse order of maturity, to the SBA disaster home loan.

In order to avoid a hardship or to satisfy a legitimate need, it may become necessary to allow "cash out" on a substitution of collateral. This should occur only in instances where the borrower's SBA payment record is acceptable, credit reputation is good and SBA's loan remains secure. Ability and intent to maintain a responsible payment plan should be evident. This avenue should be utilized only after consideration of other available alternatives. An acceptable reason for "cash out" is:

Uncompensated medical expenses.

NOTE: The purpose of the SBA disaster home loan is to assist the borrower in returning to a pre-disaster condition. Substantial upgrades, i.e. home improvements, are not in keeping with this purpose. When they are involved, you should not allow substitution of collateral. A substantial increase in senior liens on the purchase of new collateral over the senior liens on the existing collateral should not be allowed. Substantial would be an increase of the senior liens equal to 2.5 times the existing senior liens or SBA principal balance whichever is lower.

c. Processing a Substitution of Collateral.

The borrower submits a request as provided in chapter 4, paragraphs 3 and 4.

- (1) You evaluate the request, analyze SBA's collateral position and recommend that the request be approved or denied.
- (2) You must work with counsel to prepare required Substitution of collateral documents for execution by the borrower and SBA.
- (3) SBA counsel must review all 327 actions involving substitution of collateral.

**Assumptions.**

a. What Is an Assumption?

A loan assumption occurs when a person legally accepts liability for loan repayment and agrees to be bound by the terms and conditions of the original note, the loan authorization and agreement and related documents.

b. Guidelines for a Loan Assumption.

You may permit assumption of the loan by a prospective purchaser of the present residence at the interest rate and terms stated in the note and the loan authorization and agreement. The original obligors may be released if collateral values are maintained and the financial strength of the assumptor is at least equal to the borrower. A "due on sale and/or death" clause must be required as a part of the assumption process. The assumptor will therefore be prohibited from any future assumption. The assumptor should inhabit the property as a primary residence. This is generally limited to hardship situations only.

c. Processing a Request for Assumption.

The borrower submits a request as provided in chapter 4, paragraphs 3 and 4.

- (1) You must evaluate the request, analyze SBA's collateral position and the credit worthiness of the assumptor. Then recommend that the request be approved or denied.
- (2) You must work with counsel to prepare required assumption documents for execution by the borrower, the assumptor and the SBA.
- (3) SBA counsel must review all 327 actions involving assumption of the disaster home loan.

#### 14. Reinstatement of a Loan.

a. What Is a Reinstatement of a Loan?

Correction of a situation when a loan is mistakenly classified paid in full. This may or may not involve the release of collateral.

b. Guidelines for Reinstatement of a Loan.

There may be circumstances when a loan is mistakenly paid in full. Collateral should not be released. The loan should be reinstated as soon as possible. If a SBA Form 397 has been issued and the collateral has been released reinstatement should be referred to OFO Denver for action.

c. Processing a Request for Reinstatement.

The borrower submits a request as provided in chapter 4, paragraphs 3 and 4.

- (1) You must prepare a 327 action justifying the reinstatement and requesting that a check be issued to the borrower in the amount of the reinstatement. Be sure to state that interest accrual is to begin as of the date of the check. This will ensure the borrower is not charged interest during the period the loan was paid in full because the borrower did not have use of the money during this time.
- (2) Send a copy of the 327 action to OFO Denver.
- (3) You must work with counsel to prepare any legal documents needed.
- (4) SBA counsel must review all 327 actions involving re-instatement of the SBA loan.

#### 15. Paid-in-Full Loans.

You must release all collateral of any nature when a loan is paid in full, unless the collateral is pledged to secure another SBA loan.

SBA Form 397, Notice of Fully Paid Account (Appendix 3).

Upon receipt of Form 397, the collateral cashier should:

- (1) Stamp the note paid;
- (2) Prepare required documents to release any collateral;
- (3) Submit the release documents for signature of the approving official; and

(4) Forward these to the borrower.

Prior to receipt of Form 397.

- (1) Prior to receiving the Form 397, you may approve release of collateral if:
  - (a) Payment in full is by certified funds or cashier's check,
  - (b) Payment in full is by check from an escrow agent, if you are confident that no problems will be encountered in collecting any outstanding balance, or
  - (c) Payment in full by wire transfer from an escrow agent.

A 327 action is required for (a) through (c) above.

## **SERVICING ACTIONS TO CURE DELINQUENCIES**

The primary use of resources in loan servicing centers and offices should be in collection of delinquent accounts.

Collection efforts on loans at the earliest stages of delinquency should be standardized as much as possible. This is to allow use of maximum resources to those loans that become increasingly delinquent.

Standardization includes the development and use of increasingly emphatic collection letters. Loans delinquent more than 90 days, should be assigned to more experienced collectors.

You should attempt to contact, by telephone or letter, borrowers of all loans delinquent 10 days or more. The purpose of the contact is to make arrangements for the borrower to pay delinquent payments. If the borrower is unable to bring the loan current within a reasonable time, any of the actions in this chapter may be used to assist the borrower.

### **1. Deferments of Loan Payments.**

#### **a. What Is a Deferment?**

A deferment is the action that will allow the borrower to miss a payment(s) without classifying the loan as late or in default. The purpose of a deferment is to assist the borrower during a temporary financial set back.

You must not grant a deferment for the sole purpose of statistical reduction of your delinquency rate.

#### **b. Guidelines for Deferment of Payments.**

You may defer past due or future loan payments to the end of the loan. You should make the borrower aware that this will create a balloon payment due at the end of the loan term. You should not defer more than 6 months in the future. You must not defer more than one year of future payments in a single deferment.

Before you approve a deferment or an extension of a deferment, the borrower should provide you with financial statements. Deferments of delinquent payments and up to 6 months future payments may be made without financial documentation if:

The borrower makes a written request explaining the reason for the financial difficulty;

The reason given is reasonable; and

No deferments or reductions in payments have been granted previously.

You must not defer more than 5 years total on a single loan.

- (1) You should not extend the maturity of a loan each time a deferment is granted due to the paperwork, administrative detail and legal documentation needed to extend the maturity.
- (2) You must prepare a 327 action to defer loan payments. It does not require review by counsel.

NOTE: Special provisions are available to assist borrowers who suffer losses in a subsequently declared disaster. See paragraph 6 in this chapter.

c. Interest Accrual during a Deferment.

Interest accrues during the deferment period. You must inform the borrower that payments following the deferment period will apply to accrued interest first and then to principal.

d. Borrowers Called to Active Military Duty.

You should assist borrowers in adjusting their affairs in contemplation of military service. SBA does not have a policy to defer payments solely because a borrower enters the service. You should consider each case individually on the basis of the borrower's ability to continue payments on the loan.

The provisions of the **Soldiers and Sailors Civil Relief Act** may be applicable. See Appendix 4. Be particularly aware of Sections 526 and 590. If there are questions concerning its applicability, consult with counsel.

**2. Reducing the Amount of Loan Payments on a Temporary Basis.**

- a. You may reduce the amount of the borrower's loan payments to a fixed amount, for a limited period of time. In most situations, the reduction should be for no longer than 6 months. You should make the borrower aware that this will create a balloon payment due at the end of the loan term.
- b. The reduced monthly payment should be enough to cover accruing interest.
- c. You should not extend the maturity of a loan each time a deferment and/or temporary reduction in payments is granted due to the paperwork, administrative detail and legal documentation needed to extend the maturity.
- d. You must prepare a 327 action to temporarily reduce loan payments. It does not



require review by counsel.

### **3. Reducing the Amount of Loan Payments on a Permanent Basis.**

- a. You may reduce the amount of the borrower's loan payments to a fixed amount permanently if there has been a substantial change in the borrower's current and expected income. Examples of this are disability or retirement of the borrower. The borrower must provide complete financial information and documentation. You must make a thorough financial analysis and review of supporting documents.
- b. You must re-amortize the loan and ensure that the monthly payment is enough to pay the loan in full within 30 years of the date of the original note. A 5-year maximum extension beyond 30 years is allowed in workouts.
- c. You must prepare a 327 action to permanently reduce loan payments.
- d. You must work with counsel to prepare an amendment to the loan authorization and agreement if the maturity of the loan is extended.
- e. SBA counsel must review all 327 actions involving permanent reduction in loan payments if the maturity of the loan is extended.

### **4. Extending the Maturity of the Loan.**

- a. You may extend the maturity of the loan if the borrower is not able to pay off the loan balance at the original note maturity date because:
  - (1) The borrower received deferments.
  - (2) The borrower received reductions in loan payments.
  - (3) The loan was improperly amortized.
- b. You must submit the amendment to the note or loan authorization and amendment for SBA counsel review.
- c. No maturity date may exceed 30 years from the date of the original note. [Per CFR § 123.105]
- d. SBA can make exceptions to this maximum maturity only to facilitate orderly liquidation of the loan. In order to process such as exception, you must transfer the loan into liquidation status. Only the AA/FPO or designee has authority to approve such an exception. Prepare the 327 for the AA/FPO approval and obtain his or her approval before transferring the loan into liquidation.

## 5. Changing the Borrower's Interest Rate.

### a. Guidelines for Changing Interest Rate.

Under extreme hardship situations, the interest rate may be reduced (even retroactively) to as low as 0 percent. Complete financial analysis and documentation of hardship are required. You must work with SBA counsel to prepare the amendment to the note or loan authorization and agreement.

### c. Counsel Review of 327 Actions for Interest Rate Changes.

SBA counsel must review all 327 actions involving changes in interest rate.

## 6. Compromise Actions.

### a. What is the Authority to Compromise?

The SBA can compromise a debt (that is, it can accept less than the full amount owed on a debt) based on the authority contained in the following statutes and regulatory sources:

#### (1) Section 5(b) of the Small Business Act.

Section 5(b) of the Small Business Act gives the Administrator authority to effect compromise settlements.

#### (2) The Federal Claims Collection Act.

The Federal Claims Collection Act (31 U.S.C. 3701 and following) provides a means for settlement, adjustment, and compromise of claims by Federal agencies.

#### (3) 4 CFR §183.

4 CFR §183 prescribes standards for the compromise of claims under the Federal Claims Collection Act.

### b. What is the General Settlement Policy?

#### (1) Terms “compromise” or “settlement”.

The terms “compromise” or “settlement” can be used interchangeably or together to mean the resolution of a debt for less than the amount due through mutual agreement between debtor and SBA.

#### (2) Obligor does not have the ability to make full payment.

When it is known that the obligor does not have the ability to make full payment, it may be appropriate to settle for less than the full amount due. However, when the liability of the obligor is clear and the Government can collect fully without protracted litigation (or large unrecoverable expenses) there is little basis to settle for less than what is owed.

(3) Compromised/settlement amount.

It must bear a reasonable relationship to the estimated net present value of the projected amount of recovery available through enforced collection.

(4) Factors in assessing debtors' ability to pay.

- (a) Health and Life expectancy;
- (b) Local economic conditions;
- (c) Present and potential income;
- (d) Equity in pledged or reachable assets;
- (e) Possibility of assets being improperly transferred or concealed by debtor; and
- (f) Applicable exemptions available to debtor under State and Federal law.

(5) Debtor assistance.

Active cooperation by the debtor may have substantially enhanced recovery. This should be recognized in the settlement analysis.

(6) Benefits to others.

A compromise proposal, which may also benefit junior lienholders, is permissible when the benefits to the SBA are significant and there are no better alternatives.

(7) Prompt Action.

- (a) You need to initiate the compromise process within 3 months after a deficiency has been established.
- (b) The SBA Form 327 is to be completed promptly after receipt of the required materials necessary for consideration of the offer.

(8) Documented recovery efforts.

The file must show that efforts to realize recovery on the assets and to compromise have been made.

(9) Charge Off.

The Charge Off of an account having substantial equity in reachable assets is **NOT** an acceptable alternative.

(10) Compromise Attempt.

The SBA must attempt to reach a compromise settlement with obligors prior to commencement of foreclosure actions against their personal residences or the referral to DOJ for such actions. This is applicable in all cases no matter how the lien originated.

(11) Fraud or Misrepresentation.

(a) An offer in compromise cannot be accepted if the Agency has knowledge of fraud, substantial misrepresentation, or financial dishonesty on the part of the offeror.

(b) Settlement of claims involving these issues is reserved for the DOJ.

c. "Rule of Two" Authority.

(1) Loan officers must justify and explain compromise actions using standard SBA Form 327 format with appropriate supporting documentation indicating the benefit to the borrower and/or to the Agency. Legal involvement is required as indicated.

(2) Field Office staff in District offices, branch offices, Disaster Home Loan Servicing Centers, Santa Ana Disaster Loan Servicing and Liquidation Office, and Commercial Loan Servicing Centers may take the following actions by rule of two. (As explained in Chapter 2 Para 4, page 2-4.)

(a) Compromises of interest accrued or adjustment of interest rates:

Waiving any amount of accrued interest.

Retroactively reduce the applicable interest rate down to and including zero (no interest accrual) for any time period.

Reductions in interest rates for future time periods (limited or indefinite) down to and including zero (no interest accrual).

Review by counsel is required if loan documentation is altered.

- (b) The sale of notes, waiving all or a portion of the interest accrued (see below for adjustment of the principal balance).
  - (c) Negotiated sales of Colpur acquired through foreclosure proceedings consistent with state law (and Colpur with a market value of less than \$25,000 acquired through a deed in lieu of foreclosure) can be approved by rule of two. Legal review of the sale documentation is required.
  - (d) These procedures and authorities for the compromise of accrued interest or the adjustment of the interest rate also apply to “going business” loans.
  - (e) Legal review is required in order to permit comment on legal implications of the recommended action.
3. District Offices, Santa Ana Disaster Loan Servicing and Liquidation Office, by the rule of two, can approve compromises of principal amount of \$500,000.00.
    - (a) This authority level is determined by the principal amount forgiven rather than by the principal balance outstanding on the account. (For example, the net outstanding principal balance that would be remaining after the proposed compromise offer is applied to the current principal balance.)
    - (b) Legal review is required in order to permit comment on legal implications of the recommended action.
  4. Branch Office, by the rule of two, can approve compromises of principal amount of \$300,000.00.
  5. Disaster Home Loan Servicing Centers, by the rule of two, can approve compromises of principal amount of \$100,000.00.

**NOTE:** The authority noted in items 1 through 5 above also applies to the sale of a note or other evidence of indebtedness for less than the full principal amount due the Agency. Field offices must submit compromise recommendations (Rule of Two with comments of counsel) involving the forgiveness of outstanding principal more than of the above amounts to the Headquarters Claims Review Committee for final action.

6. District offices, branch offices, Disaster Home Loan Servicing Centers, Santa Ana Disaster Loan Servicing and Liquidation Office may approve compromises of any size recommended for acceptance by DOJ (including

“going businesses”) using the rule of two with legal concurrence for the following.

- (a) Compromises when obligors are in bankruptcy or in litigation under the administrative control of the Department of Justice.

U.S. Attorneys offices have been delegated authority to settle cases involving claims of \$1 million principal (plus any accrued interest) or less, if the referring agency concurs with the settlement.

- (b) For claims more than \$1 million, the approval of the Commercial Litigation Branch of the Civil Division, Department of Justice in Washington D.C., is required.

**NOTE:** If SBA disagrees with the U.S. Attorney’s decision on cases within the delegated authority, the matter must be referred to the Commercial Litigation Branch of the Civil Division, Department of Justice in Washington D.C. for resolution.

- d. What is the Headquarters Claims Review Committee (HCRC) and What Actions it can take?

- (1) This committee is comprised of:

- (a) Assistant Administrator for Portfolio Management (Chair).
- (b) Assistant Administrator for Financial Program Operations.
- (c) Director of the Loan Programs Division.
- (d) Associate General Counsel for Litigation.
- (e) Or Their Designees.

- (2) The Headquarters Claims Review Committee is authorized to:

- (a) Sell a note/loan or other evidence of indebtedness owed SBA for less than the principal amount due, upon majority vote of its members.
- (b) Compromise an Agency claim against a going business for any principal balance amount, upon majority vote of its members.
- (c) Release a claim against an obligor in any amount, upon majority vote of the members.
- (d) Hear reconsideration of any decision made by the HCRC, made by

the requester to the AA/FA.

- (3) Field offices must send these loans to HCRC along with their recommendations (rule of two) with comments of counsel.

e. What are the Compromise Procedures?

Early recognition, by all parties, that a compromise settlement is a likely occurrence can lead to greater borrower cooperation and a greater recovery from the business assets. The most knowledgeable person regarding the business assets is the borrower. An honest relationship between the liquidator and the borrower will go a long way towards avoiding unpleasant surprises and the eventual settlement of the debt. You must not make any promises to the borrower. Ordinarily, do not begin formal discussions before the business collateral has been liquidated.

- (1) Fact finding.

Once the business assets have been liquidated, you must obtain sufficient evidence to evaluate the obligor's ability to pay the remaining debt. Included are financial statements completed under penalty of perjury. Where it appears that the obligor cannot pay, give them an:

- (a) SBA Form 770, Financial Statement of Debtor.

- (b) SBA Form 1150, Offer in Compromise.

- (2) Hopefully, the compromise procedure will result in an amicable, reasonable and timely resolution of the obligation. You must not assume the obligor(s) know(s) the Agency procedures and must strive to make sure they:

- (a) Are aware of their continuing liability.

- (b) Are told a compromise settlement is a privilege, not a right.

- (c) Are advised that they must make full disclosure of all assets and liabilities and SBA reserves the right to make such confirmation or appraisals as it deems necessary, either directly or through third parties.

- (d) Understand the concepts of "ability to pay" and "recoverable through legal means" and convey to them our intent to arrive at a figure, which is reasonably comparable to the amount achievable, if enforcement action were employed.

- (e) Agree to a date for submission of the completed forms and

documentation.

## **7. Borrowers Who Suffer a Loss in a Declared Disaster.**

- a. Occasionally, SBA borrowers suffer additional loss as the result of events that lead to a disaster declaration. For the most part, the borrower can be adequately helped by judicious use of authorities delegated to you in this SOP (e.g., deferment, interest rate reduction, subordination, and extension of maturity).
- b. Borrowers who have suffered total or near total physical loss may require exceptional assistance. Such efforts are in keeping with the agency's disaster mission and may very likely enhance the prospects for recovering the existing loan. For such losses, you may take the following actions as appropriate and as described in the following sections of this paragraph.
  - (1) You may defer payments up to 6 months without review of the borrower's financial statements. The deferred period may retroactively start as of the date of the disaster and may subsequently be extended for up to a total of 12 months.
  - (2) You may waive interest during the deferred period.
  - (3) After the deferment period, you may adjust the interest to the lowest rate possible to provide the best opportunity for the borrower's survival and the agency's recovery. The adjusted rate may apply whether or not the borrower obtains a disaster loan.
  - (4) You may extend and balloon the loan's maturity consistent with the borrower's ability to repay without regard to the life of the collateral.

## **8. Claims Against Estates of Deceased Borrowers.**

You should file your claim against the estate of a deceased borrower. Use a 327 action to initiate the claim. You do not need to transfer the loan into "In Liquidation-Litigation" for the sole purpose of filing a Proof Of Claim (Comment: File anyway and let the estate deny).

### **a. Guidelines for Not Filing a Claim.**

You may approve not filing a claim by a 327 action if:

- (1) The deceased's passing has no adverse affect on the loan. The heirs agree to continue making payments;
- (2) The loan is current; and



- (3) The collateral is reasonably adequate to secure the remaining loan balance.
- (4) SBA counsel must review all 327 actions involving the decision to not file a proof of claim in probate.

Any decision not to file a claim must have supporting written documentation.

## 9. What Are CPC Expenditures?

### a. Recovering CPC Expenditures.

- (1) You can add CPC expenditures onto the principal amount of the loan. Interest is charged on this amount, as provided in the note.
- (2) You can ask the borrower to cover these costs out-of-pocket as part of the workout. This would allow the borrower to avoid interest accrual on these expenses.

### b. Examples of Typical CPC Expenses:

- (1) Abstracts of title or title reports for real property;
- (2) Title insurance on real property;
- (3) Recording fees; and
- (4) Real property and personal property appraisals.

### c. Processing CPC Expenditures for Payment.

- (1) You must prepare a 327 action (you can use a 327 stamp). The 327 must contain the following information:
  - (a) Itemization of the expenses to be paid, with the original invoice attached.
  - (b) A statement that the value of the expenditure to SBA's interests, warrants the expenditure.
  - (c) A classification of the payment as an advance or an expense.
  - (d) If the payment is an expense, whether it is a recoverable or non-recoverable expense.
  - (e) The delivery deadline for the payment, and whether the payment is

subject to the Prompt Payment Act (subject to interest if payment is not made within 30 days after proper invoicing).

- (f) The name of the payee and delivery instructions, for example, pay to SBA and send to SBA collateral cashier, or pay to the vendor and send to the vendor.
  - (g) Any other necessary information as discussed in this Chapter.
- (2) All requests for payment of CPC expenditures are processed electronically, through SBA's Fiscal Branch, Office of Financial Operations (OFO), Denver, Colorado.

## 10. **Placing a Loan "In Liquidation" or "In Litigation".**

You must prepare a SBA 327 action to place a loan in liquidation or in litigation. Your report must provide full justification for the action.

### a. When Must a Loan Be Placed "In Liquidation?" (automatic situations)

A loan **MUST** be placed "in liquidation" when:

- (1) Foreclosure Action by a prior lien holder or a lawsuit has been instituted against the borrower or obligor with respect to any collateral securing the loan and the Agency's interest may be adversely affected;
- (2) The borrower has filed a voluntary petition or an involuntary petition has been filed against him/her under the Bankruptcy Code; and
- (4) All or a valuable part of the collateral has been abandoned by the borrower.

### b. When Should a Loan Be Placed "In Liquidation" (judgmental situations)

A loan **SHOULD** be placed in liquidation when:

- (1) All reasonable alternatives to collect the debt have been exhausted;
- (2) The borrower cannot, or will not, repay the debt on reasonable terms;
- (3) The collateral is clearly in serious danger of being dissipated; or
- (4) Any other circumstances, which may substantially and adversely affect the Agency's position (lawsuit by a junior lien holder, etc.).

### c. When Must a Loan Be Placed "In Litigation?"

An account **MUST** be classified as "in litigation" when:

- (1) There are insolvency proceedings, such as bankruptcy.
- (2) A lawsuit has been instituted against a borrower or other obligor who may have a substantially adverse effect on the Agency's position.
- (3) SBA has been named a party defendant in a suit that may substantially harm the Agency's position.
- (4) The Agency must pursue judgment or otherwise enforce its lien through litigation.

d. When Should a Loan Be Placed "In Litigation"?

When legal action appears necessary to effect further recovery or to protect the position of SBA, the recommending official must classify the loan "in litigation." Unsecured loans in liquidation status will be transferred to district offices or the Loan Liquidation Center with a recommendation for transfer to the Department of Justice for litigation against the borrowers and guarantors, if appropriate.

e. Placing a Loan in Litigation.

A loan is to be placed "in litigation" by use of a 327 action. The recommending official can classify it "in liquidation" and "in litigation" on the same 327 action. Secured loans in liquidation status will be transferred to district offices or the Loan Liquidation Center with a recommendation for transfer to the Department of Justice for litigation against the borrowers and guarantors after collateral is liquidated and full recovery is not achieved, if appropriate.

f. Counsel must review 327 actions that place a loan in litigation.

**11. Removing a Loan from In Litigation and In Liquidation.**

a. Removing a Loan from "In Litigation".

When the litigation matter is complete or a determination is made that further legal effort would not be warranted or justified remove the loan from "in litigation" status.

b. Removing a Loan from "In Liquidation".

An account can be returned to servicing by use of a 327 action, when the situation that classified a loan as "in liquidation" has been resolved or has been restructured or re-amortized by:

- (1) A workout plan,

- (2) A term compromise agreement,
- (3) A judgment has been obtained, and
- (4) At least 3 monthly payments made, if financial statement is obtained. If no financial statement is obtained require 6 monthly payments before waiving financial requirements, as agreed.

Once the loan is returned to servicing, it should be monitored to ensure any agreements reached in liquidation are kept.

## CHARGE OFF PROCEDURES

### 1. SBA Policy Regarding Charge Off Accounts.

SBA's policy is to be diligent and thorough in its collection of debt and to promptly charge off all uncollectible accounts. The charge off status will more accurately reflect the status of the individual account and the Agency's entire portfolio.

### 2. Effects of Charging Off a Loan.

Charge off is the process by which SBA recognizes a loss and removes the uncollectible account from its active receivable accounts. A charge off does not affect SBA's rights to collect the loan from the borrower and does not reduce SBA's ability to proceed with any available remedy.

### 3. Determining When a Loan May Be Charged Off.

You may justify a charge off based on one or more of the following:

- a. All efforts have been exhausted to collect from:
  - (1) The borrower,
  - (2) Liquidation of Collateral,
  - (3) Compromise with the borrower, and
  - (4) Legal remedies available.
- b. Estimated costs of future collection exceed anticipated recovery.
- c. Borrower cannot be located or is judgment proof.
- d. SBA's rights for debt collection have expired (e.g., statute of limitations, restrictions of state law, and Agency policy).
- e. Chapter 7 (No Asset) Bankruptcy has been adjudicated.
- f. Inability of SBA or private sector collection efforts to effect further worthwhile recovery.

**4. Determining When a Loan Cannot Be Charged Off.**

- a. You cannot charge off a loan if:
  - (1) You are receiving regular loan payments as outlined in the note or a payment plan,
  - (2) The loan is secured with real estate or mobile home, and
  - (3) The loan has been referred to the Department of Justice for enforced collection.

**5. Procedures for Charging Off a Loan.**

- a. You must prepare a 327 action that reflects the following:
  - (1) Identity of every borrower's documented financial condition;
  - (2) Collection efforts;
  - (3) Results of asset search/credit bureau report; and
  - (4) Efforts to compromise the debt and the results.
- b. You must indicate on the 327 whether the loan should be referred to IRS and collection agencies.
- c. Counsel must review and comment on the 327 action.

For secured loans only. If such review cannot be completed within 30 days, or if counsel determines that additional recovery would be possible through legal action, the case will be transferred into litigation status and will become the responsibility of counsel except for normal support provided by loan servicing personnel.

- d. You must place the loan in liquidation.

## **WHEN SBA WILL DISCLOSE LOAN INFORMATION TO A REQUESTER**

### **1. What Is SBA's Policy Governing Disclosure of Information About SBA's Loans?**

#### **a. General Guidance.**

SBA has very specific policies and guidelines about disclosing information about our loans and loan programs to the public.

- (1) You should review those policies before you disclose any information to anyone.
- (2) You also should consult with SBA counsel in any situation where you have a question about whether you should disclose information.

#### **b. Regulations and Policies.**

- (1) SBA's regulations at 13 C.F.R. Part 102 (effective February 28, 1996);
- (2) SBA's policies at SOP 40 03, "Disclosure of Information" (Freedom of Information Act); and SOP 40 04, "Privacy Act Procedures".

#### **c. General Policy.**

SBA's policy generally is to disclose as much information as possible to the public, under the "openness in Government" policy in the Freedom of Information Act (FOIA). However, there are laws that prohibit you from disclosing certain types of information. That is why it is very important to be familiar with SBA's policies in this area, and to consult with SBA counsel for guidance.

### **2. Types of Information That Generally are Available to any Requester Under the Freedom of Information Act (FOIA).**

You may disclose some types of information about SBA's loan programs, or in a loan file, no matter who requests it. Examples of this information include:

#### **a. Official SBA policies, decisions, and forms, including:**

- (1) Standard Operating Procedures (SOPs).

- (2) Opinion Digest.
- (3) Size decisions (business loans).
- (4) SBA's annual reports.
- (5) SBA Forms and publications.
- (6) Addresses and telephone numbers of SBA offices.

**b. Some information about individual loans, including:**

- (1) Name of a SBA borrower (**EXCEPT for Disaster Home Loan borrowers**).
- (2) Original amount of the loan.
- (3) Type of loan (e.g., disaster, etc.).
- (4) Business mailing address of a borrower (**EXCEPT for Disaster Home Loans**).

**c. Information that is a matter of public record, for example:**

- (1) Recorded mortgages, deed of trusts, fixture filings, and financing statements (UCC-1).
- (2) Pleadings and documents already filed with a court.

**d. Statistical information about SBA's loan portfolio, as long as you do not identify specific loan names, for example:**

- (1) Number of loans in default status.
- (2) Number of loans made to a particular city, county, or state.

**3. Types of Information That Generally is "Not" Available to any Requester.**

You must NOT disclose the following types of information, no matter who the requester is:

**a. SBA's internal records which show SBA's decision-making process, for example:**

- (1) 327 actions.
- (2) SBA counsel's legal opinions and comments.



- (3) Letters between SBA personnel and personnel from another Federal agency.
- (4) Letters and memorandums between SBA personnel.
- (5) Loan officer reports.

**b. Some information about individual loans, for example:**

- (1) Status of the loan.
- (2) Racial/ethnic status of the borrower.
- (3) Gender of the borrower.

**c. Information about a civil or criminal law enforcement investigation or prosecution, for example:**

- (1) Information which formed the basis for a referral to the Inspector General.
- (2) Written reports made by a SBA employee to the Inspector General.
- (3) Any information prepared by a SBA employee in support of an Inspector General investigation.

**d. Information SBA has received from another Federal agency.**

You should direct the requester to that other agency, in this situation.

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

**a. Who is the requester?**

- (1) Where borrower is the requester;
  - (a) You may give out any of the types of information allowed in this Chapter.
  - (b) If the requester wants some other information, use the guidelines in this Chapter.
- (2) Where some other entity is the requester, generally, you must consider the request to be subject to FOIA. However, SBA handles requests from the following entities in special ways:

- (a) Congress.
- (b) Federal and State agencies.
- (c) Law enforcement personnel.
- (d) SCORE volunteers.

For these types of requests, you must consult with SBA counsel or the appropriate FOIA officer for assistance in responding to the request.

**b. Does the request have to be in writing?**

- (1) If the request is subject to FOIA, then:
  - (a) The request must be in writing.
  - (b) The requester must be reasonably specific in describing the records he or she wants.
  - (c) The requester must state that he or she is asking for the information under FOIA.
- (2) You should advise the requester of these requirements, if the requester asks for information over the telephone.
- (3) Pursuant to the Electronic Freedom of Information Act Amendments, the requestor can obtain a response in electronic format, if available.

**c. Does the requester have borrower's written authorization to have access to the borrower's loan file?**

- (1) FOIA requires that SBA give advance notice to the borrower, before disclosing any of the borrower's business information contained in the loan file in response to a FOIA request for that information.
- (2) Where the requester wants BUSINESS information about a borrower, it is very helpful (but not required) if the requester has the borrower's written permission. This will eliminate the need for SBA to ask the borrower whether he or she objects to disclosure of the information requested.

Examples of business information are:

- (a) Business tax returns and financial statements.
- (b) Loan applications.

- (c) Business credit reports.
- (3) Where the requester wants PERSONAL information about a borrower, you must NOT disclose this information unless you have the borrower's written permission.

Examples of personal information are:

- (a) Personal tax returns and financial statements.
- (b) Home addresses.
- (c) SBA credit history.
- (4) If the requester is the borrower's attorney, you should ask for the attorney to advise you in writing that he or she represents the borrower.

**d. Is the loan file covered by the Privacy Act?**

- (1) Penalties for disclosure of information in a file covered by the Privacy Act:
  - (a) If the file is covered by the Privacy Act, you could receive a misdemeanor criminal conviction and/or up to a \$5,000 fine if you knowingly disclose information in that file.
  - (b) In order to avoid these potential penalties, you must be sure whether the loan file the requester wants is covered by the Privacy Act.
- (2) How do you find out whether a file is covered by the Privacy Act?
  - (a) Generally, files covered by the Privacy Act are files which are filed under an individual's name or social security number.
  - (b) SBA must designate specific categories of its files as covered by the Privacy Act. Examples of files which SBA currently has designated as covered are:
    - (i) Disaster Home Loan files.
    - (ii) Official Personnel Files (OPFs).
    - (iii) Litigation Files.
  - (c) If you have any doubt about whether a certain file is covered, check with SBA counsel.

**e. Is the loan "in litigation" status?**

If a loan is "in litigation" status, you must consult with the SBA attorney assigned to the case before you disclose any information about the loan to any party.

**f. Should you consult with SBA counsel?**

It is a good idea to consult with SBA counsel if you have any doubt about whether it is okay for you to disclose any information to any party. That way, you will avoid any criminal or civil penalties, or any disclosure of confidential or privileged information.

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

**a. You should consult with SBA counsel before you accept delivery of any subpoena directed to you personally or to SBA generally.**

- (1) There should be a procedure in your office about who is supposed to accept service of process of any subpoenas or summons that are delivered to your office.
- (2) If there is no such procedure, you must consult with SBA counsel before you sign for delivery of any subpoena or summons.
- (3) If there is no on-site Counsel, sign for delivery of the subpoena or summons and notify SBA Counsel as soon as possible.

**b. You must advise SBA counsel immediately after you receive a subpoena.**

- (1) If you receive any subpoena that asks for records or for your testimony, you must advise SBA counsel immediately.
  - (a) In some situations, the time period for court filing deadlines starts from the date you received the subpoena.
  - (b) If you do not deliver the subpoena to counsel immediately, SBA might miss a court deadline. You could harm SBA's interests in some court proceedings.
- (2) SBA policy requires SBA counsel to review every subpoena where SBA is not a named party in the lawsuit. [See 13 C.F.R. § 102.12 (effective February 28, 1996).] In all cases, SBA counsel must determine if SBA will comply, or may refuse to comply, with the subpoena.

**c. You must cooperate in complying with a subpoena, if SBA counsel approves compliance with the subpoena.**

Your cooperation may include:

- (1) Assisting counsel in gathering SBA records to respond to the subpoena.
- (2) Testifying in a State or Federal court proceeding.

- d. You must promptly furnish to Counsel to the Inspector General a copy of any subpoena issued pursuant to criminal proceeding, as required by the provisions of 13 C.F.R. § 102.12.**

## **REFERRAL OF IRREGULARITIES TO THE OFFICE OF INSPECTOR GENERAL**

### **1. What is SBA's Policy Regarding Referrals to the Office of Inspector General?**

- a. SBA's policy is that SBA employees must report immediately to the Office of Inspector General (OIG) any known or suspected misconduct or irregularities committed by any SBA employee or any non-SBA party.
- b. The ultimate purpose of the IG referral process is to protect and maintain the integrity of SBA's programs.
- c. Under the Inspector General Act of 1978, as amended, employees have the right and authority to report matters directly to the OIG, without the necessity for prior supervisory approval. Referrals can be made confidentially or anonymously and there are whistleblower protections available to employees.

### **2. What Matters must you refer to the OIG?**

#### **a. Irregularities committed by any non-SBA party in connection with a loan.**

You must immediately advise the OIG if you become aware of actual or suspected irregularities committed by persons other than SBA employees, for example:

- (1) Misrepresentations, fraud, and false statements committed by an applicant, borrower, guarantor, or participating lender, or by any of their agents, attorneys, or representatives.
- (2) Irregularities involving the collateral for SBA transactions, or the proceeds from the collateral.
- (3) Misuse of loan funds or any other funds in which SBA has an interest.
- (4) Any conduct which is the subject of an investigation being done by another Federal, State, or local agency, for example, the Federal Bureau of Investigations (FBI) or the local police department.

#### **b. Improper conduct by SBA employees.**

You must immediately advise the IG if you become aware of actual or suspected improper conduct by any SBA employee, for example:

- (1) Bribery.
- (2) Violations of any local, State, or Federal law in connection with SBA's programs and operations.
- (3) Violations of any rule or regulation involving SBA's programs and operations.

**c. OIG Audits.**

The OIG conducts audits of internal Agency functions and of participants in SBA programs to promote the economical, efficient, and effective operation of SBA programs, and to detect and prevent waste, fraud, and abuse. Audits give SBA managers an objective and systematic assessment of how well their offices are carrying out their SBA-related programs and operations. The audits assess operations in terms of the economical use of resources, adequacy of management systems and procedures, adherence to program requirements, and the extent to which SBA's mission is being fulfilled.

You may request the OIG to conduct an audit of internal Agency functions, if you believe that SBA is not functioning economically, efficiently, or effectively. If you suspect violations, irregularities, or non-compliance by participants in the disaster loan program, you may also request an audit of one or more participant.

**3. How to Refer a Matter to the OIG?**

**a. Make a telephone report to the OIG.**

- (1) The OIG encourages SBA employees to report improprieties first by making telephone contact with them.
- (2) You must report the suspected impropriety by telephone, to the Special Agent in Charge (SAC) of Investigations with responsibility for your geographic area, or to the Inspector General Hotline (See your SBA Telephone Book).
- (3) The OIG representative will listen to the facts of the situation that you describe, and will usually advise you within 24 hours whether the OIG will pursue. The OIG may do a limited investigation/records search in order to make this decision.
- (4) If the OIG decides to conduct an investigation or needs further information, the OIG will ask you to prepare a written referral.

- (5) If you are initially requesting an audit, you may call the OIG Auditing Division (see your SBA Telephone Directory).

**b. Prepare a written referral, if requested by the OIG.**

- (1) If the OIG requests that you submit a formal referral for investigation, you must prepare a written referral for submission to the SAC with responsibility for your geographic area.
- (1) You may discuss the matter with your supervisor and/or SBA counsel prior to or as part of your referral. Often, this will be a good idea, especially when the suspected impropriety involves an outside party and may affect more than one program or loan. However, you are not required to do so.
- (2) If the OIG requests a formal referral for an audit, you must prepare a written referral for submission to the OIG, Auditing Division, Washington Office Center, 409 Third Street SW, Washington, DC 20416.

**4. What is the Format and Content of a Written OIG Referral?**

**a. Written Referral Format.**

Your written referral should contain as many of the following elements as possible; however, the absence of some of them should not hinder you from making the referral.

- (1) A brief heading to identify the matter you are reporting, for example, misrepresentation, missing collateral, or possible conversion of collateral.
- (2) The complete name and address of the borrower or subject of the report.
- (3) The Social Security number, tax identification number, date of birth (or approximate age) of the borrower or subject of the report, if known.
- (4) The loan, grant, contract, or transaction number, if any.
- (5) A brief statement of the nature of the suspected irregularity, including the approximate date the incident occurred.
- (6) A brief statement of the factual basis for the report.
- (7) A brief statement of significant actions taken to date and the current status.
- (8) The estimated dollar value involved, if known, and the basis for the estimate.



- (9) If the irregularity concerns a loan application, indicate whether the loan was approved or declined, and the date of this action.
- (10) If the irregularity or misconduct concerns an approved loan:
  - (a) The name, address, and tax identification number of the borrower and guarantor(s).
  - (b) The loan number.
  - (c) The amount and date of the loan approved and dates of disbursements, if any.
  - (d) The balance due.
  - (e) If the loan is delinquent, for how long.
  - (f) The participating lender's name, address, and percentage of participation.
  - (g) Attach a copy of the loan officer's report.
- (11) If the borrower is not directly involved in the suspected irregularity, state the subject's personal or business relationship with the borrower, participating lender, contractor, or surety.
- (12) A brief statement as to whether the matters reported adversely affect SBA, any of SBA's employees, the loan applicant, the borrower, the participant, the contractor, or other claimant.
- (13) If the irregularity or misconduct concerns collateral:
  - (a) Last known location of the collateral.
  - (b) Best available description of the collateral, including identification/serial numbers.
  - (c) Estimated value of the collateral at date of loan application, and at date of sale or other disposition (cite these dates specifically).
  - (d) Any known details about the disposition of the property and/or the proceeds from the property.
  - (e) Any explanation given by the borrower or other parties involved in the disposition of the property.
  - (f) Any actions taken by SBA personnel to locate and recover the

property, and the results of these actions (business loans only).

**b. Supervisory Review.**

You are NOT required to obtain supervisory review and clearance of any referral. You may obtain supervisory review and counsel comments, if you want.

**c. Supplemental Reports.**

If you discover new or additional information about a matter which you already have referred to the OIG, send the OIG a supplemental report about this information.

**5. What Happens After you Refer a Matter to the OIG?**

**a. OIG Investigation.**

The OIG may choose to conduct an investigation into the particular matter you referred. The OIG may also investigate the effect that the matter referred may have on a wider scale, for example, in other SBA offices, in other SBA loans made by the same participating lender, etc. The purpose of the investigation is to discover any violations of regulations or laws. If the OIG discovers any such violations, the OIG may refer the matter to the U.S. Attorney's Office for criminal or civil prosecution, or may use the information to help SBA maximize recovery on a loan.

**b. OIG Audit.**

- (1) The OIG may choose to conduct an audit of, for example, a participating lender, an SBA office or division, or an SBA program. In this context, the OIG will be looking for regulatory and policy violations or problems.
- (2) The OIG would use this information to make suggestions to the appropriate SBA program management officials for how to improve administration of the program, or to decide whether the situation warrants an OIG investigation.

**c. OIG Referral to the U.S. Attorney's Office, Affirmative Civil Enforcement (ACE) Division.**

- (1) The ACE Division of the U.S. Attorney's Office is responsible for enforcing Federal statutes and regulations through civil law enforcement proceedings.
- (2) The Government can obtain monetary damages through such proceedings. This sometimes includes treble damages (the amount of the loss to the Government is tripled).

- (3) Civil enforcement proceedings can occur simultaneously with criminal prosecutions.

**d.    **OIG Referral to the U.S. Attorney's Office, Criminal Division.****

The Criminal Division of the U.S. Attorney's Office is responsible for enforcing Federal criminal laws, through criminal law prosecutions. Parties prosecuted under criminal laws are subject to incarceration and/or monetary fines.

**6.    **What are Your Ongoing Responsibilities after You Have Referred a Matter to the  
OIG?****

**a.    **Protect SBA's interests and maximize recovery on the loan.****

- (1) After you have made a referral to the OIG about a particular loan, you still are responsible for taking appropriate and timely action on that loan. You still must protect SBA's interests and maximize recovery on the loan.
- (2) Some actions you want to take on the loan or about a participating lender may interfere with an OIG investigation in progress, or prejudice a criminal proceeding.

In order to avoid any harm to SBA's interests in these matters, you must:

- (a) Consult with your OIG representative before taking any action on the loan, for example, before deferring loan payments on a loan.

**You should consult with the OIG representative before you even advise any non-SBA party of the existence of an OIG investigation into a particular matter. Giving this information to the subject of an investigation would tip them off and could interfere with the investigation.**

- (b) Defer to any instructions the OIG representative gives you, with respect to the action you want to take.
- (c) Maintain close contact with the OIG representative so that you will be aware of the status of the investigation or litigation proceeding. This will enable you to make informed decisions about the actions you should take on the loan or loan program.

**b.    **Coordinate with SBA counsel where U.S. Attorney's Office is involved.****

- (1) When SBA already has referred a loan to the U.S. Attorney's Office, for debt collection or otherwise:

You may still make your referral directly to the OIG representative, without going through other SBA personnel. You should, however, advise the OIG that the debt collection referral has been made.

## 7. What are Areas That Commonly Generate OIG Referrals?

### a. Missing or converted collateral.

- (1) You must refer to the OIG, any missing or converted collateral valued at more than \$5,000. You may refer any missing or converted collateral valued at \$5,000 or less, if you have any facts indicating that the collateral was stolen, converted, vandalized, or otherwise wrongfully disposed. You should make a referral even where you think that the circumstances do not show that any party had the motive to convert the collateral. The OIG is responsible for determining whether the circumstances warrant an investigation.
- (2) The Small Business Act prohibits converting, disposing of, concealing, or removing collateral securing a SBA loan. The U.S. Attorney's Office ACE unit can prosecute any violation of this law. The ACE unit may be able to get up to a \$5,000 fine and up to a 5-year jail term for the violator.

### b. Missing borrowers or guarantors ("skips").

You may refer to the OIG, any situation involving missing obligors or guarantors, after local efforts to locate the individual have failed. The OIG can run various information searches to assist you in locating the person. An example of this situation is where the borrower or guarantor is missing, and the loan funds are missing or absconded. In this situation, the OIG may be able to issue an arrest warrant for the missing person.

### c. Felony arrests and convictions of a borrower or guarantor.

You may refer to the OIG, Office of Security Operations, any situation where you discover that a party to the loan transaction has been arrested or convicted for a felony. The OIG can run a criminal records check.

- (1) An example of where some violation of law might exist is where the criminal records check reveals a past criminal history for the borrower. If the borrower did not report this information on his or her loan application forms, this omission would constitute a misrepresentation to the Government, and possibly also fraudulent inducement of SBA to approve the loan. In addition, the OIG has discovered a correlation between past criminal history and failure to repay loans.
- (2) The OIG also might discover criminal activity which is under the purview of other agencies, for example, the Immigration and Naturalization

Service (INS), the Drug Enforcement Agency (DEA), or the Internal Revenue Service (IRS). The OIG may refer such matters to other Federal agencies, where appropriate.

## LOAN COLLECTION MONITORING & REPORTS

### 1. General Guidelines for Loan Collections.

You are responsible for the collection of SBA serviced loans. You must request that the borrowers submit their loan payments to either a lock box or OFO Denver. You should request and encourage that borrowers agree to have their payments debited from their bank accounts through Pre-Authorized Debits (Appendix 2). OFO will advise you if the borrower's payment by check is rejected in which case you must contact the borrower for replacement payment.

### 2. Computer Databases For Loan Collection Status.

To assist you in monitoring borrower loan approvals, disbursement, payment activity and status, SBA maintains a database accessible from your local computer terminal. It is available through the Portfolio Management Query Display (PMQD) screens. The index of these screens is displayed by entering PMQD00.

The following is a description of the loan collection status screens most commonly used in loan servicing:

#### a. SBA Serviced Loans.

You can retrieve the current loan payment status for a SBA serviced loan from your computer terminal through the PMQD screens.

- (1) PMQD09 displays the date of last payment, amount of principal and interest to be paid, date of next payment due and other loan information that may be helpful in collecting the loan payments.
- (2) PMQD11 displays the history of loan payments made and the application of the payments to principal and interest.

### 3. Reporting of Delinquent Loans.

#### a. SBA Serviced Loans.

Each Monday morning, from your "Reports Menu", your office may designate an individual to print out the following reports covering all of your delinquent loans:

- (1) Collector Reports

(These reports list each loan in descending order of delinquency and

provide the number of days since the last collection call was made to the borrower):

- (a) LCAW40XX\* Lender Serviced XGP Loans (You should not have any of these).
- (b) LCAW50XX\* SBA Serviced Business Loans (You should not have any of these).
- (c) LCAW60XX\* Disaster Farm Loans (You should not have any of these).
- (d) LCAW70XX\* Disaster Home Loans.
- (e) *LCAW55XX\* All SBA Serviced Loans at both the District and the Servicing Center.*

(2) Supervisor Reports.

(These reports provide the supervisor with summary information regarding the status of their offices portfolio and the level of collection activity by the office's collectors):

- (a) LCAW41XX\* Lender Serviced XGP Loans.
- (b) LCAW51XX\* SBA Serviced Business Loans.
- (c) LCAW61XX\* Disaster Farm Loans.
- (d) LCAW71XX\* Delinquent Disaster Home Loans.
- (e) LCAW30XX Delinquent Disaster Home Loan
- (f) LCAW31XX DLCS Weekly Que Statistics.
- (g) PMCW05XX\* AMS Weekly Statistic Report.

XX\* = To be replaced by the last two digits of the

Office Code nu

**4. Basic Steps in the Loan Collection Procedure.**

**a. SBA Serviced Loans.**

(1) Assigning Past Due Accounts for Follow-up.

Delinquent accounts can be assigned to collectors by Group Codes. Under this system, you would be responsible for collecting all loans in a

particular Group Code.

Delinquent loans can also be assigned to a collector by "Days Delinquent". Examples are "10 to 30", "31 to 60", "61 to 90" and "90 and over". Under this system, the more experienced collector would work the seriously delinquent loans.

(2) The Delinquent Loan Collection System (DLCS).

The DLSC is an on line system providing access to loan collection information on SBA's central mainframe. The Loan Servicing Supervisor may automatically set priorities, group, and distribute the office's portfolio of delinquent accounts.

In the DLCS screen, you may bring up delinquent loans by loan number or use a function key to bring up "next in Que". It is more efficient to use the "next in Que", because the most serious delinquent loans are brought up first.

There are auxiliary displays to help you from the logon/menu and collection status screen via function code and function key entries. These screens provide information relating to prior collection methods, payment history and loans worked/not worked during the collection cycle.

Complete instructions on operating the DLCS are available on the SBA internal bulletin board system (for access assistance, contact your local OIRM).

(3) Placing the Call to the Borrower.

You are responsible for the collection of delinquent loans. You will be the first contact with these borrowers and it will be up to you to determine why the borrower is unable to make the required payment. Do not be afraid to ask questions. The problem may be temporary or it could be a problem necessitating a loan modification, e.g. deferment, temporary payment reduction, due date change, or modification of the repayment schedule. For such modifications, refer to the guidance in Chapter 2 of this SOP.

When calling a delinquent borrower, you are to remain polite and courteous at all times. Don't be afraid to ask questions (e.g. "According to our records your loan is past due... When will you be able to send the past due payment(s)?" "Are there some particular problems that are preventing you from making your monthly payments?", "Is there some way that SBA might help you?") Contact borrowers by telephone as soon as their loan becomes past due and contact all past due borrowers weekly.



(4) Sending Automated Collection Letters to Borrowers.

Once you have logged into the DLSC System for a specific loan account, enter the "Action/Update Screen" by pressing the "F-2 key". Once in the menu, tab down to "ACTION CD" and enter "AR". Then tab the "AMS MENU?(Y/N)" and enter "Y". This will enter you into the AMS Letter Directory. Each letter is identified by a number code. (010, 020, 030, etc). Select the appropriate letter by its number code. The letter will appear in the screen. Enter the required information and then tab to the "XMIT section". Transmit! You then will be returned to the main screen. Under "Collection Comments" the letter code will appear. (010, 020, 030, etc)

**5. Recording the Results of a Call in the Delinquent Loan Collection System (DLCS).**

- a. Recording in the DLCS of all calls and other correspondence with borrowers, lenders and CDCs is critical to effective loan servicing. This is especially needed in light of the transfer of files between field offices and servicing centers.
- b. Before you start making any calls on delinquent loans, you must log in to the DLCS System. To record your conversation with a borrower, lender or CDC, press "F-2 key" and this will bring you to the ACTION/UPDATE screen. Tab the "Action CD" (code). Enter Action Code. Tab to "Result CD" (code). Enter correct "Result Code." Tab to "Comment". Enter brief statement covering conversation, e.g. "Called bwr prom to mail 1 pmt on 4/21 and will mail April pmt on 5/5." Then transmit.

# APPENDIX 1

## SBA FORM 327, MODIFICATION OR ADMINISTRATIVE ACTION

MODIFICATION OR ADMINISTRATIVE ACTION (For Inter-Office Use Only)		2. Loan Approval		5. Servicing Office No.													
<b>SECTION A - IDENTIFYING DATA - Prior to this Action</b>		Date _____		6. Classification:													
1. Name (incl. trade) and Address (incl. ZIP):  Borrower/ Lessee		Gross _____		Current <input type="checkbox"/> Delinq. <input type="checkbox"/> Col. Pur. <input type="checkbox"/>													
		SBA Sh. _____		In. Liq. <input type="checkbox"/> Chg. Off. <input type="checkbox"/>													
Partic. <input type="checkbox"/> (Name and Address): SBC <input type="checkbox"/> Lessor <input type="checkbox"/>		SBA Part % _____		7. Delinquencies: No. Payments _____													
		3. Type		Total Amt. _____													
		<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px;">D</td> <td style="width: 20px;">IP</td> <td style="width: 20px;">G</td> <td style="width: 20px;">X</td> <td style="width: 20px;">L</td> </tr> <tr> <td></td> <td></td> <td></td> <td>GP</td> <td>G</td> </tr> </table>		D	IP	G	X	L				GP	G	8. Loan Balance			
D	IP	G	X	L													
			GP	G													
		Bank Serviced _____		\$ _____													
		SBA Serviced _____															
		Date - XGP Purch. _____		9. Appraised Date _____													
		4. Disbursement: (Gross)		By Whom: _____													
		1st _____		10. Values (\$000):													
		Last _____		All Col. or Col. Pur. _____													
		Tot. Amt. _____		Prior Liens _____													
		Fully Disbursed? <input type="checkbox"/> YES <input type="checkbox"/> NO		11. Maturity Date: _____													
a. Loan/Case No. _____		b. This Action No. _____		<b>REFERENCE OFO CHANGES ONLY</b>													
c. Report Date: _____				5. Redesignate Servicing Office _____													
				6. Revise Instal. Type (Enter F, P, or X) _____													
				Revise Instal. Freq. (Enter M, Q, S, A, or X) _____													
				<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td>J</td><td>F</td><td>M</td><td>A</td><td>M</td><td>J</td><td>J</td><td>A</td><td>S</td><td>O</td><td>N</td><td>D</td> </tr> </table>		J	F	M	A	M	J	J	A	S	O	N	D
J	F	M	A	M	J	J	A	S	O	N	D						
<b>SECTION B - INSTRUCTIONS TO COMPTROLLER - For this Action</b>		<b>COMPTROLLER USE ONLY</b>		43-5													
1. Charge off Loan (Enter 416) _____		Revise Instal. Amount _____		55-6													
2. Re - establish Ch - Off (Enter 410) _____		Revise Next Instal. Due Date _____		63-6													
3. Terminate Gly. Loan (Enter F or V only) _____		Revise Maturity Date _____		69-7													
Effect Date Gly. Loan Term. _____		If above revised installment amt. is temporary,															
4. Approval Amount _____		Future Instal. Amount _____		35-4													
Code _____		Future Instal. Due Date _____		77-7													
Increase Gross by + _____		7. Issue New Repay cards to Bor. (Enter 00) _____		11-1													
Incr. SBA Sh. by + _____		Transfer Loan to In-Liquid, (Enter 436) _____		11-1													
Reduce Gross by - _____		Trans. Loan from In-Liq. to servicing (Enter 437) _____		22-2													
Red. SBA Sh. by _____		Date Loan Trans. to or from Liquid _____		22-2													
Reinstate Gross _____		8. Date Loan Trans. to In-Litigation _____		22-2													
Reinstate SBA Sh. _____		Enter Date Loan Removed From In-Lit. _____															
Ref. 9-30 (Explain)																	
<b>SECTION C - JUSTIFICATION AND APPROVAL SIGNATURES - For this Action</b>		SOP _____		PARA _____													

**APPENDIX 1**  
**LOCALLY GENERATED FORM 327**

<b>MODIFICATION OR ADMINISTRATIVE ACTION</b> SBA FORM 327 - Pipeline Version (8/97) (El Paso Home Loan Servicing Center)		
NAME OF BORROWER		PARTICIPANT
LOAN NO.:	REPORT DATE:	ACTION#:
APPROVAL DATE: APPROVED AMOUNT: % OF GUARANTY:	TYPE: SERVICIED BY: PURCHASE DATE:	INITIAL DISB. DATE: FINAL DISB. DATE: TOTAL AMT. DISB.:
CURRENT BALANCE: MATURITY DATE:	CLASSIFICATION: DATE TO LIQ. (IF APP.) DATE CHG. OFF (IF APPL.):	SOP REF AND PARAGRAPH #:
REF. [50-10]		

CAUSE FOR REPORT: Reason for Report

L/O COMMENTS: Recommendation

RECOMMENDATION OF L/O: Recommendation

SBA Official,

Date: \_\_\_\_\_

Comments:

I do ( ) I do not ( ) Approve

SBA Official,

Date: \_\_\_\_\_

**APPENDIX 1**  
**SBA 327 STAMP – EXAMPLE**

U.S. Small Business Administration	
	Action # _____
We concur with this request.	
_____ Recommending Official	_____ Date
_____ Counsel	_____ Date
_____ Approving Official	_____ Date
SOP _____	Paragraph # _____

## **APPENDIX 2**

### **PRE-AUTHORIZED DEBIT SYSTEM**

#### PORTFOLIO MANAGEMENT DEBIT PROGRAM (PMD) PRE-AUTHORIZED DEBIT (PAD) FIELD DIRECTIONS

SBA is initiating a new program (PMD), referred to as Pre-Authorized Debit (PAD) for loan payments. This system will allow borrowers to pay monthly loan installments electronically. SBA will electronically transmit data to the Kansas City Federal Reserve Bank (FRB). The PRB then transmits the information through the Automated Clearing House (ACH), to the borrowers' financial institutions for debit to their accounts. The monies are automatically deposited in SBA's account at the Treasury Department.

PMD PROCEDURES ARE AS FOLLOWS: The 5510 enrollment form, along with an introductory letter (exhibits A1) are given to the borrower with their loan package. Field offices receive the completed enrollment form and enter all required information into the system. Before actual debit is made, the system will automatically "pre-note" each account to verify the information supplied by the borrowers, and to ensure that the banks can participate (they must be a member of the ACH Network), in this program. Verification of borrower information is done by electronically sending advance notice to the bank of the upcoming debit. If there are any incorrect account numbers, Routing Transit Numbers (RTN) or other erroneous entries the banks will advise SBA through a Notification of Change (NOC).

There are certain instances when a new 5510 will be required. If the bank or customer account number is not correct on the original 5510, or if the person who signed the 5510 is not authorized to sign on the account, or if the amount of the monthly debit changes, you must acquire a new 5510. The original 5510 must be placed in the borrower's collateral file.

If a bank is not a member of the ACH, its customers may not participate in PMD. Exhibit C is a letter to be used in this case or if the borrowers have sent an incomplete 5510.

Please keep in mind when entering the first PMD debit date, we need fifteen business days prior to the debit date for the pre-notification process. For example if you receive the 5510 on the 15<sup>th</sup> of the month the borrower's first debit date would be the 1<sup>st</sup> of the following month.

The borrowers will still receive their 1201 repayment notices. This notice is only to advise them that a debit was made, and to advise them of their loan balance. Paid in full loans will generate a SBA Form 397 as with check repayment. The last payment amount will automatically be adjusted by PMD to pay the loan in full.

If SBA receives a returned item (debit transaction returned), the account will be suspended from PAD. Field personnel should send a letter (exhibit D1) advising the borrowers of the returned debit. A limit of 45 days has been established to resolve the return, (collect the returned payment). If no reinstatement is entered in the PMD system, the account will automatically be closed from the PAD process. If the borrower wishes to re-enroll in PAD they may. It is up to field discretion to decide whether or not to let them. A rule of thumb you might want to use is "three returns bans PAD".

In the PAD process, there is a procedure known as a Notification of Change (NOC). This occurs when a financial institution advises SBA of some kind of change, such as in an account number or Routing Transit Number (RTN). This is not a returned item since SBA has received and been credited with the

borrower's payment. A new 5510 will need to be completed by the payer if the bank account or routing transit number changes, or if the debit amount changes or if the person who signed the 5510 is not authorized to sign on the account.

The borrower may stop the PAD process at anytime. It is required that they send written notice to SBA. However, in many cases, we anticipate that the borrowers will simply advise their banks not to honor the debit.

Field Security Officers must update personnel security to include PMD authorization. We are asking that only those employees directly responsible for the input of PAD information be given access to the secured portion of the PMD system. For rules and regulations governing all secured systems see SOP 90-47.

Once the field office receives a completed 5510 enrollment form the following functions must be performed:

- CHECK 5510 (exhibit A1) to see that all required information (payers name, name of financial institution, routing transit number, bank account name and number to be debited, type of account and debit amount) has been submitted and that the form has been signed.
- ACCESS THE PMD SYSTEM: through SBA's mainframe via PMDIOO. Once the subsystem menu appears, field personnel will need to logon to access the secured transaction screens (to enter data or see bank account numbers on screens), (exhibit H). A second menu will appear (exhibit F). Simply choose the function you wish by placing the cursor next to the desired function and xmit.
- ACTIVE PAD ACCOUNT QUERY: will bring you page one of the latest PMD information. There are two pages to view (see exhibits G & G1).
- PAD ACCOUNT HISTORY: (exhibit H) is a summary detailing each time a loan has begun and ended in PMD; example: a borrower signs up for PAD, after three debits stops PAD, waits two months and signs up again. Each of the "enrollments" would be listed on this screen, along with the close (termination) reason code. If you would like to see the detailed information for these enrollments, you must tab down to the bottom of the screen where it says "hist detail" and xmit. You will receive the first of two screens (exhibits H1 & H2).
- RETURN NOTIFICATIONS: (exhibit I) is a system report of loan numbers where there has been a returned debit. The date of return and the return reason code (exhibit I1) also appear on this screen. These loans have been suspended from the PAD process until field personnel restart them. The borrower must be contacted, and the payment made up before restarting can take place. A loan will appear on this screen for a maximum of 45 days, at which time the PMD record will be closed or, until the account has been restarted, whichever occurs first. This screen is updated every week; therefore, a print of this report should be made every Monday.
- NOTIFICATION OF CHANGE (NOC): (exhibit J) is a system report of all the loan numbers where there has been a (NOC), with the date and reason (exhibit J1). Central office will update the PMD system with the new information reported. A new 5510 will be needed for changes to the account numbers. This screen is updated every week therefore, each office should make a print of this report every Monday.
- ENROLLMENT ENTRY: (exhibit K) for use when entering PAD information for the first time on a loan. This screen is in three sections. There are several fields that are optional (PAD will still commence even if these fields are not complete, but we recommend that you complete as

much as possible so you will not have to go back to the files. Field personnel will only need to update, via the enrollment update screen to enter information from the 5510's they receive.

The first section, "Payer Info" is where information on the payer is kept. There are instances where the payer name will be different from the borrower name. The payers name, street, city, state, and zip code must be completed along with the debit amount (monthly payment), even if the payer and the borrower are the same, along with the first PAD date and the date the enrollment form (5510) was signed. The system will not debit an account unless it has a loan balance, so the "final PAD" may be left blank. If a payer specifies a certain time frame for PAD (example: they only want their account debited for a specific three month period), then you would complete these two fields with the first and last dates for debit.

The second section, "Bank Info" also has certain fields that must be completed, such as RTN (Routing Transit Number, which identifies the bank for automated processing), account number, account title, and type (c for checking and s for savings).

In the comment portion of the "Bank Info" section, we suggest that a bank contact person be listed along with a phone number. "Bnk Rep Sig Ind" (Banking Representative Signature Indicator) can be used if the borrower sent the enrollment form to his/her bank for completion and the bank representative signed the form.

Section three "System Event Info" is generated by the system. No user input is allowed. No PAD will take place unless all mandatory fields are completed.

- ENROLLMENT UPDATE: (Exhibit L) is an update version of the enrollment entry screen (exhibit K). This screen is to update information an existing enrollment. Once field personnel receive a completed 5510, this screen will be used to update and complete the required entries.
- RESCHEDULE/RESTART/CLOSE PAD ACCOM: (Exhibit M) is used whenever there is an interruption in the PAD process. If an account was set up to begin debit on August 17, and the borrower called on August 10, and said he did not want SBA to begin debiting his checking/savings account until the month of September you would "Reschedule Debit". If there has been a returned item (NSF etc.), after you have contacted the borrower and have received payment, you would "Restart Suspended Debit". If a borrower has written in or SBA personnel have decided to terminate PAD, you would "Close PAD Account".

Each screen has an action line. This was created for your convenience for maneuvering in the system without having to constantly return to the main menu. This feature is extremely helpful and can save a lot of time.

## AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENTS

EXHIBIT A

\_\_\_\_\_  
(AGENCY NAME)

### PAPERWORK REDUCTION ACT AND PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). The information requested on the form is required under various provisions of title 15 U.S.C. 1601, 12 CFR 205 and 31 CFR 202, for the purpose of providing authority to the Department of Treasury to designate financial institutions to collect payments, by electronic means, from your account. The information will be used for identification with the records of the government agency and the financial institution to direct your payments to the point you authorize. No deduction may be made unless a signed authorization form is received. Failure to furnish this information may delay or prevent the collection of these payments through the Automated Clearing House System.

### INDIVIDUAL/COMPANY INFORMATION

INDIVIDUAL/ORGANIZATION NAME: (PLEASE PRINT) \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY/STATE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

AREA CODE: \_\_\_\_\_

YOUR AGENCY ACCOUNT IDENTIFICATION NUMBER: \_\_\_\_\_

TYPE OF PAYMENT: \_\_\_\_\_

I hereby authorize the initiation of a deduction from my account and the financial institution named below to debit such account. I understand I will be notified if the debit amount needs to be adjusted, either to be increased or decreased. I also understand that I have the right to stop automatic payment by notifying my financial institution in writing three days prior to the time my account is charged.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

### FINANCIAL INSTITUTION INFORMATION

FINANCIAL INSTITUTION NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY/STATE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

NINE - DIGIT ROUTING TRANSIT NUMBER: 

ACCOUNT TITLE: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

- CHECKING  
 SAVINGS

SIGNATURE AND TITLE OF REPRESENTATIVE: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

AREA CODE: \_\_\_\_\_

DATE: \_\_\_\_\_



EXHIBIT A 1

Date:

Dear Borrower:

The automatic debit of your bank account for payment on your loan which you previously authorized, has been scheduled for \_\_\_\_\_.

It will not be necessary for you to mail a check to SBA for this payment, or future payments, as long as you are participating in the automatic debit program.

We hope this process will make repayment of your loan simpler.

If you have any questions, please contact:

Small Business Administration  
Santa Ana Disaster Servicing Center  
901 W. Civic Center Drive Suite 160  
Santa Ana, CA 92703

(800) 372-6412

EXHIBIT B

Dear Borrower

SBA is sorry to inform you that we are unable to enroll you in our Pre Authorized Debit (PAD) program at this time for the following reason(s):

- No account/unable to locate
  - Invalid account number
  - Non transaction account
  - Incomplete enrollment form, (please complete highlighted areas and return the form to us).
  - Your bank is not qualified to participate in this program.
  - Other (explain)
- 
- 
- 

If you would still like to participate in this program or have any questions, please feel free to contact me.

---

Sincerely,

---

EXHIBIT C

Date:

EFFECTIVE DATE  
June 24, 2002

Borrowers Name  
Borrowers Address  
State, City Zip

Dear Borrower:

The automatic debit of your bank account for payment on your loan which you previously authorized, was not honored by your bank for the following reason(s):

- \_\_\_ \* Account closed
- \_\_\_ \* Authorization revoked by you
- \_\_\_ \* Authorization revoked by bank
- \_\_\_ \* No account/unable to locate
- \_\_\_ \* Invalid account number
- \_\_\_ Payment stopped
- \_\_\_ Insufficient funds
- \_\_\_ Account Frozen
- \_\_\_ \* Non transaction account
- \_\_\_ Invalid transit routing number
- \_\_\_ Your bank is not qualified to participate in this program.
- \_\_\_ Other

Your payment for the month of \_\_\_\_\_ is still due. Please send a check to: US Small Business Administration, Denver Colorado 80259. Please include your loan number on your check.

\* May require the completion of a new authorization form.

Sincerely,

Supervisory Loan Specialist

EXHIBIT D



CHOOSE WHICH FUNCTION YOU WANT

```

PHDI00                               Pre-Authorized Debit System        Date: MM/DD/YY
                                       Subsystem Menu                          Time: HH:MM

- Active PAD Account Query           - NOC Notifications
- PAD Account History                - Return Notifications

- Enrollment Entry
- Enrollment Update

- Reschedule/Restart/               - Exit
  Close PAD Account

GGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGG  PMD message area  GGGGGGGGGGGGGGGGGGGGGGGGGG

```

PMD Menu Screen

State # 2 - post logon

- o Menu solicits selection of a function by the user
- o Update functions are available
- o SBADCS Menu Function availability to be determined by OIM

Legend: G = System generated field  
 A = Alphabetic input field  
 X = Alpha-numeric input field  
 9 = Numeric input field  
 \_ = Cursor positioning field (i.e. "checkboxblock") for the next action

EXHIBIT F











PREVIOUS

```

PMD107                 Pre-Authorized Debit System                 Date: MM/DD/YY
                        PAD Account History Query (Page 2)         Time: HH:MM

  Loan #: GGGGGGGG-GG   Location: GGGG  GGGGGGGGGG (35) GGGGGGGGGGGGGGGGG
  Bor Name: GGGGGGGGGGGGGGGGGG (42) GGGGGGGGGGGGGGGGGG
  -----< Debit / Collections Activity >-----
  | Latest Debit >   Date: GG/GG/GG  Amt: GGGGGGGG.GG
  | Cumulative > # Debits: GGG   Pr Coll: GGGGGGGG.GG  Int Coll: GGGGGGGG.GG
  -----
  -----< Account Info >-----
  | Beg Pr Bal: GGGGGGGG.GG  Beg Int: GGGGGGGG.GG  Prior PreNote: GG/GG/GG
  | SBA Status: GGGGGGGG   Stat Cmt: GGGGGGG (20) GGGGGGG  Days Delq: GGG
  | Close > Date: GG/GG/GG  Rsn: GGG       Pgm: GGGGGG  User: GGGGGGGGGG
  -----
  -----< Returns >-----< M O C >-----
  | ----Cum Ret----      | RTN: GGGGGGGG
  | Pr: GGGGGGGG.GG      | Acct: GGGG (17) GGGGGGG
  | Int: GGGGGGGG.GG     | Name: GGGGGG (22) GGGGGGGGGG
  |                      | -Rsn- --Date--
  | # Ret: GGG          Curr: GGG GG/GG/GG | Curr: GGG GG/GG/GG
  |                      Prior: GGG GG/GG/GG | Prior: GGG GG/GG/GG
  -----
  Next Page _ Prev Page _ Next Loan: 99999999 _ Hist Summ _ Menu _ Exit _
  GGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGG PMD message area GGGGGGGGGGGGGGGGGGGGGGGG

```

PMD PAD Account History Query - Page 2

Action Line allows the user to:

- o Go to the next page of the History Query
- o Go to the previous page of the History Query
- o Select the next Loan for query
- o Go to the Account History Summary Screen
- o Return to the PMD Menu
- o Exit (logoff) of the PMD System

Legend: G = System generated field  
A = Alphabetic input field  
X = Alpha-numeric input field  
9 = Numeric input field  
\_ = Cursor positioning field (i.e. "checkboxblock") for the next action

EXHIBIT H2



RETURN REASON CODES

ROI	Insufficient Funds
R02	Account Closed
R03	No Account/Unable to Locate Account
R04	Invalid Account Number
R05	No Prenotification on File
R06	Returned per agency request
R07	Authorization Revoked by Customer
R08	Payment Stopped
R09	Uncollected Funds
R10	Customer Advises Not Authorized
R12	Branch Sold to another FI
R14	Account-holder Deceased
R16	Account Frozen
R17	File Record Edit Criteria
R20	Non Transaction Account
R23	Payment Refused by Biller
R24	Duplicate Entry
R13	Bank does not participate in Auto Transfer

Exhibit I1



Appendix 2

**NOTIFICATION OF CHANGE CODES**

<b>C01</b>	<b>Incorrect Account Number</b>
<b>C02</b>	<b>Incorrect Transit/Routing Number</b>
<b>C03</b>	<b>Incorrect Transit/Routing and Incorrect Account Number</b>
<b>C04</b>	<b>Account Name Change</b>
<b>C05</b>	<b>Incorrect Transaction Code</b>
<b>C13</b>	<b>Addenda Format Error</b>

**Exhibit J1**







```

PMDU10                               Pre-authorized Debit System          Date: MM/DD/YY
                                       Reschedule/Restart/Close PAD Account      Time: HH:MM

Loan #: GGGGGGGG-GG   Location: GGGG GGGGGGGG (35) GGGGGGGGGGGGGGGGGGG
Box Name: GGGGGGGGGGGGGGGGGG (42) GGGGGGGGGGGGGGGGGGG
-----< Payer Info >-----
| Name: GGGGGGGG (22) GGGGGGGG          Debit Amt: 99999999.99
| Curr Ret Rsn: GGG                     Next PAD: GG/GG/GG
| Curr Ret Dt: GG/GG/GG                 Final PAD: GG/GG/GG
|-----|
|-----< Reschedule Debit >-----|
| Reschedule Next PAD To: MM/DD/YY      Final PAD: MM/DD/YY
|-----|
|-----< Restart Suspended Debit >-----|
| Restart PAD On: MM/DD/YY              Final PAD: MM/DD/YY
|-----|
|-----< Close PAD Account >-----|
| Close Reason: XXX                     Close Date: GG/GG/GG
|-----|

Update _                               Next Loan: 99999999 _           Menu _ Exit _
GGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGGG PND message area GGGGGGGGGGGGGGGGGGGGGGGGG
    
```

Reschedule/Restart/Close PAD Account Screen

Action Line allows the user to:

- o Update (Reschedule, Restart, or Close) the current PAD Account
- o Select the next loan for rescheduling, restarting, or closing of the PAD Account
- o Return to the PND Menu
- o Exit (logoff) of the PND System

Legend: G = System generated field  
 A = Alphabetic input field  
 X = Alpha-numeric input field  
 9 = Numeric input field  
 \_ = Cursor positioning field (i.e. "checkbox") for the next action

EXHIBIT M

**APPENDIX 3**  
**SBA FORM 397, NOTICE OF FULLY PAID ACCOUNT**

SMALL BUSINESS ADMINISTRATION  
OFFICE OF FINANCIAL OPERATIONS  
DENVER, COLORADO 80202

Notice of Fully Paid Account

TO: COLLATERAL CASHIER

The account cited below has been paid in full. Release of the paid obligating instrument when SBA-serviced, as well as any collateral held, is subject to the appropriate provisions of SOP 20 05 and SOP 20 22.

- Direct or immediate participation paid in full.
- Guarantee loan voluntarily terminated or paid in full.
- Automatic termination of guarantee loan.
- Loan paid in full by compromise.

=====

Borrower: (Name and Address)	Loan Number:
------------------------------	--------------

-----

Svc Off:  SBA-Sc  
 Bnk-Sc

-----

=====

LAST LOAN ACCOUNTING TRANSACTION PROCESSED BY SBA

Fund Sy DT#	Eff Date Blk#	Date	Overpayment
-------------	---------------	------	-------------

-----

=====

CERTIFIED CORRECT AND APPROVED FOR PAYMENT

Approving Off: \_\_\_\_\_ Date: \_\_\_\_\_

=====

BORROWER REFUND BY OFO

Refund on Schedule - W	Amount:	Date:
------------------------	---------	-------

-----

=====

INSTRUMENT RELEASED BY SBA FIELD OFFICE

Collateral Cashier: \_\_\_\_\_ Date: \_\_\_\_\_

=====

SBA FORM 397 (11-95) REF: SOP 20 05 & 20 22

=====

**APPENDIX 4**  
**EXCERPTS FROM UNITED STATES CODE SERVICE**  
**TITLE 50 APPENDIX WAR AND NATIONAL DEFENSE**  
**SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940**

UNITED STATES CODE SERVICE  
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\*\*\* THIS SECTION IS CURRENT THROUGH 105-354, APPROVED 11/3/98 \*\*\*  
 \*\*\* WITH GAPS OF 261, 265, 266, 272, 274-279, 284, 285, 290, 292, \*\*\*  
 \*\*\* 297, 298, 300-321, 323-343, 345, 347 AND 353 \*\*\*

TITLE 50. WAR AND NATIONAL DEFENSE  
 TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE  
 SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940  
 ARTICLE I. GENERAL PROVISIONS

50 USCS Appx § 510 (1998)

§ 510. Purpose; suspension of enforcement of civil liabilities

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act [50 USCS Appx. §§ 501 et seq.] remains in force.

50 USCS Appx § 511 (1998)

§ 511. Definitions

(1) The term "person in military service", the term "persons in military service", and the term "persons in the military service of the United States", as used in this Act [50 USCS Appx. §§ 501 et seq.], shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act [50 USCS Appx. §§ 501 et seq.], shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act [50 USCS Appx. §§ 501 et seq.], means, in the case of any person, the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service, but in no case later than the date when this Act [50 USCS Appx. §§ 501 et seq.] ceases to be in force.

(3) The term "person", when used in this Act [50 USCS Appx. §§ 501 et seq.], with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act [50 USCS Appx. §§ 501 et seq.], shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

UNIFORM CODE OF MILITARY JUSTICE, 1950, 50 USC App. 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

## 50 USCS Appx § 513 (1998)

## § 513. Protection of persons secondarily liable

(1) Whenever pursuant to any of the provisions of this Act [50 USCS Appx. §§ 501 et seq.] the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act [50 USCS Appx. §§ 501 et seq.], the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

(3) Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their obligation the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail.

(4) Nothing contained in this Act [50 USCS Appx. §§ 501 et seq.] shall prevent a waiver in writing of the benefits afforded by subsections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual, unless executed by such individual or dependent during the period specified in section 106 [50 USCS Appx. § 516].

## 50 USCS Appx § 517 (1998)

## § 517. Effect on rights, remedies, etc., pursuant to written agreements entered after commencement of military service

Nothing contained in this Act [50 USCS Appx. §§ 501 et seq.] shall prevent--

(a) the modification, termination, or cancelation of any contract, lease, or bailment or any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage or

(b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment,

pursuant to a written agreement of the parties thereto (including the person in military service concerned, or the person to whom section 106 [50 USCS Appx. § 516] is applicable, whether or not such person is a party to the obligation), or their assignees, executed during or after the period of military service of the person concerned or during the period specified in section 106 [50 USCS Appx. § 516].

## 50 USCS Appx § 518 (1998)

## § 518. Exercise of rights under Act not to affect certain future financial transactions

Application by a person in military service for, or receipt by a person in military service of, a stay, postponement, or suspension pursuant to the provisions of this Act [*50 USCS Appx. §§ 501 et seq.*] in the payment of any tax, fine, penalty, insurance premium, or other civil obligation or liability of that person shall not itself (without regard to other considerations) provide the basis for any of the following:

- (1) A determination by any lender or other person that such person in military service is unable to pay such civil obligation or liability in accordance with its terms.
- (2) With respect to a credit transaction between a creditor and such person in military service--
  - (A) a denial or revocation of credit by the creditor;
  - (B) a change by the creditor in the terms of an existing credit arrangement; or
  - (C) a refusal by the creditor to grant credit to such person in substantially the amount or on substantially the terms requested.
- (3) An adverse report relating to the creditworthiness of such person in military service by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.
- (4) A refusal by an insurer to insure such person.

## 50 USCS Appx § 520 (1998)

## § 520. Default judgments; affidavits; bonds; attorneys for persons in service

(1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act [50 USCS Appx. §§ 501 et seq.]. Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subdivision that facts be established by affidavit.

(2) Any person who shall make or use an affidavit required under this section, or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subdivision (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act [50 USCS Appx. §§ 501 et seq.] to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act [50 USCS Appx. §§ 501 et seq.] shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

## 50 USCS Appx § 521 (1998)

## § 521. Stay of proceedings where military service affects conduct thereof

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act [50 USCS Appx. §§ 501 et seq.], unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

## 50 USCS Appx § 522 (1998)

## § 522. Fines and penalties on contracts, etc.

When an action for compliance with the terms of any contract is stayed pursuant to this Act [50 USCS Appx. §§ 501 et seq.] no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired.

## 50 USCS Appx § 525 (1998)

## § 525. Statutes of limitations as affected by period of service

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

## 50 USCS Appx § 526 (1998)

## § 526. Maximum rate of interest

No obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a person in military service before that person's entry into that service shall, during any part of the period of military service, bear interest at a rate in excess of 6 percent per year unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability.

## 50 USCS Appx § 530 (1998)

## § 530. Eviction or distress during military service; stay; penalty for noncompliance; allotment of pay for payment

(a) No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed \$1,200 per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(b) On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this Act [50 USCS Appx. §§ 501 et seq.], or it may make such other order as may be just. Where such stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of such premises similar to that granted persons in military service in sections 301, 302, and 500 of this Act [50 USCS §§ 531, 532, 560] to such extent and for such period as may appear to the court to be just.

(c) Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (a) hereof, or attempts so to do, shall be fined as provided in title 18, United States Code, or imprisoned for not to exceed one year, or both.

(d) The Secretary of Defense or Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy, is hereby empowered, subject to such regulations as he may prescribe, to order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or other dependents of such person.

HISTORY: (Oct. 17, 1940, ch 888, § 300, 54 Stat. 1181; Oct. 6, 1942, ch 581, § 8, 56 Stat. 771; March 3, 1966, P.L. 89-358, § 10, 80 Stat. 28; March 18, 1991, P.L. 102-12, §§ 2(a), (b), 9(8), 105 Stat. 34, 39.)

## 50 USCS Appx § 531 (1998)

## § 531. Installment contracts for purchase of property

(1) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

(2) Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) of this section or in section 107 [50 USCS Appx. § 517], or attempts so to do, shall be fined as provided in title 18, United States Code, or imprisoned for not to exceed one year, or both.

(3) Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this Act [50 USCS Appx. §§ 501 et seq.] unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be applicable to conserve the interests of all parties.

## 50 USCS Appx § 532 (1998)

## § 532. Mortgages, trust deeds, etc.

(1) The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him which obligations originated prior to such person's period of military service.

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service--

(a) stay the proceedings as provided in this Act [50 USCS Appx. §§ 501 et seq.]; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107 [50 USCS Appx. § 517], unless upon an order previously granted by the court and a return thereto made and approved by the court.

(4) Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property, defined as invalid by subsection (3) hereof, or attempts so to do, shall be fined as provided in title 18, United States Code, or imprisoned for not to exceed one year, or both.

## 50 USCS Appx § 533 (1998)

## § 533. Settlement of cases involving stayed proceedings to foreclose mortgage on, resume possession of, or terminate contract for purchase of, personal property

Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this Act [50 USCS Appx. §§ 501 et seq.], the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract.



50 USCS Appx § 536 (1998)

§ 536. Extension of benefits to dependents

Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article [50 USCS Appx. §§ 530--536] upon application to a court therefor, unless in the opinion of the court the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent.

50 USCS Appx § 560 (1998)

§ 560. Taxes respecting personalty, money, credits, or realty; sale of property to enforce collection; redemption of property sold; penalty for nonpayment; notice of rights to beneficiaries of section

(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act [50 USCS Appx. §§ 501 et seq.], for a period extending not more than six months after the termination of the period of military service of such person.

(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act [50 USCS Appx. §§ 501 et seq.] ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon.

## 50 USCS Appx § 590 (1998)

## § 590. Stay of enforcement of obligations, liabilities, taxes, etc.

(1) A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted.

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**CONSUMER LOAN SERVICING  
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