

# **America's Recovery Capital (ARC) Loan Program PROCEDURAL GUIDE**

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## **1. WHAT IS AN ARC LOAN?**

America's Recovery Capital (ARC) Loan Program is a new temporary guaranteed-loan program authorized by the American Recovery and Reinvestment Act of 2009 (the Recovery Act) (P.L. 111-5, 123 Stat. 115) enacted on February 17, 2009. ARC Loans provide small businesses access to the capital needed to drive economic recovery and to retain jobs.

ARC Loans are deferred-payment loans of up to \$35,000 and are available to viable, for-profit small businesses located in the United States that need short-term help to make their principal and interest payments on existing, qualifying loans. ARC Loans are interest-free to the borrower, 100% guaranteed by SBA to the lender, and have no fees associated with them.

ARC Loans are made by participating SBA 7(a) lenders. ARC Loan funds are to be used for payments of principal and interest for up to six months on existing, qualifying small business loans. The disbursement period (up to six months) is followed by a 12 month deferral period with no repayment of the ARC Loan principal. After the deferral period, the borrower pays back only the ARC Loan principal over a five year period. SBA pays the monthly interest to the SBA Lender making the loan.

Lenders making ARC Loans should look at the borrower's entire financial situation in making determinations about the viability of the small business, the financial hardship it is experiencing and allocating ARC Loan proceeds. The Recovery Act created the ARC Loan Program for the purpose of providing small businesses with relief from making periodic payments of principal and/or interest for six months. Single, lump sum loan payments, typically, do not provide that relief to small businesses.

Unless specifically identified as inapplicable in 13 CFR 120.398 or in this Guide, SBA 7(a) Lenders making ARC Loans must apply SBA's 7(a) Loan Program Requirements found in the Small Business Act, 13 CFR Parts 120 and 121, and SBA Standard Operating Procedures (SOPs 50 10, 50 50, and 50 51). All references in this Procedural Guide to SBA's 7(a) Loan Program Requirements, including SOPs 50 10, 50 50 and 50 51 are to those requirements as amended from time to time.

The ARC Loan Program is authorized through September 30, 2010 or until funding is exhausted, whichever occurs sooner.

## **2. HOW CAN A LENDER MAKE ARC LOANS?**

### **a. Existing SBA 7(a) Lenders**

SBA 7(a) Lenders that currently participate in the following SBA delegated lending programs – PLP, SBA Express, Community Express, and Patriot Express – are eligible to make ARC loans on a delegated basis if the loan meets the eligibility and credit criteria established in Section 3,

“What are the Eligibility Requirements for ARC Loans?” and Section 4, “What are the Uses of Proceeds, Loan Terms and Conditions, and Underwriting Requirements for ARC Loans?”.

SBA 7(a) Lenders that do not currently participate in SBA’s delegated lending programs may also make ARC Loans. These SBA Lenders must submit their loan packages to SBA’s Loan Guaranty Processing Centers (7(a) LGPC) in Citrus Heights, California or Hazard, Kentucky for approval.

b. Lenders Not Currently Participating in SBA’s 7(a) Loan Program

Lenders not currently participating with the SBA in the 7(a) loan program, and who want to participate in the ARC Loan Program, should contact their local SBA District Office. Local District Offices may be found on SBA’s web site:

<http://www.sba.gov/localresources/index.html>. New SBA 7(a) Lenders must meet the Agency’s lender requirements as set forth in SOP 50-10-5(A), Subpart A, and Chapter 1. New SBA 7(a) lenders must ensure that their primary SBA lending personnel have received appropriate training on SBA’s policies and procedures (such training could include SBA District Office training and/or trade association training that adequately addresses SBA’s regulations and Standard Operating Procedures, including SBA’s loan processing, closing, servicing, and liquidation requirements). After completing the required training and signing the Loan Guaranty Agreement (SBA Form 750), new SBA 7(a) Lenders may make ARC Loans on a non-delegated basis. Non-delegated SBA 7(a) Lenders must submit their loan packages to SBA’s 7(a) LGPC for approval. New SBA Express lenders may only make ARC Loans on a non-delegated basis.

### **3. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR ARC LOANS?**

Specific eligibility requirements for ARC Loans are contained in 13 CFR 120.398 and supplemented by this Procedural Guide. In general, an ARC Loan borrower must be eligible under the basic eligibility requirements established for 7(a) loans. Lenders must ensure that the small business concerns are eligible as discussed below.

a. Eligible Businesses for ARC Loans

SBA’s eligibility requirements for small businesses are included in 13 CFR 120.100, 121.301 and in SOP 50 10 5(A), Subpart B, Chapter 2. ARC Loans also have the following additional eligibility requirements.

(1) Viable Small Businesses. ARC Loans are available to viable small businesses that are experiencing immediate financial hardship. A viable small business is an established, for profit business. It must be a going concern that is actively engaged in business with the expectation of indefinite continuance but that is having difficulty making periodic payments of principal and interest on qualifying small business loans and/or meeting operating expenses of the business. The small business must be able to reasonably demonstrate its projected continued

operation for a reasonable period beyond the six month period of payment assistance with an ARC Loan. Continued operation is demonstrated through quarterly cash flow projections for two years that demonstrate the small business has the capacity to meet the future debt service requirements of the QSBLs and the ARC Loans.

(2) Immediate Financial Hardship. An immediate financial hardship is a change in the financial condition of a small business such that the concern is having difficulty making periodic payments of principal and interest on qualifying small business loans or is having difficulty paying ordinary and necessary operating expenses of the business. A small business experiencing financial hardship may have declining sales and/or revenues, increasing expenses, reduced working capital, cash shortages due to frozen inventory or receivables, accelerated debt, or reduced or frozen credit lines, difficulty making loan payments on existing debt, difficulty in paying employees, difficulty in purchasing inventory, materials, and/or supplies, and/or difficulty in paying rent and/ or other operating expenses.

Lenders must document in their loan file a borrower's eligibility for an ARC Loan. Small businesses must certify that they are experiencing an immediate financial hardship, identify the nature of the hardship, and provide evidence of the hardship as part of the loan application (SBA Form 2315, America's Recovery Capital (ARC) Borrower Information Form). Lenders must analyze the evidence provided and determine that an immediate financial hardship exists. Lenders will provide information on SBA Form 2316, Part B, Lender's Supplemental Information for America's Recovery Capital (ARC) Loan Guaranty Request, identifying the specific hardship experienced by the small business concern. The following categories of financial hardship are identified on the form:

- Loss/Reduction of customer base (or loss/reduction of revenue of 20% or more over the preceding 12 months)
- Increase in cost of doing business of 20% or more in the preceding 12 months
- Loss/Reduction of 20% or more in working Capital and/or similar loss/reduction of short term credit facilities
- Decline in gross margin of 20% or more over the preceding 12 months
- Decline in operating ratio of 20% or more over the preceding 12 months
- Inability to restructure existing debts due to credit restrictions within the preceding 12 months
- Loss/Reduction of Employees
- Loss/Reduction of Major Suppliers (major suppliers out of business); and/or
- Other Immediate Financial Hardship – with Explanation

A small business concern may experience one or more of these financial hardships. The percentages and timing of the financial hardships identified above provide guidance to SBA Lenders. Minor variances in percentages and timing are allowable.

b. Ineligible Small Businesses for ARC Loans

The following businesses are ineligible for ARC Loans:

(1) Ineligible Businesses Listed in 13 CFR 120.110. Businesses listed in 13 CFR 120.110 are ineligible for ARC Loans. SOP 50 10 5(A), Subpart b, Chapter 2 contains a supplemental discussion of ineligible businesses. Ineligible businesses include the following:

- Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting. (Businesses with a religious component must be submitted to the 7(a) LGPC for additional analysis in consultation with the Office of General Counsel.)
- A business deriving directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depiction or displays, of a prurient sexual nature or that presents any live performances of a prurient nature.
- Non-profit businesses, businesses engaged in lending, passive holders of real estate/personal property, life insurance companies, pyramid businesses, businesses engaged in gambling, illegal businesses, businesses that restrict patronage, government-owned entities, cooperatives, businesses engaged in loan packaging, businesses engaged in political or lobbying activities, and speculative businesses.

(2) Prohibited NAICS Codes. The Recovery Act states that no funds appropriated or otherwise made available in the Recovery Act may be used by any private entity for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. Thus, small business concerns with the following primary industry North American Industry Classification System (NAICS) codes are ineligible for ARC Loans:

- (i) 713210 (Casinos (Except Casino Hotels));
- (ii) 721120 (Casino Hotels);
- (iii) 713290 (Other Gambling Industries);
- (iv) 713910 (Golf Courses and Country Clubs); and
- (v) 712130 (Zoos and Botanical Gardens).

Applications submitted by small business concerns with a primary industry NAICS code of 713940 (Fitness and Recreational Sports Centers), which includes both swimming pools and other types of fitness and recreational centers, may not be approved on a delegated basis and must be reviewed by the 7(a) LGPC to determine eligibility in accordance with the Recovery Act statutory restriction on assistance to swimming pools. Additional guidance with regard to these restrictions is included in SBA Policy Notice 5000-1105, “Recovery Act – Restricted Uses of Funds.”

(3) Start-Up Businesses. Because the use of proceeds for ARC Loans is limited to making principal and/or interest payments on existing Qualifying Small Business Loans (QSBL), brand new start-up businesses (i.e. businesses that have had no operations prior to the loan application) are not eligible for ARC Loans.

(4) Business Expansions. ARC Loans are not suitable for business expansion purposes since the only permissible use of proceeds for ARC Loans is to make principal and/or interest payments on existing QSBLs.

(5) Previous Loss to Government. The following businesses are ineligible for ARC Loans unless waived by SBA for good cause:

(i) A business that previously defaulted on a Federal loan or Federally assisted financing that resulted in the Federal government or any of its departments or agencies sustaining a loss; or

(ii) A business owned or controlled by a principal or any Associates (see 13 CFR 120.10) which previously owned, operated or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or departments to sustain a loss in any of its programs.

For each of the foregoing, a “loss” includes any compromise agreement with any such agency/department.

This restriction applies whether or not SBA was involved in the previous loss. See SOP 50 10 5(A), Subpart A, Chapter 2, Paragraph 3.d. for further information.

c. Character Requirements for ARC Loans.

(1) Procedures for Delegated Authority ARC loans. Generally, ARC Loans may be made only if questions 1(a), (b) and (c) on ARC Borrower Information Form, SBA Form 2315, are all answered “No.” If a Subject Individual answers “Yes” to question 1(a), then the small business is not eligible for an ARC loan. If a Subject Individual answers “Yes” to questions 1(b) or 1(c), then that individual must go through a background check and character determination unless the charge resulting in a “Yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be attached to the SBA Form 2315 and maintained in the lender’s loan file.) If the individual pleads guilty to the charges or to lesser charges the background check and character determination must be conducted. When there is a “yes” response on questions 1(b) or 1(c), a lender processing an ARC loan under delegated authority may elect to process, submit and disburse the ARC loan only when the subject’s affirmative activity meets the criteria set forth in SOP 50 10 5 (A), Subpart B, Chapter 2 for SBA to clear a 7(a) loan application for processing (a single minor offense or up to three minor offenses more than 10 years prior to the date of the application or a prior offense that was cleared by the Director, Office of Financial Assistance (D/FA) or designee on a previous application and no additional offenses have occurred since the date the prior application was cleared [the D/FA or designee’s clearance is only valid for 6 months from date of issuance].

If the affirmative activity does not meet the criteria set forth above and the lender cannot clear the ARC loan application for processing under its delegated authority, a Statement of Personal History, SBA Form 912, and any supporting documentation must be sent to the 7(a) LGPC which will forward it to the Office of Inspector General, Office of Security Operations (OIG/OSO) for processing. OIG/OSO will notify the 7(a) LGPC, and the 7(a) LGPC will notify the lender that the applicant is or is not eligible on a character basis for an ARC loan. The lender must document its loan file with SBA's notification. The ARC loan application may be processed using delegated authority after the lender has received OIG/OSO's written clearance regarding the character issue(s) from the field office.

In using its delegated authority as described above, an ARC lender must secure and submit a completed SBA Form 912 to SBA. The SBA Form 912 may request either a name check or fingerprint check by the Federal Bureau of Investigation (FBI). FBI name checks take longer and, while not required, fingerprint checks typically provide a faster alternative. For all Form 912s submitted, SBA's OIG/OSO will request a "Name Check" (a/k/a background check) or a "Fingerprint Check" from the FBI. Incomplete Form 912s cannot be processed and will be returned to the lender. The lender must submit a corrected Form 912 before processing can continue.

To request a "Name Check" or a "Fingerprint Check", please follow the procedures contained in SOP 50 10 5(a), Subpart B, Chapter 2.

ARC lenders choosing not to exercise its delegated authority to clear a 912 with a "yes" response must submit the ARC loan application to the 7(a) LGPC to be processed under non-delegated ARC loan processing procedures.

If the information from the FBI Name Check or Fingerprint Check is consistent with the information provided on the 912, OIG/OSO will notify the appropriate SBA Servicing Office, and the SBA Servicing Office will document its file and will notify the lender that the applicant is eligible on a character basis for an SBA loan. The lender must document its loan file with SBA's notification that the applicant is eligible.

If the information from the FBI Name Check or Fingerprint Check contradicts the information provided on the Form 912, OIG/OSO will notify the Office of Financial Assistance (OFA) and the D/FA or designee will evaluate the discrepancy and determine if the discrepancy warrants a denial of the loan on the basis of character. If the loan warrants a denial, the D/FA or designee will notify the SBA Servicing Office and the Servicing Office will notify the lender that the applicant is not eligible on a character basis. If the ARC loan has been disbursed, the Agency will cancel its guaranty. Any interest payments disbursed to the lender prior to such cancellation must be repaid to SBA.

A Subject Individual may not reduce his or her ownership interest in a small business applicant for the purpose of avoiding completion of Form 912. Anyone who would have been considered a Subject Individual within 6 months prior to the application must complete Form 912. The only

exception to the 6-month rule is when a Subject Individual completely divests his or her interest prior to the date of the application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the small business applicant (and any associated Eligible Passive Concern) in any capacity, including being an employee (paid or unpaid).

(2) Procedures for Non-Delegated Authority ARC loans. The procedures for determining character eligibility for ARC loans that are not being processed under delegated authority are those set forth in SOP 50 10 5 (A), Subpart B, Chapter 2 for standard 7(a) loan processing.

d. Businesses Owned by Non-U.S. Citizens.

If the ARC Borrower Information Form 2315 indicates that the applicant business is owned by a non-U.S. citizen, lenders must comply with the verification and eligibility requirements set forth in SOP 50 10 5 (A), Subpart B, Chapter 2.

e. Ethical Requirements.

An ARC loan is not eligible if there is any question of possible violation of any of SBA's ethical requirements, as described in 13 CFR 120.140 and SOP 50 10 5 (A), Subpart B, Chapter 2.

f. Bankruptcy.

An applicant is not ineligible for an ARC loan just because the applicant has previously been a debtor in a bankruptcy case where the debtor received a discharge or restructured its debt under a confirmed plan. That is a matter to be considered in the lender's credit decision. However, if the applicant is a debtor in a pending bankruptcy proceeding where the debtor has not received a discharge or confirmed a plan, the applicant is not eligible for an ARC loan.

g. Multiple ARC Loans.

A small business concern may not receive more than one ARC Loan. The one ARC Loan can be used to make payments of principal and/or interest on more than one QSBL. Additional ARC Loans made to affiliates must be approved by the 7(a) LGPC.

#### **4. WHAT ARE THE USES OF PROCEEDS, LOAN TERMS AND CONDITIONS, AND UNDERWRITING REQUIREMENTS FOR ARC LOANS?**

a. Uses of Proceeds for ARC Loans

1) Acceptable Uses of Proceeds for ARC Loans. ARC Loans are made for the specific purpose of making periodic payments of principal and/or interest (including default interest), either in full or in part, on one or more existing QSBLs for a period of time not to exceed six

consecutive months.

2) Unacceptable Uses of Proceeds for ARC Loans. ARC Loans may not be used for the following purposes:

(i) For any purpose other than to make periodic payments of principal or interest on one or more QSBL;

(ii) For a purpose that will not benefit the Borrower; or

(iii) To provide or refinance funds used for payments, distributions, or loans to an Associate of the Borrower.

b. QSBLs Eligible for Payment with an ARC Loan.

A QSBL is an existing loan made to a small business concern that meets the eligibility standards for a 7(a) loan. The use of proceeds for the QSBL must have been consistent with eligible use of proceeds for 7(a) loans (13 CFR 120.120) and cannot have been for any ineligible use of proceeds for 7(a) loans (13 CFR 120.130 or 13 CFR 120.160(d)).

QSBLs include mortgages, secured and unsecured loans, 504 first mortgages, capital leases, notes payable to vendors/ suppliers/utilities, home equity loans used to finance business operations, SBA loans made or guaranteed on or after February 17, 2009 and/or credit card obligations used to finance business operations. QSBLs do not include loans made or guaranteed by SBA prior to February 17, 2009, including 7(a), 504 and disaster loans. In determining whether a borrower's financial obligations constitute a QSBL, a signed debt instrument that provides evidence of a principal amount, interest rate, and required payments is considered adequate evidence of the existence of a loan.

The QSBL can be same institution debt as well as other institution debt. The provisions of 13 CFR 120.10, 120.536(a)(2) and 120.925 with regard to Preference for repayments without prior SBA approval do not apply to ARC Loans. Also, the provisions of 13 CFR 120.201 restricting refinancing does not apply to ARC Loans. A Lender is expected to assess a borrower's total financial position including the small business concern's debt burden – both same institution debt and other institution debt. The Lender must make determinations about the allocation of ARC Loan proceeds that consider the overall financial situation of the small business. While SBA allows a Lender to use an ARC Loan to make payments on same institution debt without SBA's approval, the Lender is encouraged to use the ARC Loan proceeds in a manner best designed to promote the borrower's long-term viability.

The Lender must document the existence of the QSBL by obtaining evidence of the existing indebtedness including the payments required. Lenders must document the type of QSBL and must indicate whether it is same institution debt or other institution debt. For other institution debt, the Lender must document the borrower's outstanding debt and the associated payments required.

The lender must review the use of proceeds for the QSBL and confirm and document that the QSBL was used for an eligible use and not for an ineligible use. The QSBL must have been used for a sound business purpose and for one of the following eligible uses:

- ❖ Acquire land (by purchase or lease)
- ❖ Improve a site (e.g. grading, streets, parking lots, landscaping)
- ❖ Purchase one or more existing buildings
- ❖ Convert, expand or renovate one or more existing buildings
- ❖ Construct one or more new buildings
- ❖ Acquire (by purchase or lease) and install fixed assets
- ❖ Purchase inventory
- ❖ Purchase supplies
- ❖ Purchase raw materials
- ❖ Working capital
- ❖ Refinancing certain outstanding debts

The loan is not a QSBL if it was used for any of the following ineligible purposes:

- ❖ To provide or refinance funds used for payments, distributions, or loans to an Associate of an Applicant
- ❖ To refinance a debt owed to a Small Business Investment Company
- ❖ To invest in real or personal property acquired and held primarily for sale, lease or investment
- ❖ To fund a change in ownership
- ❖ For a purpose that did not benefit the small business
- ❖ To provide or refinance funds used to pay past due Federal or state payroll taxes

c. Special Rules for QSBL Lines of Credit.

Lenders may use ARC Loans to make payments on QSBL lines of credit. Payments may take one of two forms: (1) The ARC Loan may be used to make up to six consecutive months of principal and/or interest payments on a QSBL line of credit; or (2) the Lender may allow the Borrower to make one payment of up to \$35,000. In the later case, the QSBL line of credit must be same institution debt, and the Lender must defer the remaining five months of payments on the QSBL line of credit to provide the small business concern with the benefit intended by the Recovery Act. A Lender may not reduce the credit limit of a same-institution QSBL line of credit for at least 18 months after using the proceeds of an ARC Loan to pay down the principal balance of the line unless the QSBL line of credit defaults and is placed on non-accrual by the Lender. Disbursement of only one payment on a QSBL line of credit where the QSBL line of credit is the only loan being paid with the ARC Loan must be undertaken carefully and in the context of a borrower's overall debt structure because it potentially reduces the amount of time before a small business concern must begin making principal payments on the ARC Loan (13 months compared to 18 months with a six month disbursement period). This action may be

taken after consideration of the borrower's overall financial situation and must be in the best interest of the borrower. The Lender should include a statement in the loan write-up why this disbursement is in the best interest of the borrower.

d. Special Rules for QSBL Home Equity Loans.

If the ARC Loan is used to make payments on a QSBL home equity loan (line of credit or term loan), the Lender must confirm that the proceeds of the QSBL home equity loan were used for business-related purposes. Lenders must document the specific business purpose the QSBL home equity loan was used for and the borrower must certify that the ARC Loan proceeds are being used only for business-related debt (National ARC Authorization Boilerplate).

Documentation required for payments on QSBL home equity loans includes a copy of the loan statements and documentation of the type and business purpose of each use/purchase. In addition, the borrower must certify that the amounts were exclusively business expenses.

Monthly payments for QSBL home equity loans may not exceed the principal amount used for business purposes documented above. Interest payments must be pro-rated to reflect the amount associated with valid business purposes. If total payments on the QSBL home equity loans are less than six, the Lender should include a statement in the loan write-up why this disbursement is in the best interest of the borrower. If the home equity loan is a line of credit, and is same institution debt, the provisions of paragraph c above apply. No non-business expenses on home equity loans may be paid with the proceeds of an ARC Loan. If the use of proceeds of the home equity loan was not for business expenses, the home equity loan is not a QSBL and is not eligible for payment by an ARC Loan.

e. Special Rules for QSBL Credit Card Obligations.

If the ARC Loan is used to make payments on QSBL credit card obligations, the Lender must confirm that the proceeds of the QSBL credit card obligations were used for business-related purposes. Lenders must document the specific business purpose the QSBL credit card obligation was used for and the borrower must certify that the ARC Loan proceeds are being used only for business-related debt (National ARC Authorization Boilerplate). Documentation required for payments on QSBL credit card obligations includes a copy of the credit card statements and documentation of the type and business purpose of each use/purchase. In addition, the borrower must certify that the amounts were exclusively business expenses. Payments for QSBL credit card obligations may not exceed the principal amount used for business purposes documented above, and must be monthly payments unless the entire balance is paid off. Paying off the balance must be in the best interest of the small business concern and, if same institution debt, may not be accompanied by a reduction in the small business' credit limit consistent with the provisions included in paragraph c above. Interest payments must be pro-rated to reflect the amount allocated for business purposes. No non-business expenses on credit card balances may be paid with the proceeds of an ARC Loan.

f. Terms and Conditions for ARC Loans

(1) Maximum Loan Amount. The total amount of any ARC Loan may not exceed \$35,000.

(2) SBA Guaranty Percentage. The SBA guaranty to the Lender on an ARC Loan is 100%.

(3) ARC Loan Disbursement, Deferral, Repayment Structure and Note. ARC loans have a maximum term of six and one-half years comprised of the following segments:

(i) Disbursement Period. ARC loans are disbursed over a maximum of six consecutive months. SBA allows a lender up to eight months from approval to complete disbursement. However, the ARC Loan must be disbursed over six consecutive months. If the ARC Loan is not disbursed within eight months, the loan will be cancelled. Disbursements may pay on one or more QSBL, in whole or in part.

(ii) Deferral Period. ARC Loans are deferred for 12 months beginning the month after the last ARC loan disbursement. The first principal payment on an ARC loan is due beginning the 13<sup>th</sup> month after the last loan disbursement.

(iii) Repayment Period. Principal repayment begins the 13<sup>th</sup> month after the last loan disbursement. The ARC loan is repaid over the remaining five years. It is fully amortized over five years. Lenders are to use constant principal payments. Balloon payments are not permitted. The borrower may prepay all or a portion of the principal during the life of the loan without penalty.

Lenders must use the Note Form included in the Appendix for ARC Loans.

(4) Allocation of Payments. The Recovery Act provides ARC Loans for the purpose of making periodic payments of principal and interest. Accordingly, payment allocations for an ARC Loan must be prioritized in the following order:

(i) Up to six monthly payments of scheduled principal and/or interest on the borrower's QSBLs. Balloon payments that are scheduled during the disbursement period of the ARC Loan, may be included in one or more of the six monthly payments included in this category. Balloon payments may not be accelerated to the ARC Loan disbursement period for the specific purpose of using ARC Loan proceeds. If the balloon loan payment is accelerated by a lender for other reasons (like a default), ARC Loan proceeds may be used to make the balloon payment and the lender will document the reason for the acceleration.

(ii) Any remaining amount available on the loan in the sixth disbursement month, after the scheduled monthly principal and/or interest payments may be used to prepay principal on a QSBL.

Allocation of payments for business lines of credit. The provisions are included in

Section 4c, “Special Rules for QSBL Lines of Credit.”

(5) Interest Payment

- (i) Borrower. Small business concerns pay no interest on ARC loans for the life of the loan.
- (ii) Lender. SBA Lenders making ARC Loans are paid interest monthly by the SBA. The SBA will publish the specific interest rate in the Federal Register. An SBA Lender will only be paid the rate of interest established by the SBA. SBA will not pay interest on accrued interest.

A lender may not charge and SBA will not pay a default interest rate. (Default interest is a change (increase) in interest rate charged the borrower as a result of a failure to meet certain conditions specified in the loan agreement, typically timely payments.) The rate of interest SBA will pay to a lender following default of an ARC Loan is the ARC Loan Interest Rate in effect on the date of the earliest uncured payment default. SBA will only pay Lenders interest for 120 days past the earliest uncured payment default on the ARC Loan.

(6) Restructuring and Deferrals of non-SBA Loans as Part of the ARC Loan Transaction.

As part of the overall credit evaluation of a small business concern, an SBA Lender may restructure and/or defer its loan(s) to the concern as part of the overall ARC Loan transaction. While the QSBL may include same institution debt, SBA Lenders must avoid circumstances that could create a possible conflict of interest and such restructuring must be in the best interests of the small business concern. For example, allocating ARC Loan payments in such a restructuring in such a manner as to favor the lender but not serve the best interests of the small business concern would give the appearance of a conflict of interest.

(7) Collateral. SBA lenders are required to take collateral for ARC Loans consistent with their existing practices for similarly-sized non-SBA guaranteed commercial loans. Lenders’ collateral policies and procedures must be commercially reasonable and prudent. With respect to collateral taken, Lenders must use commercially reasonable and prudent practices to identify collateral items, which would include conformance with procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans. Lenders must substantiate their existing, applicable collateral policies in the ARC loan file and must certify their conformance with those policies on SBA Form 2316 (Part C). Small Business Lending Companies (SBLCs) must follow their existing 7(a) loan practices with regard to collateral.

(8) Fees. SBA will not charge any fees or costs to lenders or borrowers, including guaranty fees. The lender or its affiliates may not charge any fees or costs to the small business concern receiving the ARC Loan other than the direct costs associated with securing and liquidating collateral. Disallowed fees include, but are not limited to, points, bonus points, prepayment penalties, brokerage/packaging fees, document preparation fees, fees for processing, origination, or application, funding fees, late fees, and out of pocket expenses (other than the

direct costs of securing and liquidating collateral).

(9) Disbursement of ARC Loan Funds. ARC Loan funds are used for the purpose of making periodic principal and interest payments on QSBLs. Lenders must disburse ARC Loan funds in one of two ways. The Lender may pay itself and/or other lenders directly using either checks, electronic transfers or other evidence of payment. Alternatively, the lender may issue checks made out jointly to the borrower and the QSBL payee. Access through a debit or credit card is not an acceptable disbursement method for ARC Loans.

(10) Secondary Market Sales and Participations. ARC Loans may not be sold on the secondary market. Sales of participations in ARC Loan are also prohibited.

(11) Loan Increases. Due to the nature and the disbursement, deferral and repayment structure of ARC Loans, loan increases are not permitted without the express prior written approval of the 7(a) LGPC. Any increase approved must be consistent with the authorized use of proceeds and must be completed within the six month disbursement period. Under no circumstances will a loan increase extend the loan disbursement, deferral or repayment periods of the term of the loan beyond six and one-half years. Any request for an increase to an ARC Loan is subject to the availability of funding. Under no circumstances may an ARC Loan exceed \$35,000.

(12) Guarantees. Holders of at least a 20% ownership interest in the borrower generally must personally guarantee the ARC Loan.

(13) Bankruptcy. A borrower that has filed for and exited from bankruptcy is not excluded from receiving an ARC Loan. Consideration of a past bankruptcy is a factor for the lender's business judgment in making the final credit decision. See section 3f, "Bankruptcy," for a discussion of circumstances when bankruptcy would make a small business concern ineligible for an ARC Loans.

(14) Personal Resources Test. There is no personal resources test required for ARC Loans. The provisions of 13 CFR 120.102 do not apply to ARC Loans.

g. Lender Responsibility for Reviewing ARC Loan Eligibility

SBA 7(a) Lenders are responsible for screening ARC Loan applications and loans for eligibility. Lenders must be fully familiar with SBA's eligibility requirements as set forth in the Agency's statutes, regulations, SOPs, and this Procedural Guide and screen all ARC Loan applicants and applications to ensure they meet eligibility requirements.

In screening ARC Loans for SBA eligibility, lenders may in many instances rely on certifications provided by the applicant, several of which are included in the ARC Loan application documents. For example, character and other eligibility factors are included on the SBA Form 2315.

(1) Delegated Lenders. While the SBA expects all SBA 7(a) Lenders to carefully screen their ARC Loan applications for SBA eligibility, the Agency authorizes all delegated lenders to analyze and fully determine an applicant's eligibility for ARC Loans without prior review and approval by the Agency. If delegated lenders have questions on a particular ARC Loan, they may consult with SBA regarding that loan's eligibility. The consultation request may be e-mailed to the 7(a) LGPC at [ARC Loan Eligibility Questions@sba.gov](mailto:ARC Loan Eligibility Questions@sba.gov)

Delegated SBA Lenders will be required to certify in their request for an SBA loan number that the applicant and the loan meet the Agency's eligibility requirements. In making that certification, the lender will acknowledge complete liability for the loan if it later comes to the attention of SBA or the lender that the applicant or loan was ineligible.

Delegated SBA Lenders must use SBA's ARC Loan eligibility checklist (SBA Form 2316, Part C), which will be maintained in the lender's loan file but not sent to SBA. The lender must maintain appropriate loan file documentation supporting its eligibility determination. It must also ensure all required forms/information are obtained, are complete, and are properly executed.

(2) Non-Delegated Lenders. Non-delegated Lenders must carefully review and screen ARC Loans to ensure they meet SBA's eligibility requirements before transmitting the application materials to the 7(a) LGPC. These materials will include the SBA request for a loan number, the eligibility checklist (SBA Form 2316, Part C), and the supplemental information sheet (SBA Form 2316, Part B).

Non-delegated lenders must ensure all required forms/information are obtained, are complete, and are properly executed. Appropriate loan file documentation must be maintained, including adequate information to support the eligibility of the applicant and the loan.

#### h. Underwriting and Approval of ARC Loans

(1) Credit Criteria for Delegated Processing of ARC Loans. The credit analysis and underwriting processes are performed by the SBA Lender. In underwriting an ARC Loan, the SBA Lender must consider and evaluate a borrower's overall credit situation to identify the complete debt burden of the small business concern in order to assess the continued viability of the small business concern. The small business' debts must be identified in order to determine the allocation of the use of proceeds for the ARC Loan as well as to establish whether the small business has a reasonable expectation of repayment of existing debt as well as the new ARC Loan. A Lender is expected to assess a borrower's total financial position including the small business concern's debt burden -- both same institution debt and other institution debt. The Lender must make determinations about the allocation of ARC Loan proceeds that consider the overall financial situation of the small business. While SBA allows a Lender to use an ARC Loan to make payments on same institution debt without SBA's approval, the Lender is encouraged to use the ARC Loan proceeds in a manner best designed to promote the borrower's long-term viability.

SBA has established the following credit criteria for delegated processing of ARC Loans:

- (i) The Borrower must be in operation for a minimum of two years.
- (ii) Annual financial statements (balance sheet, income statement, and cash flow statement) for three years (or for as long as business has been operating, if less than three years) must be obtained and analyzed. The statements must demonstrate that the business is a Going Concern and provide evidence of profitability or positive cash flow in at least one of the past two years. IRS verification of income is required as described in Section 7b, Closing Requirements, of this Guide. For those small business concerns whose most recent annual financial statements are more than 90 days old, interim financial statements are required.
- (iii) Quarterly cash flow projections for two years from the time the ARC Loan was made based on reasonable growth projections that indicate there will be sufficient cash flow to meet current and future debt service obligations including the ARC loan. Projected debt service coverage of 1.0 is sufficient for this purpose.
- (iv) Borrower certification on SBA Form 2315 that the requested loan proceeds will not be used to pay QSBL debt that is more than 60 days past due. (If the borrower cannot make that certification, then the loan cannot be made under delegated authority and must be submitted to the 7(a) LGPC. As part of the submission to the 7(a) LGPC the borrower must provide details regarding any debt more than 60 days past due.)
- (v) Borrower certification on Form 2315 that the small business is suffering an immediate financial hardship and identifies the hardship being experienced with supporting documentation. Examples of immediate financial hardship are described in Section 3a(2), "Immediate Financial Hardship," above.
- (vi) An acceptable business credit score obtained by SBA after submission by the Lender for an SBA Loan Number.

(2) Underwriting and Approval by Delegated Lenders. If, based on the Lender's evaluation, a small business borrower meets the credit criteria for delegated processing established in (i) through (v) above, the lender will submit the loan to SBA through E-Tran. After certifying as to the borrower's eligibility and credit requirements, the loan application will be accepted by SBA for processing. Upon submission, SBA will obtain a business credit score. If the credit score is within the acceptable range, the lender will receive an SBA loan number. If the credit score is not within established limits, the loan will be referred to the 7(a) LGPC for

further review. Additionally, if the borrower does not meet the credit criteria for delegated processing, but the lender believes the potential ARC loan is a viable loan, the lender may submit the entire loan package to the 7(a) LGPC following the requirements for non-delegated lenders. See Section 5, “What is the ARC Loan Application Procedure?” for additional information.

(3) Underwriting and Approval by Non-Delegated Lenders. Non-Delegated lenders will obtain the necessary information to underwrite the loan consistent with the credit criteria for delegated processing established above. Non-Delegated lenders will prepare a credit memorandum addressing the credit criteria and submit the loan to the 7(a) LGPC for credit scoring and an approval decision. See Section 5 for additional information.

## **5. WHAT IS THE ARC LOAN APPLICATION PROCEDURE?**

### **a. Required Forms from Applicant**

ARC Loan application packages must include the forms and information the lender requires in order to make an informed eligibility and credit decision. The applicant and the lender must certify the application is true and complete.

Except as set forth in paragraphs (1) through (3) below, the only documentation required by SBA from the applicant under the ARC Loan Program is SBA Form 2315, “ARC Loan Program Borrower Information Form,” which must be signed and dated by the applicant. SBA Form 2315 has been modified and consolidated to generally include the certifications and requirements previously set forth in SBA Forms 159, 601, 912, 1261, and 1624.

(1) SBA Form 159 7(a): If the applicant has not used a packager has been used by the applicant to complete the ARC Loan application, the applicant will so indicate on the Form 2315, and no Form 159 is required. If a packager has been used by the borrower who paid a fee directly to the packager, the Form 159 must be fully completed and kept in the loan file, and the lender does not send it to SBA. Lenders and their affiliates are prohibited from charging borrowers packaging fees for ARC Loans.

(2) SBA Form 912: If questions 1(a), (b), and (c) of Form 2315 are answered negatively, no Form 912 is required. If question 1(a) is answered affirmatively, the loan is ineligible. If questions 1(b) or (c) are answered affirmatively, the lender may process the ARC loan under its delegated authority under certain conditions or submit the ARC loan to the 7(a) LGPC for non-delegated processing. In the latter case, the applicant must complete Form 912 and follow the steps as outlined in section 3c, Character Requirements for ARC Loans.

(3) SBA Form 1624: If the applicant has never been debarred, suspended, or otherwise excluded, the applicant must so indicate on Form 2315 and no Form 1624 is required. If the applicant answers affirmatively, a Form 1624 is required, and the loan cannot be

processed as a delegated authority ARC Loan.

Each of the following parties applying for an ARC Loan must complete and sign an SBA Form 2315:

- for a sole proprietorship, the sole proprietor;
- for a partnership, all general partners and all limited partners owning 20 percent or more of the equity of the firm;
- for a corporation, each officer, director, and 20% or more owner;
- any other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business; and
- any person guaranteeing the loan.

The SBA Lender is responsible for ensuring all required forms/information are obtained, are complete, and are properly executed, including electronically based forms/information. In addition, after the loan is closed, the lender must continue to apprise SBA of certain critical performance data as well as changes in certain basic borrower information, such as trade name and address.

b. Delegated SBA Lender Request for SBA Loan Number

Existing SBA Lenders with approved delegated authority may make ARC Loans using their delegated authority under the following conditions:

- (1) Eligibility. SBA Lenders must certify that the eligibility requirements contained in Section 3 are met.
- (2) Credit. SBA Lenders must certify that the proposed ARC Loan meets the credit criteria for delegated processing established in Section 4i(1), Credit Criteria for Delegated Processing of ARC Loans.”

Delegated SBA Lenders must submit the ARC Loan application package to SBA via E-Tran for an SBA Loan Number. As part of the E-Tran submission, the Lender must certify as to items (1) and (2) above. Upon submission, SBA will obtain a business credit score. If the business credit score is within acceptable limits, SBA will issue the Lender a Loan Number and the SBA Lender will approve the loan. This information typically will be provided electronically.

If the credit score for the ARC Loan is not within acceptable limits – either too high or too low, the ARC Loan will be referred to the 7(a) LGPC for further review.

If the SBA Lender cannot make the required certifications but still believes the application may be a viable ARC Loan, the lender may submit the entire loan package to the 7(a) LGPC by following the requirements for non-delegated lenders in the following section.

c. Non-Delegated Lender Approval Request.

Non-Delegated SBA Lenders should submit the ARC Loan package including SBA Form 2315, “America’s Recovery Capital (ARC) Borrower Information Form,” and SBA Form 2316, “America’s Recovery Capital (ARC) Loan Guaranty Request, Parts A, B, and C” to the 7(a) LGPC. Additionally, the Non-Delegated SBA Lender must submit borrower’s financial statements for the past three years and interim financial statements if annual statements are more than 90 days old, IRS verification of a borrower’s income, quarterly cash flow projections for two years, and additional documentation, if necessary, to support the statement of financial hardship included in the Form 2315. The lender should also submit its credit memorandum including an analysis and discussion of the borrower’s status, the character and reputation of the business, its business structure and age, experience and depth of management, current and past financial condition, projected cash flows, and the financial hardship being experienced. Information on the QSBLs being paid with an ARC Loan including the required documentation for credit card obligations and home equity loans must be provided.

SBA Lenders with delegated authority that are not able to certify to the required credit and eligibility criteria may also send in the same information for proposed ARC Loans if the lender believes the loan is a viable loan.

The lender may send the request for loan package to the 7(a) LGPC by mail, facsimile transmission or electronic transmission.

(1) 7(a) LGPC Review. The 7(a) LGPC will review the loan package submitted for completeness and will evaluate the information and underwriting analysis performed for purposes of credit and eligibility approval. The 7(a) LGPC will also obtain a business credit score for the loan. Based on this review and analysis, the 7(a) LGPC will make an approval decision with regard to the ARC Loan.

If approved, the 7(a) LGPC will notify the lender and provide an SBA loan number. If disapproved, the 7(a) LGPC will advise the lender of the disapproval and the reason for disapproval.

There is no appeal or reconsideration of the 7(a) LGPC credit and/or eligibility determination. If new information is developed that materially changes the nature of the credit, it may be resubmitted for review and possible approval.

(2) Lender Notification of Approval Decision. Upon receipt of a complete loan package from a Lender, the 7(a) LGPC expects to make approval or disapproval decisions within ten (10) business days. The 7(a) LGPC will notify the lender of its decision by fax or by electronic transmission. If approved, the notification will include the SBA Loan Number and the ARC Loan Authorization.

d. Funding Limitation.

There is an established limit on the amount of ARC Loans SBA may make based upon the funds appropriated by Congress and the subsidy calculations. SBA does not have authority to guarantee ARC Loans in excess of that limit. SBA Lenders do not have an SBA guaranty until a loan number is issued. SBA cannot issue a loan number if funds are not available.

e. Loan Volume.

Due to the limited funding available for ARC Loans, SBA reserves the right to allocate loan volume under the ARC Loan Program among participating lenders. SBA has determined that no lender may make more than 1,000 ARC Loans in total but there is no guaranty of the availability of 1000 loans per lender. Further, lenders may only receive 50 ARC Loan approvals per week. Unused weekly allocations may be carried over into subsequent weeks but in no instances may the total number of ARC Loans approved for a lender exceed 1,000. The limit applies to the aggregate number of ARC Loans made – either delegated or non-delegated. SBA has set these initial limits in order to better manage the pipeline of ARC Loans. The allocations will be regularly reassessed and the SBA may make adjustments, as appropriate, given the volume and nature of ARC Loans being processed.

## **6. HOW IS INTEREST ON ARC LOANS PAID TO LENDERS?**

a. Acceptable Methods of Calculating Interest

SBA Lenders may calculate interest based on either of the following two established methods for 7(a) loans:

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

b. Rate of Interest Paid on ARC Loans.

SBA will establish and publish in the Federal Register the rate of interest an SBA Lender may charge SBA on an ARC Loan. The rate will be a variable rate based on Prime. The initial interest rate will be the variable rate that is in effect on the first business day of the month in which SBA received the loan application. The rate will be adjusted on the first business day of each month thereafter. SBA Lenders may not charge different rates or methods of interest calculation on ARC Loans. SBA will pay interest in arrears on a monthly basis.

The rate of interest SBA will pay to a Lender following default of an ARC Loan is the same ARC Loan Interest Rate in effect on the date of the earliest uncured payment default. SBA will only pay a Lender interest on the principal balance of the loan at the time of default for 120 days past the earliest uncured payment default on the ARC Loan.

c. Interest Payments to Lenders.

SBA Lenders must bill the SBA monthly for the interest due via the lender's 1502 report. If the lender fails to file a 1502 report, the lender will not be paid until all past due 1502 reports have been filed. The interest payable billed by SBA Lenders will be reviewed by SBA's Denver Finance Center who will validate the amount requested. If the amount requested is within established tolerance limits, the Denver Finance Center will pay the requested amount. If the amount requested is outside of established limits, no interest will be paid and the lender will be contacted to resolve the discrepancy. SBA will not pay interest on accrued interest. (SBA will issue separate instructions on 1502 reporting and interest payment procedures for ARC Loan interest payments to Lenders.

The Debt Collection Improvement Act of 1996 requires agencies to make all payments electronically. The SBA is intent on making interest payments to lenders for the ARC program in this manner as soon as practicable. A new subsystem is being developed to collect and store account, electronic routing and other basic information necessary to accomplish this goal. Until this additional information can be collected from all lenders participating in the ARC program, SBA will mail out interest payment checks to lenders based on the address and contact information currently stored in our Partner Information Management System (PIMS). Addenda information provided with the check will identify the payment as "ARC loan interest" and will contain the SBA loan number for reference. Further information on payment of interest payments to lenders will be forthcoming with the guidelines on a modified 1502 reporting as mentioned above.

d. Reconciliation of Interest Payments to Lenders.

SBA, or SBA's agent, will perform subsequent reconciliations of the interest billed and paid. When requested, Lenders will provide loan transcripts for ARC Loans within 10 business days of the request from SBA or its agent. One or more reconciliations and/or audits of interest payments may be performed by SBA at purchase, at the end of the loan term and/or during the term of the loan.

e. Adjustments Allowed on Interest Payments to Lenders.

If the reconciliation or audit shows an interest overpayment, the Lender will pay SBA any amounts due to SBA as a result of any reconciliation or audit performed, and SBA may net the interest amount due from future interest payments or guaranty purchase amounts due to the Lender. If the reconciliation or audit shows an underpayment, SBA will pay any amount due the Lender as a result of the reconciliation or audit.

**7. WHAT MUST A LENDER DO FOR CLOSING, SERVICING AND LIQUIDATION OF ARC LOANS?**

SBA Lenders must close, service, and liquidate their ARC Loans consistent with existing practices and procedures that Lenders use for their non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with SBA Loan Program requirements as defined in 13 CFR 120.10. SBA Regulations at 13 CFR 120.524 provide that the Agency will be released from liability on a guaranty on various grounds, including a lender's failure to close, service or liquidate a loan in a prudent manner or to comply with applicable SBA Loan Program Requirements (as defined in 13 CFR 120.10).

a. SBA Authorization

Delegated Lenders complete the ARC Loan Authorization 2009 without SBA review and sign it on behalf of SBA. (The latest version of the ARC Loan Authorization may be accessed from SBA's banking page at <http://www.sba.gov/banking>.) SBA does not require that this form be provided to the borrower.

The 7(a) LGPC will complete the National ARC Loan Authorization 2009 for Non-Delegated Lenders as part of their credit underwriting and approval process.

b. Closing Requirements

An SBA Lender must use the same closing and disbursement procedures and documentation for their ARC Loans as they use for its non-SBA guaranteed commercial loans. All SBA Lenders must use the Note, SBA Form 2318, and Guaranty Form, SBA Form 148, for ARC Loans. An SBLC must use the same closing and disbursement procedures and documentation for its ARC Loans as it uses for its 7(a) loans or submit an alternative approach for prior written approval by SBA.

The lender must obtain all required collateral and must meet all other required conditions before loan disbursement, including obtaining valid and enforceable security interests in any loan collateral. These conditions include requirements identified in the loan authorization, such as standby agreements, appraisals, and business licenses.

The lender must also complete the following before disbursing ARC Loan proceeds:

(1) Verification of Financial Information. Lender must submit IRS Form 4506-T (SBA version) to the Internal Revenue Service to obtain federal income tax information on Borrower for the last 3 years. If the business has been operating for less than 3 years, lender must obtain the information for all years in operation. This requirement does not include tax information for the most recent fiscal year if the fiscal year-end is within 6 months of the date SBA received the application. Lender must compare the tax data received from the IRS with the financial data or tax returns submitted with the Loan application and relied upon to approve the Loan. Borrower must resolve any significant differences to the satisfaction of Lender and SBA. Failure to resolve differences may result in cancellation of the Loan.

If a Delegated Lender does not receive a response from the IRS or copy of the tax transcript within 10 business days of submitting the IRS Form 4506-T, then Lender may close and disburse the loan provided that Lender sends a second request following precisely the procedures included in SOP 50-10-5(A), Subpart B, Chapter 5, and Lender performs the verification and resolves any significant differences discovered, even if the Loan is fully disbursed.

Non-Delegated Lenders must follow the procedures included in SOP 50-10-5(A), Subpart B, Chapter 5 with regard to verification of financial information.

If a material discrepancy appears or the IRS advises that it has no record on the applicant, the lender must report it immediately to the 7(a) LGPC and document the loan file of the action taken. The SBA will investigate the issue and may direct the lender to secure additional information, proceed with loan processing, rescind approval of the loan (if no disbursement has occurred), suspend further disbursement, call the loan, or initiate recovery of any disbursed amounts. Any interest payments disbursed to the lender prior to any loan cancellation must be repaid to SBA. In addition, the SBA office will determine if a referral of the matter to OIG is warranted and will make that referral.

(2) Third Party Payments. ARC Loan applicants must supply information about payments to loan packagers, accountants, lawyers, or any other individual or entity that assisted the borrower in obtaining the loan. If the applicant responds negatively to this question on the Form 2315, Form 159 is not required. Otherwise, Form 159 must be completed, and the lender must keep the signed Form 159 in its loan file. Lenders and their affiliates may not charge borrowers any fees for ARC Loans except for the customary and standard direct costs of securing and liquidating collateral.

(3) Adverse Change. If the ARC loan approval is over 45 days old before the first disbursement, the Lender must obtain satisfactory evidence that there has been no unremediated adverse change (as set forth in SOP 50 10 5(A), Subpart B, Chapter 7, since the date of the application that would warrant withholding or not making any disbursement.

(4) Hazard Insurance. Applicants must obtain required hazard insurance on all assets taken as collateral, unless the lender does not require hazard insurance on its conventional, commercial loans for similar collateral. If the lender does not require hazard insurance (for example, if it would impose an undue burden on a borrower given the small size of a loan), the lender must document the reason in its loan file. If collateral is not taken, hazard insurance is not required.

(5) Flood Insurance. The lender must make the required flood hazard determination and require flood insurance (when collateral is taken) pursuant to the flood insurance requirements in SOP 50 10 5(A), Subpart B, Chapter 5. (Generally, those requirements state that flood insurance is required on real estate collateral in a flood zone, but it is within the lender's discretion to determine whether flood insurance is necessary on personal contents and fixtures when the

building is not taken as collateral.) If collateral is not taken, a flood hazard determination is not required and flood insurance is not required.

(6) Environmental Reviews. Lenders must follow the environmental requirements of SOP 50 10 5(A), Subpart B, Chapter 4. Delegated lenders have the authority to make prudent decisions regarding environmental risk that are stated there as reserved for the processing SBA office. Non-delegated lenders must follow the procedures included in SOP 50 10 5(A), Subpart B, Chapter 4. A Lender may not request an ARC Loan number for a loan that will have primary collateral that will not meet SBA's environmental requirements or that will require use of a non-standard indemnification agreement. If collateral is not taken, environmental reviews are not required.

(7) Child Support Payments. Lenders must obtain certification from any 50 percent or more owner of applicant business on SBA Form 2315 that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

- (i) an administrative order;
- (ii) a court order;
- (iii) a repayment agreement between the holder and a custodial parent; or
- (iv) a repayment agreement between the holder and a state agency providing child support enforcement services.

(8) Disbursements. SBA Form 1050, Settlement Sheet, is not required to document disbursements. Lenders must document the individual QSBLs being paid with the ARC Loan and the monthly payment schedule (by QSBL) for the ARC Loan. Additional disbursement requirements are described in Section 4.b.(8) above. The lender must send only a copy of the executed Authorization to the SBA office servicing the loan. The lender should not send any other closing documentation to SBA after closing an ARC Loan unless it makes a request for purchase of the guaranty.

c. Servicing and Liquidation Requirements

Routine ARC Loan servicing and liquidation matters are overseen centrally by either SBA's Commercial Loan Servicing Centers located at 2120 Riverfront Drive, Little Rock, AR 72202 (501-324-5871; lrsc.servicing@sba.gov) or 2719 North Air Fresno Drive, Fresno, CA 93727-1547 (209-487-5650; fsc.servicing@sba.gov).

SBA lenders must service and liquidate ARC Loans using their practices and procedures that the lender uses for its non-SBA guaranteed commercial loans. Under all circumstances, such practices and procedures must be commercially reasonable, consistent with prudent lending standards, and in accordance with SBA Loan Program Requirements (as defined in 13 CFR

120.10). An SBLC must use the same servicing and liquidation practices for its ARC Loans as it uses for its regular 7(a) loans or submit an alternative approach for prior written approval by SBA.

(1) SBA Consent Required for a Servicing/Liquidation Action. While the SBA lender may take any necessary servicing or liquidation action for any ARC Loan in its portfolio, SBA requires its prior written consent for servicing actions that may have significant exposure implications for the Agency. Lenders must obtain the prior written consent of SBA before taking any of the following actions. The lender must also document the action and SBA's consent in its loan file.

- (i) Increase the principal amount of the loan above that authorized by SBA at loan origination;
- (ii) Confer a preference on the lender (after the initial ARC Loan is approved) or engage in an activity that creates a conflict of interest;
- (iii) Compromise the principal balance of a loan or compromise/release any obligor/guarantor for less than the full principal amount due;
- (iv) Take title to any property in the name of SBA;
- (v) Take title to environmentally contaminated property, or take over operation and control of a business that handles hazardous substances or hazardous wastes;
- (vi) Transfer or pledge any portion of a loan;
- (vii) Take any action for which prior written consent is required by an SBA Loan Program Requirement; or
- (viii) Any deferral beyond the initial six month deferral that a Lender may approve.

(2) Notification to SBA of Action Taken. Lenders must document their loan files and notify the SBA Servicing Center electronically or in writing as soon as possible, but no longer than 10 days after they take any of the following actions, and provide relevant information, as necessary. (Lenders may use SBA Form 2237, PLP/SBA Express/LowDoc Servicing Checklist, to notify the Center.)

- (i) Decreases the principal amount of the loan;
- (ii) Cancels the loan;
- (iii) Becomes aware of a change in the trade name of the business or, if it has no trade name, a change in the name of the business entity;

- (iv) Becomes aware of a change to the borrower's address;
- (v) Changes a loan's maturity;
- (vi) Approves an assumption of a loan;
- (vii) Classifies the loan into "liquidation status;" and/or
- (viii) Deferral of an ARC loan for up to six months.

(3) Deferrals. ARC Loans may be deferred during the repayment period by a Lender for up to six months. Notice to SBA of the deferral must be provided. Any deferral for an additional period must be approved in advance, in writing. In any situation where an ARC Loan is deferred during the repayment period, the loan must be re-amortized to ensure that the loan is fully repaid within the remaining term of the loan. An ARC Loan may not be deferred when the underlying QSBL is on non-accrual.

(4) 1502 Reporting. Lenders must use the 1502 reporting format to timely and accurately report the status and outstanding balance of all of their SBA loans, including ARC Loans. SBA will provide separate guidance on 1502 reporting for ARC Loans. Lenders that fail to file 1502 reports will not be paid interest on their ARC Loans by SBA until all past due 1502 reports have been filed.

(5) Liquidation of ARC Loans. Each lender is responsible for liquidating any defaulted ARC Loan originated by the Lender. ARC Loans must be liquidated in accordance with the existing practices and procedures that the Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with SBA Loan Program Requirements defined in Section 13 CFR120.10.

Lenders must complete the liquidation of all ARC Loans with an estimated remaining collateral value in excess of \$1,000. For loans with an estimated remaining collateral value of \$1,000 or less, an SBA Lender may request that SBA accept the transfer of the loan in order to complete liquidation. If the lender requests SBA to complete liquidation, SBA will review the request using normal review criteria and determine if referral to Treasury for liquidation is appropriate. Bankruptcy, foreclosure, litigation, cross-collateralization with another SBA guaranteed loan, possible grounds for an SBA purchase adjustment ("repair") or denial of liability, or other factors could preclude SBA's transfer to Treasury. In requesting that SBA liquidate, the lender must identify all guarantors obligated on the debt that have not been discharged in bankruptcy or compromised so SBA can include their names in the Treasury offset system. Any recoveries obtained by Treasury will be remitted to SBA, less Treasury's costs of collection.

In carrying out their liquidation responsibilities, lenders should recognize that, as part of its lender monitoring and review responsibilities, the Agency will explicitly evaluate the timeliness

and reasonableness of an SBA Lender's liquidation activities. SBA will conduct complete purchase reviews on all loans as provided under SOPs 50-50 and 50-51.

(6) Documentation of Liquidation Actions. The lender does not have to provide a liquidation plan to SBA, although the lender is encouraged to prepare one as an aid to orderly recovery. However, the SBA Lender must document all significant actions taken during the liquidation of a loan. SBA will review liquidation actions as part of its review of a lender's processing, making, closing, servicing, and liquidation of ARC Loans. Please note that the lender will need to submit a litigation plan for any non-routine litigation (where factual or legal issues are in dispute and require resolution through adjudication or where legal fees are estimated to exceed \$10,000). The reimbursement of liquidation related fees and expenses to the Lender is limited to the amount of the recovery on the ARC Loan.

In pursuing liquidation after SBA's purchase, lenders must provide SBA with a liquidation status report every 180 days until all recovery is completed or the lender recommends that the loan balance be charged off. Within 60 days of completion of recovery actions, the lender must provide the Agency with a liquidation wrap-up report summarizing all recovery activity, valuation and disposition of collateral, collections, and expenses to the appropriate SBA Commercial Loan Servicing Center in Little Rock or Fresno. In lieu of documentation to evidence that liquidation of collateral has been completed, the Lender may certify that "liquidation of collateral is complete." The lender must forward to SBA any recovery proceeds not already remitted to the Agency.

(7) Application of Proceeds from Disposition of Collateral. The lender must apply the proceeds from the sale of collateral in the following order to:

- (i) liquidation expenses associated with the disposition of collateral
- (ii) principal balance of the loan.

(8) Note Receivables. A lender may take back a Note Receivable on the sale of collateral on any reasonable terms negotiated between the lender and the buyer. However, the Note Receivable must be legally enforceable and assignable and must be properly signed by the borrower/guarantor acknowledging the debt. The principal balance of the loan must be reduced by the amount of the Note Receivable, which will not have an SBA guaranty.

## **8. HOW DOES SBA PURCHASE ITS GUARANTY?**

### **a. Guaranty Purchase on ARC Loans.**

Lenders are not required to liquidate collateral prior to requesting purchase of an ARC Loan guaranty. SBA will process the purchase of an ARC Loan when there has been an uncured payment default exceeding 60 days or when the borrower has filed bankruptcy. In any of the

above situations, the lender is still required to complete all recovery actions on the loan after purchase, and the lender must document the liquidation of all business assets in its wrap-up report for the loan. If warranted and at its discretion, SBA may take over the servicing after purchase.

SBA requires Lenders to submit ARC loans for purchase no later than 120 days after the earliest uncured payment default on the ARC Loan. SBA will only pay Lenders interest for 120 days past the first uncured payment default of principal payments on the ARC Loan. Additionally, SBA may honor its guarantee and require a Lender to submit an ARC Loan for purchase at any time.

b. Procedures and Documents Required for Guaranty Purchase of ARC Loans.

SBA reviews all loan documentation that is relevant to the purchase being processed prior to payment of its guarantee using standard guaranty purchase review procedures. For ARC Loans, that documentation will include appropriate substantiation of the borrower's eligibility for the ARC Loan, as described in Section 3, "What are the Eligibility Requirements for ARC Loans?". (See ARC Loan Purchase Checklist at <http://www.sba.gov/aboutsba/sbaprograms/elending/>).

The maximum SBA will pay the lender at purchase is the principal balance of the loan at the time of default plus up to 120 days interest at the ARC Loan Interest Rate in effect on the date of the earliest uncured payment default.

SBA will only purchase reasonable and necessary lender fees and expenses incurred in recovery actions up to the amount of the recovery. If fees or other amounts related to disposition of collateral that are charged to the borrower by the lender are not paid by recoveries prior to the purchase request, the lender must deduct these amounts, and any interest charged on such amounts, from the balance shown on the transcript of account submitted to SBA.

With regard to interest paid to lenders on ARC Loans, the lenders must submit a loan transcript as part of the purchase package. Adjustments to interest paid will be made in accordance with Section 6 above. Lenders will be responsible for paying SBA any overpayment of interest amounts due to SBA and SBA may net the amount due from any interest payments or guaranty purchase amounts due to the lender. SBA will pay any amount due the Lender resulting from an underpayment of interest.

c. Release from Liability on SBA's Guaranty

SBA regulations at 13 CFR 120.524 set forth the circumstances under which SBA is released from liability on a loan guaranty (in whole or in part, within SBA's exclusive discretion). If the lender's loan documentation or other information indicates that one or more of the events described in the regulations occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guaranty and may withhold a decision on whether to honor the guaranty until completion of such investigation.

**9. HOW DOES SBA CONSIDER ARC LOAN PERFORMANCE IN A LENDER'S OVERALL PORTFOLIO PERFORMANCE?**

SBA will assess an SBA Lender's performance as described in the lender oversight regulation at 13 CFR 120.1000 *et seq.* SBA expects that ARC Loans will have a much higher default rate than 7(a) loans. Lender participation in the ARC loan program may be taken into account as part of a Lender's contribution to SBA's mission in determining the satisfactory performance of a lender.

**10. WHAT IS THE PROCEDURE FOR SUSPENSION OR REVOCATION OF ELIGIBILITY TO PARTICIPATE IN THE ARC LOAN PROGRAM?**

SBA will follow the procedures contained in 13 CFR 120.1400 *et seq.* governing lender oversight and enforcement practices.

## **APPENDIX**

### **List of ARC Loan Forms**

- a. SBA Form 2315, America's Recovery Capital (ARC) Borrower Information Form
- b. SBA Form 2316, Part A, America's Recovery Capital (ARC) Loan Guaranty Request
- c. SBA Form 2316, Part B, Lender's Supplemental Information for America's Recovery Capital (ARC) Loan Guaranty Request
- d. SBA Form 2316, Part C, Eligibility Information Required for America's Recovery Capital (ARC) Loan Submission
- e. SBA Form 2318, America's Recovery Capital (ARC) Loan Note
- f. National America's Recovery Capital (ARC) Loan Authorization, 2009