



# GUIDE TO SBA 7(a) SECONDARY MARKET LOAN SALES

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## I. INTRODUCTION

Lenders who hold business loans guaranteed by the Small Business Administration's (SBA) 7(a) Guaranty Loan Program may sell the guaranteed portions of those loans in the secondary market.

To administer its secondary market program, SBA has appointed Colson Services Corp. to act as its Fiscal and Transfer Agent (FTA). Colson handles record keeping for all SBA-guaranteed portions sold in the secondary market.

## II. THE LOAN SALE PROCESS

### A. Document Glossary

1. SBA Form 147 – Promissory Note:
  - SBA loan agreement between Borrower and Lender. SBA recommends that any promissory note dated after February 15, 1996, contains the following statement: "Borrower shall provide Lender with written notice of intent to prepay part or all of this loan at least 21 days prior to the anticipated payment date. A prepayment shall be defined as any payment made ahead of schedule that exceeds 20% of the then outstanding balance."
2. SBA Form 1086 – Secondary Participation Guaranty Agreement:
  - Form used to sell the guaranteed portion of an SBA loan into the secondary market. This is a tri-party agreement between the Lender, first Purchaser and SBA.
3. Purchaser's Confirmation of Sale:
  - Settlement information (based on SBA Form 1086), which includes Lender's wire instructions and certificate issuance instructions.

### B. Settlement Requirements

1. Allowable accrued interest on SBA loans:
  - (a) Monthly SBA loans. The maximum accrued interest eligible for purchase on SBA guaranteed loans is 60 days.
  - (b) Non-monthly paying SBA loans
    - Annual-paying loans: Shall have no more than 11 months of accrued interest.
    - Semi-annual-paying loans: Shall have no more than 5 months of accrued interest.
    - Quarterly paying loans: Shall have no more than 2 months of accrued interest.
    - Seasonal P&I loans: Shall pay as agreed, on a case-by-case basis.
2. The Lender must provide the following documents to the Purchaser of a loan:
  - (a) FTA's required documents
    - *Fully executed SBA Form 1086.* The Lender must properly complete, execute and forward an SBA Form 1086 to the initial loan Purchaser for each loan sold. The FTA will not accept corrections and/or alterations to this form.

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- *Copy of SBA Form 147 (Promissory Note)*. On the original promissory note, an authorized officer of the lending institution must sign and date the following legend: "The guaranteed portion of the outstanding principal balance of this note has been transferred to a Registered Holder for value." Upon completion of this legend, Lender should make a copy of the original promissory note (the signature on the legend will thus be a photocopy). On the copy of the promissory note delivered by Lender to Purchaser, the following certification must appear: "We certify this document to be a true and certified copy of the Original Note." This certification must be manually signed and dated, preferably in blue ink.
  - Certified copy of Note addendum (if any).
- (b) Other documents (at Purchaser's request)
- *Copy of SBA Form 529B (Loan Authorization Agreement)* - delivery of this form by the Lender is optional. However, FTA may request a copy if discrepancies are found between the *Note* and *SBA Form 1086*.
  - *Payment History* - in the case of the initial sale of an SBA loan by the originator thereof, the Lender may also provide the Purchaser with a transcript showing the date(s) and amount(s) of disbursement(s) and the payment history.
3. Purchaser must provide the following to the FTA with the documents mentioned in 2(a) above:
- *Purchaser's Confirmation of Sale*
  - \$75.00 set-up fee

### C. Settlement Process

1. Upon receipt and verification of the documents specified above from the Lender, the loan Purchaser should sign and submit the complete document package to the FTA.
2. FTA will, after review and approval of completed document package, notify the Purchaser that its loan may settle. This notification will take place within 2 business days from the FTA's receipt of the document package. If the documents are not in good order, Purchaser must correct any discrepancies or replace inaccurate loan documentation before settlement can take place. Corrections must be received and accepted by FTA prior to the settlement date.
3. Prior to loan settlement, the Purchaser will contact Lender to verify the borrower's last payment date and outstanding principal balance.
4. One business day prior to the scheduled loan settlement date, the Purchaser must provide the FTA with a Purchaser's Confirmation of Sale and the FTA's settlement fee of \$75.00. Required settlement details includes:
  - Loan information
  - Settlement calculations
  - Net interest rate information
  - Wire instructions for the Lender
  - Certificate registration information
5. On a designated date agreed to by the Purchaser and the Lender, the wire transfer of funds from the Purchaser to the Lender (through the FTA) effectuates settlement. Purchaser must wire the settlement amount to FTA's bank before 1 p.m. EST. FTA wires funds received to the Lender the same day.
6. Within two business days of the settlement date, the FTA will issue the Purchaser, or its designee, an SBA Guaranteed Interest Certificate.

### D. Common Settlement Documentation Problems

To avoid delays in settling an SBA 7(a) loan, take note of the following common problems the FTA encounters during the document review process:

#### 1. SBA Form 1086:

- Use of "white-out" on any page of SBA Form 1086.
- GP Number is not in agreement with SBA System and/or Borrower Note (SBA Form 147).
- Principal prepaid is not accounted for on SBA Form 1086 ("par value" on page 2).
- Interest paid-to-date is not current.
- Interest rate listed, dollar amount on SBA Form 1086, and guaranty percentage are not in agreement with SBA System information.
- Changes and alterations are not initialed.
- Ceiling and floor rates do not agree with the Borrower Note (SBA Form 147).
- Information has been omitted (a required field is left blank).
- Original Lender signature or Lender name is missing on page 18.
- Original Purchaser signature or Purchaser name is missing page 18.
- Pages 6-17 missing.

#### 2. Borrower Note (SBA Form 147):

- Maturity over twenty-five (25) years and loan is not a construction loan.
- Maturity over twenty-five (25) years and not offset by interest-only payments.
- Dollar amount of Note (SBA Form 147) is not in agreement with SBA's System.
- GP Number is not in agreement with SBA's System and/or SBA Form 1086.
- "True and certified" legend is missing or does not contain original signature.
- Borrower signature is missing on note modifications and/or changes.
- "True and certified" legend is missing on note modifications and/or changes.
- SBA approval/acknowledgement is missing from modifications and/or changes.
- "Guaranteed portion transfer" legend is missing.
- Use of "white-out" on any page of SBA Form 147 (Note).
- "Cap letter," if needed, is missing. A cap letter is needed if the Borrower's Note (or any attached modification or allonge) states that the loan has a cap and/or floor.
- "Calendar quarter letter," if needed, is missing. A calendar quarter letter is needed if the Borrower's Note does not clearly define the quarterly rate change to be on the calendar's quarters.
- "May adjust" letter is missing. If a variable rate Note contains this language, a letter of clarification is needed.

### E. Program Fees on Sold Loans

- Lenders must pay an ongoing SBA program fee of .50% per annum on all loans approved on or after October 12, 1995. This fee is payable from the interest amount passed through by Lender to FTA.
- Lenders must pay an ongoing SBA program fee of .40% per annum on all loans approved before October 12, 1995 and sold after August 31, 1993. This fee is payable from the interest amount passed through by Lender to FTA.
- For sold loans, an SBA premium fee = ½ of any premium in excess of 110, which is paid by Lender at the time of settlement.

### F. Loan Sale Terminology

#### 1. Selling at Par:

- Selling a loan at par is selling 100% of the outstanding principal balance. This method of sale maximizes service income or future earnings.

#### 2. Selling at a Premium:

- Selling at a premium is selling the outstanding guaranty balance for more than 100% of its value. This method of sale maximizes immediate income.

#### 3. Selling at a Discount:

- Selling at a discount is selling the outstanding guaranty balance for less than 100% of its value. This sale price method may be used for unique situations, e.g., selling seasoned loans or fixed rate loans.

### G. Completing SBA Form 1086

The regulations that govern all SBA secondary market transactions can be found in SBA's Standard Operation Procedures (SOP) 50 50, Chapter 8, and the SBA Form 1086. The SOP 50 50 defines what the Lender should expect when entering the secondary market for the sale of the guaranteed portion of any SBA term loan. The regulation regarding the secondary market appears in Subpart F – Secondary Market 13 CFR 120.600 – 120.660.

The Lender remains responsible for all loan-servicing activities on sold loans. The Lender must service sold loans according to the regulations, the SBA 750 Agreement and SBA Form 1086. The regulations prevail if there is any inconsistency between the SBA Form 1086 and the regulations.

Before a Lender sells its first loan, it must be familiar with SBA Form 1086. When the Lender signs this agreement, it is acknowledging certain facts about the loan as well as agreeing to the terms and conditions of SBA Form 1086.

### H. Lender Certifications at Time of Sale

- Lender has no knowledge of a default by the Borrower or likelihood of default.
- Lender has paid the SBA the guaranty fee.
- The loan is properly closed and fully disbursed.
- Lender acknowledges that it has no authority to unilaterally repurchase the guaranteed interest.

Attached are a *Sample of SBA Form 1086* and the *Description of Informational Fields on SBA Form 1086*. Please review and execute SBA Form 1086 in accordance with these instructions.

## III. SERVICING LOANS SOLD IN THE SECONDARY MARKET

The Lender is obligated under SBA Form 750 to service its SBA loans. Modifications to the Note may be made without the consent of the registered holder **IF** the changes do not affect the repayment terms.

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### A. Interest Rate Changes

Rate adjustments should take place on the first calendar day of the adjustment period, and should be tied to the current prime rate in effect as published on the second business day of the month in *The Wall Street Journal*. Interest should accrue at the new rate as of the first calendar day of the adjustment period.

### B. Deferments and Modifications

The Lender, at the request of the Borrower, may approve ONE payment deferral for up to three consecutive months, without obtaining prior permission from the registered holder. The Lender must immediately notify the FTA and SBA of such deferral. Interest is not waived as a result of the deferment, only deferred. Lender notification of deferment must include:

- SBA loan number
- Borrower's name
- Terms of deferment
- Date Borrower is to resume payments
- Reconfirmation of calendar basis

When making payment modifications, the Lender may not change the terms and conditions of repayment of the Note (other than initial unilateral deferment). The Lender must forward a request for payment modification to the FTA. The FTA will forward the proposed modification to the registered holder.

If the FTA does not receive a response from the registered holder within 30 calendar days from the date of the request from FTA, the lack of response will be construed as non-consent.

### C. Payment Pass-Through

The Lender remains responsible for collecting Borrower's loan payments and must forward them to the FTA. The Lender is subject to penalty if payment received from Borrower is not forwarded to the FTA on a timely basis. The Lender remittance is due to the FTA on the third calendar day of every month or the next business day, if the third is not a business day. The SBA allows a grace period of two business days after the due date. Lender remittances not received in the office of the FTA by 5 p.m. Eastern Standard Time on the second business day after the due date, are subject to a late penalty. Paragraph 6(c) of SBA Form 1086 describes the components of the late penalty.

The loan payment should be applied first to interest, to the date of receipt of the Borrower's payment, and the balance applied to the principal, or payments should be applied in accordance with the SBA Note.

### D. Borrower Late Payments

- Borrower late payments are payments that were due to the FTA in a prior reporting period.
- Borrower late payments must be remitted by the Lender to the FTA, along with a separate 1502 Form, within two (2) business days of receipt of collected funds.

### E. Prepayments

A Borrower may prepay a loan guaranteed by the SBA at any time without penalty. A prepayment is any payment that is greater than 20% of the principal amount outstanding at the time of prepayment (see paragraph 15 of SBA Form 1086).

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The Lender must give a 10-business day advance written notice (for loans approved by SBA on or after February 14, 1985) to the FTA of any prepayment by the Borrower. The Lender must also give written notice if repurchasing the loan out of the secondary market due to default. This gives the FTA time to redeem the investor's certificate.

Lender's notice to the FTA shall include:

- SBA loan number and Borrower name
- Prepayment date
- Principal amount being prepaid
- Accrued interest due to FTA as of prepayment date
- Lender prepayment certifications

According to SBA Form 1086, the Lender shall have 30 calendar days from the date originally identified as the prepayment date to forward the prepayment funds. If funds are not received within this 30-day period, a new written notice is required. Interest will continue to accrue through the day immediately prior to the date that payment is received by FTA.

For loans approved by SBA prior to February 15, 1985, where SBA Form 1086 was used to convey the sale of the loan, the Lender must forward prepayments within three business days of receipt.

For loans where SBA Form 1084 or 1085 was used to convey the sale of the loan, the Lender must forward prepayments within two business days of receipt.

### F. Borrower Default

1. The FTA provides monthly to each SBA field office a list of all respective guaranteed interests that are 60 days or more past due based upon both the Lender and FTA's records.
2. If the Lender is to repurchase the loan from the secondary market because of default, the following information must be submitted:
  - Ten-day advance written notice
  - Prepayment certification indicating that the Borrower has defaulted on a payment due under the Note for sixty (60) days or more, and repurchase is being made pursuant to Paragraph 10(a) of SBA Form 1086 [Paragraph 9(a) under version 6/79 of SBA Form 1086].
  - Interest to the date of the wire
  - Transcript of account within ten business days of receipt of the request from FTA
3. If SBA is to purchase the loan from the secondary market because of default:
  - Lender and FTA will provide a transcript and final statement of account of the guaranteed interest to SBA within five business days of SBA's purchase notice

***If you have any questions concerning the secondary market program, please call Colson's Secondary Market Customer Service at (877) 245-6159.***