

SBA SECONDARY MARKET PROGRAM AND SECURITIZATIONS GUIDE

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Chapter 1

SBA SECONDARY MARKET PROGRAM

INTRODUCTION

The SBA Secondary Market for 7(a) loans (“Secondary Market”) was established by Congress in 1984 (98 Stat. 329) as the primary liquidity channel available to 7(a) Lender participants (“Lenders”) that wish to sell the cash flows from the guaranteed portion of an SBA 7(a) loan (“Loan”) to investors. This market exchange enables Lenders to relend funds returned from the sale of the Loan guarantee, allowing them to expand their commitment to small business lending. It is a well-established program that continues to offer investors ample liquidity, a full faith and credit guarantee from the federal government, along with relative returns over a variety of economic cycles.

The purpose of this Program Guide is fourfold: (1) to introduce the Lender community to the mechanics of a Loan sale in the Secondary Market; (2) to describe the exercise of pooling guaranteed Individual Certificate (“GIC”) interests into SBA pools which improves the marketability of SBA Certificate Interests; (3) to describe the primary functions of the SBA Fiscal and Transfer Agent (“FTA”) in the SBA Secondary Market program; and (4) to outline the process steps for securitizing the unguaranteed portion of Loans into private label securitizations.

Chapter 2 describes the sale of the initial Loan guarantee from a Lender participant to an investor referred to as a Registered Holder, or to a broker-dealer intermediary. This chapter details the roles and responsibilities of each party in the sale transaction, describes the process steps in completing a sale, and provides guidance to Lenders on servicing and liquidation activities affected by the Loan sale. It also outlines important provisions of the [SBA Form 1086](#), “Secondary Participation Guaranty Agreement,” with a focus on the representations and obligations of all parties involved in the payment transfer process from a small business borrower to a Registered Holder.

Chapter 3 details the SBA Loan pooling process with emphasis on the identification of approved SBA Pool Assemblers, the structuring characteristics of SBA pools, the nature of the guarantee extended to holders of Pool Certificates, the creation and sale of interest-only Originator Fees, the components of a payment to holders of Pool Certificates, along with pool sales settlement and disclosure requirements for the benefit of investors.

Chapter 4 explores the role of the SBA Fiscal and Transfer Agent and the duties and responsibilities inherent in that critical function. This chapter will summarize the primary duties of the FTA as:

- validation agent for all initial Loan sales settlements;
- payment processor for Loan remittances from Lenders;

- investor representative when exercising demand for guarantee purchase of defaulted Loans;
- registrar for Individual Certificates and Pool Certificates (collectively, “Certificates”);
- paying agent to all Certificate holders;
- program fee collections agent for itself and for SBA;
- pool administrator for newly-created pools;
- trustee for the SBA Master Reserve Fund; and
- fiscal agent responsible to the SBA for the delivery of all Certificates as well as periodic reports and dashboard applications detailing the condition of the SBA Secondary Market program.

Chapter 5 introduces Lenders to the process steps involved in bringing to market a private sale of the unguaranteed portion of Loans. The chapter will review the regulatory framework for this exercise, describe the general structure of the pooling of the unguaranteed portion of Loans (“securitization”), the documents required for review and approval by the SBA, as well as the limitations and execution of the SBA Multi-Party Agreement.

Transactions involving interests in Pools or the sale of individual guaranteed portions of Loans are governed by the contracts entered into by the parties, this SBA Secondary Market Program Guide, Subpart F of 13 C.F.R Part 120 and sections 5(f), (g) and (h) of the Small Business Act (15 U.S.C. 634(f), (g) and (h)).

This Guide and related Secondary Market documentation can be found on the [SBA website](#). Documents and data on the website will be updated by SBA from time to time.

Chapter 2

LOAN SALE SETTLEMENTS & SERVICING

OVERVIEW

The SBA Secondary Market was established to provide liquidity to Lenders, and thereby expand the availability of commercial credit for small business. The Lender makes the decision to participate in the Secondary Market program through the sale of each specific guaranteed Loan. A Lender must use the [SBA Form 1086](#) to sell the guaranteed portion of a Loan. The SBA Form 1086 is a legally binding document, which includes the terms and conditions that govern the sale and all subsequent servicing of the Loan sold. The SBA Form 1086 must be executed by the Lender, the investor (“Registered Holder”), FTA and SBA. The sale of the Loan to a Registered Holder provides the holder of an Individual Certificate with SBA’s guarantee to purchase the unpaid principal and accrued interest due. SBA’s guarantee is backed by the full faith and credit guarantee of the United States. SBA does not guarantee the timely payment on Individual Certificates. See [§ 120.621](#).

Benefits of a Sale in the SBA Secondary Market

A sale of the Loan guarantee provides the following benefits:

- Sale proceeds allow for relending – reduces Loan funding needs within a lending unit.
- Premium income (if any) is recognized immediately upon settlement.
- Terms of sale include retained servicing income for the Lender.
- The underlying Loan is unaffected by sale; however, Registered Holder consent will be required when terms of the loan affecting the cash flow change after settlement.
- Favorable capital treatment for federal depository institutions.

SECONDARY MARKET SALES

SBA’s FTA is responsible for all sales settlement throughout the Loan sale transaction. Upon a confirmed settlement date, the Registered Holder (investor) will wire all sale proceeds, including principal, interest and premium (if any), to the FTA. The FTA will wire sale proceeds to the Lender pursuant to instructions submitted to the FTA through a confirmation of sale document. The FTA will issue a guaranteed Interest Certificate (“GIC”), also referred to as an Individual Certificate, to the Register Holder (investor) evidencing ownership of the guaranteed portion of the Loan. The SBA’s full faith and credit guarantee to the Registered Holder is unconditional. Administration of each individual guaranteed portion shall be the responsibility of the FTA which shall maintain a registry of owners and such other information as SBA shall determine.

Confirmation of sale includes delivery instructions and is handled by the FTA with Certificates issued” delivered within 48 hours of settlement. The proceeds will include guaranteed principal at par and the premium income, if any, generated from the sale. The FTA will remit the sale proceeds to the Lender and the Individual Certificate to the Registered Holder.

All borrower payments received by the Lender after the settlement date must be remitted to the FTA using the [SBA Form 1502](#), “Guaranty Loan Status and Lender Remittance Form,” pursuant to the instructions contained in the SBA Form 1086. This includes, but is not limited to, scheduled note payments and borrower prepayments. Examples of loan reporting for a Loan sold in the Secondary Market are provided in the Appendices at the end of this Guide.

Settlement Requirements:

All Loans presented for sale by the Lender require the following certifications, as set forth in the SBA Form 1086:

- a) Lender, to the best of its knowledge, has underwritten, closed and serviced the Loan in a prudent manner and in accordance with all SBA Loan Program Requirements as that term is defined in [§ 120.10](#);
- b) Lender, including its officers, directors and employees, has no knowledge of a default by the borrower and has no knowledge of information that would indicate the likelihood of a default;
- c) Lender will not share any premium received from this sale with a Service Provider, packager, other loan referral source or its affiliates;
- d) The Loan is not a revolving loan or line of credit facility;
- e) The Lender has paid the SBA guaranty fee;
- f) The Loan is fully disbursed;
- g) The Lender has no information indicating the likelihood of prepayment of the Loan by the borrower by refinancing or otherwise; and
- h) The Lender acknowledges that it has no authority to unilaterally repurchase the guaranteed interest from Registered Holder without the written consent of the SBA. Lender further acknowledges that the Loan cannot be placed on non-accrual status until the guaranteed interest has been repurchased by Lender or SBA.

The **Lender** must provide the following documents to the FTA:

FTA’s Required Documents

- Fully executed [SBA Form 1086](#)

The Lender must properly complete, execute and forward an SBA Form 1086 to the FTA, on behalf of the initial Loan purchaser for each loan sold. The FTA will not accept corrections and/or alterations to this form.

- Copy of the promissory “Note”, [SBA Form 147](#), or the Lender’s form of a promissory note.

On the original promissory note, an authorized officer of the Lender must sign and date with the following legend: “The guaranteed portion of the 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 the Lender to FTA on behalf of the Registered Holder, 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).
- Any loan modifications made subsequent to initial Loan approval.
- Other documents (at purchaser’s request).
- Copy of the 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 a Loan by the originator, the Lender may also provide the purchaser with a transcript showing the date(s) and amount(s) of disbursement(s) and the payment history.

The **Registered Holder** must provide the following required document to the FTA:

Registered Holder’s Confirmation of Sale.

One business day prior to the scheduled loan settlement date, the Registered Holder must provide the FTA with a Registered Holder’s Confirmation of Sale and the FTA’s settlement fee. Required settlement details includes:

- Loan information
- Settlement calculations
- Net interest rate information
- Wire instructions for the Lender
- Certificate registration information

On the designated date agreed to by the Registered Holder and the Lender, the wire transfer of funds from the Registered Holder to the Lender (through the FTA) *effectuates settlement*. The Registered Holder must wire the settlement amount to the FTA's bank before 1 p.m. FTA wires funds to the Lender the same day of settlement. Proceeds will include the guaranteed interest at par value and the premium income, if any, from the sale.

Within two business days of the settlement date, the FTA will issue the Registered Holder, or its designee, an Individual Certificate representing the ownership interest of the guarantee portion of an SBA Loan. Confirmation of sale for settlement includes delivery instructions handled by the FTA. The FTA will remit the sale proceeds to the Lender, and a Individual Certificate to the Registered Holder.

Common Settlement Documentation Problems

To avoid delays in settling a Loan, SBA encourages Lenders to take note of the following common problems the FTA encounters during the document review process:

SBA Form 1086

- Use of "white-out", or any other alterations on any page of the SBA Form 1086 – this is prohibited.
- SBA loan number is not in agreement with SBA loan records and/or Borrower Note (SBA Form 147).
- Principal prepaid is not accounted for on the SBA Form 1086.
- 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 loan records.
- Information has been omitted (a required field is left blank).
- Original Lender signature or Lender name is missing.
- Original Registered Holder signature or Registered Holder name is missing.

Borrower Note (SBA Form 147)

- Use of "white-out" or any other alterations on any page of SBA Form 147.
- Changes and alterations on the original Note are not initialed by Lender and borrower.
- Ceiling and floor rates do not agree with the borrower Note (SBA Form 147).
- Maturity is over twenty-five (25) years and loan is not a construction loan.
- Maturity is over twenty-five (25) years and does not include an interest-only period.
- Dollar amount of Note is not in agreement with SBA's loan records.

- SBA loan number is not in agreement with SBA’s loan records and/or the SBA Form 1086.
- “True and certified” legend is missing or does not contain original signature(s).
- Borrower’s signature(s) 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, when necessary.
- “Guaranteed portion transferred for value” legend is missing.
- “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 an interest rate cap and/or floor.

Fees on Loans Sold in the Secondary Market

Upon settlement, the FTA will assess a monthly servicing fee to cover the costs of processing Loan payments for the benefit of Lenders and Registered Holders. This fee is incorporated into the terms of the FTA contract and is updated by SBA Notice.

Fiscal Transfer Agent Web Based Application(s)

To assist Lenders and broker dealers in completing the Secondary Market sale process, the FTA has the following tools available:

- *Settlement Express* - is a web-based processing system provides the ability to enter data with new information, edit data, and browse all loans in a Lender’s or investors portfolio.
- [The 1502 Dashboard](#) - which has the capability to confirm monthly 1502 reporting performance including active month 1502 information, validate exception clearance, and update Lender profile information along with 1502 remittances via an e-File option.
- [1502 Connection](#) - allows access to SBA 7(a) Loan information, execute monthly 1502 reporting and view quarterly SBA Fee Variance exception reports.
- [Loan List](#) - enables the user to view Loan data and payment transaction histories for authorized Secondary Market Lenders and investors.
- Customer Service Online Request - (CSOR) is an online facility that allows SBA 7(a) clients to submit formal Secondary Market requests to SBA’s FTA.

MODIFICATION OF SECONDARY MARKET LOANS

Servicing Actions

According to [§ 120.535\(a\)](#), Lenders must service their Loans consistent with prudent lending standards and in accordance with Loan Program Requirements (as is defined in [§ 120.10](#)).

The following servicing actions require prior Registered Holder and/or SBA approval through the FTA:

1. Increase in the loan amount (unguaranteed portion only);
2. Decrease in SBA's guaranty percentage;
3. Change in the monthly payment amount, excluding annual amortization;
4. Change in the adjustment period;
5. Change in the interest accrual method *within SBA Form 1086 guidelines*;
6. Termination of the SBA guaranty *prior to* submission of the Guaranty Purchase Demand Kit;
7. Maturity extension;
8. Interest rate change within loan program guidelines; and
9. Payment Deferrals (other than a one-time deferral of payment for up to 3 consecutive months as prescribed in the SBA Form 1086).

Generally, the Loan documents should not be modified unless there has been a material change in the borrower's circumstances since the Loan was made. Servicing actions that affect cash flows anticipated in the sale will require consent from the Registered Holder.

This request for consent is sent by the Lender to the FTA on behalf of the Registered Holder. If the request is for a payment deferral of principal or interest, only one unilateral deferral of up to 90 days will be allowed if notice is provided to FTA prior to a payment default. All correspondence is sent through the FTA. A Lender cannot buy back the guaranteed interest once settled unless the loan is declared in default or if SBA approves otherwise.

The Registered Holder may not demand repurchase of the guaranteed interest during the deferral period, or before borrower's failure to pay the first scheduled installment following the deferral period. The Lender shall not authorize any additional deferral, or any extension of loan maturity without the prior written consent of the Registered Holder.

Borrower Prepayments

A borrower may prepay a Loan guaranteed by SBA at any time¹. A partial prepayment, other than a full payoff of the Loan, is any payment which is greater than twenty percent (20%) of the principal amount outstanding at the time of prepayment. For Loans sold in the

¹ The SBA, under §120.223 of 13.C.F.R., will assess a subsidy recoupment fee for approved loans with an initial maturity in excess of 15 years. This assessment is made irrespective of whether the loan guarantee is sold in the Secondary Market and occurs upon receipt of a borrower prepayment of more than 25% of the highest outstanding principal balance on a loan in its first 3 years following initial disbursement. Please refer to §120.223 for details on the computation of this fee.

Secondary Market, the Lender must give ten (10) business days advance written notice to the FTA to allow time for the FTA to notify the Registered Holder. The FTA shall, upon receipt of notice, advise the Lender in writing of any discrepancy between the prepayment information supplied by the Lender and the FTA's current records. On the date of prepayment, the Lender will wire funds to the FTA consisting of principal and accrued interest through the date immediately preceding the date funds are wired, plus any fees due to FTA or the SBA.

Payments received other than as regularly scheduled in the previous month must be remitted by Lender to FTA within two (2) business days of receipt of collected funds. Such remittance shall include:

- a) The SBA loan number;
- b) The Next Installment Due Date: the date the borrower is scheduled to make its next payment;
- c) The Interest Rate: the rate of interest (or rates if the interest rate on a variable rate loan changed during the payment period) used to calculate the interest payment due the FTA (i.e. the borrower's note rate less the Lender's servicing fee percentage);
- d) Guaranteed Portion Interest: the guaranteed portion of the borrower's interest payment received less the Lender's servicing fee;
- e) Guaranteed Portion Principal: the guaranteed portion of the borrower's principal payment received;
- f) Total to FTA: the sum of the guaranteed portion interest plus guaranteed portion principal for the particular Loan;
- g) Interest Period From and To: the time period covered by the interest rate and guaranteed portion interest in Items c and d above;
- h) Number of Days: the number of days covered by the reported interest payment and period, determined in accordance with the calendar basis used to compute interest;
- i) Calendar Basis: the interest computation calendar method stated at the time of the original Loan sale into the Secondary Market or as approved by the Registered Holder through a servicing action submitted by the Lender to the FTA. Acceptable computation methods for Secondary Market Loans are 30/360 and Actual days/365;
- j) Guaranteed Portion Closing Balance: the guaranteed portion of the balance remaining after applying the borrower's most recent principal payment; and
- k) Remittance Penalty: late payment penalty pursuant to Paragraph 6 of the SBA Form 1086 and/or SBA's subsidy recoupment fee (if applicable).

Full Prepayment

Full prepayments made pursuant to the applicable section of the SBA Form 1086 specifies that the redemption payments received by the FTA from a Lender or SBA shall be remitted by the FTA to the Holder via wire transfer within two (2) business days of receipt of immediately available funds by the FTA.

The prepayment date is a date prior to maturity that the Lender has established with the FTA, and on which immediately available funds shall be delivered to the FTA. The written notice shall be received by the FTA at least ten (10) business days prior to prepayment date, and it shall be the Lender's responsibility to verify receipt of such notice by the FTA.

The Lender's notice to the FTA shall include:

- a) The SBA loan number and borrower name;
- b) The prepayment date;
- c) The principal amount being prepaid;
- d) The accrued interest due the FTA as of prepayment date (interest shall accrue through and including the calendar day immediately preceding the prepayment date);

On the prepayment date, the Lender will wire the amount due to the FTA without notification from the FTA. The wire must be accompanied by the SBA Form 1502 for the prepayment of funds. An officer of the Lender must also provide the following certifications:

- (i) A certification by the Lender that, to the best of its knowledge and belief, the prepayment funds are either borrower's own funds or funds borrowed by borrower (whether or not guaranteed by SBA) pursuant to a separate transaction; and
- (ii) A certification from an officer of the Lender that the prepayment is in accordance with the terms of the SBA Form 1086, the Note and applicable law.

The certifications are intended to guard against a Lender's unilateral repurchase of the guaranteed interest from the Registered Holder without prior written consent of SBA. The Lender's failure to provide such timely certification may result in a \$100 penalty payable to SBA. If funds are not received by the FTA on the prepayment date, the Lender shall have thirty (30) calendar days from the date originally identified as the prepayment date to forward the prepayment funds.

The funds will accrue interest through the day immediately prior to the date payment is received by the FTA. If funds are not received within this thirty (30) day period, a new written notice is required.

The Lender agrees to work with the FTA to resolve errors or miscalculations that were made by the Lender or FTA during the course of the Loan and which are discovered subsequent to the prepayment. The FTA will remit the prepayment amount to Registered Holder.

Payment on full redemption of the Individual Certificate will be made only after presentation of the Individual Certificate to the FTA by the Registered Holder. The FTA shall retain a final transfer fee upon redemption.

LOANS PLACED IN LIQUIDATION

When a Loan sold in the Secondary Market is placed into liquidation, Lenders must notify the appropriate SBA Commercial Loan Servicing or National Guarantee Purchase Center via ETRAN. Please refer to SOP 50 57 for instructions on which SBA Center should receive notice of a liquidation action. The Lender must also notify the FTA in order to initiate a purchase request. This action will precipitate a request by the FTA, on behalf of the Registered Holder, to purchase the guarantee from the Secondary Market.

Guarantee Purchase Process - General

The FTA will provide to each SBA Servicing Office on or before the last business day of the month a list of Loans which are more than 60 days in arrears based on criteria supplied to FTA by SBA.

Within five (5) business days of the receipt of the list, the SBA Servicing Office will contact the Lender to determine the status of the Loan. A Loan requires action when:

- (i) The Lender's records indicate the interest paid-to-date is more than sixty (60) days in arrears; or
- (ii) Default by the borrower in payment of any installment of principal and interest has continued uncured for more than sixty (60) days.

SBA will, in consultation with the Lender, decide on an appropriate remedial action, or determine whether the Lender will be offered the option to purchase the guaranteed portion. This Lender purchase option expires if the interest paid-to-date as reported by the FTA exceeds 120 days, at which point SBA will immediately notify the FTA of its intention to purchase the guaranty from the Secondary Market. Unless SBA identifies the Loan as having been in deferment status previously, the Lender will be responsible for all accrued interest owed beyond 120 days. SBA also reserves the right to offset against the Lender any excess interest paid by SBA to the Registered Holder (e.g., interest in excess of 120 days from the date of default to the date of purchase). SBA will notify the FTA in writing of the action to be taken within five (5) business days of the decision.

Guarantee Purchases by the SBA

SBA shall at any time have the option to purchase from the Registered Holder the outstanding balance of the guaranteed interest at the Note rate less the Lender's servicing fee. Failure of the Registered Holder to submit the Individual Certificate to the FTA for

redemption on the date of prepayment specified by SBA or FTA will not entitle the Registered Holder to accrued interest beyond such date.

Guarantee Purchases by the Lender

In general, a Lender may repurchase a Loan guarantee if the Loan suffers a payment default in excess of 60 days, or if the Lender elects the Emergency Repurchase Authority described below. Lender liquidity or a desire to add loans to a portfolio are not acceptable reasons to pay off a Loan at par.

If a Lender has repurchased the guaranteed interest pursuant to Paragraph 10 or 20, of the SBA Form 1086, and if the borrower subsequently makes installment payments on the Note in full for a period of twelve (12) consecutive months, the Lender may resell the guaranteed interest it had repurchased from the SBA Secondary Market.

Where the decision is for a Lender to purchase the guaranteed interest, the FTA, at its option, may request a transcript of account from the Lender. The Lender agrees to provide the transcript of account within ten (10) business days of receipt of the request from the FTA. A Lender's failure to comply with the request for a transcript may result in a \$100 penalty payable to SBA.

The FTA and the Lender will reconcile the transcript of account within ten (10) business days of the receipt of the transcript by the FTA. If the Lender and FTA cannot agree on the balance and interest paid-to-date within such ten (10) business days, the FTA will immediately send the Lender's and FTA's transcript to the SBA Servicing Office for reconciliation. The reconciliation by the SBA Servicing Office will be final. SBA will notify the Lender and FTA of the reconciliation immediately.

Within ten (10) business days of the reconciliation of the account of a Loan that the Lender is to repurchase, the Lender will transmit, and the FTA will receive ten (10) business days advance written notice of the date of purchase. Within two (2) business days receipt of such notification, FTA will notify the Registered Holder of the repurchase date and request the Registered Holder to forward the Individual Certificate to the FTA.

On the date of purchase, the Lender, without further notification from the FTA, will forward by wire transfer, a payment to the FTA that includes the outstanding principal balance of the guaranteed interest plus interest through the date immediately preceding the date of the wire transfer.

Upon receipt of the purchase amount from the Lender, FTA shall remit to Registered Holder, within two (2) business days, the outstanding principal balance of the guaranteed interest plus interest through the date immediately preceding the date of a Lender purchase. The FTA may deduct from such amount a final transfer charge for the final transfer and redemption of the Individual Certificate. The amount of such final transfer charge will not exceed the normal transfer charge for Certificates.

Upon repurchase of the guaranteed interest by the Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750 Agreement and any continuing provision of the SBA Form 1086.

Emergency Repurchase Authority

In certain critical situations in which the borrower's ability to remain in business is directly dependent on a change in the provisions relating to the installment payments by the Borrower, SBA may permit a Lender to repurchase the guaranteed interest from the Registered Holder. Such permission, to be effective, must be in writing and sent electronically to SBA. The Lender must submit to the SBA Servicing Office a written request, which includes the following:

- a) Current financial statements of the borrower;
- b) A written decline from the Registered Holder to a specific request for a change in the terms and conditions of the payment, or a written statement from the FTA that no response was received from the Registered Holder or the guaranteed interest is part of a Pool;
- c) A statement that the proposed change in the terms and conditions of the Loan is solely for the benefit of borrower; and
- d) A certification by the Lender that it will make the requested change in the terms and conditions if repurchase is approved by SBA.

The SBA Servicing Office must review the financial statements of the Borrower and any other appropriate information and conclude that (i) a situation exists that the borrower's business will probably fail if the change is not approved, and (ii) that it is probable that the business will survive and resume payment if the change is approved. If all conditions are met, the SBA Servicing Office may approve the purchase of the guaranteed interest by the Lender. Guaranteed interests purchased may not be resold unless the borrower has made all payments as scheduled in the Note for a period of twelve (12) months.

Chapter 3

SBA LOAN POOLING

Overview

The Small Business Secondary Market Improvements Act of 1984 ([Public Law 98-352](#)) amended the Small Business Act (15 U.S.C .631 *et seq.*) to authorize SBA to issue Certificates representing ownership of all or a fractional part of SBA guaranteed portions of loans that have been assembled into an SBA-approved pool.

The advantages of pooling over individual guaranteed portions of SBA loans are:

- a) Guaranteed timely payment of principal and interest;
- b) Larger denominations that are more attractive to institutional investors; and
- c) The effect of a prepayment is less in a pool than with an individual guaranteed portion.

An SBA pool, depending on whether it is a Standard or Weighted-Average Coupon (WAC) pool, consists of four or more guaranteed portions of Loans. SBA pools can only be formed by SBA-approved Pool Assemblers. SBA guarantees to a Registered Holder in an SBA pool security (referred to as a Pool Certificate) the timely payment of principal and accrued interest. SBA's guarantee of the Pool Certificate is backed by the full faith and credit of the United States.

In brief, the pooling process works as follows: An entity desiring to become a Pool Assembler applies to SBA for approval using SBA Form 1455, "Application to Become a Loan Pool Assembler." After receiving such designation, the Pool Assembler acquires guaranteed interests in SBA Loans to be placed in the pool. Once that process is complete, the Pool Assembler submits [SBA Form 1454](#), "Application for Pool of Guaranteed Interest Certificates," to the FTA, along with the required supporting documentation. Once the FTA has ascertained that the documentation is correct and that the Pool meets SBA's minimum pool requirements, the FTA will issue a Pool Certificate(s) representing an undivided interest in a pool pursuant to the amounts requested by the Pool Assembler. The FTA will issue Pool Certificates within 48 hours of pool settlement.

Nature of the Guaranty

With respect to each Pool Certificate, SBA guarantees the timely payment of a pro rata portion of principal and interest installments on the payment date, regardless of whether funds are collected from the borrower, and on any prepayments or other early recoveries on the Loans, as stated on the face of the Pool Certificate. SBA's guarantee of the Pool Certificates is backed by the full faith and credit of the United States.

The SBA Pool Assembler Approval Process

[§ 120.630](#) sets forth the qualifications to become a Pool Assembler. Only SBA-approved Pool Assemblers can form SBA pools. An entity may not submit Pool applications to the FTA until SBA has approved the application to become a Pool Assembler. In order to become a Pool Assembler, an entity (“Applicant”) must meet certain requirements and file the following items with SBA:

- a) SBA Form 1455, “Application to Become a Loan Pool Assembler” (see Appendix V);
- b) [SBA Form 912](#), “Statement of Personal History” for each person named on the SBA Form 1455;
- c) A set of fingerprints for each person who will have authority to sign pool applications;
- d) A copy of the organization’s by-laws or a resolution of the Board of Directors that indicates the individual signing the application has the authority to commit the entity;
- e) A non-refundable application fee determined by SBA, and modified from time to time; and
- f) Copies of the most recent annual report to shareholders and SEC Form 10-K annual report, where applicable.

The Applicant must certify that it:

1. Is either (i) regulated by a State or Federal financial regulatory agency, or (ii) is an active member of the Financial Industry Regulatory Authority (FINRA); (*Regulation by a State or Federal regulatory agency applies to banks, insurance companies and credit unions. Broker/Dealers must be supervised by FINRA in order to be approved by SBA as Pool Assemblers.*)
2. Has a net worth in accordance with the requirements of the appropriate regulatory authority. If the Applicant is a Broker/Dealer, the appropriate requirement is the minimum net capital requirement pursuant to [SEC rule 15c3-1](#);
3. Has the financial capability to assemble acceptable and eligible Loans in sufficient quantity to support the required minimum issuances of Pool Certificates; and,
4. Is in good standing with SBA as determined by the SBA Director of the Office of Financial Assistance (“D/FA”) or its equivalent, and with its State or Federal regulatory body governing the entity’s activities or with FINRA, if it is a member.

Pool Assemblers will be approved on a conditional basis pending clearance of the Statements of Personal History. Unfavorable reports on the Statement of Personal History will result in an immediate suspension of an individual representing the Pool Assembler.

Federal or State-chartered banks, insurance companies, credit unions, and Broker/Dealers are all potentially eligible to become SBA Pool Assemblers if they meet the above-mentioned requirements.

Pool Assembler Requirements after Approval

In order to continue to qualify as a Pool Assembler after receiving initial approval from SBA, an organization must:

- (i) Meet the preceding requirements for initial eligibility;
- (ii) Conduct its business operations in accordance with accepted securities or banking industry practices, ethics, standards and applicable SBA regulations; and,
- (iii) Maintain its books and records in accordance with general accepted accounting principles.

Each time a pool application ([SBA Form 1454](#)) is submitted to the FTA, the Pool Assembler certifies that it is in compliance with all of the preceding requirements. If a Pool Assembler, including any of its principals, should fail to comply with any of the preceding requirements, it may be suspended or terminated by SBA.

Suspension or Termination of a Pool Assembler

Pursuant to [§ 120.631](#), the D/FA may suspend a Pool Assembler from operating in the Secondary Market for up to 18 months or terminate its status if the Pool Assembler, or its Associates, does not comply with any of the Pool Assembler requirements stated above and listed in [§ 120.630](#) (a) and (c). A Pool Assembler may also be suspended or terminated if the Pool Assembler and/or its Associates:

1. Has been indicted or formally charged with or convicted of a misdemeanor or felony;
2. Has received an adverse final civil judgment that it has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships;
3. Has not formed a pool for at least three years; or
4. Is under investigation by its regulating authority for activities which may affect its fitness to participate in the secondary market.

It is the Pool Assembler's responsibility to report to SBA if it is not in compliance with any of the Pool Assembler requirements or meets any of the termination conditions stated above.

The D/FA will notify a Pool Assembler by certified mail, return receipt requested, of the decision to suspend, along with the reasons why, at least ten business days prior to the effective date of the suspension. To terminate a Pool Assembler, the D/FA must issue an order to show cause why the SBA should not terminate the Pool Assembler. The Pool

Assembler can appeal suspension or termination by the SBA. The suspension or termination will remain in effect during the appeal process. See [§ 120.631](#).

Pool Formation and Characteristics

Once an organization has been approved by SBA as a Pool Assembler, it may begin to assemble and market pools. The Pool Certificates must be based on and backed by the SBA-guaranteed portion of loans that are:

- a) Guaranteed under Section 7(a) of the Small Business Act (Loans approved under Sections 503 and 504 of the Small Business Investment Act are ineligible for pooling);
- b) Fully disbursed and in a current pay status as of the issue date of the pool, as evidenced by the records of the Lender for loans not previously sold or by the records of the FTA for Loans already sold in the Secondary Market; and
- c) No more likely to default or prepay than they were at the time of initial sale.

SBA pools are either Standard or Weighted-Average Coupon (“WAC”) pools. The similarities and differences of Standard and WAC pools are described below.

Requirements and Characteristics for ALL Pools (Standard and WAC)

1. The underlying Loans in a pool must be either all fixed rate or all variable rate.
2. **Base Rate and Adjustment:** For variable rate pools, each underlying Loan must use the same base rate, either the Wall Street Journal Prime Rate, the LIBOR Base Rate² or the SBA Optional Peg Rate, and float on the same accrual basis, either monthly or calendar quarterly.
3. Split (mixed) rate loans, where the unguaranteed portion retained by the Lender is at a variable interest rate and the guaranteed portion is at a fixed interest rate, may be placed in fixed rate pools only.
4. All pools are closed-end securities. No Loans may be added to a pool once the pool has been issued. Substitution of Loans in pools already established is also prohibited. Underlying Loans that prepay or default cannot be replaced in the pool.
5. All guaranteed portions in the pool must be valued at par.
6. **Minimum Maturity Ratio (“MMR”):** The MMR is the ratio between the shortest and the longest remaining Loan maturity in the pool. The MMR is determined by SBA in conjunction with estimating program subsidy costs for the SBA Secondary Market Pooling program and is updated from time to time.
 - For pools issued prior to October 2005, the Loan Maturity Ratio was 70%.

² Subject to availability of LIBOR-based loans. The U.K.’s Financial Conduct Authority is not expected to support LIBOR as an interest rate benchmark after December 31, 2021.

- For pools formed from October 2005 through September 2017, the MMR was 80%.
 - For WAC pools that began in January 2009 up until to September 2017, the MMR was 76%.
 - For all pools formed in fiscal year 2018 the MMR was 94%.
 - For pools formed in fiscal year 2019 the MMR was 95%.
 - For pools formed in fiscal year 2020, the Loan Maturity Ratio is 94%.
7. Minimum aggregate principal balance of Loans outstanding at the time of Pool Certificate issuance: \$1,000,000
 8. Minimum face amount of any Pool Certificate: \$25,000
 9. All Pool Certificates must be multiples of \$5,000, with the exception of one Certificate per pool.
 10. The underlying Loans in the pool must be in current status. Current status means that no payment on any underlying Loan is more than 29 days past due. For example, for a pool issued on March 1, an underlying Loan interest paid-to-date must be at least January 1.
 11. The maximum allowable difference between the highest borrower note rate (gross rate) and the lowest borrower note rate is 200 basis points, or 2.00%.
 12. **Maturity Date:** The maturity date of the pool will be one month following the date of the longest Loan maturity in the pool. This legal final date will remain fixed even if the Loan with the longest maturity in the pool is prepaid. The pool will continue to make payment distributions until all pool principal has been distributed to Pool Certificate holders, or the pool reaches its maturity date, whichever occurs first. The final payment date will be the 25th day of the month following the Loan with the longest maturity.

STANDARD Pool Characteristics

1. Minimum number of Loans in a pool: 4
2. The initial coupon interest rate on a Pool Certificate (pool rate) is equal to the lowest net rate (borrower's note rate less all fees) on an underlying Loan in the pool. If an underlying Loan's net rate is higher than the pool rate, the Pool Assembler can take an Originator Fee on the Loan to adjust the net rate to the initial coupon rate, but only if an Originator Fee is currently not being taken on the Loan.
3. The largest underlying loan in the pool cannot constitute more than 25% of the total pool principal amount.
4. Pool Interest Rate Caps: If one or more Loans in a variable rate Loan pool has an interest rate cap, the pool has a cap, equal to the lowest underlying Loan cap.
5. Pool Interest Rate Floors: If at least one of the Loans in a variable rate loan pool does not have an interest rate floor, then the pool will not have a floor. If all of the

Loans in a variable rate pool have an interest rate floor, the pool has a floor, equal to the lowest underlying Loan floor.

6. Pool Certificates will reflect the appropriate cap and/or floor designation associated to the pool. Should a pool have a cap and no floor, as determined by the above parameters, the Pool Certificate will reflect: CAP: 13.0%, FLOOR: None

WEIGHTED AVERAGE POOL “WAC” Pool Characteristics

1. Minimum number of guaranteed portions in a WAC pool: 10
2. The largest underlying Loan in the pool cannot constitute more than 10% of the total pool principal amount.
3. There is a 75 basis point maximum differential between the lowest net coupon rate and the highest net coupon rate for all underlying Loans in a WAC pool. The differential gives Pool Assemblers the flexibility to pool Loans with slight variances in the net interest rate yet should prevent large swings in the value of the pool security due to the prepayment or default of any one of the Loans in the pool.
4. ***Originator Fees (interest-only strips) are not allowed in WAC pools.***

Priority of Pool Payments

SBA guarantees the timely payment of scheduled principal and interest on Pool Certificates. Pool payments are adjusted to reflect apportioned prepayments or other payments of unscheduled principal. Registered Holders of SBA Pool Certificates related to pools formed prior to October 1, 2017 may also receive a pro rata distribution of amortization excess tied to retained principal from prior Loan prepayments.

POOL SETTLEMENT PROCEDURES

Delivery to FTA and Pool Settlement/Approval Procedures

Pool Assemblers can submit applications to the FTA to form pools ([SBA Form 1454](#)) from the third business day of the month to the 20th calendar day of the month. If the 20th calendar day of the month falls on a weekend or holiday, the deadline will be the business day immediately prior to the 20th. Applications received after the 20th of the month will be considered for settlement in the following month. All fixed rate pools formed during a month will carry an issue date of the 15th of that month. For example, a fixed rate pool formed in March will carry an issue date of March 15. All variable rate pools formed during a month will carry an issue date of the first of that month. For example, a variable rate pool formed in March will carry an issue date of March 1.

Initial Submission of Loans

A Pool Assembler must identify and send underlying Loans (guaranteed portions) to be included in a pool to the FTA. Guaranteed portions, as described here, can be initial sales into the Secondary Market, subsequent sales (transferred loans), or a combination of both. **A Loan must be sold and certificated (settled) by the 12th business day of the month if it is to be placed in a pool within that same month. Pool applications should be submitted after all loans in the pool have been certificated.** SBA has mandated that all pools must be submitted via [PSU-Online](#), the FTA's web-based application for creating pools, from initial creation to final submission. PSU-Online access is granted only after an individual and/or company has been screened and authorized by SBA.

Using PSU-Online, the Pool Assembler submits the Loans it would like to pool. The FTA will determine if all the Loans meet the pool parameters. If a Loan does not fit the parameters of the pool, it will be removed and the Pool Assembler will have the option of replacing it with another Loan. A pool will be approved within two full business days after pool submission, provided all the Loans meet the pool parameters.

The FTA will notify the Pool Assembler via email of approval, the Pool's unique SBA pool number, and the CUSIP identification number. The FTA will also advise the Pool Assembler of what other documents are needed to complete the Pool (e.g. Originator Confirmation, Individual Certificate, SBA Form 1088, disclosure statements, initial pool split instructions, FTA fees). The Individual Certificates can then be delivered to the FTA.

Loan List and SBA Form 1454 Submission

After the pool has been approved, the Pool Assembler will submit a loan list worksheet and an SBA Form 1454 with an original signature. The loan list worksheet and SBA Form 1454 will be used to document and determine a future pool settlement date.

The worksheet must include the following information for **each Loan**:

- a) SBA Loan Number;
- b) Maturity date;
- c) Outstanding guaranteed principal balance; and
- d) Borrower Note Rate, Net Rate (Note Rate less Servicing Fee and SBA Ongoing Fee), Net Rate less FTA fee, and Originator Fee (if any)

Overall, the worksheet must also disclose the total aggregate pool balance.

The SBA Form 1454 must include the following information:

- a) Pool Assembler name and address
- b) Pool Assembler License Number
- c) Pool Assembler Taxpayer Identification Number
- d) Total guaranteed principal balance of pool

- e) Pool Scheduled Maturity Date
- f) Pool interest rate and adjustment period, if variable rate
- g) Current Weighted Average Coupon (WAC Pools only)
- h) Pool Cap and/or Floor, if applicable
- i) Proposed Pool Issue Date
- j) Proposed Pool Settlement Date
- k) Two SBA-authorized pool signatories

Pool Settlement

The Pool will settle within two (2) full business days after receipt of the worksheet and SBA Form 1454 by the FTA, provided the pool is in proper order and all documents, Individual Certificates and fees and have been received by FTA.

Pool Certificates will be issued within two (2) business days of pool settlement and delivered pursuant to the instructions of the Pool Assembler.

Interest Adjustments

STANDARD Pools

If interest on the underlying Loan is paid past the issue date of the Pool, the Pool Assembler is claimed by the FTA for the appropriate number of days of interest. For example, a March 1 pool issue date with a Loan interest paid-to-date of March 10 results in an interest claim to the Pool Assembler from March 1 to March 10 on that underlying Loan balance at the pool rate.

If interest on the underlying Loan is paid prior to the issue date of the pool, the Pool Assembler is advanced the appropriate number of days of interest. For example, a March 1 pool issue date with a Loan interest paid-to-date of February 18 results in a payment to the Pool Assembler of interest from February 18 – March 1 on the underlying Loan balance at the pool rate.

WAC Pools

The interest adjustment procedure for WAC pools is slightly different, and will use individual Loan interest rates, as opposed to the initial pool rate, to calculate the interest claimed or advanced on the Loan.

All interest adjustment processing is completed within three weeks of pool settlement.

Pool Payments and Payment Dates

SBA Pools pay principal and interest on the 25th of the month, with the exception of the first payment on Pools formed prior to October 1, 2004, which consisted of interest only. The first payment on a July 1 issue variable rate pool occurs on September 25 and pays

interest from July 1 – August 1. Variable rate pool payments have an 85-day delay in interest. For example, a variable rate pool payment on August 25 consists of interest from June 1 – July 1. Fixed rate pools have a 70-day delay. For example, a fixed rate pool payment on August 25 consists of interest from June 15 – July 15.

Record date for SBA Pool Certificates is the last business day of the month. The Registered Holder on the books of the FTA at record date is entitled to that month's principal and interest pool payment. For example, all variable rate pool holders of record on June 30 will receive the scheduled payment for August 25, which covers interest from June 1 – July 1. Certificate transfers for that pool received from July 1 – July 31 will be entitled to the September 25 pool payment.

Prepayments on Underlying Loan in Pools

The pro rata share of prepayments on underlying Loans is passed through to Pool Certificate(s) holder(s) on the second subsequent month's scheduled payment date. For example, for an underlying Loan prepayment received by FTA on July 20, the pro rata share of that prepayment will be remitted to Pool Certificate holders on September 25.

Disclosure

Pursuant to [§ 120.641](#), the Pool Assembler must disclose to the purchaser, verbally or in writing, information on the terms, conditions, and yield on the sale of a Pool Certificate. For the initial sale of a Pool Certificate, the disclosure requirement is contained in [SBA Form 1454](#). For subsequent sales, the disclosure is contained in [SBA Form 1088](#), Form of Detached Assignment. In either case, certain information must be disclosed by the seller to the buyer prior to the sale of a Pool Certificate. The FTA will provide written confirmation of disclosure information to the buyer when the Pool Certificate is delivered.

Lender Pools

Lenders that are also Pool Assemblers may not be a holder of a Certificate in any pool in which any of the Loans were made by that Lender. See [§ 120.644\(d\)](#) When a Lender assembles a Pool that includes one of more Loans made by that Lender, all Certificates for that Pool must have been sold to third parties by the time of pool formation. This is consistent with SBA policy that a Lender may not be a holder in due course of its own Loans.

Pooling Fees

SBA establishes all FTA fees associated with forming SBA pools through its contract with the FTA. These fees cover the administrative costs of registering the pools and recording the cancellation of the surrendered Certificates. The current fees may include the following:

- The FTA pool formation fee, charged on a per Loan basis;

- A transfer fee for each Individual Certificate delivered to the FTA and not currently in the Pool Assembler's name;
- Pool split fees for each Pool Certificate issued after the Pool Assembler's Master Pool Certificate has been issued at the time of pool settlement; and
- An Originator Fee on Standard Pools, established as a payment processing fee for those holders of an Originator Fee certificate. This charge is collected monthly from the Borrower's payment and due to the FTA. This fee is in addition to a Loan servicing fee assessed to Lenders by the FTA.

Chapter 4

THE SBA FISCAL & TRANSFER AGENT

Overview

The Fiscal and Transfer Agent (FTA) serves as SBA agent for the registration and sale of government guaranteed securities in the SBA Secondary Market. All individual Loan and pool settlements are handled through the FTA on SBA's behalf. The FTA also serves as payment agent for the collection, verification and distribution of Loan payments from borrowers to Registered Holders. The FTA plays a critical role in coordinating the funding of the Master Reserve Fund ("MRF") and ensuring the proper computation of monthly payments of principal and interest to investors. The FTA performs custody functions for those credit and securitization transactions that involve the pledge or conveyance of Loans. Finally, the FTA provides SBA and the investor community with continuous reporting of Loan and pool payment data, program sales activity and other ad hoc reports that detail the full scope of Secondary Market sales activity in the SBA 7(a) loan program.

The services provided by the FTA are awarded through a procurement process managed by SBA. The FTA operates as an agent for the SBA in the Agency's delivery of its Secondary Market program, and is compensated through fees paid by market participants.

Primary Functions of the FTA

Recipient for Lender Payments and Loan Status Reporting

The FTA is the primary intake point for monthly fee remittances and guaranteed Loan payments passed on to the SBA and to Registered Holders of Certificates, respectively. Lenders are required to update SBA on the payment status and guarantee principal balance outstanding on all SBA loans in their active portfolio. The primary mechanism for this reporting and remittance process is through the [SBA Form 1502](#), a monthly reporting format designed to update the status and guarantee balance outstanding of each Loan assigned to a Lender's portfolio. The FTA accepts electronic submission of data along with payment wires for reported fee remittances (primarily to SBA) and for guarantee portions of principal and interest to be passed on to Registered Holders of Certificates or to the SBA Master Reserve Fund.

Reported data is subject to validation through business rules established in coordination with the SBA's Office of Capital Access. If accepted, the data will be delivered to SBA for loading into SBA's ETRAN system. If corrections are needed, the FTA will contact the Lender to identify the filing error and work with them on subsequent Lender corrections.

The FTA offers Lenders a SBA 1502 Dashboard application which provides website access to their lender loan reporting, including an ability to provide correction updates without submission of an additional Form 1502. This service is provided free of charge to Lenders by submitting an enrollment request via email to the FTA at INFO@colsonservices.com

Payment remittances are tested for good funds before being sent to either: (1) SBA's Denver Finance Center for that portion of the remittance applicable to ongoing fees, late fees and subsidy recoupment fees on partial or full repayments; (2) Registered Holders of Individual Certificates if the guarantee portion has not been pooled; (3) to the SBA Master Reserve Fund if the underlying Loan resides in an SBA pool; and (4) to individual holders of interest-only receipts (Originator Fees) for those portions of an interest payment "stripped" apart from the reported payment amount and paid out to a separate holder.

The FTA also processes all guarantee purchases involving defaulted Loans and borrower prepayments in the Secondary Market. The process includes a reconciliation of final balances and the distribution of guarantee principal and accrued interest owed to Registered Holders. When the payment involves a defaulted Loan in a SBA pool, this payment distribution is made to the SBA Master Reserve Fund.

Central Registrar of SBA Certificate Interests and Investor Receipts

The FTA is responsible for the registration and issuance of all SBA Individual and Pool Certificates arising from the sale of guarantee interests. It is responsible for the printing and distribution of all physical Certificates prepared in the name of SBA to Registered Holders of the Certificate interests. The FTA receives direction from the SBA on the terms and conditions to be affixed to each Certificate.

As registrar, the FTA is required to account for the ownership of each Certificate interest issued in the SBA Secondary Market. It is responsible for providing this information to SBA upon request and bears full responsibility for the management of this registration function. This accounting includes custodial functions including the cancellation of Certificates surrendered, reissuance of lost or destroyed Certificates and final redemptions. The registration system is subject to audit by SBA or by other federal government oversight officials including but not limited to the Office of Inspector General, the Government Accountability Office, and the U.S. Securities and Exchange Commission. The FTA shall obtain written authorization from an authorized SBA official to release this information and will cooperate in the timely delivery of the requested data. The Director of the Office of Financial Assistance, or designee shall be included on any data release.

The FTA is also responsible for the issuance and administration of interest-only receipts referred to as Originator Fees. These Originator Fees generally come primarily from forming

Standard SBA pools which require all Loans to have the same net Note rate at the time the pool is formed. The FTA will distribute pro rata portions of the interest payment, when made, to holders of these Originator Fee Certificatess and will manage all accounting and transfers.

Paying Agent

The FTA shall compute and distribute monthly payments to Registered Holders of Certificates. Amounts to be distributed to Registered Holders of Individual Certificates are made based on the reported amounts of principal and interest paid to Lenders from the SBA borrowers. Payments for all Individual Certificates pass through to Registered Holders in the month in which the payments are reported by Lenders to the FTA. If no payments are reported for a Loan in a given month, no payments are remitted to the Registered Holder of Individual Certificates. Payments from Loans placed in SBA pools are deposited into the MRF. Funds are withdrawn from the MRF each month to make the timely payment of principal and interest to Pool Certificate holders, with the FTA providing monthly reporting to all Pool Certificate holders.

Bailee for Secured Credit and SBA Securitizations

Lender financing activities involving Loans typically focus on secured credit agreements that include the pledge of 7(a) loans, or private label securitizations of the unguaranteed portions. Each of these financing transactions require the execution of an [SBA Multi-Party Agreement](#). Since the SBA guarantee represents a significant portion of each Loan pledged or conveyed to a trust in a securitization, the FTA acts as bailee by taking possession of and holding the original SBA Note. This is to ensure that SBA has access to the original SBA Note should it need to exercise its right to acquire the guarantee interest or prevent transfer of the Loan without SBA's prior written consent. The FTA secures the original Notes and administers all requests for Note releases on behalf of the credit provider, the trustee or SBA.

Program Reporting and Administration

The FTA is contracted to provide ad hoc and periodic reporting on the level of Secondary Market Loan and pool sale activity to SBA. This reporting includes the capture and storage of historical Loan and pool sales as well as transfers. The FTA also responds to any ad hoc request sent by SBA to address an immediate inquiry, and to provide supporting documentation to support its operational activity.

Chapter 5

SBA SECURITIZATIONS

INTRODUCTION

As Lenders increase the size of their SBA 7(a) lending portfolio, an opportunity exists for those Lenders who have already sold the guaranteed portion of the Loan to consider the securitization of the unguaranteed interests. This transaction is currently authorized under [§ 120.424](#) and involves the transfer of a Lender's unguaranteed interests and other assets into a trust or special purpose vehicle in exchange for cash and the accretion of excess interest over the life of the securitization. According to [§ 120.424\(e\)](#), these securitizations require SBA's prior written consent which SBA may withhold in its sole discretion. See generally, [§§ 120.420 – 120.428](#). Lenders may only securitize Loans that are fully disbursed within 90 days of the securitization's closing date. See [§ 120.423](#).

Document Submission

Lenders conduct the selection of a securities underwriter, and work toward obtaining an investment grade rating on the senior tranche of securities being offered for sale to investors. All transaction documents involved in the sale and servicing of the unguaranteed Loan interests, and the delivery of such interests to a trust are to be prepared for SBA review and approval prior to execution. Loan participation interests, whether originated by the securitizing Lender, or acquired from other SBA Lenders, are not permitted in an SBA securitization. Requests for consent are to be sent electronically to the Secondary Market Division within the Office of Capital Access. The consent request must include the preparation of a private placement memorandum that discloses all transaction terms and conditions, the risk retention portion to be held by the Lender for the term of the transaction, and the composition of the Loan pool being assembled for transfer to the trust. Transaction documents will include, but are not limited to a Private Placement Memorandum, Transfer and Servicing Agreement, Unguaranteed Interest Sale and Assignment Agreement, an Owner Trust Agreement, Indenture Agreement, SBA Multi-Party Agreement, opinions of counsel, and any other document necessary to complete the transaction (including a closing checklist of all documents). SBA must also receive a certification statement from the Lender affirming its status as being "well-capitalized", as determined by its primary regulator. Please refer to [§120.425\(a\)](#) for specific guidance on determinants of a Lender being designated "well-capitalized".

All SBA securitizations shall also include the preparation and delivery of an [SBA Multi-Party Agreement](#) to be executed by all parties to the transaction including the SBA and the FTA. The SBA Multi-Party Agreement reinforces each party's interest in the Loan and the continuing responsibilities of the parties to the transaction. This includes the Lender, the Indenture Trustee, the Back-up Servicer, the Custodian (if any), the FTA and the SBA.

SBA Review

SBA will review the Lender request for consent to ensure that all regulatory requirements have been met. SBA will analyze the structural components contained in the transaction documents to make sure that they are properly disclosed in the Private Placement Memorandum. The review will also involve SBA's computation of the Lender's 10-year Loss Rate on disbursed loans excluding current fiscal year activity. This Loss Rate, as defined in [§ 120.420 \(i\)](#), will be used to establish the minimum Subordinated Tranche. The Subordinated Tranche must be equivalent to the greater of two times the Lender's computed Loss Rate or 2.0% of the aggregate unguaranteed principal balance outstanding of the Loans to be contributed to the securitization. This Subordinated Tranche is to be held by the Lender for no less than 6 years from the date of the initial closing. The securities evidencing the Subordinated Tranche must also bear a legend stating that the securities may not be sold until 6 years after the issue date.

The determination of the Subordinated Tranche is separate from the risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act which in general, requires a securitizer to retain an interest equivalent to at least 5.0% of the size of the securities offering. Conformance with this statutory requirement must be contained in the form of a legal opinion of counsel provided to SBA for the transaction.

If acceptable to SBA, Lenders are to have all parties to the SBA Multi-Party Agreement execute the signature pages for transmission to SBA. SBA prepares a letter response which will include original signature sets of the Multi-Party Agreement from the SBA and the FTA. Once received, SBA will deliver its consent letter to the Lender via electronic mail with hardcopy originals of the letter, along with the SBA and FTA signature pages to the Multi-Party Agreement sent via overnight mail. In the case of a Lender's first SBA securitization, SBA's consent letter will include disclosure of the Lender's Loss Rate, the Lender's Initial Currency Rate ("ICR"), and Initial Currency Rate Percentage ("ICRP"). The ICRP is a ratio of the Lender's Currency Rate compared with the Currency Rate of the 7(a) portfolio at the time of the securitization. This ratio may be used by SBA to evaluate a Lender's portfolio performance relative to the SBA portfolio. Subsequent letter consents will remove reference to an initial currency rate in its disclosure. To complete the exercise, Lenders are to provide SBA with an electronic version of all documents upon the closing of the transaction.

Dissolution of a SBA securitization is subject to the negotiated terms contained in the transaction documents.

APPENDICES

- I. SBA FORM 1086
- II. EXAMPLES OF LOAN PAYMENT REPORTING
- III. SBA FORM 1088
- IV. SBA FORM 1454
- V. SBA FORM 1455

APPENDIX I

SBA FORM 1086 AGREEMENT, SECONDARY PARTICIPATION GUARANTEE AGREEMENT



OMB NO.: 3245-0185
EXPIRATION DATE: 06/30/2020
SBA LOAN NUMBER _____

SECONDARY PARTICIPATION GUARANTY AGREEMENT

IMPORTANT INFORMATION

THIS FORM IS TO BE USED FOR THE INITIAL TRANSFER ONLY. ALL SUBSEQUENT TRANSFERS MUST USE THE DETACHED ASSIGNMENT SBA FORM 1088. INFORMATION COLLECTED BY THIS FORM IS USED TO RECORD THE SALE OF THE GUARANTEED PORTION OF AN SBA LOAN. THE INFORMATION IS REQUIRED TO COMPLY WITH PROGRAM REQUIREMENTS AND PROGRAM PARTICIPATION. THE LENDER AND REGISTERED HOLDER COMPLETE THE FORM AND SUBMIT IT TO THE OFFICES OF THE FISCAL TRANSFER AGENT (FTA).

A. LENDER CERTIFICATIONS. The LENDER CERTIFIES, by signing this document among other things that: (See Paragraphs 3, 10 and 20 of the Terms and Conditions herein)

- (1) Lender, to the best of its knowledge, has underwritten, closed and serviced the loan in a prudent manner and in accordance with all SBA Loan Program Requirements as that term is defined in 13 C.F.R. §120.10,
- (2) Lender, including its officers, directors and employees, has no knowledge of a default by Borrower and has no knowledge or information that would indicate the likelihood of a default,
- (3) The Lender will not share any premium received from this sale with a Service Provider, packager, or other loan referral source,
- (4) The loan is not a revolving loan or line of credit facility,
- (5) Lender has paid the SBA guaranty fee,
- (6) The loan is fully disbursed, and
- (7) Lender acknowledges that it has no authority to unilaterally repurchase the Guaranteed Interest from Registered Holder without the written consent of the SBA. Lender further acknowledges that the loan cannot be placed on non-accrual status until the guaranteed interest has been repurchased by Lender or SBA

B. BORROWER PAYMENTS. Lender shall send to the Fiscal and Transfer Agent ("FTA") the FTA share of all Borrower payments received after settlement of the loan sale. LENDER WILL NOT SEND ANY PAYMENTS DIRECTLY TO THE REGISTERED HOLDER OR TO THE BROKER/DEALER. Lender will retain a copy of this Form. Lender will not receive a return copy of this Form after settlement. The Wire transfer receipt from the settlement through FTA will be the Lender's notification that the sale is complete.

C. LENDER PAYMENT AND LATE PAYMENT PENALTY. Lender's Guaranty Loan Status and Lender Remittance Form (SBA Form 1502) shall be due at FTA on the third calendar day of every month, or the next business day if the third is not a business day. On any payment not received in the offices of FTA by 5 PM Eastern Time on the second business day after the due date, FTA will, on behalf of SBA, levy a late payment penalty of five percent (5%) of the amount remitted late, or \$100, whichever is greater (subject to a maximum penalty of \$5,000 per month per reporting unit). This late payment penalty will be paid through FTA along with the late payment penalty identified in Paragraph 6(c). (See Paragraph 6 of the Terms and Conditions).

D. PAYMENT MODIFICATIONS. Lender may approve one deferral of payment for up to three consecutive monthly payments without obtaining prior permission from Registered Holder. Lender shall immediately notify FTA and SBA of any deferral. Any other payment modification must receive prior approval by Registered Holder. Requests for payment modification must be forwarded to FTA which will forward the proposed modification to Registered Holder or provide the name of such Registered Holder to Lender for direct negotiations at Registered Holder's discretion. (See Paragraph 2 of the Terms and Conditions).

E. BORROWER PREPAYMENTS. For loans approved by or on behalf of SBA after February 14, 1985, Lender must give ten (10) business days advance written notice to FTA to allow time for FTA to request that Registered Holder return the Certificate. On the date of prepayment, Lender will wire funds to FTA consisting of principal and accrued interest through the date immediately preceding the date funds are wired, plus any penalty or other fees due to FTA. (See Paragraph 15 of the Terms and Conditions).

F. LENDER REPURCHASES. Unless all conditions in Paragraph 20 are met, Lender may repurchase a loan only on a willing buyer-willing seller basis, subject to SBA approval. Lender liquidity or a desire to add loans to a portfolio are not acceptable reasons to pay off a loan at par. (See Paragraphs 3 and 20 of the Terms and Conditions).

G. PROGRAM FEES. There is an ongoing fee collected from all payments received from the Lender, which is transmitted to SBA to defray program expenses, and subject to change from time to time. In addition, FTA will withhold from the settlement transaction an amount equal to 50% of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the guaranteed portion of the loan. This amount is also sent to SBA to defray program expenses and will not be refunded under any circumstances. (See Section I of the Terms and Conditions).

TERMS AND CONDITIONS

The U.S. Small Business Administration, an Agency of the United States Government ("SBA") and the Lender named below ("Lender") entered into a guaranty agreement on SBA Form 750 ("750 Agreement") applicable to a loan ("Loan") made by Lender in participation with SBA to the Borrower ("Borrower") named below evidenced by Borrower's Note and any modifications thereto ("Note") a copy of which is attached hereto and incorporated herein by reference. Lender is the beneficiary under the 750 Agreement of SBA's guaranty of the specified percentage of the outstanding balance of the Loan ("Guaranteed Interest.")

Section I: Borrower Information and Lender Certifications

Lender _____ Borrower _____
Address _____ Address _____
_____ Zip _____ _____ Zip _____
Lender Contact _____ Lender Telephone _____
Lender Email _____

LENDER CERTIFIES THE FOLLOWING AS OF THE DATE OF LENDER'S SIGNATURE:

Date of 750 Agreement _____ Percent of SBA Guaranty _____
Date of Note _____ Original Face Amount \$ _____
SBA Loan Authorization Date _____ (Date of SBA Form 529B)
Outstanding Principal Amount of Loan \$ _____
Outstanding Principal Amount of Guaranteed Interest \$ _____
(This is the "Par Value")

THE SBA GUARANTY FEE WAS PAID ON _____
[Date]

Date of First Disbursement of Loan _____
[Date]

Date of Final Disbursement of Loan _____
[Date]

Guaranteed portion has a [] fixed rate or [] variable rate (check one).

If variable: Base Rate: _____ Prime LIBOR SBA Peg Rate _____

Unguaranteed portion has a [] fixed rate or [] variable rate (check one).

If variable: Base Rate: _____ Prime LIBOR SBA Peg Rate _____

Interest is paid to, but not including _____
[Date]

Interest is calculated on [] 30/360 or [] Actual Days/365 (check one).
(OTHER METHODS ARE PROHIBITED)

SBA shall retain a program fee equal to _____ (to be completed by the Lender) of one percent per year of the guaranteed principal amount outstanding. Such fee shall be collected by the FTA from all payments received from Lender. FTA shall transmit such fees to SBA on a regular basis, no less frequently than monthly.

There shall be a minimum lender servicing fee required by SBA. This fee shall be published from time to time in the *Federal Register*. The minimum servicing fee as of the date of publication of this Form is 0.4% per annum for all loans. There shall also be a minimum premium protection fee for any Guaranteed Interest sold at a price greater than Par Value. This fee shall be published from time to time in the *Federal Register*. The minimum premium protection fee for those Loans sold on the secondary market at a premium as of the date of publication of this Form is 0.6% per annum. For any Guaranteed Interest sold at a price greater than Par Value, the total minimum lender fees, as of the date of publication of this Form, are 1.0% per annum.

Except for the period between final disbursement and the first interest adjustment date, Lender's total fees must remain constant for the life of the loan. Lender's total fees, as computed on the unpaid principal amount of the Guaranteed Interest, shall be entered next to the phrase "Lender's Permanent Fee" below. If this Agreement relates to a variable rate loan, the total fee may be adjusted for the period from final disbursement to the first adjustment date to conform the rate to market rates. If such an adjustment is used, enter the initial fee next to the phrase "Lender's Initial Fee" below.

Lender's Permanent Fee _____

Lender's Initial Fee _____

- Optional - Variable Rate Loans Only - If initial fee is different than permanent fee.
- Lender's Initial Fee must conform to the minimum fee requirements described above.

Price paid for the Guaranteed Interest. (Net of accrued interest. Otherwise include ALL money and other items of value exchanged.)

Price paid by Purchaser: \$ _____ % of Par _____

SBA shall retain a program user fee equal to 50% of the portion of the sale price, which is in excess of 110 percent of the outstanding principal amount of the guaranteed portion of the loan. Such fee shall be collected by the FTA and shall be remitted by FTA to SBA on a regular basis, no less frequently than monthly, pursuant to FTA's contract with SBA. SBA will not refund such program user fee under any circumstances.

CASH FLOW YIELD based upon Constant Prepayment Rate. (Enter both mortgage and bond equivalent yield.) For a variable rate loan, the yield should be based upon the current net rate and should be entered as a spread from the Base Rate. EXAMPLE: Base Rate + 1% based upon 5% Base Rate and current net Rate of 6%.

Constant Annual Prepayment Rate assumption _____ % per annum

Certificate Interest Rate: _____ % (Borrower's Note rate less applicable fees)

Certificate Cap _____ % Certificate Floor _____ % (if applicable)

Mortgage Yield:

(Fixed Rate Loan) _____ %

(Variable Rate Loan) Base Rate: _____ Prime LIBOR SBA Peg Rate
(+/-) _____ % based on _____ % Base

Bond Equivalent Yield:

(Fixed Rate Loan) _____ %

(Variable Rate Loan) Base Rate: _____ Prime LIBOR SBA Peg Rate
(+/-) _____ % based on _____ % Base

Lender hereby assigns the Guaranteed Interest to Purchaser/Registered Holder as follows:

Name _____

Address _____

Zip code

Contact Person _____ Telephone _____

Email Address: _____

Under the penalties of perjury, Purchaser/Registered Holder certifies that its **Taxpayer Identification Number** is _____, is not subject to backup withholding pursuant to an Internal Revenue Service Notice, and is a U.S. citizen or other U.S. person, as defined in Internal Revenue Service Form W-9. Failure to provide a Taxpayer Identification Number will subject interest earned to backup withholding.

Registered Holder requests SBA to issue through FTA a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of Registered Holder (such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate to be called "Registered Holder"). SBA, Lender and Registered Holder (for itself and for any subsequent Registered Holder) agree to the appointment by SBA of FTA to serve as the agent to transfer Certificates and to receive loan repayments, and to transmit such payments to the Registered Holder.

A written notification to or demand upon SBA pursuant to this Agreement shall be made through FTA to:

SBA Servicing Office _____

City _____ State _____

SBA Servicing Office Code (Please see Attachment 2 at the end of this document) _____

Section II: Lender, Registered Holder and FTA Rights and Responsibilities.

1. Lender's Sale of Guaranteed Interest. Lender has sold the Guaranteed Interest and acknowledges that it has received value for that Guaranteed Interest. Lender has given notice and acknowledgment of the transfer of the Guaranteed Interest by completing the following legend on the Note:

The guaranteed portion of this Note has been transferred to a Registered Holder for value.

Dated _____
(Lender)

Lender has delivered or hereby delivers to FTA a photocopy of the Note and any modifications thereto with the legend; such photocopy shall be incorporated into this Agreement. This legend shall serve as notification for any future transfer of the Guaranteed Interest. The date of the legend shall be on or before the date of settlement for the sale of the Guaranteed Interest.

The photocopy of the note and any modifications thereto must have a legend stating that the photocopy is a true and certified copy of the original.

2. Loan Servicing. Lender shall remain obligated under the terms and conditions of the 750 Agreement, and shall continue to service the Loan in the manner set forth in the 750 Agreement and SBA Loan Program Requirements. Modifications to the 750 Agreement or the Note that do not affect the repayment terms of the Note may be effected by Lender or SBA without the consent of Registered Holder (for itself and any subsequent Registered Holder). Lender, at the request of Borrower, may grant one deferment of Borrower's scheduled payments for a continuous period not to exceed three (3) months of past or future installments. Lender shall immediately notify FTA and the SBA Servicing Office in writing of any deferment. The notification will include (i) the SBA Loan Number, (ii) the Borrower's name, (iii) the terms of such deferment, (iv) the date Borrower is to resume payment and (v) reconfirmation of the basis of interest calculation (e.g. 30/360 or Actual Days/365). Interest is not waived, only deferred. Subsequent to the deferment period, payments received from Borrower will first be applied to accrued interest until such time as interest is paid to a current status, then to principal and

interest. Registered Holder may not demand repurchase of the Guaranteed Interest during the deferment period, or before Borrower's failure to pay the first scheduled installment following the deferment period. Lender shall not authorize any additional deferment, or any extension of Loan maturity without the prior written consent of the Registered Holder.

No change in terms and conditions of repayment of the Note other than the deferment authorized in this Paragraph shall be made by Lender or SBA without the prior written consent of Registered Holder. A request for such payment modification must be forwarded by Lender to FTA. FTA will forward the proposed modification to Registered Holder. The Registered Holder must respond to the request within ten (10) business days of the date of the request from FTA. Lack of response will be construed by Lender and FTA as non-consent, and appropriate action under Paragraphs 10, 11 or 20 of this Agreement will be taken. FTA, at the discretion of Registered Holder, may provide the name of Registered Holder to Lender for direct negotiation of the modification.

3. Representations and Acknowledgments of Lender. Lender hereby certifies that the Loan has been made and fully disbursed to Borrower, and that the full amount of the required guaranty fee has been paid to SBA. The outstanding principal amount of the Guaranteed Interest and date to which interest is paid as certified by Lender is accepted by SBA, and has been warranted by SBA to the Registered Holder as of the SBA Warranty Date. The Warranty Date is the date this Agreement is settled by Lender and Registered Holder through FTA. Lender shall be liable to SBA for any damage to SBA resulting from any error in (i) the certified principal amount, (ii) percentage of Guaranteed Interest, and/or (iii) date to which interest is paid. Lender also represents that as of the Warranty Date, which is the date of settlement of this transaction as determined by the SBA and FTA, neither Lender nor any of its directors, officers, employees, or agents has or should have through the exercise of reasonable diligence, any actual or constructive knowledge of any default by Borrower on the Note, or has any information indicating the likelihood of a default by Borrower or the likelihood of prepayment of the Loan by Borrower by refinancing or otherwise.

If Lender has repurchased the Guaranteed Interest pursuant to Paragraph 10 or 20, and if the Borrower subsequently makes installment payments on the Note in full for a period of twelve (12) consecutive months, Lender may resell the Guaranteed Interest it had repurchased in the SBA secondary market.

Lender hereby acknowledges that it has no authority pursuant to this Agreement to unilaterally repurchase the Guaranteed Interest from Registered Holder without the written consent of SBA.

Lender further acknowledges that the Loan will not be placed on non-accrual status until the Guaranteed Interest has been repurchased by Lender or SBA.

Lender also acknowledges that SBA reserves the right to recover any outstanding Lender obligations to SBA by setting off any and all funds due to Lender related to Secondary Market transactions or from SBA including but not limited to SBA guaranty payments and applying such funds to Lender's outstanding obligations to SBA.

4. Obligations and Representations of Registered Holder. SBA shall purchase the Guaranteed Interest from Registered Holder pursuant to the terms of this Agreement regardless

of whether SBA has any knowledge of possible negligence, fraud or misrepresentation by Lender or Borrower, provided neither Registered Holder nor any person or entity having the beneficial interest in the Guaranteed Interest participated in, or at the time it purchased the Guaranteed Interest had knowledge of, such negligence, fraud or misrepresentation.

Subject to the provisions of 18 U.S.C. §1001 (relating among other things to false claims) Registered Holder, and any person or entity having the beneficial interest therein, hereby warrants that it was not the Borrower, Lender or an "Associate" of Lender, or anyone standing in the same relationship to Borrower ("Associate" is defined in 13 C.F.R. §120). Registered Holder warrants that it had neither participated in nor been aware of any negligence, fraud or misrepresentation by Lender or Borrower with respect to the Note or related Loan documentation. Neither execution of this Agreement by SBA, nor purchase by SBA from Registered Holder, shall constitute any waiver by SBA of any right of recovery against Lender, Registered Holder, or any other person or entity.

Registered Holder (for itself and each subsequent Registered Holder) hereby acknowledges that the Loan may be terminated on a date other than its maturity date. At that time, the Certificate will be called for redemption, at par, and the Registered Holder must submit an affidavit attesting to the provisions of this Paragraph. The Certificate will cease to accrue interest as of the date of such termination, regardless of whether the Certificate is surrendered and the affidavit is received.

5. Issuance of Guaranteed Interest Certificates. SBA, Lender, and Registered Holder (for itself and each subsequent Registered Holder) agree that ownership of the Guaranteed Interest shall be evidenced by a Certificate to be issued by SBA. SBA shall issue such Certificate by designating and authorizing such issuance by FTA, or through its own facilities.

FTA shall be the custodian of the executed original of this Agreement. The Agreement shall be delivered to FTA immediately after execution by Lender and Registered Holder. Each Registered Holder shall receive the Certificate described herein. Registered Holder may obtain from FTA a copy of the executed Agreement pertaining to the Guaranteed Interest represented by the Certificate.

Upon execution of this Agreement and delivery to FTA, FTA shall issue to Registered Holder (or to Registered Holder's assignee if FTA is provided written information on a timely basis) the Certificate evidencing the ownership of the Guaranteed Interest in the Loan. If Registered Holder is not the person or entity having the beneficial interest in the Certificate, Registered Holder hereby represents that it has obtained authorization from such holder of beneficial interest appointing Registered Holder as agent for such person or entity with respect to all transactions arising out of the respective obligations under this Agreement.

The Certificate shall identify the Guaranteed Interest and shall state, among other things: (i) Name of Registered Holder, (ii) the Principal Amount of Guaranteed Interest as of the Warranty Date, (iii) the Certificate Interest Rate, and (iv) the Borrower's Payment Date.

Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee: (i) obtaining from the transferor the executed Detached Assignment and Disclosure Form (SBA Form 1088), (ii) presenting the Certificate and executed Detached Assignment and Disclosure Form to FTA for registration of transfer and issuance of a new Certificate, (iii) paying to FTA a Certificate issuance fee set from time to time by SBA, and (iv) presenting to FTA the exact spelling of the name in which the new Certificate is to be issued, complete address and taxpayer identification number of the new Registered Holder, name, email address and telephone number of the person handling the transfer, and complete instructions for delivery of the new Certificate.

6. Obligations of Lender.

- a. FTA must receive from Lender by the third calendar day of every month or the next business day thereafter if the third calendar day of the month is not a business day ("FTA Due Date"), the FTA's share of all sums Lender received from Borrower as regularly scheduled payments during the preceding month. By the same date, Lender shall provide the following information on the Guaranty Loan Status and Lender Remittance Form (SBA Form 1502) with respect to each Loan, which Lender has sold to a Registered Holder and which, is registered with the FTA. Lender acknowledges that "each Loan" means all Loans registered with the FTA regardless of which version of SBA Form 1086 was executed at the time of sale or transfer. SEE PAYMENT CALCULATION EXAMPLE ATTACHED TO THIS AGREEMENT.

- 1) SBA GP Number: the SBA Loan Number
- 2) Next Installment Due Date: the date the Borrower is scheduled to make its next payment.
- 3) Interest Rate: the rate of interest (or rates if the interest rate on a variable rate loan changed during the payment period) used to calculate the interest payment due the FTA (i.e. the Borrower's note rate less the Lender's servicing fee percentage).
- 4) Guaranteed Portion Interest: the guaranteed portion of the Borrower's interest payment received less the Lender's servicing fee.
- 5) Guaranteed Portion Principal: the guaranteed portion of the Borrower's principal payment received.
- 6) Total to FTA: the sum of the guaranteed portion interest plus guaranteed portion principal for the particular Loan.
- 7) Interest Period From and To: the time period covered by the interest rate and guaranteed portion interest in Items 3 and 4.
- 8) Number of Days: the number of days covered by the reported interest payment and period, determined in accordance with the calendar basis used to compute interest.

- 9) Calendar Basis: the interest computation calendar method stated at the time of the original Loan sale into the secondary market or as approved by the Registered Holder through a servicing action submitted by the Lender to the FTA. Acceptable computation methods for secondary market loans are 30/360 and Actual days/365.
 - 10) Guaranteed Portion Closing Balance: the guaranteed portion of the balance remaining after applying the Borrower's most recent principal payment.
 - 11) Remittance Penalty: late payment penalty pursuant to Paragraph 6 of this Agreement or SBA's Subsidy Recoupment Fee.
 - 12) Grand Total: sum of the totals for Items 6 and 11. Equals the amount of the wire remitted to the FTA.
- b. With the exception of prepayments pursuant to Paragraph 15 of this Agreement, payments received other than as regularly scheduled in the previous month must be remitted by Lender to FTA within two (2) business days of receipt of collected funds. Such remittance shall include the information described in Items 1 to 12 above.
- c. As stated in subparagraph (a) of this Paragraph, Lender remittance of the SBA Form 1502 and the funds collected are due to FTA by the FTA Due Date. **POSTMARKS ARE NOT CONSIDERED AS PROOF OF RECEIPT. THE REQUIREMENT IS RECEIPT BY FTA.** If Lender remittance, including complete payment information as specified in subparagraph (a) of this Paragraph is not received in the office of the FTA by 5 PM Eastern Time on the second business day after the FTA Due Date, Lender shall pay:
- (i) a late payment penalty to SBA (collected by FTA), equal to the interest on the unremitted amount at the rate provided in the Note, less the rate of Lender's servicing fee;
 - (ii) a late payment penalty to SBA (collected by FTA), calculated at a rate of twelve percent (12%) per annum, on the unremitted amount; and
 - (iii) a late payment penalty to SBA (collected by FTA), which is the greater of \$100 or five percent (5%) of the unremitted amount.

There is no limit on the penalty calculated in (i) and (ii) above. There is a \$5,000 per month per reporting unit limit for the penalty identified in (iii) above. **SEE EXAMPLE OF LATE PAYMENT PENALTY CALCULATION ATTACHED TO THIS AGREEMENT.**

If these penalty fees are not included in the remittance, FTA, on behalf of SBA, shall levy such late payment penalties on Lender. Failure by Lender to pay such penalty and collection fees within ten (10) business days of receipt of a bill for such fees may constitute a significant violation of the Rules and Regulations of the Secondary Market and a violation of SBA Loan Program Requirements. FTA and SBA reserve the right to withhold these penalty fees from settlement of any future Guaranteed Interest sale, or any payment made by SBA or FTA to Lender.

FTA will forward the fees due SBA on a regular basis, no less frequently than monthly,

pursuant to FTA's contract with SBA.

- d. Lender agrees to work with SBA and FTA, at no charge, to reconcile immediately any Loan in which the interest paid-to-date on the Lender's books differs from the records of the FTA by three (3) days or more and/or has a principal discrepancy greater than \$10.00. Lender agrees to provide a transcript of account of the Guaranteed Portion of the Borrower's payments made to the Lender within ten (10) business days of receipt of a request from SBA or FTA. Failure of Lender to provide a transcript upon request may cause the Lender to be fined \$100 by SBA.
- e. Lender's total fees as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall remain as specified in Section I above for the life of the Loan. These Lender fees are not transferable except to an entity to which servicing of the loan is assigned under the provisions of the Form 750 Agreement, SBA Rules and Regulations and SBA Standard Operating Procedures.
- f. Lender agrees to deposit the pro rata share of Borrower's payment due to the FTA in a demand deposit account held by the Lender and titled as follows: "[insert legal name of Lender], fbo Colson Services Corp., as FTA, in trust for the individual security beneficiaries." The demand deposit account shall not refer to any party other than the Lender, FTA, and the individual security beneficiaries (as applicable).
- g. For defaulted Loans in which the SBA has purchased the Guaranteed Interest and the Registered Holder has been paid in full, the Lender is responsible for all accrued interest in excess of 120 days from the interest paid to date used to compute the purchase amount.

7. Obligations of FTA.

- a. FTA shall have the obligation to remit to Registered Holder payments received pursuant to Paragraph 6 of this Agreement (less applicable fees and penalties, if any), as follows:
 - (i) Investor payment date will be the fifteenth of the month or the next business day if the fifteenth of the month is not a business day. Any payment received by the FTA up to the second business day prior to the investor payment date will be sent to the Investor on the investor payment date.
 - (ii) Any payment received by FTA on or after the second business day prior to the Investor payment date of the month following Borrower's scheduled payment will be remitted to Registered Holder within two (2) business days of receipt of immediately available funds by FTA. Any late payment penalty received by FTA pursuant to Paragraphs 6(c)(i) and 6(c)(ii) of this Agreement allocated to the period after the fifteenth day, or the next business day if the fifteenth is not a business day, of such following month shall be remitted to the Registered Holder.
 - (iii) Other amounts received from Lender by FTA will be held and applied as required by this Agreement.
 - (iv) FTA may offset from payments due to Registered Holder for any guaranteed interests with beneficial ownership any prior overpayments made to Registered

Holder. FTA will provide Registered Holder FTA's transcript of account of the guaranteed interest in offset of any remittances pursuant to Paragraph 7(c) of this Agreement.

- b. Prepayments pursuant to Paragraph 15 of this Agreement or full redemption payments received by FTA from Lender or SBA shall be remitted by FTA to Registered Holder by wire transfer within two (2) business days of receipt of immediately available funds by the FTA. Payment on full redemption of the Certificate will be made only after presentation of the Certificate to FTA by Registered Holder. FTA shall retain a final transfer fee upon redemption.
- c. Each remittance by FTA to Registered Holder shall be accompanied by a statement of (i) the amount allocable to interest, (ii) the amount allocable to principal, and (iii) the remaining principal balance as of the date on which such allocations were calculated.
- d. If FTA fails to make timely remittance to Registered Holder in accordance with this Paragraph 7, FTA shall pay to Registered Holder, (i) interest on the unremitted amount at the rate provided in the Note less applicable fees, and (ii) a late payment penalty calculated at a rate of 12% per annum on the amount of such payment. In addition, FTA shall pay a fee of \$100 per loan to SBA. The fee paid to SBA shall be limited to not more than \$50,000 per month.
- e. FTA agrees to identify to Lender each month any Loan in which the paid-to-date on its books differs by three (3) days or more from the paid-to-date on the books of Lender and/or has a principal balance discrepancy greater than \$10.00, provided the information required by Paragraph 6(a) has been submitted to FTA by Lender. Such identified differences will be reconciled on a timely basis.
- f. FTA agrees to issue Certificates within two (2) business days of settlement or receipt of the SBA Form 1088.
- g. FTA agrees to acknowledge any request from Registered Holder for late payment claims within ten (10) business days of receipt.
- h. FTA agrees to forward to Registered Holder, within one (1) business days of receipt, any servicing request requiring concurrence of Registered Holder. FTA agrees to forward Registered Holder's response to Lender within one (1) business days of receipt. If FTA does not receive a response from Registered Holder within ten (10) calendar days from the date of the request, Registered Holder will be deemed to have submitted a response of non-consent. FTA is directed to take appropriate action pursuant to Paragraphs 10, 11 or 20 of this Agreement.
- i. Where the Guaranteed Interest is a part of a Pool pursuant to 13 C.F.R. Part 120 Subpart F of SBA Rules and Regulations (as amended), the FTA, as manager of the Pool, will, on behalf of the Registered Holder of Pool Certificates, agree to servicing actions by Lender that have been approved by SBA that will not affect the rights of the Registered Holder.

- j. FTA agrees to pay accrued interest for any Loan, which FTA fails to include in the late payment report described in Paragraph 10(a). FTA shall be responsible for interest beginning 90 days after the interest paid to date of the Loan and continuing until 30 days after the SBA Servicing Office receives notification of the arrearage.

- k. The FTA shall process loan information received from Lenders via SBA Form 1502 reporting and submit the data electronically to SBA on a daily basis. FTA can receive SBA Form 1502 statements from Lenders via various delivery methods, including but not limited to: e-mail, FTA's website or sFTP (Secured File Transfer Protocol). Upon receipt of the loan information, FTA shall validate the data, and accept those elements that match the data file provided by SBA. FTA will provide an electronic update back to SBA each business day. The FTA shall be responsible for contacting Lenders to correct loan data submitted for the prior reporting period, and to reconcile missing or incorrect loan information. Lender shall respond to FTA request for information within five (5) business days of receipt of such request. Lender's response to FTA request for loan information shall be substantive enough so FTA can reconcile loans. Reconciliation will be performed on a daily basis during the course of the month following the last reporting period. The FTA shall collect and track the known loan data errors that were corrected during the month following a reporting period. FTA shall verify SBA Form 1502 data reported by Lenders against edit criteria provided by SBA. FTA shall report information to SBA on loan accounts that remain uncorrected. Uncorrected loan account information shall include GP number, name of Lender and description of loan error. From time to time, FTA shall provide additional reports derived from the SBA Form 1502 reporting process described above, as prescribed by SBA.

8. Transferability of Guaranteed Interest. Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Each Registered Holder of the Guaranteed Interest shall be deemed to have represented that to the best of its knowledge, it has, and so long as it is a Registered Holder will have no interest in the Borrower, the Note or the collateral hypothecated to the Loan, other than the Guaranteed Interest held under this Agreement. Each Registered Holder represents that it will not service or attempt to service the Loan, or secure or attempt to secure additional collateral from Borrower.

Without the consent of SBA, Lender or FTA, Registered Holder may transfer the ownership of the Guaranteed Interest and all of its rights and obligations under this Agreement to a subsequent assignee via the SBA Form 1088 (other than the Borrower, Lender, or an "Associate" of the Lender as defined in 13 C.F.R. §120, or anyone standing in the same relationship to the Borrower). SBA, however, will only be obligated to purchase the Guaranteed Interest under Section II in the event of such assignment to the extent that such assignee has complied with all of the Registered Holder's obligations under this Agreement. The effective date of any transfer of the Guaranteed Interest shall be the date on which such transfer is registered on the books of FTA. Any payment or action by FTA or SBA to the transferor Registered Holder prior to the effective date of the transfer of the Guaranteed Interest shall be final and fully effective. Neither SBA nor FTA shall have any further obligation to the transferee Registered Holder with respect to such payment or action, and any adjustment between the transferor and transferee resulting from such payment or action by SBA or FTA shall be the responsibility and obligation solely of the transferor and transferee.

FTA will make payments on the payment date to the person or entity that on the books of FTA is the Registered Holder as of the close of business on the Record Date. The Record Date is the last business day of the prior month. Any other adjustment between transferee and transferor is their responsibility and obligation. At any given time, there shall only be one Registered Holder entitled to the benefits of ownership of the Guaranteed Interest. Upon transfer of the Guaranteed Interest, the transferor shall cease to have any right in the Guaranteed Interest or any obligation or commitment under this Agreement.

FTA shall serve as the central registry of Certificate ownership.

9. Certificates Lost, Destroyed, Stolen, Mutilated or Defaced. Procedures for claim resulting from loss, theft, destruction, mutilation or defacement of a Certificate are found in Secondary Market Regulations (13 C.F.R. Part 120 Subpart F). Upon written request, FTA will provide such procedures to any claimant.

10. Repurchase of Guaranteed Interest by Lender.

- a. FTA will provide to each SBA Servicing Office on or before the last business day of the month a list of Loans which are in arrears based on criteria supplied to FTA by SBA.

Within five (5) business days of the receipt of the list, the SBA Servicing Office will contact Lender to determine the status of the Loan. A Loan requires action where (i) Lender's records indicate the interest paid-to-date is more than sixty (60) days in arrears or (ii) default by Borrower in payment of any installment of principal and interest has continued uncured for more than sixty (60) days. SBA will, in consultation with the Lender, decide on an appropriate remedial action under Paragraph 2 of this Agreement, or determine whether Lender will be offered the option to purchase the guaranteed portion. This Lender purchase option expires if the interest paid-to-date as reported by the FTA exceeds 120 days, at which point SBA will immediately notify the FTA of its intention to purchase the guaranty from the secondary market. Unless SBA identifies the loan having been in deferment status previously, the Lender will be responsible for all accrued interest owed beyond 120 days. SBA also reserves the right to offset guaranty proceeds paid against any excess interest amount due.

SBA will notify the FTA in writing of the action to be taken within five (5) business days of the decision.

Where the decision is for Lender to purchase the Guaranteed Interest, FTA, at its option, may request a transcript of account of the guaranteed portion of the Loan from Lender. Lender agrees to provide the transcript of account within five (5) business days of receipt of the request from FTA. Lender's failure to comply with the request for transcript may result in a \$100 penalty payable to SBA.

FTA and Lender will attempt to reconcile the transcript of account of the guaranteed portion of the Loan within ten (10) business days of the receipt of the transcript by FTA. If Lender and FTA cannot agree on the balance and interest paid-to-date, FTA will immediately send the Lender's and FTA's transcript to the SBA Servicing Office for

reconciliation. The reconciliation by the SBA Servicing Office will be final. SBA will notify Lender and FTA of the reconciliation immediately.

Within ten (10) business days of the reconciliation of the account of a Loan that the Lender is to repurchase, the Lender will transmit and FTA will receive ten (10) business days advance written notice of the date of purchase. Within two (2) business days of receipt of such notification, FTA will notify Registered Holder of the repurchase date and request Registered Holder to forward the Certificate to FTA.

On the date of purchase, Lender, without further notification from FTA, will forward by wire transfer a payment to FTA that includes the outstanding principal balance of the Guaranteed Interest plus, interest through the date immediately preceding the date of the wire transfer. The wire must be accompanied by SBA Form 1502 for the prepayment funds. An officer of the Lender must also provide a certification 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 of this Agreement.

- b. Upon receipt of the purchase amount from Lender (or from SBA pursuant to Paragraph 11 of this Agreement), FTA shall remit to Registered Holder within two (2) business days the outstanding principal balance of the Guaranteed Interest plus interest through the date immediately preceding the date of Lender purchase. FTA may deduct from such amount a final transfer charge for the final transfer and redemption of the Certificate. The amount of such final transfer charge will not exceed the normal transfer charge for Certificates.
- c. Upon repurchase of the Guaranteed Interest by Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement. SBA may request both Lender's and FTA's transcripts for reconciliation. SBA's reconciliation will be final.

11. Purchase by SBA.

- a. Written notices will be given to Lender and FTA when SBA is to purchase the Guaranteed Interest. Within five (5) business days of such notice, Lender will provide a transcript of account of the guaranteed portion of the Loan and final statement of account of the Guaranteed Interest to FTA. Failure by Lender or FTA to provide the transcript may result in a \$100 penalty payable to SBA by the party failing to comply. FTA will reconcile the transcripts and the reconciliation will be final.

Within five (5) business days of final reconciliation of the account, SBA will provide ten (10) business days advance written notice to FTA of the date of purchase. FTA, within two (2) business days of the receipt of the written notice, will notify Registered Holder of the repurchase date and request Registered Holder to forward the Certificate to FTA.

On the purchase date, SBA will arrange to have funds wired to FTA. Upon receipt of the purchase amount from SBA, FTA shall remit to Registered Holder, within two (2) business days, the outstanding principal plus accrued interest through the date

immediately preceding the date of SBA purchase.

- b. SBA's payment of accrued interest to the payment date on a fixed interest rate Note shall be at the Note rate less the Lender's servicing fee. On Notes with a variable interest rate, SBA's payment of accrued interest shall be at that rate in effect on the date of the earliest uncured Borrower default, if the Loan is in default, or at the rate in effect at the time of purchase, less the Lender's fees if the Loan is not in default.
- c. If Lender fails to furnish a current transcript of account of the guaranteed portion of the Loan and the statements as required by this Paragraph and Paragraph 13(a)(i) within five (5) business days after SBA's request therefor, then SBA may rely on the certified statement of account with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible.
- d. SBA shall not be liable for any amount attributable to any late payment charges pursuant to Paragraph 6 of this Agreement that may be due FTA or Registered Holder.
- e. Upon written demand by SBA, Lender shall immediately repay to SBA the amount by which the amount paid by SBA exceeds the amount of SBA's obligation to Lender under the 750 Agreement and SBA Loan Program Requirements, and the amount paid by SBA for any payments by Borrower which were not remitted by Lender to FTA, including accrued interest thereon, plus accrued interest at the Note interest rate computed on the unpaid balance of the Guaranteed Interest from the date of purchase by SBA to date of repayment by Lender.
- f. Upon purchase of the Guaranteed Interest by SBA pursuant to this Paragraph, the rights and obligations of Lender and SBA shall be governed by the 750 Agreement and SBA Loan Program Requirements and any continuing provisions of this Agreement. SBA shall be deemed a transferee of the Guaranteed Interest and the final Registered Holder thereof with all the rights and privileges of such Registered Holder under this Agreement.

12. Default by Lender.

- a. Pursuant to Paragraph 10(a) of this Agreement, FTA notifies the SBA Servicing Offices of Loans which are in arrears. SBA contacts the Lender to determine status of the Loans.
- b. When SBA determines that the Lender has failed for any reason to remit to FTA the payments required pursuant to Paragraph 6 of this Agreement, SBA may purchase the Guaranteed Interest under the provisions of Paragraph 11 of this Agreement, provided however, under no circumstances shall SBA be liable for any amount attributable to any late payment charge.
- c. If SBA purchases the Guaranteed Interest from Registered Holder because of default by Lender, and if Borrower has not been in uncured default on any payment due under the Note for more than sixty (60) calendar days, SBA shall have the option:

- (i) to require Lender to purchase the Guaranteed Interest from SBA for an amount equal to the amount paid by SBA to Registered Holder plus accrued interest (at the interest rate provided in the Note) from the date of the SBA purchase to the date of the Lender's repurchase, plus a penalty equal to twenty percent (20%) of the amount paid by SBA; or
 - (ii) to require Lender to pay SBA a penalty equal to twenty percent (20%) of the amount paid by SBA to Registered Holder.
- d. If on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to this Paragraph, and Borrower shall be in uncured default for more than sixty (60) calendar days, then the provisions of Paragraphs 11(e) and 11(f) of this Agreement will become applicable in lieu of subparagraph (c) of this Paragraph.
- e. If Lender fails to furnish a current transcript of account of the guaranteed portion of the Loan and the statements as required by Paragraph 13(a)(i) within five (5) business days after SBA's request therefor, then SBA may rely on the certified statement of account with supporting documentation from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible.

13. Other Obligations of the Lender.

- a. Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Paragraphs 11 and 12 of this Agreement. Lender shall, within five (5) business days of a request therefor, and without charge, furnish to SBA and FTA (i) a transcript of account of the guaranteed portion of the Loan, (ii) a current certified statement of the unpaid principal and interest then owed by Borrower on the Note, and (iii) a statement covering any payments by Borrower not remitted by Lender to FTA.
- b. Upon request by FTA at any time, Lender shall issue at no charge a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Note as of the date of such certified statement.
- c. Lender agrees that failure to provide the information requested pursuant to Paragraphs 10, 11, 12 and 13 of this Agreement may result in a \$100 penalty payable to SBA.
- d. Lender agrees that purchase of the Guaranteed Interest pursuant to Paragraphs 11 or 12 of this Agreement does not release or otherwise modify any of Lender's obligations to SBA arising from the Loan, the 750 Agreement or SBA Loan Program Requirements, and that such purchase by SBA does not waive any of SBA's rights against Lender.
- e. Lender agrees that SBA, as final owner of the Guaranteed Interest under this Agreement, in addition to all rights under the 750 Agreement and the SBA Loan Program Requirements, shall also have the right to offset against Lender all rights inuring to SBA under this Agreement against SBA's obligation to Lender under the 750 Agreement and the SBA Loan Program Requirements.
- f. Lender agrees to assign, transfer and deliver the Note and related loan documents to SBA

upon written demand from SBA after purchase of the Guaranteed Interest pursuant to this Agreement.

14. Default by Fiscal and Transfer Agent.

- a. If FTA receives any payment from Lender or SBA and fails to remit to Registered Holder pursuant to Paragraph 7 of this Agreement, Registered Holder shall have the right to make written demand on FTA for any payment not remitted by FTA.
- b. If FTA fails to remit any such payment within five (5) business days of such demand, Registered Holder shall have the right to make written demand on the SBA Servicing Office identified in this Agreement.
- c. Upon receipt of written demand from Registered Holder, SBA will verify non-payment by FTA. If non-payment by FTA is verified, SBA, within thirty (30) days of verification of non-payment by FTA, will (i) make payment directly to Registered Holder of the amount of the unremitted payment plus interest at the Certificate rate to date of payment by SBA, or (ii) purchase the Guaranteed Interest pursuant to Paragraph 11 of this Agreement.
- d. FTA shall repay SBA within five (5) business days after receipt of written demand from SBA an amount equal to the unremitted amount plus interest computed at the interest rate on the Certificate on the unpaid balance of the Guaranteed Interest from the date of the failure of FTA to remit to the Registered Holder to the date of FTA's repayment to SBA. Such payment will not affect FTA's liability for a late payment charge under Paragraph 7 of this Agreement.

15. Prepayment or Refinancing by Borrower.

- a. A Borrower may prepay a Loan guaranteed by SBA at any time. A prepayment subject strictly to this Paragraph is any payment, which is greater than twenty percent (20%) of the principal amount outstanding at the time of prepayment.
- b. Lender shall transmit written notice to FTA of Borrower's intent to make a partial or total prepayment of principal. Such prepayment can be by refinancing or otherwise. The prepayment date is the date prior to maturity that Lender has established with the FTA, and on which immediately available funds shall be delivered to FTA. The written notice shall be received by the FTA at least ten (10) business days prior to prepayment date, and it shall be Lender's responsibility to verify receipt of such notice by FTA. Lender's notice to FTA shall include:
 - (i) The SBA Loan number and Borrower name
 - (ii) The prepayment date

- (iii) The principal amount of the guaranteed portion of the Loan being prepaid
 - (iv) The accrued interest on the guaranteed portion of the Loan due the FTA as of prepayment date (interest shall accrue through and including the calendar day immediately preceding the prepayment date)
- c. On the prepayment date, Lender will wire the amount due to FTA without notification from FTA. The wire must be accompanied by SBA Form 1502 for the prepayment funds. An officer of the Lender must also provide the following certifications:
- (i) The prepayment is in accordance with the terms of this Agreement, the Note and applicable law.
 - (ii) The prepayment funds are either Borrower's own funds or funds borrowed by Borrower from this or another lending institution (whether or not guaranteed by SBA) pursuant to a separate transaction.

The certifications are intended to guard against Lender's unilateral repurchase of the Guaranteed Interest from the Registered Holder without prior written consent of SBA.

Lender's failure to provide such timely certification may result in a \$100 penalty payable to SBA.

If funds are not received by FTA on the prepayment date, Lender shall have thirty (30) calendar days from the date originally identified as the prepayment date to forward the prepayment funds. The funds will accrue interest through the day immediately prior to the date payment is received by FTA. If funds are not received within this thirty (30) day period, a new written notice is required in accordance with subparagraph (b) of this Paragraph.

- d. FTA shall, upon receipt of notice pursuant to subparagraph (b) of this Paragraph, advise the Lender in writing of any discrepancy between the prepayment information supplied by the Lender and the FTA's current records. Lender agrees to work with FTA to resolve errors or miscalculations that were made by the Lender or FTA during the course of the Loan and which are discovered subsequent to the prepayment.
- e. FTA will remit the prepayment amount to Registered Holder in accordance with Paragraph 7 of this Agreement.

16. Option to Purchase by SBA. SBA shall at any time have the option to purchase from the Registered Holder the outstanding balance of the Guaranteed Interest at the Note rate less the Lender's servicing fee. Failure of the Registered Holder to submit the Certificate to FTA for redemption on the date of prepayment specified by SBA or FTA will not entitle the Registered Holder to accrued interest beyond such date.

17. Separate or Side Agreements. Separate or side agreements (i) between Lender and Registered Holder, (ii) between a Registered Holder and a subsequent transferee of the Guaranteed Interest, (iii) between FTA and Lender, or (iv) between FTA and any Registered

Holder shall not in any way obligate SBA to make any payment except as provided in this Agreement, nor shall it modify the nature or extent of SBA's rights or obligations under the terms of this Agreement, the 750 Agreement or the SBA Loan Program Requirements. Any such side agreement, which has the effect of distorting the information supplied to SBA, is prohibited.

18. Indemnity and Force Majeure. Each party to this Agreement (including FTA) for itself and its successors and assigns, agrees to indemnify and hold harmless any other party (including FTA) from and against any costs, liabilities, and related expenses arising from the performance of its duties or otherwise arising under this Agreement; provided that no indemnification shall be provided under this Agreement for action or failure to act which constitutes negligence, breach of authority, or bad faith.

If any party hereto (including FTA) is in doubt as to the applicability of this Agreement to a communication it has received, it may refer the matter to SBA for an opinion as to whether it may take, suffer or omit any action pursuant to such communications.

Under no circumstances shall any party hereto (including FTA) be held liable to any person or entity for special or consequential damages or for attorneys' fees or expenses in connection with its performance under this Agreement.

If any party hereto (including FTA) shall be delayed in its performance hereunder or prevented entirely or in part from completing such performance due to causes or events beyond its control, such delay or non-performance shall be excused and the reasonable time for performance in connection with this Agreement shall be extended to include the period of such delay or non-performance. Causes or events include but are not limited to: (i) act of God; (ii) postal malfunction; (iii) interruption of power or other utility, transportation, or communication service; (iv) act of civil or military authority; (v) sabotage or act of terrorism; (vi) national emergency; (vii) war; (viii) explosion, flood, accident, earthquake or other catastrophe; (ix) fire; (x) strike or other labor problem; (xi) legal action; (xii) present or future law, government order, rule or regulation; or (xiii) shortage of suitable parts, materials, labor or transportation. In disputes between FTA and Lender, or between FTA and Registered Holder, SBA reserves the right to require FTA to take appropriate action as SBA determines, and if legal action is required, SBA will pay reasonable attorney's fees incurred by FTA in taking such action.

19. Fees and Penalties. Lender and Registered Holder shall be responsible for payment of fees and penalties required of them by this Agreement which are in effect on the Settlement Date, and as published from time to time in the Federal Register. If any fees or penalties required in this Agreement, (including but not limited to those described in Paragraphs 5, 6, 10, 11, 12, 13 and 15), are not remitted on a timely basis by Lender, FTA and SBA reserve the right to withhold such fees and penalties from the settlement of any future Guaranteed Interest sale or payment on any defaulted loan in the Lender's portfolio.

20. Emergency Repurchase Authority by Lender. In certain critical situations in which the Borrower's ability to remain in business is directly dependent on a change in the provisions relating to the installment payments by Borrower, SBA may permit Lender to repurchase the Guaranteed Interest from Registered Holder. Such permission, to be effective, must be in

writing. Lender must submit to the SBA Servicing Office a written request, which includes the following:

- (i) Current financial statements of the Borrower,
- (ii) A written decline from Registered Holder to a specific request for a change in the terms and conditions of the payment, or a written statement from FTA that no response was received from Registered Holder or the Guaranteed Interest is part of a Pool,
- (iii) A statement that the proposed change in the terms and conditions of the Loan is solely for the benefit of Borrower, and
- (iv) A certification by Lender that it will make the requested change in the terms and conditions if repurchase is approved by SBA.

The SBA Servicing Office must review the financial statements of Borrower and any other appropriate information and conclude that (i) a situation exists that Borrower's business will likely fail if the change is not approved, and (ii) that it is probable that the business will survive and resume payment if the change is approved. If all conditions are met, the SBA Servicing Office may approve the purchase of the Guaranteed Interest by Lender.

If Lender purchases the Guaranteed Interest pursuant to this Paragraph 20, Lender must also follow the provisions of Paragraph 10 and provide FTA with ten (10) business days advance written notice of the date of purchase. Lender must also provide FTA with the written approval from the SBA Servicing Office to repurchase the Guaranteed Interest in lieu of the prepayment certification required by Paragraph 15.

Guaranteed Interests purchased pursuant to this Paragraph may not be resold unless the Borrower has made all payments as scheduled in the Note for a period of twelve (12) months.

21. Inconsistent Provisions and Caption Headings. Any inconsistency between this Agreement and the 750 Agreement shall be resolved in favor of this Agreement. Any inconsistency between this Agreement and Title 13, Code of Federal Regulations, shall be resolved in favor of Title 13. The provisions of the Secondary Market Regulations (13 C.F.R. Part 120 Subpart F) in effect on the Settlement Date, and as may be amended from time to time in the Federal Register, apply to this Agreement. The caption headings for the various Paragraphs herein are for case of reference only and are not to be deemed part of these Terms and Conditions.

Certification

By signing below, I hereby certify that I have authority to execute this agreement for the party on whose behalf I am signing, and that all representations made by such party are true and correct to the best of my knowledge. I further acknowledge that false statements made to the U.S. Small Business Administration can result in criminal prosecution under 18 U.S.C. 1001, 15 U.S.C. 645 and other provisions and imposition of civil money penalties under 31 U.S.C. 3729.

In consideration of the mutual promises herein contained, the parties agree to all the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this multi-page Agreement this _____ day of _____ 20_____

(Registered Holder) U.S. SMALL BUSINESS ADMINISTRATION

By: _____ By: Administrator, _____

Title: _____ U.S. Small Business Administration _____

Date: _____

(Lender) Examined and Accepted by
Fiscal and Transfer Agent

By: _____ By: _____

Title: _____ COLSON SERVICES CORP.
2 Hanson Place, 7th Floor

Date: _____ Brooklyn, NY 11217

NOTICE: THE GUARANTEE OF SBA RELATES TO THE UNPAID PRINCIPAL BALANCE OF THE GUARANTEED INTEREST AND THE INTEREST DUE THEREON. ANY PREMIUM PAID BY THE REGISTERED HOLDER FOR THE GUARANTEED INTEREST IS NOT COVERED BY SBA'S GUARANTEE AND IS SUBJECT TO LOSS IN THE EVENT OF PREPAYMENT OR DEFAULT.

This form is required to obtain a benefit.

PLEASE NOTE: The estimated burden for completing this form is 1 hour per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0185). **PLEASE DO NOT SEND FORMS TO OMB.**

**ATTACHMENT 1a -- SBA FORM 1086
SAMPLE CALCULATION
LENDER'S AND INVESTOR'S SHARE OF A BORROWER'S PAYMENT**

Total Borrower Payment Received By Lender \$ 3,450.05

Total Interest Payment Calculation

Borrower's Balance	\$288,857.10
Multiplied by	
Borrower's Interest Rate	8.750%
Multiplied by	
Number of Paid Interest Days	31
Divided by	
Interest Calendar Basis	365

Total Interest Payment \$ 2,146.64

Investor's Share Interest Payment

Borrower's Balance	\$288,857.10
Multiplied by	
Percentage of Loan Sold to Investor	75.000%
Multiplied by	
Interest Rate Sold	7.750%
Multiplied by	
Number of Paid Interest Days*	31
Divided by	
Interest Calendar Basis*	365

Investor's Share of Interest Payment to be Remitted to FTA \$1,425.98

Lender's Share of Interest Payment

Borrower's Balance	\$288,857.10
Multiplied by	
Percentage of Loan Retained by Lender	25.000%
Multiplied by	
Borrower's Interest Rate	8.750%
Multiplied by	
Number of Paid Interest Days	31
Divided by	
Interest Calendar Basis	365

Lender's Share of Interest Payment to be Retained by Lender \$ 536.66

Lender's Servicing Fee

Total Interest	\$ 2,146.64
Minus	
Investor's Interest	\$ 1,425.98
Minus	
Lender's Interest	\$ 536.66

Lender's Servicing Fee to be Retained by Lender \$ 184.00

*NOTE: Figures shown are for illustrative purposes only. This example utilizes an actual number of days in each month with a 365 days per year basis. This same procedure may also be utilized for a constant 30 days in each month with a 360 days per year basis.

**ATTACHMENT 1b -- SBA FORM 1086
SAMPLE CALCULATION
LENDER'S AND INVESTOR'S SHARE OF A BORROWER'S PAYMENT**

Total Borrower Payment Received By Lender \$3,450.05

Total Principal Payment

Borrower's Total Payment \$3,450.05
 Minus
 Total Interest \$2,146.64

Total Principal Payment \$1,303.41

Investor's Share of Principal Payment

Total Principal Payment \$1,303.41
 Multiplied by
 Percentage of Loan Sold to Investor 75.000%

Investor's Share of Principal Payment to be Remitted to FTA \$ 977.56

Lender's Share of Principal Payment

Total Principal Payment \$1,303.41
 Minus
 Investor's Principal Payment \$ 977.56

Lender's Share of Principal Payment to be Retained by Lender \$ 325.85

Total to be Remitted to the FTA

Investor's Share of Interest Payment \$1,425.98
 Plus
 Investor's Share of Principal Payment \$ 977.56

Total to be Remitted to FTA \$2,403.54

Total to be Retained by the Lender

Lender's Share of Interest Payment \$ 536.66
 Plus
 Lender's Share of Principal Payment \$ 325.85
 Plus
 Lender's Servicing Fee \$ 184.00

Total to be Retained by Lender \$1,046.51

Payment Distribution Proof

Borrower's Total Payment \$3,450.05
 Minus
 Total to be Remitted to the FTA \$2,403.54
 Minus
 Total to be Retained by Lender \$1,046.51

Payment Distribution Proof \$ 0.00

ATTACHMENT 2 – SBA FORM 1086

SBA SERVICING OFFICE CODES

<u>Office Code</u>	<u>Name</u>	<u>City, State</u>
0350	SBA National Guaranty Purchase	Herndon,
0626	Commercial Loan Servicing	Little Rock,
0992	Commercial Loan Servicing	Fresno, CA

ATTACHMENT 3a -- SBA FORM 1086

**EXAMPLE OF A PENALTY CALCULATION
FOR LATE LENDER REMITTANCE OF A BORROWER PAYMENT**

(See Paragraph 6 (c))

Example 1

Assume:

1. that a \$1,000 payment received by Lender as a regularly scheduled Borrower payment is received by the FTA on the tenth of the month (a business day) following receipt by Lender:
2. that the interest rate on the note less the Lender's servicing fee is 7.75%:
3. that interest is calculated on a 30/360 day basis

(a) The late penalty is the greater of \$100 or 5% of the payment amount. \$100.00
subject to a \$5,000 maximum on the Lender's total monthly remittance.
\$1,000 x 5% = \$50. The penalty is \$100.

(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).

Unremitted amount	\$1,000.00
Multiplied by Note Rate minus Lender's servicing fee	7.75%
Multiplied by number of late days	5
Divided by interest calendar basis	<div style="border-top: 1px solid black; display: inline-block; width: 100%;">360</div>
	<u>\$1.08</u>

(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.

Unremitted amount	\$1,000
Multiplied by 12%	12.0%
Multiplied by number of late days	5
Divided by interest calendar basis	<div style="border-top: 1px solid black; display: inline-block; width: 100%;">360</div>
	<u>\$1.67</u>

TOTAL PENALTY \$102.75

ATTACHMENT 3b -- SBA FORM 1086

**EXAMPLE OF A PENALTY CALCULATION
FOR LATE LENDER REMITTANCE OF A BORROWER PAYMENT**

(See Paragraph 6 (c))

Example 2

Assume:

1. that a \$5,145.96 payment received by lender as a regularly scheduled Borrower payment is received by the FTA on the fifteenth of the month (a business day) following receipt by the Lender;
2. that the interest rate on the note less the Lender's servicing fee is 7.75%;
3. that interest is calculated on an actual/365 day basis

(a) The late penalty is the greater of \$100 or 5% of the payment amount, subject to a \$5,000 maximum on the Lender's total monthly remittance. $\$5,145.96 \times 5\% = \257.30 . The penalty is \$257.30. \$257.30

(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).

Unremitted amount	\$5,145.96
Multiplied by the Note rate minus Lender's servicing fee	7.75%
Multiplied by number of late days	10
Divided by interest calendar basis	<u>365</u>
	\$10.93

(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.

Unremitted amount	\$5,145.96
Multiplied by 12%	12.0%
Multiplied by number of late days	10
Divided by interest calendar basis	<u>365</u>
	\$16.92

TOTAL PENALTY **\$285.15**

APPENDIX II

EXAMPLES OF LOAN PAYMENT REPORTING

SAMPLE CALCULATION
LENDER'S AND INVESTOR'S SHARE OF A BORROWER'S PAYMENT

Total Borrower Payment Received By Lender \$ 3,450.05

Total Interest Payment Calculation

Borrower's Balance \$288,857.10
Multiplied by
Borrower's Interest Rate 8.750%
Multiplied by
Number of Paid Interest Days 31
Divided by
Interest Calendar Basis 365

Total Interest Payment \$ 2,146.64

Investor's Share Interest Payment

Borrower's Balance \$288,857.10
Multiplied by
Percentage of Loan Sold to Investor 75.000%
Multiplied by
Interest Rate Sold 7.750%
Multiplied by
Number of Paid Interest Days* 31
Divided by
Interest Calendar Basis* 365

Investor's Share of Interest Payment to be Remitted to FTA \$1,425.98

Lender's Share of Interest Payment

Borrower's Balance \$288,857.10
Multiplied by
Percentage of Loan Retained by Lender 25.000%
Multiplied by
Borrower's Interest Rate 8.750%
Multiplied by
Number of Paid Interest Days 31
Divided by
Interest Calendar Basis 365

Lender's Share of Interest Payment to be Retained by Lender \$ 536.66

Lender's Servicing Fee

Total Interest \$ 2,146.64
Minus
Investor's Interest \$ 1,425.98
Minus
Lender's Interest \$ 536.66

Lender's Servicing Fee to be Retained by Lender \$ 184.00

*NOTE: Figures shown are for illustrative purposes only. This example utilizes an actual number of days in each month with a 365 days per year basis. This same procedure may also be utilized for a constant 30 days in each month with a 360 days per year basis.

**SAMPLE CALCULATION
LENDER'S AND INVESTOR'S SHARE OF A BORROWER'S PAYMENT**

Total Borrower Payment Received By Lender \$3,450.05

Total Principal Payment

Borrower's Total Payment \$3,450.05
 Minus
 Total Interest \$2,146.64

Total Principal Payment \$1,303.41

Investor's Share of Principal Payment

Total Principal Payment \$1,303.41
 Multiplied by
 Percentage of Loan Sold to Investor 75.000%

Investor's Share of Principal Payment to be Remitted to FTA \$ 977.56

Lender's Share of Principal Payment

Total Principal Payment \$1,303.41
 Minus
 Investor's Principal Payment \$ 977.56

Lender's Share of Principal Payment to be Retained by Lender \$ 325.85

Total to be Remitted to the FTA

Investor's Share of Interest Payment \$1,425.98
 Plus
 Investor's Share of Principal Payment \$ 977.56

Total to be Remitted to FTA \$2,403.54

Total to be Retained by the Lender

Lender's Share of Interest Payment \$ 536.66
 Plus
 Lender's Share of Principal Payment \$ 325.85
 Plus
 Lender's Servicing Fee \$ 184.00

Total to be Retained by Lender \$1,046.51

Payment Distribution Proof

Borrower's Total Payment \$3,450.05
 Minus
 Total to be Remitted to the FTA \$2,403.54
 Minus
 Total to be Retained by Lender \$1,046.51

Payment Distribution Proof \$ 0.00

APPENDIX III

SBA FORM 1088, SECONDARY MARKET FORM OF DETACHED ASSIGNMENT



OMB No. 3245-0212
OMB EXP. DATE: 09-30-2020

**FORM OF DETACHED ASSIGNMENT
FOR U.S. SMALL BUSINESS ADMINISTRATION LOAN
POOL OR GUARANTEED INTEREST CERTIFICATE**

(To Be Effective, This Assignment Must Be Delivered To The Fiscal
Transfer Agent With The Described Registered Certificate)

I am the owner, or the duly authorized representative of the owner, of the Loan Pool or Guaranteed Interest Certificate described below, and when I purchased such Certificate I was not the Borrower, Lender, or an Associate of the Lender or the small business borrower (as defined in Title 13 Code of Federal Regulations, Part 120).

FOR VALUE RECEIVED, the undersigned assigns and transfers to:

Type or print name, address (including zip code)

and taxpayer identifying number of assignee

the following described registered Certificate and all rights thereunder, effective as provided in SBA Form 1086, of which the undersigned is the Registered Holder or the duly authorized representative of the Registered Holder:

Certificate Number: _____

Date: _____

Signature by or on behalf of Registered Holder

I CERTIFY that the above-named person(s) as described, whose identity (or the identity of each of whom) is well known or proved to me, personally appeared before me this _____ day of _____, 20 ____ at

_____ and signed the above assignment.

City and State

If the signatory is signing on behalf of Registered Holder, I am satisfied that such signatory is properly acting in such capacity.

Signature Guaranteed By: _____

Signature and title of certifying officer

Name

(SEAL)

Address

Officers authorized to certify assignments include officers and employees of banks and trust companies incorporated in the United States, its territories or possessions, or the Commonwealth of Puerto Rico, and Federal Savings and Loan Associations, who have been authorized to (i) generally bind their respective institutions by their acts, (ii) unqualifiedly guarantee signatures to assignments of securities, or (iii) expressly certify assignments of securities.

**REQUIRED DISCLOSURE INFORMATION MUST BE COMPLETED FOR
TRANSFER.**

TRANSFER INSTRUCTIONS

IT IS THE RESPONSIBILITY OF THE ASSIGNEE TO PRESENT THE CERTIFICATE FOR TRANSFER.

Prior to any sale, Section 5(h)(1)(C) of the Small Business Act, 15 U.S.C. 634 (h)(1)(C), authorizes SBA to “require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on terms, conditions, and yield of such instrument.”

In compliance with this statutory requirement, the seller of a Loan Pool or Guaranteed Interest Certificate must disclose the information on the Form 1088 to the buyer prior to the trade date of a Loan Pool or Guaranteed Interest Certificate. In addition, the seller must submit a properly completed copy of this Form to the Fiscal Transfer Agent (FTA). The FTA will not process transfers unless this requirement is met. The FTA will provide written confirmation of all disclosure information to the buyer when the certificate is delivered.

This certificate must be presented for transfer and registration into the Assignee's name at the office of the FTA. Colson Services Corp., 2 Hanson Place, 7th Floor, Brooklyn, NY 11217, or may be mailed to Colson Services Corp., P.O. Box 54, Church Street Station, New York, NY 10274. The newly issued Certificate is available at the offices of the FTA after two (2) business days, or may be mailed according to Assignee's instructions. Certificates will be registered exactly as Assignee's name appears hereon. The FTA may charge a transfer fee, payable by check at the time of presentation.

Record date on the books of the FTA is the last business day of the month. FTA's sole responsibility is to pay the Registered Holder as of the Record Date. No claims for payments will be recognized other than the failure to pay Registered Holder. All other claims for payments, accrued interest, etc., must be presented to the Assignor.

Payment on full redemption of the Guaranteed Interest Certificate will be made only after presentation of the Guaranteed Interest Certificate to FTA by Registered Holder for transfer and registration into the Assignee's name of “Colson Services Corp., FTA, in Consideration of Final Payment.” FTA shall retain a final transfer fee upon redemption.

Signature guarantees can take the form of a Medallion Signature Guarantee (STAMP) or a Corporate Seal.

SECONDARY MARKET MANDATORY DISCLOSURE INFORMATION

Pursuant to the disclosure requirements of 15 U.S.C. 636 (h), the undersigned hereby certifies that the following information has been provided to the purchaser, either orally or in writing, prior to sale. The FTA will not process transfers unless this form is submitted with other required transfer documents. FTA will provide Purchaser/Assignee with written confirmation of such disclosure information with the issuance of the new certificate.

This disclosure information provides investors with a constant annual prepayment rate (CPR) determined by the seller to be representative of this security. The purpose of the CPR is twofold: (1) to produce a cash flow yield calculation based upon the past performance of SBA loans and, (2) to help investors choose between SBA loans, pools and alternative investments. Past results are no guarantee of future performance. Individual investors should consider the use of several different CPRs to determine the potential yield on an SBA security.

Fill in either Part A or Part B. For additional information on completing this form please refer to the Secondary Market Program Guide.

PART A: POOL CERTIFICATES

1. Constant Annual Prepayment Rate Assumption. _____ % per year
2. Weighted Average Maturity. Month _____ Day _____ Year _____
3. Pool maturity. Month _____ Day _____ Year _____

4. Price. (Net of transfer fee and accrued interest. Otherwise include all money and any items of value exchanged)
\$ _____ As a percentage of par _____%
 5. Pool Interest Rate. (Fill in the pool interest rate from the front of the certificate. For fixed rate pools fill in the net coupon rate. For variable rate pools use the spread over or under Base Rate, e.g., enter "Base Rate + 1%".)
 6. Coupon used to determine yield on variable rate pool.
 7. Interest rate ceiling and floor, if any, on variable rate pool.
Ceiling _____% Floor _____
 8. Delay days to first payment. (70 days for fixed rate pool and 85 days for variable rate pool). _____ days.
 9. Cash flow yield based upon preceding information. Enter both mortgage and bond equivalent yield. For variable rate pools, the yield should be based upon the current coupon rate and should be entered as a spread against Base Rate. (Example: Base Rate + 1.0% based upon 10% Base Rate)
- Mortgage yield:
 [Fixed rate pools] _____ %
 [Variable rate pools] (Base Rate +/-: _____) _____% based upon _____% Base Rate
- Bond equivalent yield:
 [Fixed rate pools] _____ %
 [Variable rate pools] (Base Rate +/-: _____) _____% based upon _____% Base Rate
10. Investment Characteristics. The seller must provide the following additional information to the buyer prior to the sale:
 - (a) SBA guarantees timely payment of principal and interest on pool certificates.
 - (b) SBA does not guarantee premiums.
 - (c) The pool or parts thereof may be prepaid prior to scheduled maturity.

PART B: INDIVIDUAL LOAN CERTIFICATES

1. Constant Annual Prepayment Rate Assumption. _____% per year.
 2. Certificate Scheduled Maturity Date. Month _____ Day _____ Year _____
 3. Price. (Net of transfer fee and accrued interest. Otherwise include all money and any other items of value exchanged)
\$ _____ As a percentage of par _____%
 4. Certificate interest rate. (Supply the certificate interest rate from the front of the certificate. For fixed rate loans fill in the coupon rate. For variable rate loans use the spread over or under Base Rate. (e.g., enter variable "Base Rate + 1%".)
_____%
 5. Coupon used to determine yields on variable rate loan.
 6. Interest rate ceiling and floor, if any, on variable rate loan.
Ceiling _____% Floor _____%
 7. Delay days to first payment: 75 days for an individual loan.
 8. Cash flow yield based upon preceding information. Enter both mortgage and bond equivalent yield. For a variable rate loan, the yield should be based upon the current coupon rate and should be entered as a spread against Base Rate. (Example: Base Rate + 1.0% based upon 10% Base Rate).
- Mortgage yield:
 [Fixed rate loans] _____ %
 [Variable rate loans] Base Rate (+/-: _____) _____% based upon _____% Base Rate
- Bond equivalent yield:
 [All loans] _____ %
 [Variable rate loans only] Base Rate (+/-: _____) _____% based upon _____% Base Rate

9. Investment Characteristics. The seller must provide the following additional information to the buyer prior to the sale:
- a. SBA does not guaranty timely payment of principal and interest on individually guaranteed portions.
 - b. SBA will purchase the individually guaranteed portions upon 60 days uncured default by borrower.
 - c. SBA does not guaranty premiums.
 - d. To aid the orderly repayment of borrower's debt, the lender may, at the request of the borrower, grant one three month deferment resulting in a three month delay in payments to the investor.
 - e. The guaranteed portion may be prepaid before the maturity date.

This form is required to obtain a benefit.

PLEASE NOTE: The estimated burden for completing this form, including reading instructions and gathering the information is 1.5 hours. You are not required to respond to any request to collect information unless it displays a currently valid OMB approval number. The OMB number for this collection of information is 3245-0212. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. PLEASE DO NOT SEND COMPLETED FORMS TO THESE ADDRESSES..

Explanation and Instructions of Sections in Form 1088:

1. Constant Annual Prepayment Rate Assumption. It is the seller's responsibility to determine the appropriate CPR for each sale. (For additional information on cash flow yields based upon constant prepayment rates see "Determining the Yield of a Mortgage Security," by Michael Waldman and Mark Gordon, in Frank J. Fabozzi, ed., The Handbook of Mortgage Backed Securities (Chicago: Probus, 1985)).
2. Weighted Average Maturity. This is the weighted average maturity (WAM) of the underlying loans in a pool. This information is required for pool certificates only.
3. Maturity. This is the stated maturity of the loan or pool as written on the front of the certificate.
4. Price. The price paid by the buyer should be entered. This price should not include the transfer fee or accrued interest. Except for the two preceding items, the price must include all money and any other items of value exchanged between the parties. The price should be entered both in dollars, and as a percentage of par, e.g., \$103,000 and 103.
5. The interest rate on the certificate. Fill in the certificate interest rate from the front of the certificate. For fixed rate certificates the rate will be stated as the annual percentage rate. For variable rate certificates the rate will be stated as a spread over or under Prime, e.g., Prime + 1% or Prime - 1.5%.
6. Coupon used to determine yields on variable rate certificates. This is the certificate interest rate in effect on settlement date. For example, if the prime rate is 6% on settlement date and the certificate interest rate is prime + 1.75%, enter 7.75%. For fixed rate certificates leave this item blank.
7. Interest rate ceiling and floors, if any, on variable rate certificates.
8. Delay days. This is the number of days to the first payment. The delay days for SBA loans and pools are these:

Fixed rate Pools:	70 days
Variable rate Pools:	85 days
Individual loans:	75 days
9. Cash flow yield based upon preceding information. Yields should be entered on both a mortgage yield (monthly compounding) and a bond equivalent yield (semi-annual compounding) basis. The bond-equivalent yield will in cases be somewhat higher. For variable rate certificates, the yield should be based upon the current coupon rate and should be given as a spread over or under Prime. For example, if on a variable rate certificate Prime is 10% and the cash flow mortgage yield is calculated to be 11%. Then the following information should be entered:

Mortgage yield:

Prime + 1.0% based upon 10% Prime

Bond Equivalent yield:

Prime + 1.21% based upon 10% Prime.

10. Investment Characteristics. The seller must provide the following information to the buyer prior to the sale of a pool certificate:
- a. SBA guarantees timely payment of principal and interest on pool certificates.
 - b. SBA does not guarantee premiums.
 - c. The pool may be prepaid prior to the scheduled maturity date.

The seller must provide the following information to the buyer of an individual loan certificate prior to the sale:

- a. SBA does not guarantee timely payment of principal and interest on individually guaranteed portions.
- b. SBA will purchase the individually guaranteed portions upon 60 days uncured default by borrower.
- c. SBA does not guarantee premiums.
- d. To aid the orderly repayment of borrower's debt, the lender may, at the request of the borrower, grant one three month deferment resulting in a three month delay in payments to the investor.
- e. The guaranteed portion may be prepaid before the scheduled maturity date.

If there are any questions please contact the FTA or Marybeth Kerrigan (202) 205-7552 of the SBA.

APPENDIX IV

SBA FORM 1454, APPLICATION FOR POOL GUARANTEED INTEREST CERTIFICATES

APPLICATION FOR POOL OF GUARANTEED INTEREST CERTIFICATES

Pool Assembler Name: _____

Address: _____

Pool assembler Number: _____

Pool Assembler Tax I. D. Number*: _____

Interest Rate Requested on Pool Certificates: _____

Current Weighted Average Coupon Applicable on Pool certificates: _____

Scheduled Maturity Date Requested on Pool Certificates: _____

Pool Cap and Floor: _____

Proposed Issue Date on Pool Certificates: _____

Proposed Settlement Date: _____

Guaranteed Interests for the Pool:

	Loan Number	Borrower Name	Originator Fee	Net Interest Rate (fixed) Or Net Spread (Variable)	Scheduled Maturity Date	Balance as of Pool Application Date
1.	_____	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____	_____

Use additional sheets if necessary.

* Section 6109 of the Internal Revenue Code requires most recipients of dividend, interest or other payments to give taxpayer identification numbers to payers who must report the payments to the IRS. IRS uses the numbers for identification purposes.

Please forward either (1) the Certificate of Beneficial Interest or (2) SBA Form 1086 and the Note for each loan to Colson Services Corp., P.O. Box 54, Church Street Station, New York, NY 10274, or if delivered by courier, to Colson Services Corp., 2 Hanson Place, 7th Floor, Brooklyn, New York 11217. Provide the name, address, taxpayer identification number, delivery instructions and amount for each pool certificate to be issued.

For each certificate, Pool Assembler must certify that buyer has received required disclosure information described in Chapter 3, Section 6-H and Chapter 8, Section 17 of Secondary Market Program Guide. For each certificate, Pool Assembler must submit to FTA information on items 1-5 of SBA Form 1088, except that it is not necessary to provide duplicate information where the information is the same for several certificates.

THE FTA SERVICING FEE IS 1/8TH OF 1% PER ANNUM. THE POOL APPLICATION PROCESSING FEE IS \$30 PER GUARANTEED INTEREST INCLUDED IN THE POOL.

We certify to the following:

1. This entity meets all requirements for pool assembler (13 CFR 120.630) as of the date of application for this pool, and this pool meets all the requirements for loan pools (13 CFR 120.611).
2. The above listed loans are current as of the date of application.
3. We are authorized by our firm to submit this pool application (two signatures required).

_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Title	_____ Title
_____ Date	_____ Date

SBA Form 1454 (11-08) Previous Editions are obsolete
Required to obtain benefit

APPENDIX V

SBA FORM 1455, APPLICATION TO BECOME A LOAN POOL ASSEMBLER

APPLICATION TO BECOME A LOAN POOL ASSEMBLER

Name of Firm: _____ Date of Application: _____

Address: _____

Please provide the following information:

1. A certification that the applicant meets all requirements for pool assembler (13CFR 120.630).
2. Name and address of the regulatory entity regulating your firm. (FINRA Membership/Regulation is required for broker/dealers).
3. A certified copy of the resolution of applicant's Board of Directors or a certified copy of the appropriate provisions of the firm's by-laws which authorizes the official signing this application to take any and all steps necessary to file for and become a pool assembler.
4. Name and Title and a completed SBA Form 912, Statement of Personal History, for each individual authorized to sign the application for a pool. Two signatures will be required for each pool.
5. Copies of the applicant's most recent annual report to shareholders and Form 10-K annual report (where applicable).

Broker dealers, in submitting this application, authorize FINRA to provide to the SBA, upon request by SBA, information relative to complaints wherein decisions have been issued or offers have been accepted by FINRA, but which are still pending and are therefore not yet final. Further, broker-dealers hereby authorize FINRA to disclose information to the SBA upon request as to whether the applicant firm is subject to any special surveillance, or any other regulatory information deemed relevant by SBA.

Name: _____ Title: _____

Name: _____ Title: _____

Name: _____ Title: _____

Name: _____ Title: _____

Submitted by: _____
Name Signature
_____ Title

Send this form and the other required documents to Director, Office of Financial Assistance, U. S. Small Business Administration, 409 Third Street, S. W. Suite 8300, Washington, DC 20416. They will be processed and reply sent to the above address in care of the person submitting this form.

SBA Form 1455
Required to obtain benefit