

# FAQs

## FREQUENTLY ASKED QUESTIONS ABOUT THE SBAExpress PURCHASE PROCESS *(for loans serviced by the Commercial Loan Service Centers)*

### 1. How should I notify SBA that an SBAExpress Loan is being “downgraded” to a status other than a regularly performing loan (i.e. “special assets,” “managed account,” “liquidation status”)?

There are several ways that you can notify SBA that a loan is downgraded and there is one way that cannot be used. In order to provide the best possible service, please notify us by either:

- Mailing your notification to:

United States Small Business Administration  
The Commercial Loan Service Center  
Attention: Purchase Unit

Fresno CLSC  
2719 North Air-Fresno Drive, Suite 107  
Fresno, California 93727-1547

Little Rock CLSC  
2120 Riverfront Dr. Suite 100  
Little Rock, AR 72202

- E-mail your notification to: [fsc.purchasing@sba.gov](mailto:fsc.purchasing@sba.gov) for Fresno or [lpsc.expresspurchase@sba.gov](mailto:lpsc.expresspurchase@sba.gov) for Little Rock (Please note – this is a special e-mail address. Please do not use the e-mail address used for routine servicing requests for loans not downgraded).
- Faxing your notification to: (559) 487-5009 for Fresno or (202) 292-3877 for Little Rock. (Please note – this is a special fax number located within the Purchase Unit. Please do not use the fax number used for routine servicing requests for loans not downgraded.)
- Please note that we encourage you email or fax your downgrade requests to us.

### 2. When liquidation is completed, where should I submit my demand for SBA to honor its guaranty and purchase my SBAExpress, CommunityExpress, PatriotExpress or ExportExpress loan?

If your portfolio is serviced by The Commercial Loan Service Center – Fresno, then your demand should be submitted to:

The United States Small Business Administration  
The Commercial Loan Service Center  
Attention: Purchase Unit  
2719 North Air Fresno Drive, Suite 107  
Fresno, California 93727-1547

If your portfolio is serviced by The Commercial Loan Service Center – Little Rock, then your demand should be submitted to:

The United States Small Business Administration  
The Commercial Loan Service Center  
Attention: Purchase Unit  
2120 Riverfront Drive, Suite 100  
Little Rock, AR 72202

### 3. Where do I submit my demand for purchase if I have both a SBAExpress loan as well as a 7(a) guaranteed loan that is not SBAExpress?

You should submit your purchase demand in connection with the SBAExpress loan to the appropriate Commercial Loan Service Center, however, please make sure you mention that there is another non-

Express 7(a) companion in Herndon. You should submit your purchase demand in connection with your non-Express 7(a) loan to The National Guaranty Purchase Center in Herndon, Virginia. The Center is the only SBA office authorized to purchase Express type loans, so in the case of companion loans, you will be dealing with both the Herndon office and the Center.

#### **4. Can I submit my purchase demand electronically to the Center?**

**Yes.** We encourage you to submit your purchase demand packages to the Center electronically. Submitting electronically saves you postage and us time and storage space. You may submit your package as an attachment to an email to the appropriate center at either [fsc.purchasing@sba.gov](mailto:fsc.purchasing@sba.gov) for Fresno and [lrsce.expresspurchase@sba.gov](mailto:lrsce.expresspurchase@sba.gov) for Little Rock. However, we have restrictions on the size of the email we are allowed to receive. If your email is less than 4 MB it should be delivered successfully, emails larger than 4 MB are usually rejected.

If you have larger packages you wish to submit or multiple packages, you may use our third party transmission service “**sendthisfile**” which is accessible at no cost to you **only** through our Center homepage at <http://www.sba.gov/aboutsba/sbaprograms/elending/clc/index.html>. Just follow the link at the bottom of the page for the appropriate Center and it will take you to an instruction page. At the bottom of the instruction page please click on the Continue link to access the site. There are no size limitations to the attachments and the site provides notification when the file is successfully uploaded and again when SBA downloads the file. Please contact us if you wish someone to walk you through the process.

#### **5. If litigation is involved where should I send my demand for purchase of the SBAExpress loan?**

Send your demand to the appropriate Commercial Loan Service Center. Center legal professionals have combined commercial transaction and litigation experience of over 75 years. Our attorneys are authorized to practice law in a number of different states and are familiar with the commercial laws of our jurisdiction. If there is some need to transfer the case to the local District Office, Center attorneys will make that determination and notify you immediately in order to provide the best possible customer service.

#### **6. How should the lender make its demand?**

It’s easy. The Center has developed a special Purchase Demand Kit that is mailed or emailed to the participant lender when the loan has been downgraded to “liquidation status” and our Purchase Unit has been notified. This kit is designed to guide the lender so SBA can make its purchase decision within 45 days! The demand to purchase the loan can be made when all liquidation is complete and the lender is ready to charge the loan off.

#### **7. When can SBA purchase an SBAExpress loan from a participant lender?**

SBA purchases SBAExpress loans after the lender has fully liquidated all collateral, formal written demand has been made on all obligors/guarantors who remain liable, the lender has pursued all collectible obligors, and SBA has reviewed the loan documentation — except for expedited purchase requests. This means that all liquidation must be completed. The Center has found it helpful to emphasize that, immediately following loan purchase by SBA and notification to the lender of the purchase via email , the loan is then charged off.

#### **8. When is liquidation considered “completed”?**

When all collateral has been liquidated, all obligors and guarantors pursued, and any related bankruptcies have been “finalized.” In a Chapter 7 bankruptcy case, “finalized” means that the court has issued a discharge and a report of No Assets/No Distribution or Final Report of Distribution has been issued. See FAQ 15 below for a discussion of Chapter 11 and 13 bankruptcies, Trustee’s Report of No Assets/No Distributions.

Unlike other SBA loan programs, SBA cannot purchase an SBAExpress loan until all reasonable recovery and enforced collection is exhausted. In those cases where the outstanding loan balance is \$25,000 or less and the lender uses the Center's Purchase Demand Kit (including the execution of all certifications within the Purchase Demand Kit), the Center will accept a lender certification that all collection activity is completed. Also, since the change in the liquidation regulations, lenders are required to fully liquidate all "business personal property" before submitting a purchase demand for all loans approved after May 14, 2007 (13CFR120.520). No asset searches are required if the loan is unsecured or only has business personal property for collateral. This enables SBA and its valued lending partners to focus scarce resources on those SBAExpress loans having a larger dollar balance.

## **9. What are the essential elements of an asset search?**

As much as a "cookie cutter" answer would make this answer easy, the correct answer to this question depends on a number of factors. The Center has already taken into consideration the concern expressed by many participant lenders that it does not represent a good use of scarce resources to expend a lot of time and money on loans with a balance of \$25,000 or less. This rule of convenience represents just one way the Center has engaged in public-private sector partnerships that has helped create a results-focused organization.

That leaves SBAExpress loans with balances greater than \$25,000 and up to \$350,000. The scope of any asset search will depend on all the facts and circumstances, such as the outstanding dollar balance of the loan and what you would do in the case of your non-SBA guaranteed loans. Some of the tools that you should consider are Corporate/Partnership, Motor Vehicle, Real Property, Grantor/Grantee, Judgement/Tax Lien, Civil Suit, UCC, Bankruptcy, Assumed Name, Liquid Asset, Federal Litigation and Residence and employment searches. Other searches that might be appropriate are Skip traces, employment, Owner and Encumbrance, Liquid Asset and Mutual Fund/Brokerage Searches.

A copy of the asset search does not need to be submitted with the Purchase Demand Kit, however, the Wrap Up Report must include a summary of the results of the search addressing specific assets located and justification for not pursuing any located assets.

## **10. I am unclear as to what documentation is required to establish that the lender has pursued all collectible corporate obligors and guarantors. Is a corporate dissolution required?**

A corporate dissolution is one way the participant lender can document that "liquidation or collection activity is complete." Other satisfactory documentation includes:

1. A bankruptcy trustee's report and/or an analysis of the petitions and schedules demonstrating there were no worthwhile assets.
2. In a Chapter 7 bankruptcy involving a corporation, we ask that you obtain a copy of the case closure document and attach a copy of your proof of claim (or notice of no asset case).
3. The Center will accept the lender's certification that liquidation is complete and consistent with treatment of its non-SBA guaranteed portfolio. An asset search and credit report demonstrating a lack of assets and that competing creditors are not being paid. If the loan balance is less than \$25,000, or unsecured or if the loan was approved after May 14, 2007 and only has business personal property for collateral no asset search is required.

In summary, SBA expects reasonable documentary evidence supporting the conclusion that there is no worthwhile prospect of collection from the corporation (or other entity). You may find other methods to establish the corporation is "judgment proof;" if so please share with us the type of documentation you are relying upon and we will consider adding it to this list.

## **11. What documentation must be submitted to SBA with the lender's request for purchase?**

The Commercial Loan Servicing Center, has created a "Purchase Demand Kit" that guides the participant lender and helps ensure that only the necessary documents are submitted to SBA. No more, no less!! (In

*fact, you can help us provide you the very best possible customer service and fastest purchase decision if you send only the information requested in the kit. Please, do not include extra information because that will only delay our ability to provide fast service).* Generally speaking, SBA requires a wrap-up report, a certified and reconcilable Transcript of Account, a copy of the note, wire instructions, detail of expenses, SBA form 1919/1920 and all collateral documents. If the borrower or guarantor has filed a bankruptcy, the lender must also submit a copy of the notice of bankruptcy, bankruptcy discharge or plan confirmation.

**12. What information has to be included in the signed and certified transcript of account?**

Five important items must be included. 1. Interest “paid from and to” date, 2. Next due date, 3. Application of payments and sale of collateral proceeds 4. A description of any costs reimbursed through sale of collateral proceeds, and 5. The transcript must be certified. The Center has found that the greatest causes for delay in the purchase process is *a transcript of account that cannot be reconciled or a lack of information in the wrap-up report*. We would like to help you make sure that your loan is purchased fast. So, if you have any questions regarding how to prepare the transcript of account please contact the SBAExpress Purchase Group at the Center!

**13. Is the participant lender required to conduct any type of investigation before stating that the borrower is a skip?**

Yes, the participant lender is required to conduct, at a minimum, a site visit — and a credit report should be pulled. A professional skip trace will often be appropriate, especially for larger loans. Often, a skip trace can be obtained economically by combining it with an asset search. The analysis of this investigation should be summarized in the wrap-up report, however, copies of the documentation do not need to be submitted.

**14. If the lender hires outside legal counsel, should that counsel communicate directly with SBA?**

No. The lender’s outside counsel must communicate *with the lender* regarding all matters concerning the liquidation of the SBAExpress loan. The lender will then communicate with the SBA. If lender’s counsel elects to correspond directly with SBA’s legal counsel at the Commercial Loan Servicing Center, we ask that the lender instruct their outside legal counsel to copy the lender on all correspondence. This will enhance communication and ensure that the participant lender is fully apprised of all developments.

**15. If the borrower/guarantor files a Chapter 11 or Chapter 13 bankruptcy, when is liquidation considered completed?**

Generally, liquidation is considered completed when all proposed payments under a confirmed plan are made **and** the debtor receives his discharge. (*Note: The practical application of this rule may result in purchase by SBA being delayed for several years*).

However, if the SBAExpress loan is **unsecured** and the participant lender elects to immediately deduct the total anticipated plan payments at time of purchase demand from the loan balance, then SBA can purchase the loan when the court confirms the bankruptcy plan (i.e. before all bankruptcy plan payments are made by the borrower/guarantor). In this case, the purchase can be processed. (*Note: In this case, the participant lender assumes all risk that the plan will not pay out as anticipated because there will be no further payments made by SBA in the event of a plan default.*)

If the SBAExpress loan is **secured**, the purchase may only be authorized after all collateral is liquidated. (*Note: The practical application of this rule is that SBA will rarely purchase secured loans in Chapters 11 or 13. The reason for this result is because the collateral has not yet been liquidated and SBA cannot purchase these loans until the collateral is liquidated*). As outlined in Procedural Notice 5000-803, effective 6/11/02, lender retains the option of immediate purchase.

**16. If the borrower/guarantor files a Chapter 7 bankruptcy, when is liquidation considered completed?**

Generally, liquidation is considered completed when two events occur. First, all collateral must be liquidated. Second, the borrower/guarantor must be discharged as evidenced by the bankruptcy court's issuance of the official document "Discharge and Trustees Report of no assets/no distributions." If no creditor has filed an objection to discharge, then a debtor will typically be discharged within 120 days of the date the borrower filed its petition in bankruptcy and is usually well before a case is "closed." Note that collateral is considered liquidated if it can be deemed worthless. SBA will consider liquidation completed when the debtor is discharged and the collateral is "written off" by the lender as worthless. For loans with balances of \$25,000 or greater, such "write off" must be supported by a site visit report as required by SOP 50 51, appraisals and lien searches and included within the wrap up report. If the loan balance is less than \$25,000 the lender can certify that all collection is complete and the Center will rely on the lender's certification.

**17. Do I have to wait until the court enters a discharge in a "no asset" Chapter 7?**

Yes, liquidation is considered complete when all collateral is liquidated (or written off) and the debtor is discharged and Trustees Report of No assets/No Distribution— except under the expedited purchase process. If no creditor has filed an objection to discharge, then a debtor will typically be discharged well before a case is closed. Waiting for the discharge causes little delay.

**18. What must the Wrap-Up Report contain?**

The Wrap-Up Report must include a detailed summary of the following:

1. the liquidation effort put forth by the lender,
2. findings generated by the site visit and credit report,
3. liquidation activity regarding collateral and,
4. the actions taken to pursue the guarantors.

If the lender is not going to pursue the guarantors or collateral, then the report must include the justification for this decision.

**19. Why doesn't the Center purchase SBAExpress loans within 45 days? —**

SBA is not permitted (except for the expedited purchase process) to purchase the SBAExpress loan until all liquidation is complete. In order to help ensure that all the required information accompanies the Lender's demand for purchase, the Center has created a helpful and convenient-to-use "Purchase Demand Kit." This required format will reduce delay caused by the inadvertent omission or misplacement of documents. If the kit is used and fully completed and if all the collateral has been liquidated, the Center can purchase loans within 45 days.

**20. Does the SBAExpress program allow the participant lender to charge fees?**

Yes. Please review page 18 "Fees" of the attached SBAExpress Program Guide dated October 1, 2002. The Center reads the language found in the Guide to mean that any fees charged to the borrower after payment default should not be reflected in the transcript of account. Therefore, prior to SBA purchase, such amounts will be subtracted from the total amount purchased by the Agency. However, on the other hand, if the transcript of account reflects fees charged to the borrower prior to payment default and paid by the borrower, then no adjustment will be made to the transcript of account.

- 21. In the case of performing loans, we are finding that some borrowers are unable to obtain insurance on real estate AT ANY PRICE due to insurance companies who are refusing to insure in a particular area. Although we might be able to force-place coverage in these instances, it would be at an expense prohibitive to the borrower and contrary to our normal business practice (we typically only force-place coverage on properties for loans in liquidation or follow up until the borrower provides evidence of coverage on performing loans). Please advise us what we should do in these cases.**

A participant lender has the unilateral authority to determine the necessity to force-place hazard insurance if the borrower's coverage lapses. SBA considers it to be a prudent lending practice to ensure that hazard insurance is maintained on worthwhile collateral. Insurance coverage is also required by regulation [13 CFR §120.160(c)]. The lender must make a business decision concerning forced placement of insurance if the borrower does not pay the required premium, based on the insurance cost and availability, and the value of the collateral. If insurance is not available or only available at an exorbitant price, the lender should document the loan file as to the situation, the steps it has taken to attempt to procure coverage and its decision with respect to force-placement. If the lender decides not to force-place and the property is destroyed, SBA will review the circumstances (including the basis for the lender's decision) at the time of guaranty purchase to determine whether the lender's decision was reasonable and prudent. Obviously, the unavailability of insurance will be a decisive factor!

- 22. Aside from the restrictions expressly stated in SBA Procedural Notice 5000-803, what other circumstances might render a loan ineligible for expedited processing?**

13 CFR 120.524(a) lists a variety of reasons that the SBA can be released from its liability on a loan guarantee. If the Center suspects that one or more of these events has occurred, it will exercise its discretion to not process a purchase request using the expedited procedures. Additionally, if the loan has defaulted within 18 months after the final disbursement, the Center is required to subject the loan to extra scrutiny pursuant to SBA Policy Notice 5000-831. Because of the very high degree of scrutiny that we are required to exercise in reviewing the documentation submitted with the request, expedited processing may also not be available for these early default loans.

- 23. What is the most current policy regarding the submission of SBA Form 1919 — Borrower / Guarantor Information?**

This form is *required* by SBA to process a lender's purchase request. If a lender cannot supply the form(s) at the time of purchase, the lender will be notified that SBA cannot process the purchase and the purchase request will be considered withdrawn until the lender submits the form(s).

- 24. What is the most current policy regarding the submission of SBA Form 1920SX — Eligibility Information, Parts A and C?**

SBA Form 1920SX, Parts A and C, are *required* for SBA to process a purchase request since these parts contain signed lender certifications. The lender must also submit any supporting eligibility documentation used by the lender in making its eligibility determination. Form B is not required to be submitted for SBA to process a purchase.

*Lender re-certifications:* Since the 1920SX Parts A and C are prepared and certified by the lender, the originating lender may prepare and re-certify these parts of the form at the time of purchase if the lender cannot locate the originals. However, a re-certification cannot be done by another lender that has acquired the loan from the originating lender. The only exception would be if the lender that acquired the loan can locate sufficient documentation in the loan file to substantiate all portions of Parts A and C, and submits this information along with the re-certified parts of the form for SBA's review.

**E-Trans certifications:** E-Trans lenders may use the print application process to print out the data submitted in connection with the application for an SBAExpress loan guaranty. The print application includes the two certifications contained in SBA Form 1920SX Parts A and C combined into one certification. The signed certification will substitute for 1920SX Parts A and C, and will fulfill the 1920 submission requirement for processing a purchase request for E-Trans lenders.

**Eligibility-authorized lender certifications:** For eligibility-authorized SBAExpress lenders, Form 1920SX Parts A and C are not required for SBA to process a purchase request, nor is supplemental documentation regarding eligibility, such as checklists, unless specifically requested by SBA because of an apparent eligibility problem. Instead,

**a) For E-Tran loans:** E-Tran lenders who submit loan application data electronically will need to use the print application accessible through the E-Tran “Print Report” screen and must submit to SBA the printed loan application information with the certification at the end signed by the lender.

or

**b) For non-electronic loans:** If the loan application was not submitted electronically, the lender will need to submit a signed **SBA Form 2238 (SBA Express Guarantee Request Eligibility Authorized)** which should have been submitted at the time of the application, and the following lender certification:

Borrower Name \_\_\_\_\_  
SBA Loan Number \_\_\_\_\_

*Lender hereby certifies that the loan information pertaining to the above loan is true and correct, to the best of its knowledge, and that it has exercised due diligence to obtain true and correct information. Lender is aware and acknowledges that SBA review of this information is a quick look at eligibility intended to provide limited protection to SBA and Lender from making an ineligible loan on which SBA could not honor its guaranty, and that if an SBA loan number is assigned and SBA later learns that the loan is not eligible, SBA still may deny liability on its guaranty. Lender approves the loan application to SBA subject to the terms and conditions stated in the application and associated documents. Without the participation of SBA, to the extent applied for, Lender would not be willing to make this loan on these terms, and in its opinion, the financial assistance approved is not otherwise available on reasonable terms. Lender certifies that none of the Lender’s Associates, including but not limited to its employees, officers, directors, or substantial stockholders (more than 10%) has a financial interest in the Applicant. Lender approves and certifies that the Applicant is a small business according to the standards in 13 CFR Section 121, the loan proceeds will be used for an eligible purpose, and the owners and managers of the Applicant business are of good character.*

*(Signed and dated by Lender. Printed name and Title to accompany signature.)*

## **25. Do I have to submit IRS tax transcripts at time of purchase?**

Yes – in some cases. On early default loans with principal balances above \$10,000 at the time of the purchase request, the lender must provide IRS tax transcripts that it obtained to verify applicant financial information on loans where such information was relied on in the lender’s credit analysis (or the seller’s financial information in a business purchase situation). Such information is not required if the lender used credit scoring that did not include business revenues or profits. If tax transcripts were required, the lender must indicate whether there were any discrepancies between the applicant/seller financial information and the tax transcripts and, if so, how those discrepancies were resolved. Use the PDK. It indicates where these transcripts are to be included.

**26. Who is responsible for conducting *SBAExpress* purchases and where can I receive answers to my other questions regarding the *SBAExpress* purchase process?**

All *SBAExpress* purchases are handled by the two Commercial Loan Servicing Centers. The Commercial Loan Servicing Centers are striving to become a “pinnacle of excellence” for the Agency that augments the important work done by our sister District Offices. We do this in part by collaborating with our valued lending partners consistent with notions of public-private partnerships in order to create a results-focused organization. Therefore, we would like to hear from you. Please contact us at:

The United States Small Business Administration  
The Commercial Loan Service Center  
ATTN: Purchase Unit

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