

File Documentation Checklist for America's Recovery Capital (ARC) Loans

- [Borrower Information Form \(SBA Form 2315\)](#) – One for each person listed at the top of the form. (Submit to SBA if you are not using your delegated authority. On delegated loans, file in your file folder).
- [SBA Form 2316, Part A, Loan Guaranty Request](#). (complete and submit to SBA if not using your delegated authority, otherwise you provide this information via E-Tran)
- [SBA Form 2316, Part B, Lender's Supplemental Information](#). (complete and submit to SBA if not using your delegated authority, otherwise this information is entered via E-Tran)
- [SBA Form 2316, Part C, Eligibility Information Required](#). (All lenders must complete. If submit loan using your delegated authority, you retain it in your file. If not using delegated authority, you complete and send to the Processing Center.)
- Borrower's financial statements for the past two years (submit to SBA on non-delegated loans).
- Interim financial statements if annual statements are more than 90 days old (submit to SBA on non-delegated loans).
- IRS verification of a borrower's income (obtained using [IRS Form 4506T](#)). This does not apply to individuals unless the business is a sole proprietor and they file a Schedule C. (follow guidelines provided in the ARC loan Procedural Guide for delegated and non-delegated loans).
- Quarterly cash flow projections for two years (submit to SBA on non-delegated loans) -- we have an Excel file that can be used to prepare these projections.
- Lender's credit memorandum (submit to SBA on non-delegated loans) including an analysis and discussion of the borrower's status, the character and reputation of the business, its business structure and age, experience and depth of management, current and past financial condition, projected cash flows, and the financial hardship being experienced. Information on the QSBLs being paid (see [ARC Loan Proceeds form](#)) with an ARC Loan including the required documentation for credit card obligations and home equity loans must be provided. Include a copy of the Note and original purpose for the QSBLs being paid with ARC loan proceeds. For QSBL credit card obligations and QSBL Home Equity Loans, include 1) a copy of the loan statements and documentation of the type and business purpose of each use/purchase; 2) A written certification from the borrower that the amounts were exclusively business expense.
- Any additional documentation, if necessary, to support the statement of financial hardship included in the Form 2315, and details regarding any QSBL that is more than 60 days past due (submit to SBA on non-delegated loans).

WHEN APPLICABLE:

- [SBA Form 159 7\(a\)](#): If a packager has been used by the borrower who paid a fee directly to the packager, the Form 159 must be fully completed and kept in the loan file, and the lender does not send it to SBA. Lenders and their affiliates are prohibited from charging borrowers packaging fees for ARC Loans.
- [SBA Form 912](#): If questions 1(a), (b), and (c) of Form 2315 are answered negatively, no Form 912 is required. If question 1(a) is answered affirmatively, the loan is ineligible. If questions 1(b) or (c) are answered affirmatively, the lender may process the ARC loan under its delegated authority under certain conditions or submit the ARC loan to the 7(a) LGPC for non-delegated processing. In the latter case, the applicant must complete Form 912 and follow the steps as outlined in the [Procedural Guide for ARC Loans](#).
- [SBA Form 1624](#): If the applicant has never been debarred, suspended, or otherwise excluded, applicant indicates on Form 2315 and no Form 1624 is required. If applicant answers affirmatively, a Form 1624 is required, and the loan cannot be processed as a delegated authority ARC Loan.

NON-DELEGATED LOANS: The lender sends the loan package to the 7(a) Processing Center:

- By Fax to: 916-735-1554 or 916-735-1680

- Upload to our website at <http://www.sba.gov/aboutsba/sbaprograms/elending/lgpc/index.html>, click on "Submit 7(a) Loan Documents Here" link.
- By mail or FedEx to: 6501 Sylvan Road, Citrus Heights, CA 95610

AFTER APPROVAL:

- An SBA Loan Authorization (download Authorization Wizard at http://www.sba.gov/aboutsba/sbaprograms/elending/authorizations/BANK_AUTH_ARC_LOAN.html) - Lender prepares when submitting a delegated ARC loan (do not send to SBA); SBA prepares and sends to lender if loan is submitted to the Processing Center.

- [Borrower's Certification](#) (provided at end of this document). This document may be used to obtain the certifications that you will be required to obtain from your borrower(s) as outlined in the Loan Authorization.

- [ARC Loan Note \(SBA Form No. 2318\)](#) - Must use this on all ARC loans regardless of submission process. DO NOT SEND TO SBA. **State-specific language provided at bottom of this document must be added to the Note.

- [ARC Loan Limited Guaranty \(SBA Form No. 2319\)](#) - Must use this on all ARC loans regardless of submission process. DO NOT SEND TO SBA. **State-specific language provided at bottom of this document must be added to each Limited Guaranty.

- [ARC Loan Unlimited Guaranty \(SBA Form No. 2320\)](#) - Must use this on all ARC loans regardless of submission process. DO NOT SEND TO SBA. **State-specific language provided at bottom of this document must be added to each Unlimited Guaranty.

ARC LOAN CLOSING REQUIREMENTS:

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

a. SBA Authorization

Delegated Lenders complete the [ARC Loan Authorization 2009](#) without SBA review and sign it on behalf of SBA. SBA does not require that this form be provided to the borrower.

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

b. Closing Requirements

An SBA Lender must use the same closing and disbursement procedures and documentation for their ARC Loans as they use for its non-SBA guaranteed commercial loans. All SBA Lenders must use the [Note, SBA Form 2318](#), and Guaranty Forms, [SBA Forms 2319 \(Limited Guaranty\)](#) and [2320 \(Unlimited Guaranty\)](#), for ARC Loans. An SBLC must use the same closing and disbursement procedures and documentation for its ARC Loans as it uses for its 7(a) loans or submit an alternative approach for prior written approval by SBA.

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

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

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

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

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

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

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

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

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

(5) **Flood Insurance.** The lender must make the required flood hazard determination and require flood insurance (when collateral is taken) pursuant to the flood insurance requirements in [SOP 50 10 5\(A\)](#), Subpart B, Chapter 5. (Generally, those requirements state that flood insurance is required on real estate collateral in a flood zone, but it is within the lender's discretion to determine whether flood insurance is necessary on personal contents and fixtures when the building is not taken as collateral.) If collateral is not taken, a flood hazard determination is not required and flood insurance is not required.

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

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

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

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

SERVICING & LIQUIDATION REQUIREMENTS are outlined in the ARC Loan Procedural Guide at http://www.sba.gov/idc/groups/public/documents/sba_homepage/elending_revry_procguide.pdf.

BORROWER'S CERTIFICATION

INSTRUCTIONS: INDICATE THE PARAGRAPHS BEING CERTIFIED TO BY HAVING THE BORROWER INITIAL IN THE [_____] NEXT TO THE APPROPRIATE PARAGRAPHS, PRIOR TO SIGNING.

In order to induce _____ ("Lender") to make a U. S. Small Business Administration ("SBA") guaranteed Loan, SBA Loan Number _____ ("Loan") to _____ ("Borrower"),

A. Borrower and _____ ("Operating Company") certify that:

- [____]1. **Receipt of Authorization** - Borrower and Operating Company have received a copy of the Authorization for this Loan from Lender, and acknowledge that:
- a. The Authorization is not a commitment by Lender to make a loan to Borrower;
 - b. The Authorization is between Lender and SBA and creates no third party rights or benefits to Borrower;
 - c. The Note will require Borrower to give Lender prior notice of intent to prepay.
 - d. If Borrower defaults on Loan, SBA may be required to pay Lender under the SBA guarantee. SBA may then seek recovery of these funds from Borrower. Under SBA regulations, 13 CFR Part 101, Borrower may not claim or assert against SBA any immunities or defenses available under local law to defeat, modify or otherwise limit Borrower's obligation to repay to SBA any funds advanced by Lender to Borrower.
 - e. Payments by SBA to Lender under SBA's guarantee will not apply to the Loan account of Borrower, or diminish the indebtedness of Borrower under the Note or the obligations of any personal guarantor of the Note.
- [____]2. **Adverse Change** - That there has been no adverse change in Borrower's (and Operating Company) financial condition, organization, operations or fixed assets since the date the Loan application was signed.
- [____]3. **Child Support** - No principal who owns at least 50% of the ownership or voting interest of the company is delinquent more than 60 days under the terms of any (1) administrative order, (2) court order, or (3) repayment agreement requiring payment of child support.
- [____]4. **Current Taxes** - Borrower and Operating Company are current on all federal, state, and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes, and sales taxes.

B. Borrower and Operating Company certify that they will:

- [____]1. **Books, Records, and Reports-**
- a. Keep proper books of account in a manner satisfactory to Lender;
 - b. Furnish [*check one if appropriate:* compiled - reviewed - audited] year-end statements to Lender within _____ days [*120 days, if not filled in*] of fiscal year end;
 - c. Furnish additional financial statements or reports whenever Lender requests them;
 - d. Allow Lender or SBA, at Borrower's or Operating Company's expense, to:
 - 1) Inspect and audit books, records and papers relating to Borrower's and Operating Company's financial or business condition; and
 - 2) Inspect and appraise any of Borrower's and Operating Company's assets; and
 - 3) Allow all government authorities to furnish reports of examinations, or any records pertaining to Borrower and Operating Company, upon request by Lender or SBA.
- [____]2. **American-made Products** - To the extent feasible, purchase only American-made equipment and products with the proceeds of the Loan.
- [____]3. **Taxes** - Pay all federal, state, and local taxes, including income, payroll, real estate and sales taxes of the business when they come due.

VIRGINIA STATE SPECIFIC LANGUAGE:

- (1) The following language must appear at the bottom of the first page of each Note, Guaranty or Limited Guaranty Form:

IMPORTANT NOTICE

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

- (2) The following language must appear on the State-Specific Provisions page of each Note, Guaranty or Limited Guaranty form:

CONFESSION OF JUDGMENT

Debtor irrevocably appoints _____,
_____ and/or _____, any one of whom may act without the joinder of the other(s), as Debtor's duly constituted attorney-in-fact to appear in the Clerk's Office of the Circuit Court for _____ County/City, Virginia, or in any other court of competent jurisdiction, and to confess judgment, pursuant to Sections 8.01-432 through 8.01-441 of the Code of Virginia of 1950, as amended, against Debtor, in the event of any default under this debt instrument, including, but not limited to any payment under this debt instrument not being paid when due, whether at maturity, by acceleration or otherwise, for all principal and interest and any other amounts, including but not limited to, attorney's fees and collection fees, due and payable under this debt instrument as verified by an affidavit and statement of account signed by an officer of the Lender or SBA which shall set forth the amount then due, together with attorney's fees and collection fees (to the extent permitted by law). This power of attorney is coupled with an interest that shall not be revoked or terminated by Debtor and shall not be revoked or terminated by Debtor's death, disability or dissolution. Debtor releases all errors and waives all rights of appeal, stays of execution, and the benefit of all exemption laws now or hereafter in effect. Debtor acknowledges that the obligation evidenced hereby was not incurred for personal, family or household purposes, but for business purposes. Debtor shall, upon Lender's or SBA's request, name such additional or alternative person(s) designated by Lender or SBA as Debtor's duly constituted attorney(s)-in-fact to confess judgment against the Debtor. No single exercise of the power to confess judgment shall be deemed to exhaust the power, and no judgment against fewer than all the persons constituting the Debtor shall bar subsequent action or judgment.

Debtor