

7(a) Workout Training

October 25, 2016 @ 11:00 a.m. Eastern

***For technical assistance call the AT&T Helpdesk
at 888-796-6118 - Thank you!***

7(a) Workout Training

***Presented by:
Ashley H. Hou
SBA District Counsel***

October 2016

- SOP 50-57 2 (December 1, 2015)
- <https://www.sba.gov/HerndonNGPC/useful-links#liquidationprocess>
- 13 C.F.R. § 120.540 Liquidation and Litigation Plans
- SBA Information Notice 5000-1394 Litigation Plan Requirements and Legal Fee Reimbursement (10/4/2016)

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Lending Steps

Loan Programs

New to SBA Lending?

SBA Loan Centers

Lender Reports & Data

SBA.gov » For Lenders » Find a SBA Resource » National Guaranty Purchase Center (Herndon, VA)

For Lenders

- ▶ Steps in SBA Lending
- ▶ SBA Loan Programs
- ▶ Working with The SBA
- ▶ Search Lender Docs
- ▼ Find a SBA Resource
 - ▶ Commercial Loan Service Center (Little Rock, AR)
 - ▶ Commercial Loan Service Center (Fresno, CA)
 - ▼ **National Guaranty Purchase Center (Herndon, VA)**
 - Mission/Contact Us
 - Useful Links
 - ▶ Sacramento Loan Processing Center (SLPC)
 - ▶ 7a Loan Guaranty Processing Center (Citrus Heights, CA & Hazard, KY)
 - National Disaster Loan Resolution Center

National Guaranty Purchase Center (Herndon, VA)

Mission

The mission of the Center is to efficiently process guaranty purchase requests and to provide assistance and oversight, as necessary, to lenders during loan liquidation. The National Guaranty Purchase Center located in Herndon, Virginia, was created to centralize SBA's 7(a) loan guaranty purchase function into a single national location.

[More](#)

Contact Us

Location

National Guaranty Purchase Center (NGPC)
1145 Herndon Parkway Suite 900
Herndon, VA 20170
Phone: 703-487-9283
Fax: 202-481-4674
Email:
loanresolution@sba.gov

[More Info](#)

Resources

Center Forms

• [Guaranty Purchase 10 Tabs](#)

Useful Links

• [Liquidation Process](#)

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Webinar Objectives:

- Discuss SBA Loan workout
 - What it is? What it involves?
- Loan Liquidation
 - When is a loan classified “in liquidation”?
 - What is to be done in marshalling assets for recovery
- Litigation- It may happen and what SBA approvals are needed.

What is a Workout?

Working with Borrower for some resolution on loan that involves

- Deferments
- Defaults
- Business ceases operation
- Collateral recovery
- Liquidation

Workout

Refers to the debt collection and negotiation process as well as the final plan agreed upon by a creditor and debtor with regard to how the problems and issues surrounding the debtor's delinquent obligation to the creditor can be “worked out” or resolved.

SOP 50-57-2 Chapter 16, paragraph A.

What does a workout involve?

- Determine what's going on with business?
 - Loan payments
 - Business financials
 - Collateral
 - Guarantors/principals
 - Real estate
 - Environmental issues

Prudent Liquidation

- SOP 50-57-2 (December 1, 2015), p.8
- New Performance standard
- Defined term in Chapter 2
- Emphasizes complete liquidation within either 24 months of date of guaranty purchase or 24 months from effective date of SOP, whichever is later.

“In Liquidation”

- Default on Note
 - Payment default
 - Failure to maintain insurance
 - Failure to provide business financials
 - Other default provisions in the Note

Specific Reasons

- SBA classifies loan in liquidation when loan is more than 60 days past due with no prospect of curing delinquency.
- Foreclosure action
- Lawsuit affecting repayment of loan, against Obligor
- Bankruptcy
- Business shut down
- Collateral is in danger of disappearing/losing value/stolen
- Receiver appointed

Demand Letter

- Lender responsibility to send demand letter
 - Note is accelerated and entire balance immediately due and payable.
 - Send to all Obligors (exemptions apply)
 - Use certified and regular mail to prove receipt.
 - Reasonable efforts to contact Obligor by telephone or email.

Liquidation Plan

- [SBA Form 1979](#)
- Site visit within 60 days for payment default
 - Feasibility of workout
 - Recoverable Value of Collateral
 - Methods of Liquidation
 - Status of senior liens
 - Obligor's repayment ability

How do you marshal assets?

- Review authorization
- Skip tracing on the obligors
- Lien/UCC search on collateral to ensure proper lien position (is there a lease?)
- Appraisals on real and personal property
- Environmental investigation, if necessary

How do you marshal assets?

- Contact taxing authorities
- Insurance
- Landlord

Consideration for Litigation on SBA Loans

- Litigation should be necessary, reasonable and customary for the locale
- Litigation should be cost effective
- Treasury Referral tools- offsets (federal payments such as social security, tax refunds, government contract payments)

Selecting Outside Counsel

An Attorney retained by Lender must:

- Be licensed in the state where litigation will be conducted.
- Have expertise in debt collection and bankruptcy law, as well as any other specialization required by the case.
- Be covered by adequate legal malpractice insurance.
- Have no conflicts with any parties to the loan.

Litigation

New information Notice 5000-1394 Litigation Plan Requirements and Legal Fee Reimbursement (effective October 4, 2016)

Litigation plan required for

- All litigation where factual/legal issues in dispute
- Legal fees over \$10,000
- Litigation involving a 7(a) loan where lender has a separate loan to same borrower
- Receivership litigation

Litigation

- Amended Litigation plan (when necessary or when initial plan has changed)
- Litigation changes from routine to non-routine
- Increase of fees by more than 15%
- Compliance with litigation plan submission is not optional
- SBA may decline to pay legal fees if no prior written approval is obtained.

Litigation

Emergency waivers of litigation plans

- Lender makes good faith effort to obtain SBA written approval
- Submits a written litigation or amended plan as soon after the emergency as possible
- Takes no further litigation action without SBA's written approval of the Plan or amended Plan.

Fees Presumed Unreasonable

- Un-justified travel expenses, including those not pre-approved by SBA.
- Multiple law firm billings for the same task.
- Attorney fees and costs that exceed recovery when no litigation plan was submitted or approved
- Appointment of a receiver to perform routine liquidation activities.
- Non-itemized bills (without hourly rates, description of services)

Litigation Fees

SBA guaranty only reimburses attorney fees and costs of litigation such as court filing fees, court reporter, transcription fees, incurred to collect that loan that **are necessary, reasonable and customary for the locality** where the court in which the litigation proceeding was filed is located.

Fees Not Reimbursable

- Overhead including conflict of interest determination, file set up, secretarial work
- Intra-law firm communications and billing by more than one person for same activity.
- Performance of routine loan servicing and liquidation duties such as preparation of a demand letter, liquidation plan, purchase package or protective bid analysis.

Fees Not Reimbursable

- Rectifying errors that would justify a partial Denial of Liability, Repair or full Denial
- Defense of action brought by SBA against Lender
- Defense of claim by an Obligor or other persons against Lender for wrongful action

Fees Not Reimbursable

- Services pertaining to litigation handled by SBA legal counsel that were not preauthorized in writing by SBA.
- Pet peeve- charging time for speaking with SBA counsel or staff.

Contact Information

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Questions?

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Or contact your local LRS –

www.sba.gov