

Preparing the SBA 7(a) Ten Tab Guaranty Package

Tuesday, June 14 - 11:00 a.m. Eastern

For technical assistance, call the AT&T Helpdesk
at 888-796-6118

Thank you!

SBA West Virginia District Office

Preparing the 2016 National Guaranty Purchase Center (Herndon) SBA 7(a) Ten Tab Guaranty Package

Presented by:
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Acknowledgement

We would like to thank Gary Griffin for his time and providing information regarding his experience in lending and working on SBA loans from his perspective.

All opinions, conclusions, and/or recommendations expressed herein are those of the presenter and do not necessarily reflect the views of the SBA.



To begin!

- ▶ Reference 10-Tab printout you downloaded before we started.
 - ▶ Added BONUS!
 - If you close the loan properly, a great deal of the issues you will be dealing with in the future will already have been addressed. Therefore, I am providing our internal loan closing checklist, which can be customized for each individual closing (emailed to you earlier with Word version of Liquidation Plan).
 - Plagiarize, plagiarize, plagiarize (whenever possible)!
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Overview

- ▶ The 10-Tab file is bank's opportunity to show that the loan was originated, closed, serviced, and liquidated in accordance with SBA Loan Program Requirements, the specifics of the loan's Authorization, and with prudent commercial lending practices no less stringent than bank applies to non-SBA loans.

Best Practice

- ▶ It is best to prepare the skeleton of the 10-tab file on all loans when they close (or 30–60 days if you reviewed the closing package before closing), because it is often difficult to compile all required documentation long after the fact in the event a loan eventually needs to be liquidated. Doing the 10-tab file pro-actively is a good check that key items* are not missing, and have been properly handled at the time of closing.

*(e.g. verification of equity injection, loan uses/disbursements, and proper collateral positions, including insurance assignment).

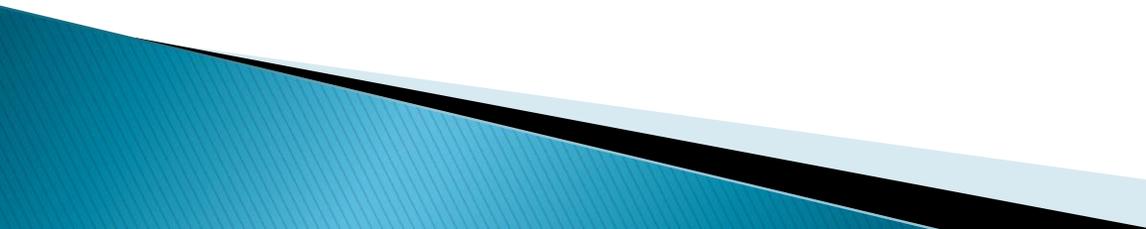
Helpful Hints

- ▶ Useful information including “Helpful Hints” and fillable file index pages can be found at <http://www.sba.gov/HerndonNGPC> . (General questions about the process can be made to loanresolution@sba.gov.)
- ▶ Before bank submits a 10-Tab file, a request should already have been made that SBA transfer the troubled loan from Commercial Loan Service Center to National Guaranty Purchase Center, Herndon VA, and classified as Liquidation. Loan continues to report on 1502 report, status code “5”.

Post-Purchase Package (for Sold Loans)

- ▶ Request that SBA purchase guaranteed portion of loan from Secondary Market can be made after loan is in prepayment default greater than 60 days, and there is no expectation that it can be cured (through use of a SBA approved deferment or catch-up plan). This request includes a Demand Letter (see boilerplate language in Tab 1), Authorization with Stamp Actions, and certified transcript of account on SBA form 1149. The 10-Tab file must be submitted within 45 days of SBA's repurchase. SBA's subsequent share of any recoveries are now submitted to SBA Denver via form 172 on Pay.gov, NOT to Colson on 1502. SBA will now have you report subject loan on your Quarterly Status Report. By repurchase, SBA has honored its guaranty, and will review the post-purchase package (the 10 Tab), to decide if this action was justified. HINT: On 1149, call Colson and get their transcript. (\$10 principal, 3 day PTD rule.)

Pre-Purchase Package(for Unsold loans)

- ▶ Bank has completed liquidation of all Business Personal Property collateral, and either no or only real property remains. SBA will review 10 Tab file to determine if it will honor its guaranty, as well as share in the banks Care & Preservation of Collateral (CPC) costs related to liquidation.
 - ▶ Reduce CPC expenses from liquidation recoveries first before applying to principal (6-12 month wait for CPC recovery).
 - ▶ If non-routine legal expenses are envisioned (\$10k threshold), bank will also have to submit a Litigation Plan with either Post or Pre-purchase packages, or subsequently.
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The Actual 10-Tab file

- ▶ **Use SBA's fillable 17 page PDF as index pages for each section of file.** Also type an index page to list specific contents included in any tab section containing multiple documents. Use additional "title" pages in front of each document listed in section index, or as an explanation of why a "required" document is not included, or not actually required. File is submitted electronically in multiple files (e.g. Tabs 1-4, 5-7, 8-10 +CPC, etc.) Via "Send This File" option on NGPC website, selecting either NGPCPREPP or NGPCPOSTPP@SBA.gov
- ▶ See attached Liquidation (or Workout) Summary. You will cut and paste this document throughout the 10-Tab.

Tab 1. – Demand

Bank's contact information, Demand Letter (form – follow link), Reason for Business Failure memo, and status of liquidation (remaining collateral?) We typically include a narrative “Liquidation or Work-out Summary”, several pages that give background history, work-out attempts, collateral summary, liquidation efforts to date, legal actions, expected recoveries, etc.

See what follows and email me if you want the Word version (YOU SHOULD HAVE ALREADY RECEIVED IT). You will cut and paste this document throughout the 10-Tab process.

Liquidation Plan (sample)

SBA National Bank SBA Loan Liquidation Plan

SBA National Bank
1234 Any Street
Your Town, TN 37300

Date: January 6, 2013

Borrower: Super Gas Station, LLC. and
Joe Smith, Individually
5678 Somewhere Road
Your Town, TN 37300

SBA Loan No.: 12345678-01

SBA Bank Loan No: 1200000045

Date of Loan Approval: December 01, 2009

Original Loan Amount: \$1,000,000.00

Principal Balance of Loan: \$932,076.32

Date Borrower Last Paid: February 4, 2012 Date Next Payment is due: March 1, 2012

Plan (continued)

1. Justification for liquidation: Principal, Joe Smith, was diagnosed with terminal cancer and made the decision to close the business.
2. Cause of business breakdown & workout attempts.

SBA National Bank originally approved the above referenced SBA 7(a) loan (Note # 1200000045) to Super Gas Station in amount of \$1,000,000. The current balance of this loan is \$932,076.32. The purpose of the loan was for the construction of a convenience store and for working capital. This loan carries a 90% SBA guaranty. \$992,340.09 was advanced on the loan leaving \$7,659.91 unfunded during the 12 month construction phase. The loan began amortizing in November 2010.

In mid-October 2010 Mr. Smith requested \$15,000 to finish out his equipment purchases (\$5,000) and provide working capital (\$10,000). Since this was beyond what was available on the SBA loan and the loan had begun amortizing, we chose to provide the company a loan outside of the SBA, secured by completely separate assets. Note # 123456789 in the amount of \$15,000 was originally made on October 22, 2010 and was renewed on March 11, 2011 in the amount of \$14,418.35. The balance was \$11,304 upon default. The purpose of the loan was to fund the purchase of scanning equipment at a cost of \$5,000 and \$10,000 for working capital. The loan was secured by a lot at 1200 My Drive, Your Town, Tennessee valued at \$105,000. This property was not part of the collateral securing the SBA guaranteed loan and was sold on May 31, 2012 for \$62,000.

Plan (continued)

COLLATERAL POSITION REVIEW

Loan # 1200000045 (store loan) is secured by a convenience store located on Somewhere Road in Your Town, vacant land on Fishy Pike, and Mr. Smith's personal residence. The balance on this loan is \$932,076.32. At origination, the value of the collateral for this loan was \$1,390,000 making the LTV 72.00%. Declining values in RE and the poor performance of the C-store will hinder the full recovery of this loan.

ANALYSIS OF TREND

Although payments were being maintained in a reasonable manner, on November 8th 2011, Joe Smith came to the bank and told us that he was closing his convenience store and that he would no longer be able to pay. We have currently foreclosed on all property with the exception of the collateral securing the SBA loan due to our belief that the maximum recovery will come from the Borrower's voluntary liquidation of said collateral.

The store property is being aggressively marketed through Dang Good of Quiet Auctions. **There is currently a sales contract on the convenience store in the amount of \$400,000.** The Fishy Pike property is listed with Tennessee Realty for \$350,000. Mr. Smith has secured a reverse mortgage on his personal residence outlined below. Both the C-store sales contract and reverse mortgage will be accepted with SBA approval.

Plan (continued)

REPAYMENT SOURCES (INCLUDE DEBT SERVICE COVERAGE)

The repayment source for these loans will be the liquidation of collateral.

INDIVIDUAL (INCLUDE INDIVIDUAL'S LIQUID ASSETS)

Mr. Smith's personal financial statement dated 03/11/2011 shows liquid assets of \$23,440. This was in a checking account at 1st Tennessee. His total assets are \$1,719,940 which is made up primarily of real estate. The total liabilities shown are \$932,076. This is all store related debt. His net worth is \$787,864. It is believed that this is a highly inflated value based on his estimate of RE values.

3. Does the Lender have any "non-SBA" loans with any borrower, guarantor, or principal?

SBA National Bank has funded three additional loans to Super Gas Station:

Note # 123456789

Note # 987654321

Note # 123567321

For further explanation see Page 1. Item 2: Cause of business breakdown and workout attempts.

In April of 2012 SBA Bank foreclosed on the collateral mention in the above referenced loans. Copy of Notes and Deeds of Trust attached.

Plan (continued)

a. Obligors: Super Gas Station, LLC
5678 Somewhere Road
Your Town, TN 37300
EIN #27-123156

Joe G. Smith
1234 Rock Road
Your Town, TN 37300
SS#123-45-6789

b. Guarantor: N/A

c. Life Insurance: Original Life Insurance requirement of \$1,000,000.00 was reduced to \$500,000 by stamp action January 19, 2010 (#573470) and later eliminated in its entirety by stamp action dated February 10, 2010 (#578317).

d. Demand has not been made at this point in time. Borrower is voluntarily liquidating collateral.

5. Will legal action be required? Not at this time.

Plan (continued)

6. **General Recovery Plan:** It is the Bank's intention to liquidate all real and personal property used to secure this loan. Personal property was negligible, has been sold and applied to principal (\$5,526.54 between March 12, 2011 and April 21, 2012). The primary commercial property built with the loan proceeds is under contract for \$400,000. We obtained a FMV appraisal dated April 16, 2011 for \$1,000,000 and a liquidation value of \$ 750,000 as of May 28, 2012. However, after aggressively marketing the property for 3 months, we have received offers of as little of \$200,000 to a maximum of \$400,000, this offer being from an existing customer of the Bank. We have accepted this offer (subject to SBA approval) and obtained a Broker Opinion as to the reasonableness of this offer. It is not the replacement value which was ever in question. It is based almost solely on the lack of sales and profitability of the store's operations. The remaining 2 commercial tracts are listed for \$350,000 with a local realtor but have had to date no activity. Mr. Smith has obtained approval for a reverse mortgage on his personal residence for \$160,000, based on an appraised value of \$230,000. We are inclined to accept this payoff (the Bank's appraisal on the same parcel was \$215,000) and release the residence for the principal reduction, given SBA's concurrence. Mr. Smith is in failing health so the disposition of any shortfall in collateral is anticipated to be minimal. Liquidation is anticipated as follows in #7.

Plan (continued)

7. Estimate of Liquidation Recovery:

	Real Estate Commercial C-store <u>Y.T., TN</u>	Real Estate Commercial Vacant Lots <u>Y.T., TN</u>	Real Estate Residential <u>Y.T., TN</u>
Original Appr. Value	\$1,000,000	\$550,000	\$350,000
Current Appr. Value	\$750,000	\$350,000	\$230,000
Current Liq. Value (Based on):	\$400,000 Purchase Agreement	\$262,500 75% of List Price	\$160,000 Reverse Mortgage
Less Sr. liens:			
1 st : None	\$0	\$0	\$0
2 nd : None	\$0	\$0	\$0
Estimated net value:	\$400,000	\$262,500	\$160,000

Plan (continued)

Expense Category:

RE Appraisal:	\$2,000	\$0	\$325
Personal Property:	\$0	\$0	\$0
Environmental:	\$0	\$0	\$0
Past dues taxes:	\$9,475	\$0	\$0
Legal fees:	\$0	\$0	\$0
CPC:	\$0	\$0	\$0
Escrow/Commissions:	\$24,000	\$15,750	\$0
Storage/Pick-up/Etc.	\$0	\$0	\$0
Trustee Foreclosure:	\$0	\$0	\$0
Auction/Sale Expenses:	\$0	\$0	\$0
Other: Def. Maint.	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Expenses:	\$35,475	\$15,750	\$325
Projected recovery:	\$364,525	\$246,750	\$159,675

Total projected recovery: \$ 770,950

Note 1: Current liquidation value on CRE (C-store) is based on contract. Liquidation value on residential RE is loan value determined by reverse mortgage based on appraisal value of \$230,000 (much higher than our appraisal in file). Current Liquidation Value of Commercial Lots is 75% of most recent appraisal and broker's opinion.

Note 2: Commission on CRE is 6%.

Any Body, EVP, Chief Credit Officer

Date

Tab 2. – SBA Authorization

- ▶ Including all stamp actions. **“The Loan Authorization contains the terms that must have been met in order to validate the SBA Guaranty”**, and will indicate what items are needed in the other tabs. Additionally, list any SBA or non-SBA Companion Loans, which are any loans to the same borrower/principals, whether or not they use any of the same collateral as for the SBA loan. SBA permission should have been requested to allow companion loans that affect the collateral position of SBA loan. Lender may not in fact or appearance confer preference to its non-SBA guaranteed loans.

Note:

- ▶ As of 01 / 01 / 2014 the SOP governs (over the Authorization).
 - ▶ PLP Lenders and LowDoc Lenders need to include their Eligibility Checklists.
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Tab 3. – Eligibility

- ▶ Any special programs requirements such as Recovery Act Certifications, Franchise Agreement, Fuel Supply or Jobbers Agreements and appropriate approvals.
- ▶ For Recovery Act loans, statements (certifications) as to use of proceeds and working capital (no golf courses, casinos, aquariums, zoos and pools and statement as to Illegal Immigrants) (also required in Tab 5). We do separate individual forms; I have seen it done as part of affirmative and negative covenants checklist.

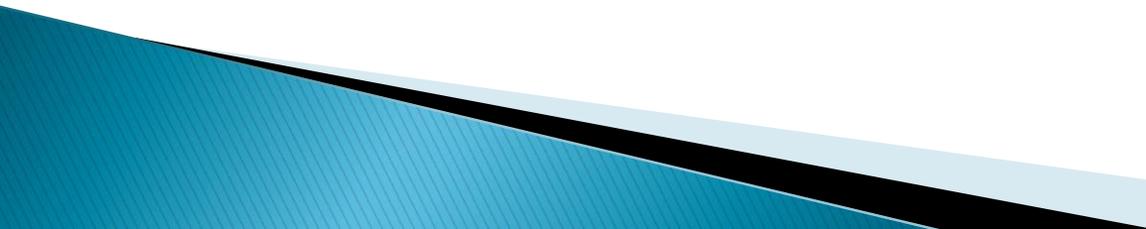
Tab 4 – Legal Documentation

- ▶ Must include Note (SBA 147) along with any modifications. Also, all Guaranties (SBA 148), Loan & Security Agreements, Collateral instruments – UCC financing statements and recorded mortgages/deeds of trust with Title Insurance as required, Leases, Landlord agreements, etc. (Can use own docs now; do not recommend).
- ▶ Bank must evidence that collateral requirements in the Authorization were obtained in the specified priority position and properly perfected. Specifically:

Legal Continued

- ▶ **Personal Property** - There should have been a pre-closing UCC Lien search (UCC-11) to indicate that the proper position *would be* obtained, a post-closing UCC search to evidence bank's required original position, and then post-default searches confirming that proper position still exists.
- ▶ **Real Property** - business or personal - pre-closing title insurance, instruments recorded upon closing, post-default title searches confirming required position. If any collateral had been released or substituted during the life of the loan or if some has subsequently been liquidated, include appropriate documentation (this information is repeated in Tab 9).

Legal Continued

- ▶ Other Collateral – Assignments of CDs, Stock, Life Insurance, Titles to vehicles, manufactured homes, etc.
 - ▶ Other information – Purchase/Sale Agreements (original to loan purpose), Borrower & Guarantor SSN/EIN, Form 912
 - ▶ Legal Proceedings – Actions against borrower, Bankruptcy filings and disposition, etc.
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Tab 5 – Disbursements

- ▶ Here we prove that the lender ensured that the SBA loan funds were used in accordance with Authorization's **USE OF PROCEEDS**. This must also be shown if the SBA loan refinanced a lender's interim loan. It is imperative that borrower's equity injection* requirements have been verified and documented before any SBA loan funds are disbursed. Such as:

*Only include in 10-Tab if early default (see Tab 7).

Disbursements Continued

- ▶ Loan Closing – Closing statement should reflect Authorization's use of funds. Closing agent should compile documentary evidence – copies of incoming & outgoing checks and wires, of borrower's equity injection as well as for all payees listed on closing statement. Debts being refinanced should have copy of note and current pay-off statement. If bank has retained/disbursed funds on borrower's behalf (that don't appear on closing statement) the lender should retain copies of account statements for business and loan accounts, as well as transaction tickets showing any inter-company transfer of funds. Only working capital should be disbursed directly to borrower; all other loan uses paid on borrower's behalf should be made directly to that party. (Hint: On WC, obtain first month's Bank Statement of Borrower to show proceeds stayed with the Company.)

Disbursements Continued

- ▶ Lender and borrower must certify settlement on SBA form 1050.
- ▶ Subsequent/Multiple disbursements – Must compile chronology of each individual disbursement, itemizing the dollar amount utilized from the available Uses categories, and then totaled to match authorization amounts. (We prepare an Excel spreadsheet.)
- ▶ Each disbursement must be supported with documentary evidence of use of funds, such as paid invoices, copies of cleared checks, receipts, etc.
- ▶ If SBA loan refinanced lender's interim loan, provide copy of note(s), and evidence that the interim loan uses were eligible and in accordance with Authorization.
- ▶ If loan was to refinance debt, include debt schedule with copies of notes and final pay-off statements.

Tab 6– Certified Transcript of Account

- ▶ Lender's loan system's history is transferred to SBA form 1149 to show each borrower payment, including Principal & Interest breakdown, interest paid-to dates, interest rate changes, approved deferments, Default Date, and recoveries from liquidation. SBA will compare this transcript to their records obtained from Colson's compilation of 1502 data (posting of remittances to the loan), and inform of any discrepancy. (Colson transcripts???. available only on sold loans).
- ▶ Lender expenses can be (and should be) netted from recoveries; provide supporting details! If expenses were netted against recoveries it is mandatory to complete CPC tabs after Tab 10.
- ▶ Review of the transcript provides determination if loan is considered Early Default (18 month rule).

Tab 7 – Early Default

- ▶ Did default occur within 18 months of initial disbursement, or, 18 months from the date of final disbursement? Complete the Tab-7 cover page, entering date of default. If NOT an early default, do not answer or provide details on follow-up questions! If loan is an early default the major items for **non-PLP** loans are:
 - ▶ Proof that Tax returns were verified via IRS 4506-T at origination.
 - ▶ Proof that Equity Injection requirement was met (2 months Bank Statements personal and before and after Bank Statements on Borrower). We typically would also detail equity injection on Closing Statement and have copies of canceled checks or wires.
 - ▶ If loan provided for a Change of Ownership, include the Business Valuation.
 - ▶ Standby Notes.

Early Default – PLP

- ▶ In addition to the requirements for non-PLP, PLP early default loans must include:
 - Credit Memo
 - Borrower's Application

NOTE: Credit memo should be very specific as to cash flow computations used to determine cash flow available for Debt Service. This is GLOBAL cash flow! Need to reference data bases of industry norms used in evaluating viability of projections and reference to the Borrower's business plan (Tab 9 also).

Tab-8 – Reconciliation of Business Personal Property Collateral

- ▶ In this section the original collateral specified in Authorization is compared to the current collateral, principally to show that bank verified original collateral, and documented via site visit report and follow-up liquidation appraisal, if appropriate, that all collateral was available to be liquidated (15 day and 59 day rule). IS IT STILL THERE?
- ▶ Include itemized list of personal property collateral present at origination or subsequently acquired with loan proceeds. Include equipment description, serial numbers, photographs, etc., and in narrative form discuss bank's due diligence to verify, protect, and establish value of collateral to be liquidated. (Third parties are available to do this.) Discuss any discrepancy.

Tab-9 – Collateral Disposition

- ▶ This tab has 4 major sections: 9(a) Appraisals, 9(b) Post-Default Site Visit Report, 9(c) Report on Sale of Collateral, and 9(d) Status of Liquidation. In addition to SBA's fillable section form, make separate cover page for each section.
- ▶ **9(a).** Cover page to list the appraisals to be found in this section. Include copies of real estate, equipment, and business appraisals obtained for origination, as well as those obtained for liquidation. Post default equipment/inventory appraisals might use original lists as base, and as appropriate appraisal might simply be in letter form from qualified industry person, such as used-equipment dealer or Auctioneer.

Collateral Continued

- ▶ **9(b).** Include **site visit report** which should have been made within 15 days of adverse event (like borrower telling bank he is in distress, or, actually closing the doors!), or within 59 days of payment default. “The site visit report should document lender’s efforts to protect SBA’s interests in collateral, including a detailed inventory”. **Include PHOTOGRAPHS.** Site visits can be multiple, and report should summarize relevant discussions (including subsequent) of borrower’s intent/plan/ability regarding loan repayment, and if any possibility exists for a workout. Explore any reasonable (but **PRUDENT**) steps the bank might consider to afford the business chance to regain viability. Confirm agreement that borrower will not move or sell any collateral without bank’s knowledge and permission, and that any proceeds are to be applied to loan. Discuss arrangements to have collateral valuated, and if it is reasonable to allow borrower to attempt self-liquidation. See SBA SOP 5057, chapter 15 for great points on site visit reports!

Collateral Continued

- ▶ **NOTE: SOP 50 57 is about 160 pages and is an easy and quick read! A MUST read for those involved with the servicing area of the Lender.**

Collateral Continued

- ▶ 9(c). Report of Sale of Collateral
- ▶ The “cover page” for this section is typically several pages of detailed narrative describing collateral position at liquidation, and all subsequent liquidation activities. Include inserted charts or spreads of running/cumulative recoveries from sale of collateral. (See Liquidation memo earlier. Cut and Paste!!!)
- ▶ If any collateral has already been liquidated, provide documentary evidence of the sale and proof that lender obtained fair value in releasing any collateral. For each individual transaction, note how proceeds were applied to the loan and reflected on transcript. Total the sales to date, summarize remaining collateral, and estimate final recovery.

Collateral Continued

- ▶ 9(d) – Status of Liquidation – Is liquidation complete, and is the loan ready to be charged-off? Charge-off refers to SBA, as lender within its policies may have already charged-off part of the loan. SBA considers a loan ready to be charged-off if no worthwhile collateral remains, and there is no further expectation of recovery.
- ▶ See SBA form for Final Wrap-Up / Charge-off Report which will require a very comprehensive memo summarizing efforts made for cost-effective recoveries, and conclusions that no additional recoveries are possible or feasible (Liquidation Memo again). Status of remaining guarantors/obligors is reviewed, and those still legally liable for remaining deficiency will be reported to US Treasury.

Tab 10 General Information

- ▶ Include Lender's wire transfer Form, Environmental Reports – original and post-default (summary sections only), SBA 159 Compensation Agreement from loan closing, Source of Equity Injection (if required and if early default), Assumption Agreements. DO NOT include information required in Early Default if it is not an Early Default!)
- ▶ CPC Tabs – This is a fillable 11–page PDF form that requires bank to certify and detail expenses incurred during liquidation for the Care & Preservation of Collateral (appraisals, taxes, maintenance, utilities, Legal, sales commissions, etc.) to request that SBA accepts its share of costs. In-between the tabs, the lender will insert supporting documents for all paid costs, such as closing statements, paid invoices or account statements, etc. all supported with copies of bank checks .

Summary:

▶ Always:

- 1) 4506-T
- 2) Verify Equity (both source and that it was actually injected, BEFORE loan was disbursed)
- 3) Tie out Use of Proceeds
- 4) Insurance Assignments and Collateral Verification (before and after loan was made)
- 5) PLP Lenders – Be very specific in your analysis of GLOBAL cash flow.

Worth the Webinar right here!!!

- ▶ Prepare the 10-Tab outline (skeleton) immediately after the loan closes! Borrowers are much more cooperative BEFORE there is a problem! When updating to send off, take OUT Early Default information if NOT Early Default!!!

Contact

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Or visit the SBA web site to find your local LRS at:

www.sba.gov