

## Chapter 19. Expenses and Recoveries

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### A. Classification of Expenses

Expenses are classified by SBA as either recoverable or non-recoverable. When reviewing payment requests, SBA may determine that an expense is recoverable or non-recoverable in whole or in part.

#### 1. Non-recoverable Expenses

Non-recoverable Expenses are the costs associated with liquidation of a loan that cannot be added to the principal balance. For example:

- a. The portion of fees or costs incurred that were not necessary, reasonable or customary;
- b. Expenses that are not related to collection of amounts due under the Note or to preservation or disposal of the collateral for the loan;
- c. Interest and service fees on expenses incurred after SBA purchased its guaranty;
- d. Legal expenses incurred in asserting a claim, cross claim, counterclaim, or third-party claim against SBA or in defense of an action brought by SBA against a 7(a) Lender or CDC, unless payment of such fees or costs is otherwise required by federal law;
- e. Legal expenses incurred in connection with the performance of liquidation activities that do not require the services of an attorney, unless preauthorized by SBA;
- f. Legal expenses incurred by taking actions for the sole benefit of the 7(a) Lender or CDC, as determined by SBA;
- g. Legal expenses incurred in the defense of, or payment of any settlement or adverse judgment resulting from a suit, counterclaim or other claim by an Obligor or other Person seeking damages based on a 7(a) Lender's or CDC's alleged wrongful action unless SBA expressly directed the 7(a) Lender or CDC to take the alleged wrongful action;

- h. Expenses incurred by a 7(a) Lender or CDC that failed to liquidate the SBA Loan in accordance with prudent lending practices including those pertaining to promptness; or
- i. Expenses incurred by a 7(a) Lender or CDC that failed to liquidate the SBA Loan in accordance with Loan Program Requirements, including those pertaining to Liquidation or Litigation Plans.

## 2. Recoverable Expenses

As set out in Chapter 2 (*Definitions*), Recoverable Expenses are the SBA approved, necessary, reasonable and customary costs incurred to collect amounts due under the Note, to enforce the terms of the Loan Documents, or to preserve or dispose of collateral. Although Recoverable Expenses can be added to the principal balance of the loan, they should be treated as a side obligation to avoid: (1) violating the *Secondary Participation Guaranty Agreement*, which prohibits Lenders from adding Recoverable Expenses to the balance of a loan sold in the secondary market; (2) inconsistencies with SBA Form 1502 reporting; and (3) inconsistencies in the transcript of account required for guaranty purchase. Recoverable Expenses include, for example:

### a. Searches

- (1) U.C.C. lien searches;
- (2) Title reports; and
- (3) Credit and asset search reports on Obligor.

### b. Appraisals

- (1) Post-default Appraisals;
- (2) Post-default Environmental Investigation Reports; and
- (3) Site visit reports prepared by contractors.

### c. Litigation Expenses

- (1) Attorney fees; and
- (2) Costs such as court filing fees.

d. **Collateral Care and Preservation**

- (1) Utility bills;
- (2) Insurance premium payments;
- (3) Caretaker fees;
- (4) Repair bills;
- (5) Real estate and personal property taxes; and
- (6) Expenses related to non-tax senior liens, including Third Party Loans.

**Note:** Recoverable Expenses related to REO and acquired personal property collateral cannot be added to the loan balance and must be kept separate from expenses related to the original loan.

**B. Recoveries**

**1. General**

Recoveries are the proceeds obtained through liquidation of the SBA Loan.

**2. Application of Liquidation Proceeds**

Unless the terms of a workout agreement or some other legally binding document, such as a court order, specify otherwise, recoveries should be applied in the following order:

- a. Recoverable Expenses;
- b. Principal balance of the loan; and
- c. Accrued interest.

**3. Remitting Recoveries to SBA**

SBA's share of the net proceeds recovered on an SBA Loan should be remitted to SBA via [www.pay.gov](http://www.pay.gov) within 15 business days of receipt. If SBA's share is not remitted in a timely manner, SBA may charge interest on the late amount.