

*555 signed a Small Business Administration questionnaire confirming that the proceeds of the loan were used as operating capital and identifying herself as the only person associated with Master Marketing. The only evidence was that the loan proceeds were not so used. We must view this evidence in the light most favorable to the government, resolving all issues of credibility in favor of the government. The evidence is sufficient to sustain the convictions.

[7] Susan McDougal also argues that the mail fraud charge, Count 13, was predicated on the mailing of the Small Business Administration Form 1031, but that David Hale made that mailing on April 9, 1986, after she had received the \$300,000 check on April 3, 1986. She argues that the scheme had then reached fruition and the later mailing was not in execution of the scheme as required by *Kann v. United States*, 323 U.S. 88, 93-94, 65 S.Ct. 148, 150-51, 89 L.Ed. 88 (1944), *Parr v. United States*, 363 U.S. 370, 392-93, 80 S.Ct. 1171, 1184, 4 L.Ed.2d 1277 (1960), and *United States v. Maze*, 414 U.S. 395, 403, 94 S.Ct. 645, 650, 38 L.Ed.2d 603 (1974). The Supreme Court in *Schmuck v. United States*, 489 U.S. 705, 715, 109 S.Ct. 1443, 1450, 103 L.Ed.2d 734 (1989), stated that the relevant question is whether the mailing is part of the execution of the scheme as conceived by the perpetrator at the time of the fraudulent transaction. We have held recently that even a mailing that became necessary after the defendant "has successfully fleeced his victim" can come within the statute if the mailing is necessary to permit the defendant to "retain the fruits of [the] fraud." See *United States v. Pemberton*, 121 F.3d 1157, 1171 (8th Cir.1997). Accord *United States v. Lack*, 129 F.3d 403, 408 (7th Cir.1997) ("This court has also held on several occasions that mailings which occur after the defendant has obtained the victims' money are in furtherance of the scheme if they facilitate concealment or postpone investigation of the scheme.")

In this case, there was evidence that the Form 1031 was part of the scheme from the outset. Hale testified that he had to send in the Form 1031 to convince the Small Business Association his loans were proper; otherwise the SBA could "write you

up for it." The Form 1031 was part of the loan documentation he prepared at the time he originated the loan and was with the loan documents for Susan McDougal's review at the closing. His mailing of the form was certainly foreseeable. See *United States v. Lefkowitz*, 125 F.3d 608, 615 (8th Cir.1997) (third party's use of mail or wire "reasonably foreseeable" result of fraud), *pet'n for cert. filed*, No. 97-7511 (Jan. 13, 1998).

Moreover, mailing the form was necessary to allow McDougal "to retain the fruits of [the] fraud." See *Pemberton*, 121 F.3d at 1171. An SBA official testified that the Form 1031 served to allow the SBA to verify that the loans complied with its regulations. Mailing the Form 1031 with false information about the purpose of the loan was a required step in the process of gaining Susan McDougal quiet enjoyment of the money, since if Hale had not complied with the regulatory requirement of sending in necessary forms with information indicating the loan was for the operation of a small business, he could have prompted investigation.

In sum, the mailing was not "innocent," but contained false statements; the mailing of the Form 1031 was contemplated from the outset by a participant in the scheme as a necessary step; the mailing was done by a party to the scheme; and the item was mailed to the victim of the fraud to prevent detection. These facts amply satisfy the requirement that the mailing be done in execution of the fraud. Cf. *United States v. Ribaste*, 905 F.2d 1140, 1142 (8th Cir.1990) (in scheme to obtain GM dealership by false representations, GM's mailing of acceptance letter satisfied mailing element) and *United States v. Reed*, 47 F.3d 288, 290-91 (8th Cir.1995) (attorney and accountant raided trust account over a long time; bank's mailing of account statements to defendants satisfied mailing element because defendants relied on statements in carrying out fraud). We reject Susan McDougal's argument.

II.

[8][9] Susan McDougal argues that when the district court dismissed the conspiracy count against her at the close of the government's