

## What's new in this version?

Version 2009.1, released June 24, 2009

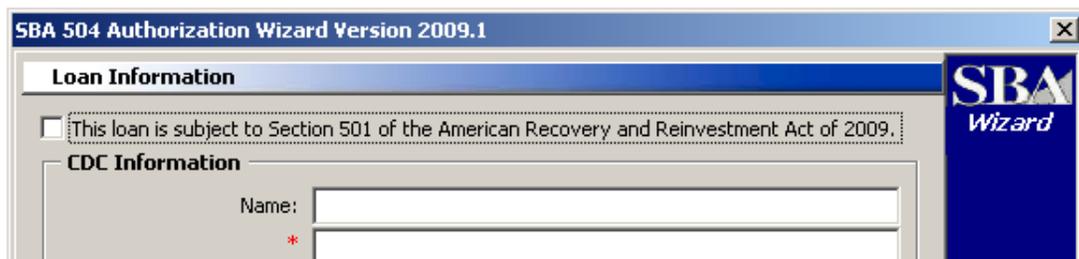
This section highlights the major differences between version 2009 and version 2009.1 of the Boilerplate and Wizard. This listing can also be found during operation of the Wizard in the "What's New" section of the 504 Wizard Help topics, which is available from the 504 Wizard menu.

Version 2009.1 has been released to accommodate the benefits of Sections 501 and 504 of the "American Recovery and Reinvestment Act of 2009". Within the Authorization this legislation may be abbreviated as "Recovery Act."

**When using the Wizard, the drafter must select Section 501 in order to include the SBA fee payment provisions.** However, Section 504 is a permanent change to the 504 program, which allows for a limited component of refinancing in the 504 project.

### Loan Information Section

The SBA 504 Authorization Wizard Loan Information panel has been modified to allow the user to select Section 501 of the Recovery Act, which requires the SBA to pay the CDC Processing Fee and the Third Party Lender Fee:



### General Loan Information Section

If Section 501 is selected, a new first sentence has been added, as follows:

#### ***General Loan information (MANDATORY)***

[~~Option~~—This loan is subject to Section 501 of the American Recovery and Reinvestment Act of 2009.] SBA will guarantee, under the following terms and conditions, a [10 or 20] year Debenture ("Debenture") in the amount of \$[**same amount as calculated in B.1.c**] to be issued by CDC and used to fund a 504 Loan (the "Loan") to assist:

#### **A. Project to Be Financed**

The American Recovery and Reinvestment Act of 2009 amended the Small Business Investment Act to allow refinanced debt to be included in the 504 project. The changes to the authorization follow:

##### **A.1. Project Property**

The introductory sentence has been modified to include the option "and refinancing". The sentence now reads:

"Debenture Proceeds will be used as part of the financing [Option and refinancing] for:"

**A.1.a. and A.1.b. Project Property**

The "real estate" and "equipment" project property paragraphs have been modified to add an additional option, "refinancing". The paragraphs now read:

- a. the [SELECT 1 or more as applicable—Purchase, lease, improvement, renovation, refinancing] of real estate [SELECT—, described as [Description]—OR/AND—, located at [Location], [City], [State] ].
- b. the [SELECT 1 or more as applicable—Purchase, lease, installation, refinancing] of equipment [SELECT—, described as [Description]—OR/AND—, located at [Location], [City], [State] ].

**A.2 Project Costs**

A 'Refinanced Debt' option was added as a Project Cost, and includes the Lender's name and amount of refinanced debt. This option may be used more than once as necessary.

*Paragraph f.(1) can be repeated as needed*

- f. Refinanced Debt—Loan from:
  - (1) [Lender] .....\$[Amount]
  - Total Refinanced Debt ..... \$[Amount]

**B. Project Financing**

The Debenture Proceeds calculation was modified so that under Recovery Act Section 501 loans the CDC Processing Fee is paid by the SBA and will not be paid from Debenture proceeds. If the Loan is not subject to Recovery Act Section 501, only line (3)(i) below will appear, and the CDC Processing Fee will remain a fee to be paid from the Debenture proceeds. If the Loan is subject to Recovery Act Section 501, lines (3)(i) and (3)(ii) will both appear, showing that the CDC Processing Fee paid by the SBA is subtracted from the CDC Processing Fee amount, with a result that the CDC Processing Fee in the Debenture calculation (figure at the far right below) becomes zero.

*Paragraph (3)(i) only will appear  
if the Loan IS NOT subject to Recovery Act Section 501  
Paragraphs (3)(i) AND (3)(ii) will appear  
if the Loan IS subject to Recovery Act Section 501*

(3) CDC Processing Fee			
(i)	CDC Processing Fee (a x 0.015)	\$[a. * 0.015]	
(ii)	Subtract CDC Processing Fee paid by SBA under Recovery Act Section 501	\$[-a. * 0.015]	\$[b.3(i) + b.3(ii)]

### **B.1.e. Disbursement**

A programming change under Paragraph B.1.e., Disbursement, has been made to remove the default of 24 months, now requiring the drafter to insert a disbursement period of up to 48 months.

### **B.3.b.(2)(a) Escrow Closing**

The Escrow Closing paragraph referring to CDC processing fees has been modified from:

- (a) Costs associated with the Debenture sale including the CDC processing fee, CSA fee, CDC attorney fee/closing costs, SBA Guarantee Fee, Funding Fee, and Underwriter's Fee.

to:

- (a) Costs associated with the Debenture sale including any CDC processing fee not paid by SBA, CSA fee, CDC attorney fee/closing costs, SBA Guarantee Fee, Funding Fee, and Underwriter's Fee.

#### ***DRAFTING TIP:***

***ALWAYS INCLUDE THE CDC PROCESSING FEE AS 1.5%. IF THE LOAN IS PROCESSED UNDER SECTION 501, THE WIZARD WILL SUBTRACT THE SBA FEE PAYMENT SO THAT THE DEBENTURE IS CALCULATED PROPERLY.***

### **B. 4. Permanent Third Party Lender Loan:**

#### **B.4.d. and 4.e.**

For Loans subject to Recovery Act Section 501, paragraph 4.e was added as a replacement for the standard Third Party Lender Fee paragraph 4.d., to describe the requirements when the SBA pays the Third Party Lender Fee.

***The following paragraph must appear  
if Loan IS NOT subject to Recovery Act Section 501***

- d. **Third Party Lender Fee.** SBA must collect a one-time Third Party Lender Participation fee equal to 50 basis points on the Third Party Lender's participation in a project when the Third Party Lender is in a senior credit position to SBA on the project. SBA may accept payment of this fee from the Third Party Lender, the 504 borrower, or the CDC. This payment may be made to SBA by (1) the Third Party Lender sending to the CDC a certified check or guaranteed funds check made payable to the CSA, and CDC forwarding it to the CSA with the 504 Loan Closing documentation, or (2) the CDC may collect the fee and the CSA will deduct the amount of the fee from the amount sent to the CDC after Debenture sale.

***Recovery Act Section 501 Approval (The following paragraph is  
MANDATORY for Section 501)***

Third Party Lender Fee payment by SBA per Section 501 of the American Recovery and Reinvestment Act of 2009. Payment of Third Party Lender Fee authorized through September 30, 2010 or until appropriated funds are exhausted, whichever is sooner.

- e. **Third Party Lender Fee.** SBA must collect a one-time Third Party Lender Participation fee equal to 50 basis points on the Third Party Lender's participation in a project when the Third Party Lender is in a senior credit position to SBA on the project. Payment of the

Third Party Lender Fee will be made by SBA, subject to Section 501 of the American Recovery and Reinvestment Act of 2009. This fee shall not be collected from the Third Party Lender, the 504 borrower, or the CDC.

## **7. CDC Fee**

### **7.b. Payment of CDC Processing Fee**

A new paragraph 7.b has been added to reflect the requirements when SBA pays the CDC Processing Fee under Recovery Act Section 501. The new paragraph reads:

***Recovery Act Section 501 Approval (The following paragraph is MANDATORY for Section 501)***

CDC Processing Fee payment by SBA per Section 501 of the American Recovery and Reinvestment Act of 2009. Payment of CDC Processing Fee is authorized through September 30, 2010 or until appropriated funds are exhausted, whichever is sooner.

- b. **Payment of CDC Processing Fee**—Payment of the CDC Processing Fee will be made by SBA subject to Section 501 of the American Recovery and Reinvestment Act of 2009. CDC may not collect a deposit that would have gone toward payment of the CDC Processing fee. SBA will pay CDC two-thirds of the estimated CDC Processing Fee at the time of loan approval or issuance of a loan number under the PCLP program. The remainder of the fee will be paid immediately following debenture funding and will be equal to 1.5% of the Net Debenture Proceeds for which CDC does not collect the CDC processing fee, minus the amount previously paid.

## **Certifications and Agreements Section**

**9.a.(3)** A new paragraph 9.a.(3) has been added to address the Section 501 Project Costs limitations, as follows:

***Alternate Funding For Restricted Recovery Act Uses (MANDATORY for Recovery Act Section 501)***

- (3) If the Project Costs include construction, acquisition, remodeling or renovation for a business that has a swimming pool, aquarium, zoo and/or golf course, then alternate funding, which may come from Borrower's Contribution, has been obtained to pay all costs reasonably and in good faith estimated to be allocable to the construction, acquisition, remodeling or renovation of the swimming pool, aquarium, zoo and/or golf course.