

## ***Getting the latest version of the Authorization***

The latest version of the Authorization can be obtained from the SBA web site at [www.sba.gov/aboutsba/sbaprograms/elending/authorizations](http://www.sba.gov/aboutsba/sbaprograms/elending/authorizations) or from any local SBA Office.

## ***Format Conventions***

All comments, references and instructions in the sections titled "Boilerplate" and "Appendix A" are located in shaded areas (gray or blue shade). All non-shaded areas in these two sections and Appendix A constitute the standardized text itself.

Text appearing in brackets [ ] must be completed, for instance:

[**Name**]—must be replaced by a name in the final authorization;

[**Amount**]—must be replaced by a \$ amount;

[**OPTION**—This sentence is optional]—Optional text—can be inserted or not;

[**SELECT**—this text—**OR**—that text]—User must select one of the available options;

[**SELECT**—First, Second, Third, Fourth, Fifth]—User must select one of the listed items;

[**Write Your Own**]—User can insert own text

Paragraphs will be renumbered depending on which options are selected. All other comments should be self-explanatory.

### **Operational Reminders:**

- Names and addresses may be saved by right-clicking in any textbox after initial entry. Names and addresses may be retrieved by right-clicking in an empty textbox.
- Assure that the Windows in Taskbar option is turned off (Tools | Options | Windows in Taskbar -- uncheck) as well as Smart cut and paste (Tools | Options | Edit).
- Please review the Wizard Settings Fact Sheet (WizardFacts.doc), available on the 504 Wizard website and located in your templates directory after installation, for recommended optimal Word settings.

## ***What's new in this version?***

This section highlights the major differences between version 2008 and version 2009 of the Boilerplate and Wizard. This listing of changes 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.

Throughout this 504 Boilerplate multiple references to "CFR" in the shaded comment areas have been changed to "13 CFR".

In addition, references to SOP paragraphs, page numbers and content in the shaded comment areas have been reviewed and updated to reflect current SBA requirements, including references to SOP 50-10(5).

The following Boilerplate sections have been modified in this version:

### **B. PROJECT FINANCING**

- **1. Debenture Proceeds**

The introductory paragraph has been modified to reflect that that the CDC forwards copies of closing documents to SBA for review, and after approval the CDC forwards the original documents to the Central Servicing Agent for the Debenture sale.

- **1.e. Debenture Proceeds — Disbursement**

The disbursement period has been revised in its entirety as follows:

"CDC must issue a debenture. The debenture proceeds must be disbursed no later than **[number of months – default is 24]** months from the approval date of this Authorization, unless extended by proper SBA procedures. If no debenture is disbursed within 48 months, this loan authorization will be cancelled by SBA. Extensions beyond the 48 month period will not be available."

- **2.c. Debenture Proceeds – Required Certifications Before 504 Loan Closing**

A new requirement has been added to ensure that interim lender certifications are not stale dated. The certification must now be executed "no earlier than the 5th day of the month prior to the month in which the CDC submits this loan to SBA for debenture funding."

- **3.a.(4) Escrow Account**

The word "doesn't," was changed to "does not".

- **3.b.(2)(a) Borrower must agree in writing:**

The sentence was modified to capitalize each type of fee and to remove "if any" with respect to the Guarantee Fee. It now reads:

"(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."

- **4.b.(6) and 4.c.(6) and (7) Third Party Lender**

The Third Party Lender provisions were amended to add provisions from Form 2287, Third Party Lender Agreement and from 13 CFR 120.921 as follows:

"4.b. The Third Party Lender's note and loan documents must not:

"(6) have any cross-default, "deem-at-risk," or any other provisions which allow Third Party Lender to make demand prior to maturity unless the Loan is in default.

"4.c. At or prior to 504 Loan Closing, Third Party Lender must execute a Third Party Lender Agreement that:

"(6) Confirms no Third Party Lender shall establish a preference beyond its rights as a senior lender on the Third Party Loan without the prior written consent of CDC/SBA.

"(7) Confirms that the Third Party Lender Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement."

## C. THE NOTE

- **4. Prepayment**

The final paragraph under the prepayment subparagraph has been changed to reflect the elimination of the Borrower deposit, to eliminate the explanation of how to calculate the prepayment date, and to refer the Borrower to the Note to determine how much notice the Borrower must give the CDC in order to prepay. The paragraph now reads:

"To prepay, Borrower must give prior written notice to the CDC according to the terms of the Note."

- **State Specific Language**

The State Specific Language for Pennsylvania was modified to reflect that all notes must include confession of judgment clauses.

## D. COLLATERAL CONDITIONS – State-Specific Language –Guarantees

**Pennsylvania** — A Mandatory Provision for Pennsylvania was added to require confession of judgment clauses in all guarantees.

**Arizona and Wisconsin** — Reference to Limited Guarantee SBA Form 148L was added.

**Kentucky** — A new mandatory provision was added:

"THESE PROVISIONS ARE FOR THE PURPOSE OF KRS 371.065 ONLY AND DO NOT WAIVE OR AVOID GUARANTOR'S OBLIGATIONS ON THIS GUARANTEE IN PART OR IN WHOLE. THE AMOUNT OF THE MAXIMUM PRINCIPAL AGGREGATE LIABILITY OF GUARANTOR IS THE NOTE AMOUNT PLUS INTEREST AT THE NOTE RATE, UNLESS THE MAXIMUM LIABILITY BOX IS CHECKED ON SBA FORM 148L, WHICH WOULD LIMIT LIABILITY TO THE STATED MAXIMUM LIABILITY PLUS INTEREST AT THE NOTE RATE. THE DATE ON WHICH THIS GUARANTEE TERMINATES IS THE MATURITY DATE OF THE NOTE PLUS 6 YEARS, PROVIDED SUCH TERMINATION SHALL NOT AFFECT EXTENSIONS OR RENEWALS OF INTEREST ACCRUING ON, OR FEES, COSTS OR EXPENSES INCURRED WITH RESPECT TO, SUCH OBLIGATIONS ON OR AFTER SUCH DATE. THE ABOVE TERMINATION DATE IS EXTENDED BY ANY EVENT THAT DELAYS OR AVOIDS THE STATUTES OF LIMITATIONS."

**Delaware**— A provision was added to allow confession of judgment clauses as follows:

"CDC, at its option, may include confession of judgment clauses in guarantees signed by Delaware residents."

## **E ADDITIONAL CONDITIONS**

- **1.a. – Flood Insurance**

The third subparagraph was modified to reflect that in circumstances when the loan includes personal property but not the business real estate as collateral and the CDC is unable to obtain flood insurance or believes that the cost of the insurance is not economically feasible, that CDC may request a waiver from the Sacramento Loan Processing Center.

"(3) If any equipment, fixtures, or inventory that is collateral for the loan ("Personal Property Collateral") is in a building any portion of which is located in a special flood hazard area and that building is not collateral for the Loan, CDC must require Borrower to obtain available flood insurance for the Personal Property Collateral. CDC may request a waiver of this requirement from the Sacramento Loan Processing Center. The CDC must submit with its request a written justification that fully explains why flood insurance is not economically feasible or, if flood insurance is not available, the steps taken to determine that it is not available. "

In addition, in the final paragraph, the words "act or neglect of" were changed to "action or failure to act by" as follows:

"Insurance coverage must be in amounts equal to the lesser of the insurable value of the property or the maximum limit of coverage available. Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of CDC. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of CDC and SBA. (Borrower will be ineligible for any future SBA disaster assistance or business loan assistance if Borrower does not maintain any required flood insurance for the entire term of the Loan.)"

- **1.b. and c. — Real Estate Hazard Insurance and Personal Property Hazard Insurance**

The word "should" was replaced with "must" to reflect that if full replacement cost insurance is not available, coverage must be for maximum insurable value. In addition, the phrase "act or neglect by" was changed to "action or failure to act by" in similar fashion to the flood paragraph referenced above.

- **1.e. — Life Insurance**

This paragraph was modified to reflect the requirement that CDC must assure that the Borrower pays the life insurance premium:

CDC must obtain a collateral assignment of each policy with CDC and SBA as assignees. CDC must also obtain acknowledgment of the assignment by the Home Office of the Insurer. CDC must also assure that Borrower pays the premium on the policy.

- **2.a. and b. – Environmental Requirements**

**Paragraph E.2.a.** has been modified to reflect that all business real property collateral requires an environmental investigation and to reference SOP 50-10(5):

"a. CDC must not close the loan until it has:

- "(1) completed the review for potential environmental contamination required in SOP 50-10(5) ("Environmental Investigation") on each business real property site that is taken as collateral, and;
- "(2) sufficiently minimized the risk from any adverse environmental findings discovered in the Environmental Investigation, or otherwise, as required by SOP 50-10(5), Subpart C, Chapter 3, (Environmental Policies and Procedures) and applicable appendices."

**Paragraph E.2.b.** has been modified to reflect that Environmental Investigation reports are submitted to the Sacramento Loan Processing Center.

- **4. – OPERATING INFORMATION –**

- a. Verification of Financial Information**

The third paragraph was modified to reflect that verification of financial information provided by the seller of a business is required when there is a change of ownership. Reference to "purchase of a business" was deleted.

The final paragraph was modified to reflect updated requirements in SOP 50-10(5) for circumstances in which the CDC closes the loan before receiving the tax transcript from IRS. The updated language refers the CDC to SOP 50-10(5) for the proper procedures:

"If CDC does not receive a response from the IRS or copy of the tax transcript within 10 business days of submitting IRS Form 4506-T, then CDC may close the Loan prior to completing this verification, provided that CDC has submitted IRS Form 4506-T to the IRS no later than 10 business days from the date of this Authorization. However, CDC must send a second request following precisely the procedures detailed in SOP 50-10(5) and must perform the verification and resolve any significant differences discovered, even if the loan is fully disbursed."

- Agreement of Franchisor**

Provision h.(4) was changed to reflect a change in the SOP and h.(2) was edited for grammatical consistency as follows:

"(2) Upon Loan payment default or deferment, to defer payment of franchise fees, royalties, advertising, and other fees until Borrower brings Loan payments current [~~OPTION—or for [months] months,~~ **whichever is less**].

"(4) To give CDC the same opportunity to cure any defaults under the franchise or lease agreement that is given to Franchisee under the same agreements."

- **8.– Construction Provisions**

- b. Required Documentation**

A clause was added to the end of this paragraph to reflect the new requirement to get a post-construction certification from the appraiser. The last sentence now reads:

"CDC may rely upon a certification by the Interim Lender, except that if an "as completed" appraisal was obtained prior to construction, CDC must also get a certification from the appraiser after construction is completed to determine if the appraisal needs to be adjusted to reflect substantial changes in the final project form the original plans and specifications."

- c. CDC Interim Financing**—A new provision was added to reflect the SOP requirement if interim financing for construction comes from a CDC, as follows:

"If the interim financing for construction comes from a CDC, then:

- "(1) Mortgages must be recorded prior to beginning construction;

- "(2) Inspections must be made by a qualified engineer, appraiser, or other party satisfactory to SBA prior to all progress disbursements;
- "(3) The small business must furnish a firm construction contract to the CDC from an acceptable contractor at a specified price, including a provision that no material changes are to be made without the prior written consent of the CDC;
- "(4) The contractor must furnish builder's risk and workers' compensation insurance;
- "(5) One complete set of plans and specifications of the proposed construction must be submitted to the CDC;
- "(6) Where the CDC or the small business is to inject funds into the construction project, these funds must be used prior to the disbursement of the interim financing;
- "(7) The CDC must make and document periodic inspections of construction; and
- "(8) When loan funds will be used to improve buildings on leased land, assignment of the lease must be obtained."

## **F. DEBENTURE SALE CONDITIONS**

### **• 3.g. – Required forms**

The following four (4) SBA Required Forms have been added to the list of closing documents:

SBA Form 2286, 504 Debenture Closing Checklist  
 SBA Form 2287, Third Party Lender Agreement  
 SBA Form 2288, Interim Lender Certification  
 SBA Form 2289, Borrower and Operating Company Certification

### **• 3.h. Document submission directions have also changed to reflect changes from streamlined closing:**

“Submit Form 2286, the 504 Debenture Closing Checklist, copies of required documents from the checklist and copies of any other documents required by SBA, for SBA review and approval by the deadlines established by SBA for each Debenture sale.

## **Appendix A and B**

Appendix A and B include the standard collateral provisions for the 7a, 504, EWCP and CAPLines Authorizations. Appendix A includes all of the common collateral paragraphs used in the four standard authorizations (7a, 504, EWCP and CAPLines). Appendix B deals exclusively with real property liens, the real property boilerplate provisions required by each state, and evidence of title provisions available in each state. Requirements for each state were recently updated after a survey of SBA field counsel. Appendix B summarizes each provision and has an index showing which boilerplate provisions are required and which title options are available for each state. The full provisions are included in the Appendix A Real Property paragraphs and may be in a different order than the indexed list of provisions in Appendix B.

## **Appendix A**

### **• State-Specific provisions – Real Property Collateral**

Three of the real property collateral paragraph state-specific provisions were updated based on the response to an SBA field counsel survey. The updated paragraphs are:

**B.1. – Lien on Land and Improvements;**

**B.5. – Leasehold Instrument on Building Constructed on Leased Land; and**

**B.6. – Leasehold Security Interest in building on leased land.**

The Boilerplate Provisions include one completely new item, **subparagraph (k)** below (Provision 11 in Appendix B) for Massachusetts and Rhode Island. The only other provisions with content changes are **subparagraph (d)** below (Provision 4 in Appendix B), requiring that for 504 loans, request for notice be sent to both the CDC and the servicing center; and **subparagraph (g)** (Provision 9 in Appendix B) (Texas only), changing ‘designation’ to ‘waiver’ and limiting the provision to ownership by an individual or an individual and spouse. **Subparagraph (f)**

(Provision 10 in Appendix B) was clarified as required for Residential Property only. **Subparagraph (h)** (Provision 6 in Appendix B) was updated to refer to the prior obligation instead of the borrower, since the grantor may be a party other than the borrower. The updated provisions follow:

- "d. Lender to file a Request for Notice pursuant to state law.
- "e. For 504 Loans, notice required to CDC and SBA CLSC.
- "f. Written waiver of homestead required. (Residential property only.)
- "g. Statement of non-homestead required. (Residential property only.)
- "h. Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- "i. Lender must obtain from prior lienholders written verification (1) of amount owing on prior obligation, (2) that prior obligation is current on payments, and (3) that prior obligation is not otherwise in default.
- "j. Written waiver of redemption rights is required. (Non-residential property only.)
- "k. Survey, certified to lender, is required, or prior survey and affidavit of no change acceptable to lender.
- "l. Statutory Condition and the Statutory Power of Sale language required."

In Real Property paragraph B.1., the water rights provision was also modified to add the phrase "if any". This provision is preprogrammed as a checked option every time this collateral paragraph is selected. The drafter may uncheck the option. If the option is unintentionally included in the final authorization, however, and it does not apply, the new modification avoids any need to delete the provision through management action.

"[OPTION - and water rights, if any,]"

- **Pari Passu – Shared Option for Real and Personal Property Collateral**

A "shared" (Pari Passu) option was added for the three real property collateral paragraphs B.1, 5, and 6 and paragraph C.1., Personal Property.

For 504 loans, selecting the 'shared' option will automatically add the following paragraph to the collateral provision as follows:

***The following must appear in 504 Authorizations only if shared lien position.***

- "1. The lien securing the 504 Loan is a shared lien pari passu with that of [name of lender] in the amount of \$[amount]. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded."

## **Appendix B**

Appendix B was updated based on a survey of SBA field counsel. The list of required provisions by each state was updated on pages 3 – 5 of Appendix B and any changes were programmed to automatically appear when a state is chosen for a real property lien.

- **Evidence of Title**

The evidence of title provisions were not modified, but based on the survey, the index was updated to add the ALTA title policy as available in every state except Alabama, Indiana, Iowa and Texas. The index is renamed 'Evidence of Title Key'. **NOTE: For 504 Loans, the ALTA title policy is required in all states where it is available.**

- **Boilerplate Requirements**

The Boilerplate Provisions were modified based on counsel response, as described above in the Appendix A discussion. As discussed above, there is one new provision, **Provision 11 (subparagraph (k) above)** for Massachusetts and Rhode Island. The only provisions with content changes are **Provision 4 (subparagraph (d) above)** requiring that for 504 loans, request for notice be sent to both the CDC and the servicing center; and **Provision 9 (subparagraph (g) above)**, (Texas only) changing 'designation' to 'waiver' and limiting the provision to ownership by an individual or an individual and spouse. **Provision 10 (subparagraph (f) above)**, was clarified

as required for Residential Property only. **Provision 6 (subparagraph (h) above)**, was updated to refer to the prior obligation instead of referencing the borrower, since the grantor may be a party other than the borrower. Some of the provisions in Appendix B were shortened from the full provision that shows in Appendix A. The updated Appendix B Boilerplate Provisions follow:

**"Boilerplate Provision Requirements Key. Refer to Appendix A for the exact text.**

- "(1) (index not used)
- "(2) Prior open ended lien(s) closed in writing according to applicable state law. Revolving line(s) of credit limited in writing to the amount stated.
- "(3) Written agreement from prior lienholders to provide Lender with [Number of days] days written notice before commencing foreclosure of prior lien.
- "(4) Request for Notice filed pursuant to state law. For 504 Loans, notice required to CDC, SBA and CSLC.
- "(5) Written waiver of homestead. (Residential property only).
- "(6) Prior lienholder written verification (a) of amount owing on prior obligation, (b) that prior obligation is current on payments, and (c) that prior obligation is not otherwise in default.
- "(7) Written waiver of redemption rights. (Non-residential property only).
- "(8) Survey, certified to Lender, or prior survey and affidavit of no change acceptable to Lender.
- "(9) Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- "(10) Statement of non-homestead. (Residential property only.)
- "(11) Statutory Condition and the Statutory Power of Sale language required."

#### **Appendix C**

The Frequently Asked Questions of Appendix C were updated to reference the new SOP and reflect the modified environmental provisions.

#### **Appendix D**

Appendix D has been deleted as an appendix to the authorization. It is now included with the 504 Streamlining documents.

### ***More Information***

See **Appendix C** at the end of this document for a list of Frequently Asked Questions.